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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·科塔里先生提交的报告

增　编

对罗马尼亚的访问(2002 年 1 月 14-19 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，仅以提交语文分发。

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

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内容提要

适足住房问题特别报告员于 2002 年 1 月 14 日至 19 日访问了罗马尼亚，目的是审查罗马尼亚已签署的国际人权文书所载适足住房权和其他有关权利的落实情况。特别报告员与有关政府部门、联合国和国际机构以及民间组织进行了广泛对话，以便确定切实解决办法和良好做法。

罗马尼亚是一个正在向市场经济转型的国家，它着力于为住房部门创造能够运行的市场。几乎所有居民住房实现了私有化，但许多住房条件较差，水电费特别是取暖费很高，居民难以应付。罗马尼亚对地震和洪水也需做好防灾和应急供应准备。自 1990 年以来贫困程度日益严重，越来越多的公民和弱势群体尤其是罗姆人处于朝不保夕的境况。

特别报告员在访问布加勒斯特各社区期间亲眼目睹了穷人和弱势群体的境况，他们常常住在城市被遗忘的角落，城市服务无论是质量还是可获得性均很差。这些情况对妇女和儿童的影响尤其严重。在一罗姆人社区，由于住房条件差，许多儿童健康面临威胁，母亲要用更多的时间去打水、找燃料和饲料。特别报告员耳闻目睹的这些情况证实了人权的不可分割性——以及住房权是整个生活条件的核心这一事实。

特别报告员总的调查结果是，在目前私有化和结构改革的背景下，除非提供更多的保护和适足的社会住房－包括提供承受得起的城市服务如取暖——否则许多人将面临被驱逐和住房不适足的困境，不仅罗姆人如此，普通居民亦然。特别报告员承认政府通过了许多法律和战略，现在的艰巨任务是付诸实施。现有人权准则和适足住房权及其他有关权利的标准应该指导这一进程和加强监督机制的工作。

特别报告员特别赞扬通过全国罗姆人战略以及在政府官员、混合委员会和罗姆人专家之间建立的协商程序和结构。随着权力下放和私有化进程的推进，地方当局和私营部门日益负责执行各项政策、方案和活动，它们直接影响到公民适足住房权的享受。然而，必须铭记中央政府在制订适当政策和法律框架以及监督发展方面应该发挥的重要作用。民间团体、学术机构和媒体在监督方面和人权教育方面都起着重要作用。

特别报告员赞赏政府开诚布公地向他介绍挑战和成就并在他访问后继续与他对话。特别报告员满意地注意到政府已采取步骤，评估特别报告员的初步调查结果和建议并已经将部分建议付诸实施。

特别报告员呼吁国际社会进一步支持该国政府及其公民为改善住房和生活条件和实现有关人权谋求切实解决办法的努力。

本报告载有请该国政府和其他利益相关者以人权为出发点，改善住房和生活条件的一般和具体建议，如下。

政府在拟定政策和方案时应考虑国际人权文书的有关条款和条约机构的一般性意见和建议。尤其应该重视少数和其他弱势群体的需要。

特别报告员欢迎政府于 2002 年 6 月通过消除贫困和促进融入社会的全国计划，其中考虑了本报告提出的许多问题。为了使穷人受益并帮助他们实现其权利，包括适足住房权，计划需要得到穷人各级政府、民间团体和国际社会的广泛支持和其有效执行。具体而言，政府应该采取综合办法解决穷人的住房需要，防止所有罗马尼亚公民遭受社会排斥和贫困，不论其种族、族裔和其他背景如何。

政府应该带头制定适当监督适足住房权执行情况的机制，如由有关部、地方当局和民间团体参与的部间委员会。这样一种参与性机制应有助于加速完成提交经济、社会、文化权利委员会的逾期报告。

政府应该制定适当指标和基准，监督适足住房权的执行情况以及实现有关千年发展目标的进展，特别是有关贫民窟居民、水和卫生设施等方面的指标和基准。

政府需要更加重视使用权的保障问题，采取步骤让定居合法化，应特别重视监测和防止强迫驱逐。政府不妨谋求联合国人居署的援助并在当地开展保障使用权全球运动。

政府必须更加重视人权教育和提高对与适足住房权有关的权利的公共意识。公共工程、交通和住房部在制定此种提高意识方案和进一步将人权纳入其政策和方案时应谋求罗马尼亚人权研究所的援助。

政府应该利用国际人权文书关于国际合作的有关条款，为实现与适足住房有关的权利谋求技术和其他援助。特别报告员呼吁国际社会提供必要援助，补充政府自身的努力，特别是在翻新和防灾领域。

罗马尼亚面临的挑战和奉行的良好做法可以为其他经济转型国家提供宝贵经验教训和典范。特别报告员建议联合国欧洲经济委员会也与人权署和联合国人居署根据联合国住房权方案框架进行合作，促进这种经验交流。

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, Mr. Miloon Kothari, on his mission to Romania, 14-19 January 2002

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Introduction

1. The mission of the Special Rapporteur on adequate housing to Romania took place from 14 to 19 January 2002, following an invitation by the Government of Romania. In accordance with Commission resolutions 2000/9 and 2001/28 on his mandate, the general objectives of the mission were to: (a) examine and report on the status of the realization of housing rights in the country, with particular attention to aspects of gender equality and non-discrimination; (b) review 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 the Government, United Nations and intergovernmental agencies and civil society in their efforts to secure these rights; (d) identify practical solutions and best practices in the realization of rights relevant to the mandate; and (e) follow up on concluding observations made by treaty bodies and assess their impacts on policies adopted by the countries concerned.

2. Throughout his activities, including 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, seeking to examine issues of adequate housing from broader perspectives and to establish linkages with other rights and issues, including gender, children, poverty, land, water, safe environment, food, indigenous people, refugees and displaced persons. For his mission to Romania, the Special Rapporteur was particularly interested in examining the challenges the country is facing in housing and related sectors against the backdrop of ongoing transition to market-oriented economy and the impact of privatization on the rights relevant to his mandate. 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, including the Roma and children living on the street.

