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### 经济、社会、文化权利

#### 适足生活水准权所含适足住房问题

#### 适足生活水准权所含适足住房问题和不受歧视权问题

#### 特别报告员米隆·科塔里提交的报告

#### 增 编

对墨西哥的访问(2002年3月4日至15日)\*\*

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\* 内容提要以所有正式语文分发。报告本身载于内容提要的附件中，仅以提交语文和西班牙文分发。

\*\* 根据大会第 53/208 号决议 B 节第 8 段，本报告迟交是为了反映最新事态发展，包括访问产生的后续行动的资料。

## 内 容 提 要

适足住房问题特别报告员应墨西哥政府向委员会所有特别程序发出的公开邀请，于 2002 年 3 月 4 日至 15 日访问了墨西哥，这是经济、社会和文化权利领域的一名特别报告员首次访问墨西哥，因此格外重要。

特别报告员自任职以来一直强调应对其任务作广义的解释，以包括处理饮水、供电和环境卫生等问题。其访问的特别重点是调查最脆弱人口如何对付住房短缺和生活条件差的问题。他既审视了一般穷人的境况，又调查了土著、妇女和儿童等特定社区和群体的问题。全球化以及区域贸易和投资协定(如《北美自由贸易协定》)对适足住房权的行使的影响也是他关注的一项问题。

特别报告员会见了社会发展部长、全国住房专员、州政府和市政府住房事务官员、联邦政府和地方各级的立法人员和法官以及全国和州人权委员会。他还访问了 Chiapas 州 Tuxtla Gutierrez 市和 san Cristobal de las Casas 市，包括访问了偏僻农村的土著社区，并访问了 Baja California 州 Mexicali 市和 Tijuana 市。

在特别报告员所到之处，包括在墨西哥城，民间社会提供了出色的协调和协助。特别报告员多次会见了民间社会的代表，并由民间社会安排进行了实地访问。当地域、乡居民向他叙述了日常生活环境以及所面临的被迫迁离问题。

墨西哥在住房领域面临重大挑战。本届政府已将住房问题定为一项国家优先工作，并于 2001 年任命了一名全国住房专员。这名专员的任务是负责协调联邦和地方各级在改善国内住房状况方面的工作。该国每年需要新建 750,000 套房才能解决人口增长和现有住房陈旧的问题。墨西哥执行了几项住房贷款计划，但这些计划大多针对正规部门的中等收入雇员，因此实际上占总人口 40%的非正规经济部门的贫困雇员无法享受该计划。该国僵硬的土地所有制(公有地制度)也相当复杂，为政府处理迁移问题增添了难度。结果，穷人和土著为找活干，或被逐出住所后出于无奈，或受土地投机的诱惑，多次发生了抢占土地事件。

特别报告员发现，墨西哥政府认真致力于落实各项国际人权文书所载的各项权利，包括致力于落实适足住房权。他尤其赞赏墨西哥在国际上就适足住房权问题所持的积极立场，并鼓励墨西哥将其在人权领域作出的承诺进一步纳入联邦和地方政策和法律中。

墨西哥为此采取了几项具体措施。该国设立了各级有关机构协助落实适足住房权。全国住房专员设立了专门负责讨论政策与战略问题的全国住房委员会。该委员会由各部、金融机构、当地住房机构、市镇协会的代表、学术界人士、专业人员以及民间社会和私营部门的代表组成。外交部设立的跨秘书处委员会后来划归内政部，并改为人权领域政府政策跨秘书处委员会，负责讨论各方面人权问题并根据所通过的关于墨西哥的结论性意见采取后续行动。该委员会属下负责落实经济、社会和文化权利尤其是偏重落实住房权问题的工作组在筹备和协助特别报告员访问方面发挥了关键作用。他期望在访问后开展后续工作时与该委员会密切合作。

特别报告员的主要调查结果表明，墨西哥需要制订较全面的全国住房方案，方案应更重视最贫困阶层的需求。迄今为止，工作重点大都在于推动私营部门筹集建房资金和提供新房上，而不是在于满足自造住房(占住房总量的 60%以上)的资金需求和修缮自建住房并向其提供公共服务设施(如供水和卫生设备)上。政府一直在执行几项住房融资项目，但由于这些项目大多主要针对城市居民和收入达最低工资五倍以上的人口，因此并不能解决问题。全国住房专员已意识到这一问题，正努力加强和调整这些方案以解决这项问题。但特别报告员强调指出，政府目前通过提供住房资金(即提供由国家担保的房屋贷款和补贴)解决住房问题的办法还不够。墨西哥要想改善住房状况，就有必要在考虑到各项人权是不可分割的这一情况下，采取更为协调的做法，努力改进法律、政策和服务，其中需特别重视脆弱群体的利益。人权框架可为此提供极有价值的思路。

另一令人关注的问题是，需要采取更多的防范措施，避免强迫迁离现象。许多人向特别报告员倾诉了被逐出国家的情景。全国各地有许多社区面临被强迫迁离问题，多数贫困家庭得不到任何法律保护或无力诉诸法律手段。1995 年金融危机后，随着支付的利息额激增，许多人无力偿还房屋贷款，银行遂收回房产，将一些人逐出住房。特别报告员还强调需要大大重视房屋租赁、租赁法规和租金管制。在市场占主导地位 and 存在土地投机问题的国家中，穷人很难有可靠的住房。从特别报告员听到的情况来看，缺乏稳定住房和被迫迁离问题显然对妇女和儿童造成了特别严重的影响。

特别报告员强调指出，在处理这些问题时，须注重各项人权是不可分割的。负责住房或卫生或食物问题的政府各部或机构各自为政，各自处理问题。需要采取远更协调一致的做法，从更大的角度看待住房、环境以及其他问题。包括财政部在内的各部之间需大大加强协调。考虑到财政部在为社会福利性住房提供必要资金方面发挥的关键作用，加强与该部的协调尤为重要。不仅需在各部间加强协调，而且各级立法人员也需加强他们之间的协调。

