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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Доклад Специального докладчика по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте Ракель Рольник

Добавление

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Резюме

Специальный докладчик по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте посетила Руанду с официальной миссией 5–13 июля 2012 года. В настоящем докладе она уделяет основное внимание политике и программам Руанды в таких областях, как право на жилье и землепользование, включая: а) укрупнение деревень (или "имидугуду"); б) программу "Бай-бай ниакатси"; с) политику в области регистрации земель и оформления права собственности; d) программы консолидации земель; и е) городское планирование в Кигали и вызванное этим перемещение населения. Она также уделяет особое внимание положению общины батва.

* Резюме распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на языке оригинала и на английском языке.

** Представлен с опозданием.

Специальный докладчик выражает признательность правительству Руанды за то, что оно с пониманием относится к концепции достойного жилища. Она также приветствует приложенные правительством усилия в целях восстановления государства и нации, равно как и результаты, достигнутые в области борьбы против нищеты и за улучшение условий жизни народа Руанды.

Специальный докладчик подчеркивает обязанность правительства обеспечить разработку и осуществление всех программ в соответствии с его международными обязательствами. Она также отмечает, что условия, в которых проводится такая политика, способны вызвать вопросы относительно соблюдения международных стандартов права на достойное жилище. Специальный докладчик особо указывает на важность обеспечения подлинного участия затрагиваемого населения и создания эффективных и действенных средств правовой защиты в случае любых возможных споров. Специальный докладчик рекомендует принять временные специальные меры в интересах общины батва и призывает правительство расширить имеющиеся у представителей этой общины возможности для осуществления прав человека и гражданских свобод, которые абсолютно необходимы для защиты права на жилище. В заключение она предлагает провести оценку текущей политики, основанную на широком участии в ней населения, и ряд реформ, в том числе законодательного характера.

Приложение

[English and French only]

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 in this context, Raquel Rolnik: Mission to Rwanda (5 to 13 July 2012)

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I. Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to the non-discrimination in this context undertook an official visit to Rwanda from 5 to 13 July 2012 at the invitation of the Government. The Special Rapporteur thanks the Government of Rwanda for its invitation and for its support and cooperation during both the preparation of her mission and the visit itself. The Special Rapporteur also thanks the office of the human rights adviser of the United Nations team in Rwanda for the support provided.

2. During the mission, the Special Rapporteur met with the Rwandan authorities at the highest level, including ministers. She also met with representatives of the State's strategic and technical agencies, civil society and independent research institutions, as well as various well-known persons. The Special Rapporteur furthermore met with representatives of the Rwandan Parliament and with the National Human Rights Commission. She went to the Southern and Eastern provinces, visited many neighbourhoods in Kigali and outside the capital, and had discussions with many people living in these areas.

II. Historical and geopolitical context

3. The 1994 genocide, the culmination of an armed conflict that had begun in 1990, continues to leave its mark on the Rwandan historical and geopolitical context. The genocide claimed the lives of approximately 800,000 people between April and July 1994. At that time, as in the past, control over land was a fundamental issue.¹ The importance of the links between the 1994 genocide and various elements of the country's sociopolitical history and geography is worth noting.

4. Violence linked to competition over power and control of resources, as well as to the issue of identity, led to successive waves of migration, mainly at the end of the 1950s and again in the mid-1990s. With the end of the monarchy and the outbreak of violence that followed, significant numbers of former leaders and their families went into exile at the end of the 1950s. In the aftermath of the 1994 genocide, the former exiles returned in large numbers, just as other Rwandans were leaving the country. Hence, a significant part of the Rwandan population only returned to the country after 1994, while there is also a large diaspora. According to the Office of the United Nations High Commissioner for Refugees, there are approximately 115,000 refugees and asylum seekers from Rwanda.

5. An understanding of the distinctive features of the country's physical and human geography is critical to an understanding of the current situation in respect of the right to decent housing. In terms of physical geography, the surface area of Rwanda (26,338 km²) makes it one of the smallest countries in Africa and one of the most densely populated countries in the world (10,537,222 inhabitants according to the August 2012 census), with 416 inhabitants/km². At the same time, the very rugged terrain consists of many highlands and hills. Over the centuries, this has made agriculture and animal husbandry problematic because of the scarcity of suitable land. Land has thus long been a major issue in the country's socioeconomic and political life.

¹ The Arusha Peace Agreement, concluded between the Government of Rwanda of the time and Paul Kagame's Rwandan Patriotic Front, was intended to end the civil war between the two sides. It contained many provisions relating to land management and housing, showing that these issues were already sources of tension.

6. As a result of all this, but also because of cultural and sociological factors, human settlements in Rwanda were not arranged in groups. Households tended to be scattered across the territory and villages, as coherent social and economic entities were few and far between.