3. The Special Rapporteur held meetings with the State Secretaries of the Ministry of Public Works, Transport and Housing and of the Ministry of Foreign Affairs, Director-General of the Ministry of Labour and Social Solidarity, and relevant officials of these ministries. The Special Rapporteur met with the President of the Commission on Human Rights, Cults and National Minorities of the Chamber of Deputies, the Counsellor for National Minorities of the Presidential Administration of Romania and the Subsecretary of State of the Ministry of Public Information, who provided information on the National Strategy on Roma and accompanied the Special Rapporteur to visit Roma communities in Bucharest. The Special Rapporteur also met with officials of District VI of the City of Bucharest, who organized for him visits to housing development in the district.

4. The United Nations Resident Coordinator/Resident Representative of the United Nations Development Programme (UNDP) provided the Special Rapporteur with an overview of the human development situation in the country. The UNDP office organized an inter-agency meeting to which representatives from the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization, the International Organization for Migration and several non-governmental organizations (NGOs) participated and provided relevant information to the Special Rapporteur. The Special Rapporteur also held meetings with the World Bank, and with the UNHCR Representative. Prior to departure, the Special Rapporteur received briefings in Geneva from the United Nations Economic Commission for Europe (UNECE), which conducted a country profile on housing

sector for Romania in 2000. The Council of Europe, the Office of the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe and the United Nations Human Settlements Programme (UN-Habitat) also provided him with information material.

5. During the mission, the Special Rapporteur held a number of meetings with members of civil society and the national human rights institutions. He met with Executive Directors of the Romanian Institute for Human Rights, Health Aid Romania, Fundatia Dezvoltarea Popoarelor, Romani CRISS and Save the Children Romania. The Special Rapporteur was grateful to Save the Children Romania and the Health Aid Romania which organized for him visits to orphanages and houses for children with HIV/AIDS, respectively. The Executive Director of the Open Society Institute provided valuable assistance and information for the mission of the Special Rapporteur. The European Roma Rights Centre in Budapest and the World Organization against Torture (OMCT) provided briefing notes to the Special Rapporteur, concerning the situation of Roma in the country. The Special Rapporteur also met with members of professional associations, including the rector of the University of Architecture and Urbanism, the President of the Ordinului Architects Order in Romania, the Association of Urbanism Professionals in Romania, as well as individual academics, consultants, lawyers and journalists. The Special Rapporteur also received valuable information materials from other civil society organizations, including the European Federation of National Organizations Working with the Homeless (FEANTSA) and the Habitat International Coalition.

6. Due to unforeseen circumstances, the Special Rapporteur was not able to visit rural areas and the mission was confined to Bucharest and its surroundings. Nevertheless, the Special Rapporteur had a rich exchange of views with relevant government officials, United Nations and international agencies, and civil society organizations, and is grateful to all those who contributed to his mission. 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 monitoring bodies, particularly the General Comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights. This report provides a summary of findings and recommendations emanating from the mission.

I. THE LEGAL FRAMEWORK FOR THE RIGHT TO ADEQUATE HOUSING IN ROMANIA

7. Romania has ratified all six major international human rights conventions: the International Convention on the Elimination of All Forms of Racial Discrimination, on 15 September 1970;[1] the International Covenant on Civil and Political Rights, on 9 December 1974; the International Covenant on Economic, Social and Cultural Rights, on 9 December 1974; the Convention on the Elimination of All Forms of Discrimination against Women, on 7 January 1982; the Convention on the Rights of the Child, on 28 September 1990; and the Convention against Torture, on 18 December 1990. At the regional level, Romania has also ratified the European Convention for the Protection of Human Rights and Fundamental

Freedoms, on 20 June 1994; the Framework Convention for the Protection of National Minorities, on 11 May 1995; and the Revised European Social Charter, on 7 May 1999.

8. The most important legal provision on the right to adequate housing under international law, and hence the mandate of the Special Rapporteur, is derived from article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, which states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

9. Article 11, paragraph 1, of the 1991 Constitution of Romania stipulates that the Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is party to. It further states, in paragraph 2, that "treaties ratified by the Parliament, according to the law, are part of national law". Specifically concerning international human rights treaties, article 20 of the Constitution establishes that: "(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to, and internal laws, the international regulations shall take precedence."

10. From the above-mentioned constitutional provisions, and being a State party to all international human rights treaties, Romania has clear commitment to the right to an adequate standard of living, including the right to adequate housing, as contained in the Covenant. It is also bound to similar provisions under article 27, paragraph 3, of the Convention on the Rights of the Child, and on the right to non-discrimination as reflected in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5, paragraph (e), of the International Convention on the Elimination of All Forms of Racial Discrimination.

11. While the Constitution establishes the supremacy of international human rights laws, the adoption of national laws and legislative measures on the right to adequate housing constitutes a key step towards its full and progressive realization. In Romania, the national legislative framework on adequate housing is defined by the Housing Law No. 114/1996, which was adopted on 11 October 1996.[2] This law and its later amendments stipulate the principle that "free and unrestricted access to dwelling is a right of every citizen". In Romania, the "adequacy" of housing is defined in article 2, paragraph (b), of the Housing Law No. 114/1996, as covering such essential requirements as: (a) free individual access to the living space, without interfering with the exclusive ownership or utilization of the space possessed by another person or family; (b) living space; (c) food processing space; (d) a toilet and bathroom unit; and (e) access to electric power, drinking water, sewage disposal and household rubbish disposal.