鉴于许多穷人处境艰难，特别报告员强调指出，欲解决墨西哥的住房问题，必须既尊重人权，又要提供人道主义援助。他建议可以设立一项全国住房问题人道主义基金。这项基金可在全国住房专员协调下，向各州有关机构提供资金，以处理急需解决的问题，其中不仅需要解决受水灾或地震影响的社区的问题，而且还需要解决无家可归者、物质匮乏的人、被驱逐后无家可归的人以及脆弱群体的问题。

特别报告员还敦促在各部门的住房政策和方案中进一步落实人权。查明该国的住房需求并以人权角度解释相关数据是逐步落实适足住房权以及实现千年期有关发展目标的第一步。

墨西哥境内的被迫迁离问题值得特别关注，需要各有关机构或人士在多个部门中采取措施予以解决。特别报告员建议设立由全国住房委员会和全国人权委员会成员以及立法人员和民间团体组成的一个工作队审查强迫迁离问题。

墨西哥实行了许多很好的政策和做法，例如设立了跨秘书处委员会及其负责经济、社会、文化权利问题的小组委员会，采取了土地正规化政策和方案，落实了土著住房方案，民间社会也开展了活动，促进、监测和保护了适足住房权。应进一步收集、研究和传播这些经验。特别报告员敦促联合国人权事务高级专员办事处(人权高专办)和联合国人类住区规划署共同执行联合国住房权方案，促进交流这方面成功的经验，包括通过互联网交流经验。

最后，需要加强人权教育，尤其是经济、社会和文化权利方面的教育。特别报告员对人权高专办最近在该国设立分办事处表示欢迎，鼓励人权高专办在其国别援助方案中落实包括适足住房权在内的经济、社会和文化权利，并在此方面进一步协助墨西哥。他还注意到，许多人并不知道联邦和州独立人权机构可受理关于适足住房权提出的投诉。

**Annex**

**Report of the Special Rapporteur on adequate housing as a component of the  
right to an adequate standard of living, and on the right to non-discrimination,  
Miloon Kothari, on his mission to Mexico, 4-15 March 2002**

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## Introduction

1. The mission of the Special Rapporteur on adequate housing to Mexico took place from 4 to 15 March 2002, under the open invitation from the Government to all the special procedures of the Commission. His mission was a particularly significant one as it was the first of such missions to Mexico by special rapporteurs in the field of economic, social and cultural rights.
2. In accordance with his mandate, established by the Commission on Human Rights in its resolutions 2000/9 and 2001/28, the general objectives of the mission were to: (a) examine and report on the status of the realization of the rights relevant to adequate housing, with particular attention to gender perspectives and the right to non-discrimination; (b) review, in the country context, the interrelatedness of adequate housing as a component of the right to an adequate standard of living, with other human rights; (c) engage in dialogues with and promote cooperation among the Government, civil society, United Nations and other international agencies in their efforts to secure the rights relevant to his mandate; (d) identify practical solutions, including best practices, towards the realization of the rights relevant to his mandate; and (e) follow up on relevant concluding observations and recommendations of treaty bodies and assess their impact on policies adopted by the country.
3. Based on the legal bases for his mandate given in Commission resolution 2000/9,<sup>1</sup> the Special Rapporteur has defined the right to adequate housing as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity”. Throughout his activities, including in his two reports to the Commission on Human Rights (E/CN.4/2001/51 and E/CN.4/2002/59), the Special Rapporteur has adopted the indivisibility approach to his mandate, and aims to explore linkages with other related rights such as the rights to food, water, health, work, property, security of person, security of home, and protection against inhuman and degrading treatment. This approach also necessitates his cross-examining a range of issues related to adequate housing, including land, forced eviction, access to water and sanitation, health, poverty, the impact of globalization, gender, indigenous people, minorities and vulnerable groups.
4. This holistic approach of the Special Rapporteur was reflected in a wide range of meetings and consultations held during the mission, including with: the Commissioner of the National Commission on Housing (CONAFOVI, Comisión Nacional de Fomento a la Vivienda); the Minister of Social Development (SEDESOL, Secretaría de Desarrollo Social); the Undersecretary for Human Rights of the Ministry of External Relations (SRE, Secretaría de Relaciones Exteriores); the President of the National Institute of Statistics (INEGI, Instituto Nacional de Estadística, Geografía e Informática); the President of the National Institute of Women (INMUJERES, Instituto Nacional de las Mujeres); the Directors of several housing finance institutions; the Executive Director of the National Human Rights Commission (Comisión Nacional de Derechos Humanos); the Director-General of the National Institute of the Indigenous People (INI, Instituto Nacional Indigenista); the President and members of the Housing Commission of the Chamber of Deputies (Comisión de Vivienda de la Cámara de Diputados); the Director-General of the Institute of Housing of the State of Chiapas; the Chief Justice of the Supreme Court of the State of Chiapas (Magistrado Presidente del Supremo Tribunal de Justicia del Estado); the Director-General of the Department of Human Settlements

and Public Works of the State of Baja California (Secretario de Asentamientos Humanos y Obras Públicas); the Chief Justice of the Supreme Court of the State of Baja California (Presidente del Supremo Tribunal de Justicia del Estado Baja California); the Mayor of the City of Tijuana; the State Human Rights Commission of Baja California; the President of the Housing Commission of the Legislative Assembly of the Federal District/Mexico City (Presidente de la Comisión de Vivienda de la Asamblea Legislativa del Distrito Federal); the Secretary for Urban Development and Housing and Director-General of the Housing Institute of the Mexico City Federal District (Secretaria de Desarrollo Urbano y Vivienda, y Director General del Instituto de Vivienda del Distrito Federal); the President of the Tribunal of Justice of the Mexico City Federal District (Presidente del Tribunal de Justicia del Distrito Federal); and the Federal District Human Rights Commission. The Special Rapporteur met with the United Nations Resident Coordinator in the country and representatives of the following United Nations bodies: the Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM) and the United Nations Population Fund (UNFPA).

