

**A Hidden National Crisis: Indigenous Housing in Australia's Top End**

by James Dawson

**Synopsis**

This article considers the conclusions of the United Nations ('UN') Special Rapporteur on Adequate Housing in relation to his visit to the 'Top End'<sup>1</sup> in Australia. It explores the legal framework governing housing with specific reference to the Top End and suggests that urgent efforts are needed to address the crisis. It argues that the right to adequate housing is protected by international law but is systematically breached. The issue of housing in domestic legislation and policy is also discussed. The article concludes with some recommendations for improving the provision of housing in the Top End.

Imagine having to sleep in the kitchen and wake each morning... to share a bathroom with 17 other occupants in a small house... But make no mistake, the sporadic riots we've seen recently are a symptom of a much deeper problem, one with overcrowded living conditions at its core...

It's only right that some of that massive federal budget should be invested where it's needed most, in our most under-resourced communities...<sup>2</sup>

The picture here depicted by the Northern Territory ('NT') Chief Minister, Clare Martin, regarding Indigenous housing is one that is both shameful, true, deteriorating and urgently needs redress.<sup>3</sup> Sadly this is the reality of living conditions for many Indigenous people across the Top End. The tour by the Special Rapporteur has again turned the spotlight on this national shame. Extensive consultation with communities is needed and must be followed by action from both the NT and Federal Governments.

**Visit by the United Nations Special Rapporteur on Adequate Housing**

At the invitation of the Australian Federal Government, the UN Special Rapporteur on Adequate Housing visited Australia between 31 July and 15 August 2006.<sup>4</sup> Mr Kothari's preliminary conclusions criticise the Federal and NT Governments' approach to Indigenous housing. Speaking of his visits to Kuranda and Mona Mona in Queensland, and Darwin, Alice Springs camp and Santa Teresa in the NT, Mr Kothari expressed dismay at the conditions. 'The conditions that I saw of overcrowding, up to 30 people living in one house, and the fact that these conditions have existed for seven decades, it certainly – perhaps not in terms of numbers but in terms of the sheer violations – is definitely amongst the worst I've seen around the world...'<sup>5</sup>

**The Right to Adequate Housing under International Law**

Australia has signed and ratified the core human rights instruments relating to housing, however, these standards have not been adopted into domestic law.<sup>6</sup> The International Covenant on Economic, Social and Cultural Rights ('ICESCR') stipulates that, as a signatory, Australia has a 'core obligation' to ensure that non-derogable 'minimum essential standards' relating to fundamental human rights are met.<sup>7</sup> According to the UN Committee on Economic, Social and Cultural Rights, at a minimum, housing must be



affordable, accessible to disadvantaged groups, habitable, culturally appropriate and provide occupants with security of tenure and afford access to appropriate services.<sup>8</sup>

### **The Right to Adequate Housing under Northern Territory Law**

In the NT the right to adequate housing is incorporated in the *Residential Tenancies Act 2006* (NT).<sup>9</sup> Sections 47 and 48 require that a landlord must not let premises unless they are habitable, safe, clean and suitable for habitation. Across the Top End a significant portion of public housing would fall below these standards.<sup>10</sup>

### **Illustrations of Inadequate Housing in the Top End**

Three communities within the Top End which illustrate the crisis facing housing include One Mile Dam, Palmerston Indigenous Village ('PIV') and the Tiwi Islands. In each of these communities, and many others across the Top End, despite the sub-standard housing, tenants are obliged to pay rent.

In One Mile Dam, a town camp situated 'one mile' from the centre of Darwin, tenants are paying \$15 per shelter per week. There are six 'houses' or shelters which are occupied, however, residents state that they provide only minimal protection from the elements. There are two ablution blocks in total for the shelters, during the wet season the roofs leak, and electricity was only installed in January this year. Vermin, including rats and snakes, are frequently present.<sup>11</sup>

In the Tiwi Islands many of the houses are in a severe state of disrepair. In Nguiu, 48 of the houses, or slightly over 20 per cent, have been condemned and declared unfit for human habitation by the Department of Health and Community Services. When a house is condemned, the local government is required to immediately shut off the electricity and water supply, presumably to discourage habitation, however, with the severe housing shortage, all of the condemned houses continue to be occupied and the residents pay rent.<sup>12</sup>

It is submitted that charging rent in such circumstances may constitute a breach of a landlord's obligations under the *Residential Tenancies Act*. Sections 57-58 oblige landlords to ensure that the premises are in a reasonable state of repair.