12. In order for the Government and its citizens to understand the human rights dimension of housing, the adequacy of housing needs to be understood in a broader sense. It should cover not only the physical aspects of housing, but also social, economic, cultural, climatic, ecological and

other factors. In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights identified seven aspects that form integral components of the right to: (a) legal security of tenure including legal protection against forced evictions; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility for disadvantaged groups; (f) location; and (g) cultural adequacy (para. 8). **The Special Rapporteur recommends that, as a State party to the International Covenant on Economic, Social and Cultural Rights, Romania should incorporate provisions of the Covenant into national law. In this context, Romania needs to make greater use of the general comments and recommendations issued by the treaty bodies, particularly the authoritative interpretations of the Covenant in the General Comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights. General Comment No. 14 on the right to health and No. 15 on the right to water also provide a useful framework and guidance in this context.**

13. The Special Rapporteur raised his concern with the Government that the third periodic report of Romania under the International Covenant on Economic, Social and Cultural Rights has been overdue since 1994. **The Special Rapporteur urges the Government to speed up submission of the report** and hopes that his mission would provide additional impetus and encouragement towards this end. The Special Rapporteur also notes that, under the Revised European Social Charter, Romania has not ratified article 31, which pertains to the right to housing.[3] As the Charter provides an additional framework for guaranteeing housing rights, and in view of Romania's aspiration to accede to the European Union, **the Special Rapporteur urges Romania to consider ratifying this article at an early date.** The Special Rapporteur was pleased to be informed by the Government that, at the time of writing this report, it was in its final stage of preparing the third report under the Covenant, and that it was also actively considering the ratification of article 31 of the Charter.

II. GOVERNMENT POLICIES AND PROGRAMMES ON HOUSING

14. Romania is facing a number of significant challenges in housing and related sectors. During the communist period, massive industrialization of a traditionally agrarian society brought forced migration from the countryside to urban areas. From the 1970s to the end of the 1980s, there was a dramatic growth of urban settlements through large-scale housing programmes led by the State. After the collapse of the communist regime, construction of new housing by the State was virtually halted, and the new Government undertook a policy of mass privatization of the housing stock. By the end of 1999, 94.6 per cent of all housing stock was in private hands. The extremely high cost of housing and related services in relation to income, together with the shortage of social housing and ageing housing stock, poses major challenges for Romania in the progressive realization of housing rights. Romania is also prone to seismic and other natural disaster risks.

15. Against this backdrop, the Ministry of Public Works, Transportation and Housing (MPWTH), which is responsible for setting national policies and programmes on the housing sector, has set strategic objectives aimed at all of the components of the housing sector, namely: (a) building new housing for rent and for ownership; (b) maintaining, rehabilitating, consolidating, improving the level of comfort and modernizing the existing housing stock; (c) creating utilities and services for housing; (d) ensuring housing security; and (e) improving the

legislative, regulatory and institutional framework for the functioning of the housing system. The Government has identified young families as a priority target group, as the majority of housing demand (75 per cent) registered by the end of 2000 was by people aged between 18 and 25. Under these circumstances, MPWTH aims to implement a national strategy for housing, with the basic objective of facilitating access to decent housing for those excluded from the free market, especially young individuals and families, and other categories of marginalized individuals, and at the same time stimulating the development of free market mechanisms in housing construction.

16. In accordance with the strategy adopted and the plan for housing construction for the period 2001-2004, the Ministry carries out and finances, partially or totally, a number of programmes of housing construction, namely: (a) completion of the unfinished blocks of flats, in accordance with Government Ordinance No. 19/1994; (b) construction of social housing for young individuals and families with moderate income; and (c) providing credit for home ownership. These activities are primarily carried out by the National Housing Agency (NHA), a self-financing institution of public interest established for the coordination of financing housing construction. At present, NHA is the only mortgage lender in Romania which grants mortgages on the basis of financial and social criteria. While the social factor is important for the establishment of the credit rating, the certificate of solvency (creditworthiness) is the main criteria for granting mortgage loans.

17. As these strategies and programmes commenced in 2001, it was still early to assess their full impact and achievements at the time of the Special Rapporteur's mission. In general, the Special Rapporteur commends the efforts of the Government in elaborating these strategies, **however, more emphasis on implementation and decentralization of financial resources will be essential in ensuring its success. Moreover, the Special Rapporteur considers that more attention is required to meet the needs of the poor and the vulnerable, in accordance with the human rights obligations, as well as article 7 of the Housing Law 116/1996.**

18. With regard to social housing, the programme currently being implemented by NHA for the construction of flats for low-income families is almost exclusively targeted towards young people, which represented the majority of rental housing applications. Under this programme, 38,000 rental residential units are to be constructed by 2004 in cooperation with the local authorities. In contrast, only 2,192 residential units are being built for low-income groups, defined as those having monthly per capita income of 20 per cent below the national minimum wage. The Housing Law 116/1996 defines the categories of people in need of social housing as: (a) those who are left homeless because their dwellings have been seriously damaged or destroyed as a result of various natural disasters; (b) people who have been evicted from nationalized houses as a result of restitution claims; (c) disabled people; (d) people who were injured, families and parents of people who died in the Revolution of December 1989; and (e) other people whose housing situation is desperate. In view of the precarious situation of certain risk groups as further analysed in the subsequent sections of this report, **the Special Rapporteur recommends that the Government further elaborate appropriate strategies and programmes to meet the needs of these people and to ensure their equal access to housing and services. The national census conducted in March 2002 should provide useful socio-economic and demographic data for reorienting strategies to meet the needs of the vulnerable groups. The needs of vulnerable groups such as Roma and other**

minority/vulnerable groups, women, the elderly and the homeless should be integrated into national housing sector policies, and that MPWTH should cooperate with other relevant Ministries in order to address these interrelated issues.