5. The Special Rapporteur also met with a number of civil society groups and organizations including:

(a) In Mexico city: Coalición Internacional para el Hábitat-América Latina (HIC-AL); DECA Equipo Pueblo, A.C.; Movimiento Ciudadano por la Democracia; FIAN Sección México y Frente por el Derecho a Alimentarse; Barzón Movimiento Jurídico Nacional, A.C.; Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos; Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C.; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.; Centro de Derechos Humanos Fray Francisco de Vitoria; Servicio Paz y Justicia (Morelos); Misión Civil por la Paz; Casa y Ciudad, A.C.; Fomento Solidario para la Vivienda, A.C.; Centro de la Vivienda y Estudios Urbanos, A.C. (CENVI); Centro Operacional de Vivienda y Poblamiento (COPEVI); Unión Popular Revolucionaria Emiliano Zapata, Asamblea de Barrios "Patria Nueva" y otras organizaciones del Movimiento Urbano Popular de la Ciudad de México; miembros del Colectivo de Pueblos en Defensa de la Tierra (San Salvador Atenco, Estado de México); Colegio de Arquitectos; Universidad Nacional Autónoma de México (UNAM), Universidad Autónoma Metropolitana (UAM), Universidad Iberoamericana, Colegio de México;

(b) In Baja California: Servicios y Solidaridad en México, A.C.; Coalición de Salud Ambiental (Environmental Health Coalition) (California, EUA); Asociación de Comités del Pueblo; Frente Cívico Mexicalense; Comité de Participación y Defensa Ciudadana, A.C.; Colegio de la Frontera Norte;

(c) In Chiapas: Centro de Derechos Humanos Fray Bartolomé de las Casas, A.C.; CCESC; DESMI; CIEPAC; Defensoría del Derecho a la Salud; Colegio de la Frontera Sur.

6. The Special Rapporteur would like to take this opportunity to thank the Government of Mexico for its openness and cooperation extended throughout the mission. He was also grateful for the various assistance provided by the Government, UNDP and HIC-AL for the smooth and efficient organization of the mission programme. Finally, he deeply appreciated and praises the efforts of civil society groups in mobilizing communities and organizing various conferences,

hearings and testimonies. He hopes that outcomes of his mission will assist the efforts by all parties towards realizing the right of everyone to dignified and decent housing, as framed in the Constitution of Mexico and in international human rights instruments.

## I. THE ISSUES

7. Mexico faces significant challenges in the housing sector. The President of Mexico has put housing as a national priority and established a goal of constructing 750,000 housing units per year in a sectoral programme on housing for the period 2001-2006. This section outlines the issues on which the Special Rapporteur focused during his mission.

8. Throughout the mission, the Special Rapporteur also focused his attention on the gender dimensions of housing rights and the need for protection of the poor and the vulnerable groups. To provide a framework for discussion with the Government, the Special Rapporteur used the questionnaire he sent to all Governments and members of civil society in September 2001, his recommendations on discrimination and the right to adequate housing contained in his second report to the Commission (E/CN.4/2002/59, para. 46), as well as general comments and recommendations adopted by the treaty bodies, particularly General Comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights.

9. **Housing need.** According to the housing and population census conducted in 2000, Mexico had 21.5 million housing units for 22.3 million households. The absolute housing deficit stood at 756,000 units as of 2000. Furthermore, the demographic predictions for the next 30 years suggest that, on average, 732,000 new housing units will be required every year over the next 10 years to meet the increasing demand for housing arising from population growth. For the period between 2010 and 2030, the housing demand is expected to grow further to 800,000 units per year. Affordable rental housing is currently very underdeveloped in Mexico, which leaves very few options for the poorer segment of society who cannot qualify for State housing finance programmes.

10. **Housing finance.** The low saving capacity of the lower segment of society poses another problem in solving the housing deficit. The Government recognizes 54 per cent of the population earning less than five minimum wages as living in poverty. It further estimates that, of the 750,000-unit predicted annual demand, demand for 307,000 units will come from the extreme poor, earning less than three minimum wages, who represent 24 per cent of the population. Major government housing finance programmes, such as INFONAVIT, FOVISSSTE and FOVI (see paragraph 24 below), are mostly targeted at the middle-income group and employees of the formal sector. Direct subsidy programmes exist for the poorest. However, these are not sufficient to meet the estimated demands.

11. **Poor quality of housing and access to basic services.** According to the official statistics, among the existing 21.5 million housing units in 2000, 95 per cent had electricity, 89 per cent access to water and 78 per cent sewage. While these figures generally represent improvement over those statistics for 1995, detailed data show that a much lower proportion of people had piped water within the home and drainage connected to the public



system or a septic tank in 2000. There is also a wide discrepancy between urban and rural areas, and between federal states (see table below). Availability of serviced land (with water and sanitation) is particularly low in poorer regions such as the State of Chiapas.

State	Population (millions)	Housing units (millions)	Occupants per housing unit	Access to water (%)	Drainage (%)	Electricity (%)
Baja California	2 488	602	4.1	91.7	83.5	96.8
Chiapas	3 921	801	4.9	70.0	62.4	87.2
Federal District	8 591	2 125	4.0	98.4	98.5	99.8
National total	97 483	21 900	4.4	87.5	87.1	95.1

Source: INEGI.

12. **Land rights/displacement.** It is apparent that the demand for new housing could not be met solely by housing finance, but would require that new land be made available. In Mexico, this is a particularly complex issue owing to the uniqueness of its *ejido* land system, a form of rural communal land tenure created by the 1917 Constitution. The majority of the land surrounding medium-sized and large cities consists of *ejidos* and the Constitution protects the rights of peasants to retain these lands in perpetuity, not to be sold, rented or mortgaged. Although the constitutional reform of 1992 allowed the titling and eventual sale of *ejido* land, this has not resulted in additional land for low-income housing and in certain cases, has led to a reduction in the amount of land available for that purpose.<sup>2</sup> As a result, significant land invasions and illegal acquisition of land have taken place over the past years on the periphery of fast-growing cities by poor and indigenous people looking for job opportunities or after having been evicted or displaced from their original residences. They often live in precarious conditions, without basic services such as water, or in environmental risk zones.