7. The painful experience of the genocide continues to leave its mark on Rwanda today, although the socioeconomic indicators do show that significant progress has been made: the rate of extreme poverty has declined, from 40 per cent in 2000–2001 to 24 per cent in 2010–2011; school attendance has improved; and the proportion of children enrolled in secondary school has doubled since 2005. There have been significant improvements in the area of housing: sources of drinking water are now available to approximately 74 per cent of the population, and access to improved methods of sanitation (latrines) has increased, from 55 per cent in 2005–2006 to 73 per cent in 2010–2011.

8. The Government is implementing many programmes in the areas of landownership and housing. These include: (a) the villagization policy, under which households that used to be scattered are being grouped together; (b) the Bye Bye Nyakatsi programme, which provided for the replacement of thatched-roof houses with houses that have sheet metal roofs; (c) the land registration and land titling policy; and (d) the land consolidation programme, whose purpose is to promote commercial farming.

9. Given the importance of land in the culture and recent history of Rwanda, fairness and inclusiveness must be assured in the numerous reforms under way in this field. The reforms and the manner in which they are implemented must not give rise to conflict.

III. Legal and policy framework relating to the right to housing

10. The 2003 Constitution contains no explicit references to the right to housing, although it does establish the right to own private property (art. 29) and the more specific right to private ownership of land (art. 30). Rwanda is, however, party to several international treaties that provide for the protection of the right to decent housing, including the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.² Rwanda is bound by the relevant provisions of these treaties under article 190 of the Constitution, which stipulates that: "Upon their publication in the Official Gazette, international treaties or agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws (...)."

11. The most relevant legislation in the context of the Special Rapporteur's review is Act No. 57/2007 of 15 December 2007, repealing Act No. 06/98 of 22 June 1998 on the creation, organization and management of the housing fund (which simply provides for the transfer of the fund to the Housing Bank of Rwanda); Organic Law No. 08/2005 of 14 July 2005 on the use and management of land in Rwanda; and Act No. 18/2007 of 19 April 2007 on expropriations in the public interest. A series of regulatory instruments also deal with various aspects of the right to housing in the country; they include Presidential Order No. 53/01 of 12 October 2006 on the structure, powers and functions of the Office of the Registrar of Land Titles; Presidential Order No. 30/01 of 29 June 2007 on the exact number of years that land leases last; Ministerial Order No. 002/2008 of 1 April 2008 on land

² Since the African Commission on Human and Peoples' Rights, in communication No. 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, found that a combined reading of articles 14 (right to the property), 16 (right to health) and 18 (right to protection of the family) of the African Charter on Human and Peoples' Rights showed that there was an implicitly recognized right to adequate housing, it is accepted that this right is protected by the Charter.

registration procedures; and Ministerial Order No. 14/11.30 of 21 December 2010 on land consolidation and utilization procedures. Various aspects of the right to housing are addressed in a number of different policies, including the National Urban Housing Policy (2008), the Kigali Master Plan (2007), the human settlement policy (2004), and the land policy (2004).

12. The general intention behind these instruments is to establish conditions of greater equality between Rwandans. This is the case of the 2005 law on land tenure, under which spouses and descendants in the first degree are granted equal rights with respect to landownership. The instruments also attest to a clear willingness on the part of the authorities to modernize the country based on the exigencies of the market economy, as will be explained in the section below on the land consolidation policy. In fact, regularization of the landownership system and liberalization of the land market are important elements of the country's economic development strategy. On this point, the Special Rapporteur would like to remind the Government that when a country opens itself up to a market economy it must take specific actions to protect the poor and all of the most vulnerable groups. Furthermore, the sometimes dominant role of the authorities could open the way for abuses, as in the case of the 2007 Act on expropriations in the public interest.

13. The Special Rapporteur welcomes the fact that the State of Rwanda is legally obliged to take all appropriate measures, as far as its available resources permit, to ensure the gradual realization of the right to decent housing. As noted by the Committee on Economic, Social and Cultural Rights, such action must be based on the principle of equality and non-discrimination, as well as on the need to protect human dignity. Furthermore, some measures towards the full realization of the right to decent housing can be applied with immediate effect, regardless of the resources available: (a) refrain from practices likely to compromise the realization of the right to decent housing; (b) give priority to groups living in unfavourable conditions, particularly when a general deterioration in living and housing conditions occurs as the result of State policy; (c) adopt a costed national strategy for the realization of the right to housing, to be developed on the basis of extensive and genuine consultations; and (d) constantly monitor the situation with respect to the right to housing, particularly where the most vulnerable groups are concerned.³

IV. Interventions in respect of land and housing

A. Policy of villagization (*imidugudu*)

14. In a country where the population has traditionally lived in scattered dwellings, the policy of villagization, known as "*imidugudu*" (singular: "*umudugudu*") in Kinyarwanda, encourages the establishment of consolidated, planned, prebuilt housing in rural centres. The Government states that the policy of *imidugudu* was initiated and is being implemented in order to improve housing and living conditions.