19. In its reply to the questionnaire by the Special Rapporteur, the Government recognized that the situation of homeless people, or of those living in inadequate houses with officially recognized social problems, should be monitored. It should take all necessary measures to ensure access to a sufficient amount of housing, including social housing, before the number of those without shelter increases, which would aggravate the situation and transform it into a national problem. **The Special Rapporteur recommends that the Government should develop indicators and appropriate monitoring mechanisms on homelessness in the country. The local authorities should be directed to implement, in cooperation with non-governmental and civil society organizations, temporary shelter programmes for the homeless, particularly during the winter, as a part of social assistance programmes.**

20. Another area that requires further attention is disaster preparedness. Earthquakes present the greatest risk in Romania, followed by flooding. After the major earthquakes that hit the country in 1977, 1986 and 1990, many residential buildings are in need of major repair and retrofittings. In Bucharest, the municipality conducted studies which found that an estimated 4,700 apartments are in danger of collapsing. The Government is well aware of the scale of potential risk and the sense of urgency, but currently lacks adequate resources to implement the new legislation providing that the Government will provide upfront the cost of retrofitting, which will be paid by the residents in mortgage. Additional difficulties relate to the fact that retrofitting of a building would require the consensus of all residents to participate in the scheme. The Government would also need to provide alternative accommodation to the residents during repairs. Currently, the Government estimates that only 4 per cent of those apartments at risk could be repaired or retrofitted. **In view of the scale of the problem, the Special Rapporteur urges the international community to provide necessary assistance, to complement the Government's own resources and efforts. The Government should consider establishing an emergency assistance programme, particularly in rural areas where alternative housing is less likely to be available.**

III. IMPACTS OF PRIVATIZATION ON HOUSING RIGHTS

21. The social cost of transition to market-oriented economy has particularly been severe for Romania during the past decade. As Romania makes further progress in the transition to a market-oriented economy and accession to the European Union, the Government's immediate priority has been to ensure macroeconomic stabilization, which has been a critical area of negotiations with the European Union and international financial institutions. Essentially, these reforms will require stronger government commitment to tighten fiscal policy, to undertake measures to address the poor financial performance of State-owned enterprises and utilities, and to implement an ambitious privatization programme.

22. While there are signs of macroeconomic recovery, according to UNDP, the poverty rate increased from 7 per cent of the population in 1989 to between 22 and 39 per cent in 1994, and the Government estimated that 44 per cent of the population was poor in 2000.[4] Significantly, the level of income inequality increased by approximately 50 per cent since 1989, contributing

to a fragile social situation in the country. Rural-urban disparities and differences between regions have also widened. According to 1998 data, incidences of poverty in rural areas were 50 per cent higher than in urban areas.[5] The Government will have an important role to play in reconciling macroeconomic policies with social objectives and meeting the needs of the most vulnerable first, keeping in mind the primacy of human rights obligations as recognized in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights.

23. In the housing sector, the share of housing stock in private hands grew from 67.34 per cent in 1990 to 95.21 per cent in 2000, as a result of mass privatization initiated by the Government. To the benefit of the tenants-turned-buyers, the high inflation of the early 1990s virtually wiped out the real value of the mortgage loan granted by the State. The proceedings from the sale of State properties were directed towards the construction of unfinished housing in major cities, although the State had little to gain from the privatization process. Due to the lack of financial resources, the State had to abandon or temporarily halt the construction of new residential units. In 1994, the Government passed Government Ordinance No. 19/1994 to expedite completion of unfinished apartment blocks by 2002. This ordinance was further modified in 2001 by Law No. 734/2001 and the Government Ordinance No. 76/2001, through which the Ministry/National Housing Agency has been empowered to take over unfinished buildings from private hands and to convert them into social housing programmes or rental housing for young people.

24. While the direct cost of ownership transfer was minimal for the residents, it turned out that the new owners were ill prepared for the financial burden of the maintenance costs of the building. The privatized housing stocks were generally in poor condition, and the difficult economic and social conditions of the new owners meant that little money could be invested in their new property and the maintenance of the common areas in multi-residential blocks, contributing to the further deterioration of these buildings. Prior to the privatization, there were active tenants' associations in Romania, which had contracts with municipally-owned management companies responsible for maintenance and repairs of State-owned housing. After the privatization, this system has completely broken down, with most of these management companies going bankrupt after the withdrawal of State subsidies. Moreover, the transformation of tenants' associations into owners' associations, now a legal obligation for homeowners in multi-story buildings, has made little progress. **The Government needs to put more emphasis on educating and reaching out to the homeowners on the need to provide information on the benefits of forming such associations and facilitate their formation with simplifying procedures and rules. The Government should also provide necessary advice and guidelines on the standard of services, and legal recourse for remedies.**

25. One of the problems associated with privatization and transition to market-oriented economy is the disintegration of the public utilities infrastructures. The quality, affordability and accessibility of essential civic services such as water and heating are a major concern in the realization of the right to adequate housing in Romania. The urban-rural disparity is grossly apparent - according to the World Bank, 95 per cent of the urban population is connected to central water supply system, whereas in rural areas only 11.7 per cent have such access. Even in central Bucharest, where the Special Rapporteur visited the house of a pensioner in Chitila district along the railway embankment, people in the community had to collect water from the

community tap in freezing temperature. This pensioner told the Special Rapporteur that he couldn't afford to live in apartment blocks because of the high cost of utility bills, which could be as much as the minimum wage. **The Special Rapporteur recommends that the Government take into account General Comment No. 6 on the economic, social and cultural rights of older persons adopted by the Committee on Economic, Social and Cultural Rights in developing social assistance programmes that address the housing and other needs of the elderly.**

26. The high cost of energy is therefore placing a heavy burden on households, not only for the poor but also for the population in general. Heating and hot water constitute 75 per cent of the energy needed in the average household. These are typically supplied by local district heating, which is plagued by serious problems associated with the transition, such as low efficiency and high marginal cost of energy production, increases in energy prices that consistently exceed the general rate of inflation, low collection rates especially from industrial users but also from individual consumers because of the high share of energy bills in total household expenditure. In 2000, the Government adopted ordinance 29/2000 and passed the law 325/2002 in May 2002 to address the heat loss and energy conservation through thermal insulation of existing building stock. Currently the Government is elaborating a national programme on minimizing thermal energy loss particularly in multi-story building. While this is a welcome development, **the Special Rapporteur is concerned that the current programme does not seem to address the issue of inequitable access to heating, particularly in poor communities, and may result in deepening the distribution gap. Furthermore, the programme should be linked with social assistance programmes to ensure that the poor and the vulnerable have affordable access to services and upgrading. The local authorities should play an important role in the delivery of services and social assistance, while the central Government should ensure monitoring of equitable distribution with particular attention to the population in need, in accordance with human rights principles. General comments on the right to adequate housing and the right to water and sanitation issued by the Committee on Economic, Social and Cultural Rights should provide useful guidance in this regard.**