13. **Forced eviction.** According to one NGO (Asamblea de Barrios Romero Rubio), there is an average of three evictions per day in Mexico City alone. In Mexico City, changes to the civil code of the Federal District and civil procedures that regulate the relation between rental housing owners and tenants came into effect in 2002. The Special Rapporteur was particularly concerned that these changes protected the interests of owners rather than renters, since: (a) no notification would be required to initiate a lawsuit against a tenant; (b) no notification of eviction sentence would be required; (c) the timeframe for the eviction procedure has been reduced from one year to three months; (d) rent may be raised at the owner's discretion; (e) rent may be fixed in a foreign currency. A concern has been that when evictions occur, they are sometimes accompanied with the use of force, often by thugs, against residents and communities being evicted.

14. **Impact of globalization.** The economic crisis of 1994-1995 has had a resounding effect on the enjoyment of the right to adequate housing. At the general level, the process of impressive economic recovery has mostly been export-led, facilitated by the North American Free Trade Agreement (NAFTA). Today, Mexico has pockets of rapidly growing cities,

particularly along the United States border, as a result of globalization and NAFTA. While there has been a rise in housing production at the national level since the 1995 crisis, in Baja California the rapid population growth has put strain on housing and civic services, particularly water and electricity, coupled with problems with more land invasions. Housing for *maquiladora* workers is generally of poor quality, some of it located in close proximity to environmentally hazardous sites and areas at risk of landslides. At another level, successive rises in interest rates following the economic crisis of 1995 left many mortgage borrowers with bad debts and unable to repay loans. In 2001, in Mexico City alone, there were more than 10,000 sentences on bad debts, which effectively authorized banks to take possession of the houses and other mortgaged properties of the debtors. This has exacerbated the situation with regard to evictions and homelessness.

15. **Indigenous people.** Mexico is home to more than 10 million indigenous people, with 39,866 indigenous enclaves, the majority of which are in the south of the country. Of the municipalities, 2,315 have a predominantly indigenous population and generally in such municipalities, the availability of housing and access to civil services (water, sanitation and electricity) is considerably lower than the national average. In fact, a majority of indigenous people in remote rural areas live in wood slat and mud houses with dirt floors, with no access to piped water. Years of conflict, particularly in Chiapas, the expropriation of land by private companies and environmental degradation have led to further deterioration of their housing and living conditions, contributing to the trends towards urban migration and land invasion. Many indigenous people demand justice against the paramilitary groups which carried out many evictions, whose impunity remains unresolved. Today, the main issue concerning the indigenous communities is that of poverty: Mexico's poverty map closely resembles that of the location of indigenous communities, not only in Chiapas, but across the country.

## II. LEGAL FRAMEWORK

16. Article 4 of the Constitution of the United Mexican States stipulates that every family has the right to dignified and decent housing. To implement this constitutional provision, the Federal Housing Act elaborates on the requirements and mechanisms of the national housing policy. At the federal level, several other acts have been enacted for the establishment and administration of various housing finance mechanisms. The State and municipal legislations establish, among other things, provision of State and municipal assistance associated with the production and ownership of social housing, particularly land purchase and registration, housing projects and town planning, building and acquisition and establishment of title.

17. The Special Rapporteur met with the Congressional Commission on Housing, which informed him that the Commission was developing a new housing law. For this purpose, it organized four conferences in the cities of Tlaxcala, Tampico, Mérida and Culiacán which brought together representatives of the Congress, the state governments, universities and colleges, and civil society, and resulted in a number of recommendations for the formulation of new federal housing law. The current Housing Act of 1984 is considered obsolete as it is based on the collective interest and favours centralized administration. The aim of the new law is also to strengthen and define the role of the National Housing Commission, established in 2001. The new draft law has nine chapters: (a) background; (b) federal, state and municipal subsidies; (c) key role of the National Housing Commission in the implementation of housing policy;

(d) human settlements; (e) coordination; (f) standardization, norms and processes; (g) finance, federal mortgage society, commercial banks, savings and loans, investment societies; (h) simplification of administrative process, deregulation and tax reduction; and (i) promotion of technological development.

18. The Special Rapporteur welcomes the process of broad consultation held in elaborating a new draft housing law. However, he notes that it does not include explicit references to international human rights instruments with respect to the right to adequate housing and the corresponding State obligations. Furthermore, it does not clearly establish policy and administrative procedures that recognize and protect the self-built housing which counts for more than 60 per cent of the housing in the country. He was encouraged, however, to be informed that a new process has now been initiated by the Ministry of Social Development, the National Commission on Housing and the Senate Commission on Housing, which signed an agreement in September 2002 to further elaborate on elements of a new federal housing law through a wide consultative process. **The Special Rapporteur recommends that the Commission incorporate Mexico's international obligations concerning the right to adequate housing and other relevant human rights in its draft housing law. It may be necessary to develop other draft documents to complement the proposed law, including on security of tenure of housing and land, self-built housing, and measures against forced eviction and displacement.**

19. The Government of Mexico established an intersecretarial committee towards the end of 2001, under the overall coordination of the Ministry of External Relations and with active involvement of civil society organizations. The main purpose of the committee is to ensure coordinated follow-up to concluding observations and recommendations adopted by treaty bodies and international and regional human rights mechanisms. Another purpose is to develop common positions among ministries on certain human rights issues, to achieve harmonization of legislation and policies. Various working groups have been set up under the committee, including on economic, social and cultural rights, and on indigenous and gender issues.