³ Committee on Economic, Social and Cultural Rights, general comment No. 4: the right to adequate housing, 13 December 1991.

15. The policy, which was included in the August 1993 Arusha Peace Agreement,⁴ meets several needs: (a) it opens the way for the provision of social services and basic infrastructure at low cost; (b) it provides for a more rational use of land (which is already scarce) for housing and agriculture and thus helps to promote growth and reduce poverty; (c) it contributes to reconciliation through the establishment of ethnically mixed housing areas; (d) it helps to improve security; and (e) it helps to mobilize people to implement various Government policies and programmes. The pace of implementation of *imidugudu* has accelerated in the past few years: the proportion of the population living in *imidugudu* villages rose from 18 per cent in 2005 to 39 per cent in 2011.⁵ This demonstrates the Government's capacity to mobilize both central and local administrations and the population to carry out its policies and programmes.

16. Theoretically, therefore, the policy of villagization is a worthy initiative, as it generally conforms with the idea of decent housing, as defined by the Committee on Economic, Social and Cultural Rights in its general comment No. 4 (1991). Indeed, the Committee considers the elements of adequate housing to include legal security of tenure; the availability of services, materials, facilities and infrastructure; and habitability. In the present case, the Rwandan Government understands the right to adequate housing to mean the right to a decent home, that is to say the possibility for the holders of that right to live in peace, security and dignity and to have access to basic services and infrastructure, as well as to socioeconomic opportunities. The Special Rapporteur would like to commend the Government on this understanding of the concept of decent housing.

17. This understanding is clearly reflected in the pilot *umudugudu* project conducted in Nyagatovu in Eastern province, where a village was built from scratch by the Government and equipped with basic infrastructure accessible free of charge (running water, electricity and biogas). The former inhabitants of the land where Nyagatovu is now located received compensation, while the new inhabitants of the site were only moved there once the infrastructure was in place. The Government has also developed some income-generating activities as a means of combating poverty. From her discussions with them, the Special Rapporteur learned that the living conditions of the inhabitants of Nyagatovu had improved with the move to their current place of residence. The inhabitants said, for example, that they have easier access to water and they now own their homes. This model *umudugudu*, which is to the Government's credit, is, however, unlikely to be repeated at the national level, largely because of economic and financial constraints.

18. These benefits of the *imidugudu* policy cannot, however, be allowed to overshadow the problems that implementation has sometimes caused and that potentially raise issues of compliance with the international standards applicable to the right to housing. Villagization has often led to the forced displacement of populations to locations not yet provided with basic infrastructure and services. In several *imidugudu* villages visited by the Special Rapporteur, the inhabitants stated that their living conditions had not improved and that basic services such as water and electricity were only accessible on payment. A few inhabitants expressed concern about the lack of effective participation and transparency in the conduct of land exchanges often necessitated by the establishment of *imidugudu*. In the

⁴ Article 28 of the Protocol of Agreement (to the Arusha Peace Agreement) on the Repatriation of Refugees and the Resettlement of Displaced Persons provides that: "The Commission for Repatriation shall develop settlement sites. The sites shall be provided with basic socioeconomic infrastructures such as schools, health centres, water, access roads, etc. The housing scheme in these areas shall be modelled on the 'village' grouped type of settlement to encourage the establishment of development centres in the rural area and break with the traditional scattered housing."

⁵ National Institute of Statistics of Rwanda, The third integrated household living conditions survey (2011).

same vein, the Special Rapporteur noted the absence of sanitation in many of the *imidugudu* villages that she visited. Thus, in reality, in contrast to the official rhetoric, villagization does not always lead to improved living conditions or better access to infrastructure and services.

19. The implementation of this policy involves population displacements. In this connection, the Special Rapporteur met with some *imidugudu* inhabitants who told her they had been forcibly displaced. The *imidugudu* villages are furthermore set up on land obtained by the authorities either through exchanges or the pooling of separate plots, often under pressure from the local administration.

20. The Special Rapporteur is of the opinion that: the process for establishing the villages must take place in full consultation with the populations concerned; the free and informed consent of the latter must be sought; the parties in land exchanges and victims of expropriation must be compensated before such transactions take place, in accordance with Act No. 18/2007 of 19 April 2007 on expropriations in the public interest; conditions in the *imidugudu* villages must be at least equal to those in the locations where displaced persons lived previously; the displacement of populations should never lead to a deterioration in the populations' living conditions; and an administrative or judicial review system must be introduced for challenging transactions arising from this policy. Land disputes in connection with transactions made necessary by villagization must not be stifled or dismissed but resolved fairly, equitably and transparently on the basis of the law. These conditions are essential to the consolidation of peace and reconciliation.