27. The Special Rapporteur welcomes the establishment of an Anti-Poverty Commission for Promotion of Social Inclusion in April 2001, under the Office of the Prime Minister. The key function of the Anti-Poverty Commission is to monitor and promote coherent and sustainable poverty reduction initiatives. In June 2002, after the mission of the Special Rapporteur, the Government launched the National Plan against Poverty and for the Promotion of Social Inclusion. **The Special Rapporteur suggests that the Anti-Poverty Commission review and strengthen its institutional arrangements within the public administration, to ensure that its obligations under the Covenant and other relevant human rights instruments are taken into account at an early stage in the further elaboration and implementation of anti-poverty strategies and legislation relating to social welfare and assistance including housing. In doing so, the Special Rapporteur recommends that the Commission take into account the statement on poverty adopted by the Committee on Economic, Social and Cultural Rights (E/C.12/2001/10) as well as the conceptual framework of a human rights approach to poverty reduction which would include such principles as the identification of the poor; empowerment; the international human rights framework; participation; equity and non-discrimination; the progressive realization of rights; and accountability.**[6]

IV. HOUSING AND LIVING CONDITIONS OF THE ROMA

28. The Special Rapporteur had particular interest in examining the situation of Roma settlements in Romania, following the presentation of the non-discrimination framework of his mandate in the second report to the Commission (E/CN.4/2002/59, section II.A) and a number of submissions from the civil society groups on the subject. He also sought to follow up on the concluding observations of the Committee on the Elimination of Racial Discrimination adopted in 1999, in which the Committee (A/54/18, para. 287) stated:

> While noting the State party's statement that, in view of the absence of any practices of racial segregation or apartheid, it has not taken any action to prevent or eliminate such practices, the Committee nevertheless requests the State party to take into consideration its general recommendation XIX relating to article 3 of the Convention.

29. The Romanian Constitution and housing laws, particularly No. 114/1996, rule out all forms of discrimination. In August 2000, the Government adopted Ordinance No. 137/2000 on Preventing and Punishing All Forms of Discrimination,[7] which provides that the exercise of the right to housing is based on the principle of equality among citizens without privilege or discrimination. Under this ordinance, the refusal to sell or rent land for housing purposes or dwellings, to grant a bank credit, or to conclude any other kind of contract with a person or group of persons on account of their belonging to a race, ethnic group, a social or a disfavoured category, constitutes an offence.

30. However, at the implementation level, the Special Rapporteur was concerned that the information provided to him by the civil society groups reported many instances of forced evictions concerning the Roma people, direct discrimination against Roma in the housing market in the form of real estate advertisements with explicit statements against the Roma and lack of infrastructures and services in Roma communities. Civil society groups warn that more evictions of Roma may take place in view of the ongoing privatization and property restitution processes.

31. In the Zăbrăuți district of Bucharest, the Special Rapporteur visited a Roma community of approximately 400 families living in five apartment blocks which lack any kind of heating sources, electricity, sanitation and domestic water. The president of the Initiative Committee of Zăbrăuți district, together with the Roma community, handed him a letter describing the poor conditions they live in. The overwhelming majority of Roma women spend virtually all their time taking care of their children and household duties. Inadequate housing and often health-threatening living conditions exacerbate their burden, forcing them to spend more time collecting water, fuel and fodder, or taking care of sick children. Thus, Roma women, as primary care-givers whose main locus in terms of childcare, household duties and social interaction is often the home, are particularly vulnerable to the effects of poor housing.

32. Poor housing and inadequate living conditions invariably impact on other aspects of life including health and education. Dangerous and unhealthy conditions are caused by structural problems or a lack of or limited access to amenities such as gas/electricity, water supply and rubbish collection. In Zăbrăuți district, for example, as some of the apartment blocks were not supplied with electricity, either due to lack of facilities or non-payment by users, some residents

resorted to illegally appropriating electricity from nearby power lines. A wheel-chaired young man told the Special Rapporteur that he had been severely injured while attempting to wire up his room; he fell and broke his back, which made him paralysed from the waist down.

33. Lack of personal identification documentation presents another obstacle for some Roma in accessing public services. One mother from Zăbrăuți told the Special Rapporteur that she was reluctant to take her sick child to the hospital because without "papers" the doctors would not see them. Simple poverty is a further barrier; another woman reported that she could not send her children to school because of lack of clothing during winter. Such conditions bring with them not only threats to the physical, but also to the mental, health of those affected. Furthermore, this community is currently facing a threat of eviction, as one of the apartment blocks has been designated by the Government for conversion into an orphanage centre. It is well-evidenced that both the experience and the threat of eviction bring not only physical risks, but additional psychological strains to bear on the community. These often impact most strongly on women as the central emotional and stabilizing force within the family and on other vulnerable persons such as the sick and elderly. **The Special Rapporteur recommends that urgent attention be directed to issues of security of tenure for those living in property or in settlements without legal contract (whether private or State-owned) or proof of ownership. A review of eviction laws, policy and practice is also recommended to ensure that correct procedure is followed and that no individual or group, whether Roma or non-Roma, suffers disproportionately therefrom.**

34. The Roma community in Zăbrăuți district is a typical of poor Romas living under neglected conditions. In Romania, there is a marked difference in the living standards of those Romas who are highly integrated into the wider society and those who are not. As is the case for other groups, the needs and housing conditions of Roma vary and examples can be found of wealthy individuals and communities of Roma. The Special Rapporteur visited one such Roma community in the suburb of Bucharest, in Fințești village, where residents have built elaborate houses in their traditional style.