20. The Special Rapporteur commends Mexico's commitment to human rights and its effort to promote the right to adequate housing, including women's right to housing, land and other property. Considering the challenges at the domestic level of giving full effects to housing rights, he considers it particularly positive that the Government has taken steps to initiate an intersecretarial discussion, with the active involvement of civil society, which is in line with obligations of the State as stipulated in international instruments and their interpretation by treaty bodies, such as General Comment No. 4 of the Committee on Economic, Social and Cultural Rights.<sup>3</sup> In a further positive development, in March 2003, the Government upgraded the status of the intersecretarial committee by officially establishing the Intersecretarial Commission on Government Policies in the Field of Human Rights, chaired by the Ministry of the Interior and with the Ministry of External Relations as its vice-chair. The new Intersecretarial Commission will cover both foreign and domestic policies, thereby ensuring greater harmonization of international human rights norms, principles and obligations. Furthermore, it will have a subcommission on economic, social and cultural rights and the participation of civil society will be further institutionalized. **The Special Rapporteur calls upon all government agencies involved in the Intersecretarial Commission to follow up and implement its recommendations. He also encourages the Intersecretarial Commission to ensure the**

**participation of the Ministry of Finance, which is the key provider of the necessary resources for social housing programmes and the reform of laws and regulations concerning banking institutions. Further, he recommends that OHCHR, particularly its newly created country office in Mexico, follow closely and study the experience of the Intersecretarial Commission, with a view to disseminating and sharing its good practice.**

### **III. POLICY FRAMEWORK**

21. The National Development Plan 2001-2006, issued by the Federal Government following public consultations on various topics around the country, pointed out the need to promote and coordinate public policies and programmes in the areas of housing and town planning and to support their implementation by involving State and municipal authorities and civil society, with a view to consolidating the housing market and making the housing sector an engine for development. It further called for development of strategies in the housing sector, in cooperation with all stakeholders, to coordinate projects in the areas of land management, public service provision and house building and improvement that will attract public and private investment. The Plan also recognized the need to provide adequate housing loans through public and private financing in order to enable workers to acquire decent housing in urban or rural areas, and the improvements that needed to be made in the processes of establishing title and registration in the area of housing.

22. In accordance with the National Development Plan 2001-2006, the Housing Programme 2001-2006 was developed, with the aim of promoting and coordinating public housing policy and programmes on behalf of all who wish to purchase, build, rent out or improve their homes, with the participation of State and municipal authorities and civil society as a whole, and at the same time to consolidate the housing market in order to transform the housing sector into an engine for development. According to the Government, this Housing Programme focuses on the process of producing housing, from not only an economic, but also a fundamentally social perspective. In social terms, the home is the primary space in which a family can fully meet its basic development needs. From an economic standpoint, a home serves as a basis of the family savings and assets, providing financial security and contributing to a better distribution of wealth. Furthermore, housing construction is a major engine for economic development, stimulating production in many sectors of the economy, including the financial sector. In sum, Mexico is attempting to make house-building a central element of its economic recovery and an engine for economic development in all regions of the country.

23. A key player in the realization of this national strategy, and thereby the right to adequate housing of Mexican citizens, is the National Commissioner for Housing, who was appointed by the President in 2001 to lead the National Commission on Housing (CONAFOVI) under the Minister of Social Development and Welfare (SEDESOL). The Special Rapporteur had extensive meetings with the Commissioner and appreciates his efforts and initiatives to improve the situation of housing through development of a national strategy, including consolidation of various housing finance schemes and coordinating with housing institutions established at the state level.

24. The Special Rapporteur also met with Directors of major housing financing institutions: INFONAVIT (Instituto del Fondo Nacional de la Vivienda para los Trabajadores), which is the

dominant housing financing institution catering for workers; FONHAPO (Fondo Nacional de Habitaciones Populares), which targets the needs of the informal sector and the poorest households; and VIVAH (Programa de Ahorro y Subsidios para la Vivienda Progresiva), which provides subsidies matching household savings, with the state/local government providing land and basic infrastructure. There are a few other housing finance schemes in Mexico, namely: FOVISSSTE (Fondo de la Vivienda), catering for public sector employees; FOVI (Fondo de Operación de la Vivienda), which provides second-tier financing to commercial banks for housing; and PROSAVI (Programa Especial de Crédito y Subsidios a la Vivienda), which provides direct (but very few) subsidies, equivalent to a down payment, for households earning less than five minimum wages.

25. These Mexican public housing finance schemes, which account for three quarters of the mortgage market, have been under criticism for their inefficiency and mistargeting. The Special Rapporteur was particularly concerned that the current system applied by INFONAVIT and FOVISSSTE, which is based on contributions from workers in the formal sector, in practice excludes extremely poor households, nominal beneficiaries of these institutions, with an income of less than two minimum wages, which account for 45 per cent of the total. Furthermore, the current programmes were mostly targeted at the creation of new single housing units, leaving out the poorest who mainly live in informal, self-built housing without access to basic services. FONHAPO, a programme for the poor, was reduced considerably over the past decade in its funding capacity and integrated into the VIVAH programme formerly managed by SEDESOL.

26. The Special Rapporteur acknowledges that the National Commissioner is conscious of these shortcomings and is making efforts to consolidate housing finance schemes and to coordinate with State and local authorities to target better the poorer segment of society. The time is opportune to turn the national strategy into action. The fiscal reform package initiated in December 2001 substantially increased tax revenue, contributing to a budgetary increase for SEDESOL and to the housing subsidy programme. While this is welcome and encouraging, the Special Rapporteur considers that sustainable solutions to the housing problem in Mexico depend not only on the availability of housing finance but essentially require a more comprehensive approach to implementing at various levels the obligations under the international human rights instruments which Mexico has ratified. Furthermore, the housing subsidy programme needs to be further expanded both in terms of its scope and coverage. Of the annual total of 750,000 households with housing needs, at least 60 per cent, or 450,000 households are in the group earning less than five minimum wages, which only receives marginal national funding and should be taken into account by the subsidy programmes. Instead, most of the national housing programme budget resources go to sectors earning between 5 to 10 minimum wages.<sup>4</sup> **The Special Rapporteur recommends that there should be a reorientation of the national housing policy to meet the needs of the poor, who constitute the majority of the population, with more emphasis on the social aspects of housing rather than viewing housing as an economic sector.**

#### IV. WOMEN'S RIGHT TO ADEQUATE HOUSING, LAND AND PROPERTIES

27. Women's equal ownership of, access to, and control over land and the equal rights to own property and to adequate housing, are often key determinants of the overall living conditions of women and their children. The Commission has been seized with this issue

since 2000 and adopted annual resolutions on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, under the leadership of the Government of Mexico. In its most recent resolution, 2002/49, the Commission requested the Special Rapporteur to prepare a study on women and adequate housing, which is submitted separately to the Commission (E/CN.4/2003/55).