### **The Concept of 'House' or 'Home'**

The Special Rapporteur correctly observed that the notion of 'house' or 'home' can be differently understood by Indigenous and non-Indigenous peoples.<sup>13</sup> Much housing provided in the Top End seems to defy this principle. It appears Indigenous communities have little, if any, input in the formulaic designs created for NT housing. For instance on the Tiwi Islands and many other communities people live largely outside, particularly during the 'build-up', the extremely hot, humid period which precedes the wet season.<sup>14</sup>

Further, hunting on the Tiwi Islands and many communities in the Top End forms a part of culture and a major source of food. The typical electric oven and range are inadequate for preparing large game, or for accommodating the



needs of several families who may share a house. Action is needed to ensure that housing is culturally appropriate.

### **Shortage of Housing**

The NT Department of Local Government, Housing and Sport's statistics acknowledge there is a substantial shortage of housing across the Top End. According to the statistics, 385 houses in the NT need demolition, and 713 need renovation. While there are no statistics on the shortage of housing, one community in the Top End that is illustrative of this shortfall is PIV. The community consists of six houses and 12 shelters and there has been no increase in housing capacity since 2001. Houses predominantly have three or four bedrooms despite containing as many as 15 inhabitants. Further, there is no provision of housing for single people.<sup>15</sup>

### **Indigenous Involvement in Decision-making**

Greater efforts need to be made by both the Federal and NT Governments as well as individual housing providers to ensure Indigenous communities are fully consulted in all stages of decision-making including house design, renovations and the numbers of houses in communities. Current plans regarding 99-year lease provisions are an example of the failure to consult comprehensively with Indigenous communities in the decision-making process. Indeed this failure to allow Indigenous people full consultation and debate with critical issues such as the 99-year lease provision, or the design of houses, undermines the right of Indigenous people to self-determination and may call into question Australia's obligations under international law, specifically the ICESCR.<sup>16</sup>

### **Conclusions**

Greater education needs to take place to inform Indigenous communities about their rights under the *Residential Tenancies Act*. There is also a role for legal aid organisations in enforcing lease provisions. While many legal aid organisations would struggle with resources to take on such cases, the National Pro Bono Network or private firms may be an effective way to ensure the enforcement of leases signed by tenants in each of these communities. It may be that until a test case is brought against a housing provider in an Indigenous community landlords will continue to fail in their obligations to ensure housing is both habitable and meets requisite health and safety requirements.

Federal and Territory Governments must increase the allocation of funding to Indigenous housing and ensure that substantially more housing in communities in the Top End is created. In building any such housing, however, Indigenous communities must be consulted at all levels of the decision-making process, including, for example, in house-design. All such housing constructed in communities in the Top End must be culturally appropriate and what is both needed and desired by communities.

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<sup>1</sup> The 'Top End' is commonly used, and is used in this instance, to refer to the top half of the NT.

<sup>2</sup> Clare Martin cited in 'Crowding Root of Indigenous Problem', *The Australian*, 1 June 2006.

<sup>3</sup> Ibid.

<sup>4</sup> *United Nations Special Rapporteur on Adequate Housing, Miloon Kothari, Mission to Australia: Preliminary Observations*, (2006) <<http://www.afho.org.au/documents/prelimobservations.pdf>> at 15 September 2006.

<sup>5</sup> Ibid.

<sup>6</sup> See P Alston and G Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly* 156.

<sup>7</sup> See ICESCR, General Comment: 'The Right to Adequate Housing', UN Doc HRI/GEN/1/Rev. 5 (2001) 22.

<sup>8</sup> Ibid.

<sup>9</sup> *Residential Tenancies Act 2006* (NT) s 47 – 48.

<sup>10</sup> Ibid.

<sup>11</sup> Interviews with residents (June and July 2006).

<sup>12</sup> Ibid.

<sup>13</sup> United Nations Special Rapporteur on Adequate Housing, Miloon Kothari, above n 4.

<sup>14</sup> For further details see *Tiwi Islands Housing Management Strategy* (2003) Tiwi Islands Local Government <[http://www.tilg.nt.gov.au/home/about\\_us/reports](http://www.tilg.nt.gov.au/home/about_us/reports)> at 15 September 2006.

<sup>15</sup> For further details see *The Voice of the Village* (2004-5) Palmerston Indigenous Village Community Plan <[http://www.palmerston.nt.gov.au/webdata/resources/files/Community\\_Plan\\_-\\_Final\\_Version.pdf](http://www.palmerston.nt.gov.au/webdata/resources/files/Community_Plan_-_Final_Version.pdf)> at 15 September 2006.

<sup>16</sup> ICESCR, above n 7.