35. However, for the majority of the poor Roma population, the housing and living conditions are dismal. From the available data and information, the situation is even worse in rural areas. According to the information submitted by the European Roma Rights Centre, in Alexandria, a town in southern Romania, the Romani houses in Potcoava street had no sewage removal system at the time of ERRC visit in May 2000, even though non-Roma houses located at both ends of that street were connected to a sewage system. Elsewhere, the communities in rural areas can be physically isolated due to poor communications infrastructure, making access to public services - including health and education - problematic.

36. The Special Rapporteur welcomes the fact that the Government of Romania has made it a major policy objective to address the Roma issue. In 2001, the Government adopted a strategy for the improvement of the conditions of the Roma population, as approved by Government Decision No. 430/2001. Positively, the strategy was formulated through extensive consultative process involving the civil society and the Roma representatives. Roma advisers have been appointed at different levels of Government, and now the Government is in the process of further elaborating strategies at the sectoral level, including housing. Such multi-stakeholder approach will be the key in the implementation of the strategy.

37. As the strategy only came into being in 2001, its effects are yet to be seen. However, it is already clear that the Government will have to provide adequate resources to ensure its implementation. It is also essential that implementation at county and local levels is carefully monitored to ensure that the responsible authorities fulfil their obligations. In the housing sector, the MPWTH has been made responsible to elaborate sectoral strategies and actions for Roma with regard to housing and land, including a review of the property rights of Roma for land and housing. So far, the ministry has carried out an inventory of the status and needs for the necessary rehabilitation of housing and environment in the areas inhabited by Roma, on the basis of which Government-financed or partnership programmes to improve services and infrastructures for the Roma communities. This will require substantial resources which the Government will have to provide from its own means and by seeking international assistance. **In further elaborating strategies on housing for Roma, and eventually in their implementation, the Special Rapporteur urges the MPWTH to bear in mind the existing human rights norms and standards, including General Comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights and General Recommendation XXVII on discrimination against Roma adopted by the Committee on the Elimination of Racial Discrimination, in particular its paragraphs 30 and 31 on housing.[8] Roma themselves (including Roma women) should also be engaged in a meaningful process of consultation in the process of elaborating and implementing housing strategies that affect them.**

38. The Special Rapporteur commends the process and structures of consultations established among the government officials, mixed committees and Roma experts. With the ongoing process of decentralization and privatization, the local authorities and private sectors are increasingly charged with the implementation of policies, programmes and activities that directly affect the enjoyment of the right to adequate housing of citizens. It is nevertheless essential to bear in mind the important role the central Government should play in setting the appropriate policy and legal framework and monitoring developments. The civil society, academic institutions and media also play essential roles in monitoring and human rights education.

39. A case in point is the controversy that surrounded the local authorities' attempt to segregate the local Roma community in the north-eastern city of Piatra Neamt. On 9 October 2001, the mayor of Piatra Neamt announced the building of a special residential district for the local Roma community. His plan, supported by the local council, was to build a district for Roma people on the outskirts of the city, including residences, a kindergarten, a health centre and a school as well as promises for jobs for the Romas. However, the proposal also included plans to surround the special district with barbed wire and guards. The newspaper *Cotidianul* reported the mayor claiming, "If Roma people don't accept to move from the city to Izvoare, they will be forced to do so." *Cotidianul* also quoted the Head of Neamt local administration as saying: "They destroyed the social houses they had and they owe hundreds of millions of Romanian lei for maintenance."[9]

40. The plan soon came under strong condemnation by the central Government, the politicians and the civil society groups. The Minister of Public Information, who oversees the Roma issue, stated: "What happened to Roma people in Piatra Neamt is unfortunate. Human rights need to be respected, no matter how local autonomy functions."[10] Following the news surrounding the controversy, a number of civil society groups took an initiative to obtain more information and background to the mayor's initiative and to find possible solutions. Romani

CRISS sent a team to Piatra Neamt to investigate the case, and met with the Roma issues experts, the County Councillor and the local Roma Party president. Following the field investigation, and upon the request from Romani CRISS, a round table discussion was organized at the Piatra Neamt Prefecture office on 11 October, with a view to clarifying the situation. It was attended by representatives from the city hall, the County Office for Roma, the local Prefecture, the Roma Party and new agencies. The round table helped to clarify the shortcomings in the communications strategies on the part of the city hall, which subsequently issued a press release stating that the plan was not intended to create a ghetto but aimed at social integration of the Roma community "by creating jobs and including children within the education system, in common classes for all the children in the neighbourhood". They further clarified that the barbed wire was never to be set up and the public order and security would be ensured by the local police. The round table also analysed the situation of Romas in the community, particularly with regard to the accusations made pertaining to the theft of construction materials by Romas. It was acknowledged that both Roma and non-Roma were involved in the stealing of materials from the construction site.

41. The Piatra Neamt case provides an example of good practice by the civil society and the central Government intervention in an effort to prevent the segregation of a particular ethnic group in a socially disadvantaged position as a result of the measures adopted by the local authorities. However, the challenge still remains: the criteria for housing allocation in the special district had not yet been clarified; and the problem was further compounded by a later announcement by the mayor not to allocate any social housing to Roma. In the meanwhile, Romani CRISS proposed that city hall work in partnership and organize training programmes to educate civil servants and citizens on prevention of discrimination, as well as appointing a mediator and establishing a commission of human rights. NGOs would monitor the criteria for the allocation of residences in accordance with the national law and international norms and standards. The Special Rapporteur was subsequently informed that the Government is following up and investigating on the Piatra Neamt case.