28. In Mexico, women's capacity to acquire, administer and inherit property, including cultivable land, on equal terms with men is recognized by law. The Land Act of 1992 recognized women's rights to *ejido* land, including the right to inheritance. In terms of access to housing finance, the rules of INFONAVIT had previously stipulated that only males could designate their spouses as economic dependants, leaving female heads of household in a disadvantaged position. These rules were subsequently amended to afford equal rights and opportunities to both men and women, and in 1999, new rules were adopted to give preferential treatment to female heads of household and younger workers.

29. In all of the testimonies received, from women who faced forced eviction in Mexico City to indigenous women in remote villages of Chiapas, there was a strong emphasis on the importance of respecting and protecting women's rights to housing and land, which also impact upon other rights such as health, education and food. The Special Rapporteur is encouraged by the work of the National Institute on Women (INMUJERES) and the dialogue he had with its Executive Director. Particular attention needs to be paid to the issue of violence against women, both at home and in cases of eviction. **The Special Rapporteur recommends that the National Commissioner on Housing work closely with INMUJERES to ensure greater coordination between the two agencies and increased emphasis on the particular needs of women in national housing policies and programmes.**

## V. STEPS TOWARDS THE REALIZATION OF THE RIGHT TO ADEQUATE HOUSING

30. As a party to the International Covenant on Economic, Social and Cultural Rights, Mexico has accepted corresponding obligations, the nature of which is set out in article 2 of the Covenant and further clarified in general comments of the Committee on Economic, Social and Cultural Rights. In general, the Special Rapporteur emphasizes the need to further integrate human rights standards and approaches into sectoral policies and programmes on housing. Throughout the mission and in his dialogue with the Government and civil society, he emphasized the human rights-based approach to housing, and the value it could imbue to efforts to identify practical solutions. In this section, the Special Rapporteur offers his views and suggestions towards this end, according to three types of obligations:<sup>5</sup> to respect, protect and fulfil.

### A. Respecting the right to adequate housing

31. The obligation to respect the right to adequate housing requires the State and its agents to abstain from carrying out, sponsoring or tolerating, either alone or in association with others, any practice, policy or legal measure which violates the right or prevents access to housing, services, related materials and resources. As already elaborated in sections III and IV above, Mexico has taken proactive action to implement its constitutional provision on the right to adequate housing

and its obligations under the international instruments, by elaborating on national strategy for housing and establishing the National Commission on Housing and the Housing National Board. While these are positive and commendable steps, **the Special Rapporteur encourages the National Commissioner on Housing to further integrate the human rights dimensions of housing, as developed by the work of treaty bodies and the United Nations human rights mechanism.** In this connection, **the Special Rapporteur commends the work of the intersecretarial committee established under the Ministry of External Relations, and recommends further expansion of the coordination and discussion process to include sectors relevant to housing, including water, sanitation, health, environment, indigenous people, women and disability.** This should contribute to the development of multisectoral strategies and programmes that contribute towards the realization of the right to adequate housing and other related rights. Human rights education programmes would naturally be a part of such a programme to promote wider respect and recognition of the right to adequate housing.

32. **The Special Rapporteur further suggests that the Congressional Housing Commission and other legislators incorporate Mexico's international obligations on the right to adequate housing in draft new legislation on housing. In this context, it may be necessary to review other existing legislation at all levels and to develop new laws and local ordinances to complement the proposed law including on security of tenure, land tenancy, prevention of evictions and displacements. Greater use should be made of the general comments and recommendations issued by the treaty bodies, particularly the authoritative interpretations of the Covenant on Economic, Social and Cultural Rights in General Comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights. Its General Comments Nos. 14, on the right to the highest attainable standard of health, 15 on the right to water, also provide a useful framework and guidance in this context.**

33. The obligation to respect the right to adequate housing on an equal and non-discriminatory basis would sometimes entail that the State give due priority to groups living in unfavourable conditions by giving them particular consideration. Based on his observations during the mission, the Special Rapporteur remains very concerned about the housing and living conditions of indigenous people, both in rural areas and urban peripheries. Above all, the Special Rapporteur is of view that their culture and values should be respected in the location, design and choice of materials for their housing. He is of the impression that, despite the multicultural and multi-ethnic richness of Mexico, its policies and programmes at the sectoral level have yet to incorporate this dimension fully; this remains a significant challenge. The Special Rapporteur was particularly concerned that the recent budget cut has severely affected the programme for indigenous housing under the National Indigenous Institute (INI), which operated in 24 states and used local building materials and indigenous labour, and developed community participation. **The Special Rapporteur encourages the National Housing Commission to work closely with INI to continue developing the work on indigenous housing, to utilize INI expertise and knowledge, and to allocate special resources to this end. He also urges the State to pay special attention to the collective identity of the indigenous people in dealing with land issues, especially when the sale or privatization of land may lead to loss of their identity.**

34. From the obligation to respect, it also follows that the primacy of human rights obligations as recognized in the Vienna Declaration and Programme of Action adopted by the

World Conference on Human Rights should be respected at the national and international levels. This means that the State should refrain from committing itself to international agreements which negatively affect the enjoyment by its citizens of rights contained in the Covenant on Economic, Social and Cultural Rights, including the right to adequate housing. **Mexico therefore needs to examine carefully existing and emerging agreements such as NAFTA, FTAA and the GATS, in order to ensure their consistency with covenanted obligations on the right to adequate housing, including access to basic civic services.** As was apparent to the Special Rapporteur from his visits to communities around Tijuana, the impact of NAFTA and increased economic activities have brought, in addition to benefits, additional challenges to the population in terms of unsustainable population growth, rapid increase of informal settlements, often located in environmentally unsafe areas, and strain on water and other civic services. In this context, the Special Rapporteur would like to draw attention to General Comment No. 15 of the Committee on Economic, Social and Cultural Rights on the right to water, which clarifies the responsibility of the State party to ensure that "no household should be denied the right to water on the grounds of their housing and land status" and that "deprived urban areas, including informal human settlements and homeless persons, should have access to properly maintained water facilities" (para. 16 (c)). With regard to international obligations, the general comment sets the normative parameter of water as a "social and cultural good, and not primarily as an economic good" (para. 11), and provides guidance to States and international organizations on formulating policies consistent with their obligations under the Covenant. **The Special Rapporteur urges the Government to take into account the contents of General Comment No. 15 and, in accordance with Commission resolution 2002/21, to give full effect to housing rights, including the right to water, giving particular attention to the individuals, most often women and children, and communities living in extreme poverty.**