42. **The Special Rapporteur commends the actions of Romani CRISS and urges the Government to continue monitoring of the situation of Roma and to act firmly against any discriminatory practices affecting Roma, including by local authorities and private owners, that negatively affects the enjoyment by Roma of the right to adequate standard of living including adequate housing, in accordance with the relevant provisions of the international human rights instruments and the General Recommendation XXVII of the Committee on the Elimination of Racial Discrimination. The Special Rapporteur particularly recommends that MPWTH put in place policies and programmes to facilitate non-discriminatory access to housing and services by the low-income Roma population, in accordance with Government Decision No. 430/2001 and the concluding observations of CERD. In this context, the Government should work closely with the civil society organizations and national human rights institution and also need to take into account the gender dimension as Roma women often face double discrimination.**

43. From the field visits by the Special Rapporteur and testimonies received, it is evident that the lack of identity cards and documentation represents one of the most serious problems affecting the enjoyment of the right to an adequate standard of living, including adequate housing, as well as civil and political rights. Roma who lack official identity documents are

often excluded from social services as well as from the special assistance programme available for the minority groups. Furthermore, in many cases Roma have been unable to appeal State justice as a result of not having personal identity papers. It is also claimed that the Roma disinterest or distrust in officially declaring an identity, stemming from a genuine fear of misuse of ethnically determined data, compounds the problem of institutional inadequacy in issuing such documents for them. **In dealing with this problem, the Special Rapporteur recommends that the State should make additional effort to raise public awareness among the Romas and to facilitate their obtaining proper identity documents. This might include assurances backed up by references to relevant legislation and practice that no disadvantage shall result from one's identity as belonging to a particular group (in accordance with international standards, including article 3 of the Council of Europe's Framework Convention for the Protection of National Minorities, as well as paragraph 32 of the OSCE Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE). The Special Rapporteur also calls upon the Government to ratify relevant international conventions on statelessness,[11] which should further facilitate the integration of the Roma.**

V. WOMEN AND CHILDREN

44. The gender dimension of housing in Romania is self-evident. In the situation of poverty, women generally tend to suffer more in terms of living conditions not only because of higher unemployment rate and lower wages but also physical and emotional impacts of poverty. Households headed by women represent an especially vulnerable group, particularly in rural areas. In December 2000, the Government adopted the National Action Plan on Equal Opportunities for Men and Women, which identified areas of focused intervention in such fields as legislation, social rights, economic development, participation in decision-making, and public awareness. While this is a welcome development, the plan currently lacks sufficient resources for implementation.[12] These women, and their family belonging to the high-risk group, particularly bear the blunt consequences of the privatization process mentioned earlier in this report. They are also often the hardest hit in the situations of evictions and resettlement, having had to take care of traumatized children and frustrated husbands. In addition to protecting families from possible physical violence, trauma and anxiety, other stress-inducing factors may include: separation from support networks, disruption of daily routines, loss of access to services including health, and health risks from emergency resettlement in unsuitable places.

45. The Committee on the Elimination of Discrimination against Women, in its concluding observations adopted in June 2000 on Romania's combined fourth and fifth periodic reports, called on the Government to place highest priority on the adoption of the proposed legislation on domestic violence and trafficking in women (A/55/38, para. 300). It is the contention of the Special Rapporteur that the current legal and policy framework on social housing still needs further refinement to address the needs of female-headed households, elderly women, women who left home because of domestic violence or victims of trafficking in human beings. The gender perspective is entirely absent in the current national strategy on housing pursued by the Government. It may also be noted that Office of the Ombudsman received a number of complaints from women in cases related to the alleged infringement of individual rights in the process of restitution of land or residential property and cases related to the provision of social security. **The Special Rapporteur shares the concern of the Committee on the Elimination of Discrimination against Women, and urges the Government to take gender perspective**

into account in their national housing programme, with a view to improving the legal and policy framework to meet the particular needs of aforementioned female populations that are in particularly high risk. The Special Rapporteur looks forward to working with the Government on this issue, and to receiving its inputs for the questionnaire on women and adequate housing, which was prepared for the report on the subject to be submitted to the fifty-ninth session of the Commission on Human Rights pursuant to its resolution 2002/49.

46. The phenomenon of street children in Romania is a complex issue that requires both immediate and long-term, multifaceted approaches. There are four categories of street children: (a) children who are sent from home by parents to work or beg; (b) children who ran away from their families; (c) children who have no family and no place to live; (d) children who live on the street with parents. In Bucharest, it is estimated that there are about 1,500 street children and approximately half of them live permanently on the streets because of extreme poverty, domestic violence and family disorganization. A significant number of them are open to such risks as delinquency, drug abuse, prostitution, suicide and other health risks including HIV/AIDS.

47. Romania, as a State party to the Convention on the Rights of the Child, is under legal obligations to take appropriate measures to implement its provisions, including article 27.3 on nutrition, clothing and housing. In Romania, there is a general shortage of shelters for street children, yet the current government policy is to close down long-term institutions and to return children to homes. At the time of the Special Rapporteur's mission, there was only one night emergency shelter in Bucharest and the existing residential centres were able to meet only two thirds of the need. Even when the children leave such institutions after having grown up and graduated high schools, many of them end up on the streets again due to a severe shortage of housing, high unemployment and low wages. The Special Rapporteur notes that the Committee on the Rights of the Child raised some of these issues at its thirty-second session in January 2003 when it considered Romania's periodic reports under the Convention on the Rights of the Child.

48. **The Special Rapporteur recommends that the National Authority for the Protection of Children's Rights should, in cooperation with the local authorities and MPWTH, design a long-term strategy to provide more appropriate and adequate shelters for the growing number of street children, also taking into account relevant concluding observations of the Committee on the Rights of the Child. For the strategy to be effective, it should be multidisciplinary and also include measures to improve legislative framework in accordance with the Convention on the Rights of the Child, to create programmes for education and public awareness, to facilitate the reintegration of street children and to improve the capacity and standards of the social services dealing with children. The Government and the international community should increase support to such civil society and non-governmental organizations which provide services to those children in need.**

VI. CONCLUSIONS AND RECOMMENDATIONS

49. **The Special Rapporteur appreciates the openness of the Government in sharing with him the challenges they face and efforts to seek solutions to the housing crisis. This report has demonstrated that, while there are signs of economic recovery, the ongoing process of transition to a market-oriented economy has presented significant challenges to the realization of the right to adequate standard of living, including the right to adequate**

housing. In the housing sector, the main focus of the Government has been to create a functioning market for housing, but at the same time, the human rights obligations stipulate the duty of Government to take immediate steps towards meeting the needs of the poor and vulnerable population who otherwise are unable to reach the benefits of the market economy. The Government has initiated several plans and strategies in the housing sector, and for anti-poverty and promotion of social inclusion in general. Further efforts will be necessary to integrate the rights relevant to his mandate in its implementation, and to transform these plans and strategies into action with wide support from its citizens and the international community.