#### **B. Protecting the right to adequate housing**

35. The obligation to protect the right to adequate housing requires the State and its agents to prevent violation of that right by the State itself, individuals, private entities and other non-State actors. As recognized in General Comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights, forced evictions are serious violations of the right to adequate housing. The Special Rapporteur is generally concerned with reported incidences of eviction in Mexico, sometimes accompanied by the use of force. Although there are no national statistics on evictions, the available information and testimonies received during the mission suggest that, when evictions occur, the evictees are left with few options for alternative housing or compensation. **The Special Rapporteur recommends that a task force on eviction issues be formed at the national and local levels, with the participation of civil society, to monitor and collect information on evictions and to discuss options for solving the problem.** Such a task force should develop mechanisms to keep a public record of evictions carried out and to continually train federal and local judges and magistrates in the application of the international human rights treaties.

36. **The Special Rapporteur recommends that the Government carefully review existing laws and policies, taking into account General Comment No. 7 of the Committee on Economic, Social and Cultural Rights on forced eviction.** To prevent evictions and protect people's right to adequate housing, further understanding of the existing international standards and a review of national law to make it consistent with the Covenant obligations would be



essential. Although some evictions, such as for persistent non-payment of rent, may be justifiable, the State and the relevant authorities should carefully review the existing laws to protect the rights of tenants, such as in the case of mortgage debtors who went into bankruptcy because of the unforeseen, substantial interest rate increase after the Peso crisis of 1994.

37. **The Special Rapporteur further recommends that, prior to carrying out any eviction, all feasible options be explored in consultation with the affected persons and groups.** Among the testimonies received during the mission, he was particularly struck by the case presented by representatives of the Atenco community, outside Mexico City, where there was a plan to build a new international airport. Despite the politicization of controversy over the planned construction, and confrontations between the authorities and community activists, the Special Rapporteur saw that at the heart of the matter lies the need to develop genuine, transparent and open consultations with the community affected by the project. While he noted that the planned construction was eventually cancelled during the course of 2002, after his mission took place, **there is a need to monitor and study carefully the lessons learned, in order to prevent a reoccurrence of violent confrontations. Furthermore, it is important to ensure that there are no repercussions for or punitive measures taken against activists and defenders of housing rights.** The Special Rapporteur remains concerned about accusations pending against the main activists, which have become stumbling blocks to further dialogue and reconciliation.

38. Some community and civil society groups have organized themselves and developed their own monitoring and protection measures against forced eviction. While this is understandable, **adequate procedural protections must be provided by the State and local authorities, in accordance with General Comment No. 7,** which specifies that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used; (d) government officials or their representatives to be present during an eviction; (e) all persons carrying out evictions to be properly identified; (f) evictions not to be carried out in particularly bad weather or at night; (g) provision of legal remedies; and (h) provision, where possible of legal assistance for persons who are in need of it to seek redress from the courts.

39. **In providing legal assistance and advice, the Special Rapporteur particularly encourages the National Human Rights Commission and other human rights commissions established at the state and city levels to develop programmes on the right to adequate housing.** Although many of these commissions have a mandate to receive complaints concerning economic, social and cultural rights, including the right to adequate housing, **there needs to be more public awareness of the work of the commissions, together with human rights education.** During the mission, the Special Rapporteur had productive discussions with the National Human Rights Commission, the State Human Rights Commission in Baja California, and the Human Rights Commission of the Federal District in this regard.

### **C. Fulfilling (providing) the right to adequate housing**

40. Overall, the Special Rapporteur observed that there would have to be sharper focus on the poor in the current housing policies and programmes. Poor housing conditions reflect, and deepen, the deprivation of the right to adequate housing, which in turn also affect enjoyment of other rights such as those to health, water, education and food. The Special Rapporteur is deeply concerned at the precarious housing conditions of the poor and the indigenous people, in both urban and rural areas. In Chiapas, he visited one indigenous community outside of Tenejapa, in which 16 families live in two small wooden huts located on a hillside. These families were members of a community which had been displaced from its original land nine years ago, and had migrated to outside of Tuxtla, only to be evicted again several years later. The community has no access to water and no accessible roads. With no cultivable land around, these families often go without eating for one day or two days at a time. They are at present living in extreme poverty, in an emergency situation, with an uncertain future. In other indigenous communities in Chiapas the Special Rapporteur visited, where people have been displaced by conflicts and paramilitary presence, people are suffering from emotional and psychological problems, in addition to inadequate housing and living conditions.

41. **In such an extreme situation, the Special Rapporteur recommends that the Government establish an emergency assistance programme, such as a national humanitarian fund for housing.** As a party to the International Covenant on Economic, Social and Cultural Rights, Mexico has an obligation to fulfil the right to adequate housing, along with other Covenant rights. Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate housing by the means at their disposal, the Government have the obligation to fulfil (provide) that right directly.

### **D. Fulfilling (facilitating) the right to adequate housing**

42. Another level of State obligation, to fulfil (facilitate), means that it must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their right to adequate housing. Such activities may include cross-subsidies, and the provision of land, materials and access to basic services. For example in Mexicali, Baja California, residents have been struggling for the past 30 years to obtain fair electricity tariffs. In climatic conditions where temperatures can reach more than 50 degrees in summer, poor families are paying up to half of their income for electricity bills for the cooling they need. The Special Rapporteur was informed of cases brought to the attention of the Baja California Human Rights Commission on this issue, which adversely impacts on the right to health and an adequate standard of living of the residents.