50. **The Special Rapporteur notes with satisfaction that dialogues with the Government, civil society, treaty bodies, United Nations and other international agencies have continued after the mission, and is grateful for the serious attention paid by them to evaluate his preliminary findings and to come up with further suggestions. While specific recommendations have been embedded throughout this report, the Special Rapporteur would like to conclude by submitting the additional general recommendations below.**

51. **The Government should take into consideration relevant provisions from international human rights instruments[13] and general comments and recommendations from treaty bodies in formulating policies and programmes. Particular attention should be paid to the needs of minority and other vulnerable groups.**

52. **The Special Rapporteur welcomes the adoption in June 2002 of the National Plan against Poverty and for the Promotion of Social Inclusion, which takes into account many issues raised in this report. For it to benefit the poor, and to assist the realization of their rights, including adequate housing, the plan needs wide support and participation for its effective implementation, by the poor, all levels of Government, civil society and the international community. In particular, a comprehensive approach should be adopted to address the housing needs of the poor and to prevent social exclusion and poverty of all Romanian citizens, regardless of race, ethnic and other backgrounds.**

53. **The Government should take a lead in developing appropriate monitoring mechanisms for the implementation of the right to adequate housing, such as an inter-ministerial committee with involvement of relevant ministries, local authorities and civil society. Such a participatory mechanism should also expedite the finalization of the overdue report to the Committee on Economic, Social and Cultural Rights.**

54. **The Government should develop appropriate indicators and benchmarks to monitor the implementation of the right to adequate housing, as well as the progress towards the achievement of relevant Millennium Development Goals, particularly on slum-dwellers, water and sanitation.**

55. **The Government needs to focus more attention on the issues of security of tenure, to take steps to legalize settlements, and to give particular attention to monitoring and prevention of forced evictions. The Government may wish to seek the assistance of UN-Habitat, and to localize its Global Campaign on Secure Tenure.**

56. **The Government has to place more emphasis on human rights education and raise public awareness of the rights relevant to adequate housing. The Ministry of Public Works, Transport and Housing should seek the assistance of the Romanian Institute for Human Rights in developing such awareness programmes and further integrating human rights into its policies and programmes.**

57. **The Government should make use of relevant provisions on international cooperation in international human rights instruments[14] to seek technical and other assistance for the realization of rights relevant to adequate housing. The Special Rapporteur calls upon the international community to provide necessary assistance to complement the Government's own efforts, particularly in the areas of retrofitting and disaster preparedness.**

58. **The challenges faced by Romania and good practices adopted can offer valuable lessons and examples for other countries with economies in transition. The Special Rapporteur recommends that the United Nations Economic Commission for Europe facilitate such exchange of experience, also in cooperation with OHCHR and UN-Habitat within the framework of their United Nations Housing Rights Programme.**

Notes

[1] Romania entered a reservation under article 14 of the Convention, that it did not recognize the competence of the Committee on the Elimination of Racial Discrimination to receive individual or group complaints related to racial discrimination.

[2] Published in *Official Monitor* No. 254, 21 October 1996.

[3] Article 31 of the Revised European Social Charter states: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: (1) to promote access to housing of an adequate standard; (2) to prevent and reduce homelessness with a view to its gradual elimination; and (3) to make the price of housing accessible to those without adequate resources."

[4] UNDP, *Poverty in Romania*, 2001, p. 5.

[5] Ibid., p. 26.

[6] See A/57/369, report of the Secretary-General on human rights and extreme poverty, as well as the ongoing work of OHCHR in developing a human rights approach to poverty reduction strategies, following the request of the Committee on Economic, Social and Cultural Rights (http://www.unhchr.ch/development/poverty/html).

[7] Ordinance on Preventing and Punishing All Forms of Discrimination, No. 137/2000, adopted by the Romanian Government on 31 August 2000, *Official Monitor* No. 431, 2 September 2000.

[8] General comments and recommendations of treaty bodies are contained in document HRI/GEN/1/Rev.5.

[9] *Cotidianul*, 10 October 2002.

[10] Statement at the National Minorities Council Plenary, as quoted by the *Independent* newspaper, 11 October 2002.

[11] These include the Convention on the Reduction of Statelessness and the Convention Relating to the Status of Stateless Persons.

[12] Commission of the European Communities, "2001 Regular Report on Romania's Progress Towards Accession", p. 27.

[13] These include: article 25.1 of the Universal Declaration of Human Rights; article 11.1 of the International Covenant on Economic, Social and Cultural Rights; articles 16.1 and 27.3 of the Convention on the Rights of the Child; articles 14.2 (h) and 16.1 (h) of the Convention on the Elimination of All Forms of Discrimination against Women; articles 3 and 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination; article 9.1 of the International Covenant on Civil and Political Rights; and article 16.1 on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[14] These include: article 28 of the Universal Declaration of Human Rights, which proclaims that everyone is entitled to a social and international order in which the rights and freedoms contained in the Declaration can be realized; articles 2.1, 11, 15, 22 and 23 of ICESCR, which build upon the foundation for international cooperation in Articles 55 and 56 of the Charter of the United Nations, and the obligation for States parties to recognize the essential role of international cooperation and to reaffirm their commitment to take joint and separate action. Also see Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, paragraphs 29-34. Also see E/CN.4/2001/51, paragraphs 91-96 and E/CN.4/2002/59, paragraphs 32-36.