43. Despite these, in his visit to Chiapas, the Special Rapporteur encountered some encouraging examples of proactive State actions. He visited one community outside of Tuxtla Gutierrez, where residents have been relocated by the State Institute of Housing from a riverbed where they were exposed to the risk of floods. The community have been given plots of land, materials and training for self-construction, and a community water tap.

44. The State Institute of Housing operates the VIVAH scheme under the federal programme, whereby the beneficiaries will put down 7,000 pesos, which is matched by a federal grant, while

the State authorities are required to provide serviced land. Aside from the general lack of resources, the scheme has several constraints. The required deposit of 7,000 pesos is far too much for a low-income family earning less than three minimum wages. Frequently, families start saving with the Housing Institute, but after a while they withdraw money to pay for medicine, education and other living costs. This problem is likely to get worse as the Federal Government (SEDESOL) is about to increase the deposit requirement to 7,500 pesos. Furthermore, the VIVAH scheme does not contemplate the use of material that is available locally and suitable for local conditions. A typical VIVAH housing unit which costs 30,000 pesos, is in a row of single storeyed concrete houses located on the periphery of a city, which may not be perfect for the hot local climate nor appealing or acceptable to the indigenous culture.

45. Despite these constraints and shortcomings, the Special Rapporteur found it encouraging that the State Institute has been trying to develop and promote local construction materials and housing designs, which could actually reduce the cost of construction and contribute to the local economy. Another positive aspect is the Institute's efforts to deal with the problem of land invasion and irregular settlements. The Institute is implementing an integral land tenancy programme which is designed to regularize the land titles of squatter families and to provide basic infrastructure such as water and sanitation as well as schools. **The Special Rapporteur views this land tenancy programme as a particularly good practice that should be further studied and promoted, as the general tendency otherwise would be to evict forcefully those illegally occupying the land, without consideration of their needs and impelling reasons for such illegal occupation.**

46. **The Special Rapporteur also recommends that the federal authorities further review VIVAH and other schemes to better target them to meet the needs of the poor.** Given the reality that most of the poor live in self-constructed, informal housing, more focus could be placed on assistance for upgrading, for which community saving or micro-credit schemes may be more appropriate and effective than formal housing finance schemes. The family plot housing improvement programme implemented by the Federal District housing authorities, is a good example of such for self construction. **The Special Rapporteur recommends that the State authorities further take into account and support various modalities that could lead to social production of housing and community, including: (a) self-produced housing by individuals or families; (b) organized self-production of housing, such as cooperative and other associative schemes; (c) other non-profit options by NGOs. In the longer term, Mexico may need to develop affordable rental housing options; they are virtually non-existent at present.**

## VI. CONCLUSIONS AND RECOMMENDATIONS

47. **The Special Rapporteur's mission to Mexico provided him with opportunities to examine its enormous challenges in the housing sector and jointly to develop solutions from a rights perspective with all partners. It is obvious that the housing needs in Mexico cannot be solved by housing finance alone. The policy of the Government needs to be more sharply focused on the poor, who require new housing as well as assistance in upgrading.**

48. While specific recommendations to the Government are presented in section IV, the Special Rapporteur would like to conclude by submitting the following additional general recommendations.

49. In view of the precarious conditions many of the poor live in, the Special Rapporteur emphasizes that the solution to the housing problems in Mexico should be based on a combination of a human rights and a humanitarian approach. He suggests that there could be a "national humanitarian fund for housing", which could be coordinated by the National Commissioner on Housing and provide funds to the institutes at the state level, to deal with urgent problems - not just communities affected by floods or earthquakes, but people who are living without shelter, with no adequate materials, and those who have been left homeless because of evictions or displacements.

50. The Special Rapporteur also urges further integration of human rights perspectives into sectoral policies, programmes on housing and the legal framework. Mapping the housing needs of the country and interpreting the data from a human rights perspective would be a first step towards progressive realization of the right to adequate housing and towards the realization of relevant millennium development goals.

51. The issue of evictions warrants particular attention in Mexico and requires multisectoral and multi-stakeholder approaches. The Special Rapporteur recommends the establishment of a task force to examine eviction issues, involving the National Housing Commission, National Human Rights Commission, legislators and civil society groups.

52. This report also presented many good practices implemented in Mexico, including the establishment of an intersecretarial committee on economic, social and cultural rights, land regularization policies and programmes, the indigenous housing programme and civil society actions to promote, monitor and protect the right to adequate housing. These experiences should be further documented, studied and disseminated. The Special Rapporteur encourages OHCHR and UN-Habitat to facilitate such exchange of good practices through its joint United Nations Housing Rights Programme, including through the use of internet.

53. There is a need to strengthen human rights education in the country, particularly on economic, social and cultural rights. The Special Rapporteur welcomes the recent establishment of an OHCHR office in the country, and encourages OHCHR to incorporate economic, social and cultural rights including the right to adequate housing in its country assistance programmes, and to further assist the Government of Mexico in this regard.

#### Notes

<sup>1</sup> These are: article 25, paragraph 1, of the Universal Declaration of Human Rights; article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights; and article 27, paragraph 3, of the Convention on the Rights of the Child; and on the right to non-discrimination, article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women; and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>2</sup> World Bank, *Mexico: Contribution to a National Urban Strategy*, p. 16.

<sup>3</sup> Paragraph 12 of General Comment No. 4 of the Committee on Economic, Social and Cultural Rights states, with reference to obligations of a State party: "steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant". General comments and recommendations of treaty bodies are contained in document HRI/GEN/1/Rev.5.

<sup>4</sup> In 2001, 81.7 per cent of the national budget for housing was allocated to INFONAVIT and FOVI.

<sup>5</sup> As developed by the Committee on Economic, Social and Cultural Rights in the following recent General Comments: No. 12 on the right to adequate food (1999); No. 13 on the right to education (1999); No. 14 on the right to the highest attainable standard of health (2000); and No. 15 on the right to water (2002).

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