21. The Special Rapporteur calls on the Government to evaluate the policy of villagization in order to identify successes and failures and then take corrective measures so that the problematic cases that came to her attention become the exception and can be quickly identified and remedied. While she recognizes the efforts and role of the authorities in raising awareness of the positive aspects of the programmes and policies under way, she calls on the Government to relinquish the notion that the ruling elites have a better idea of what is good for the population than the population has itself, and to ensure that effective and genuine consultations are always undertaken.

B. Bye Bye Nyakatsi programme

22. The Bye Bye Nyakatsi programme was designed and implemented by the Government as part of its modernization and villagization policy. Under the programme, thatched-roof houses (*nyakatsi*) were banned and replaced with houses with metal or, more rarely, tiled roofs. The policy was implemented very effectively between January and June 2011 and resulted, in 98 per cent of cases, in the destruction of thatched-roof houses and their replacement by houses with metal roofs. According to the terms of reference, the specific objectives of the policy included helping all people living in thatched-roof houses to move to *imidugudu* villages where they would have metal-roof houses; providing vulnerable families with building materials; and mobilizing those families able to build themselves decent housing.⁶

23. According to the authorities, the roll out of the Bye Bye Nyakatsi programme was accompanied by awareness-raising and advocacy campaigns, so that the consent of affected

⁶ Letter No. 2075/07.01 of 27 December 2010, sent by the Minister of Local Government to the Minister of Defence, the Minister of Internal Security, the Chief of Defence Staff, the Commissioner General of Police and various local authorities, transmitting the terms of reference of the team responsible for implementation of the housing programme, is available at http://www.minaloc.gov.rw/fileadmin/documents/minaloc_documents/tors%20nyakatsi%20eradication%20signed%20dec%202010.pdf (accessed 20 September 2012).

persons was obtained for population displacements and destruction of houses. In practice, however, the hasty implementation of the policy often led to the destruction of dwellings with many people being left homeless. The Special Rapporteur has heard numerous accounts of excessive force being used in the implementation of the programme, as reported in the press.⁷ She has also heard of a case of imprisonment of a priest who had publicly stated that the programme was inappropriate.⁸ The Special Rapporteur notes with concern that many homes that now have metal roofs do not have sanitation, not even septic tanks. Moreover, the extreme haste with which the programme was implemented is potentially problematic, because it has clearly left very little room for consultations or genuine participation by the populations concerned.

24. The Special Rapporteur would like to remind the Government that the determination of whether or not housing qualifies as decent cannot be made solely on the basis of the type of material used to make the roof. Decent housing implies not just an improvement in living conditions over those that were obtained previously but also the existence of conditions to guarantee the dignity, health and safety of the inhabitants, as well as the availability of basic services and infrastructure. Many of the houses that now have metal roofs do not have sanitation, as the Special Rapporteur was able to see for herself during her visits to the Eastern and Southern provinces. This raises questions as to whether the conditions in which the Bye Bye Nyakatsi programme has been implemented are in conformity with international standards relating to the right to housing. The Special Rapporteur urges the Government to ensure that its housing programmes are carried out in accordance with the concept of the right to decent housing, as defined above. She also invites the Government to conduct an a posteriori evaluation of the implementation of the Bye Bye Nyakatsi programme and to grant fair compensation to those whose rights have been violated as a result.

C. Land registration and land titling programme

25. The importance of land in regard to access to housing and security of leasehold explains the Special Rapporteur's interest in the ongoing process of land registration and land titling for those with rights to the land. Although the Special Rapporteur's mandate specifically concerns housing, given the close link between the right to housing and land rights, it is necessary to conduct an analysis of the land reform process. This analysis will thus look at agricultural, commercial and other types of land.⁹

26. The purpose of the land registration policy is to improve security of land tenure, to resolve the many — sometimes old — disputes over land, and to modernize land management practices in line with the demands of the market economy. In the long term, the policy should also lead to the establishment of a single national land register and to improvements in agricultural planning and transformation. The land registration and land titling policy, provided for under the 2005 Land Act, addresses many aspects of this issue. It provides for significant progress in such areas as equal rights and the prohibition of all forms of discrimination on grounds of gender, nationality or origin in regard to ownership and use of land. It thus has some positive aspects, such as equal rights for spouses to landownership and equal rights for all descendants in the first degree. These positive aspects reflect the requirements of the Constitution and the international commitments of

⁷ Igihe, "Bye Bye Nyakatsi: Govt admits use of force" (26 May 2011), available at <http://en.igihe.com/news/bye-bye-nyakatsi-govt-admits-use-of-force> (accessed 29 October 2012).

⁸ Special Rapporteur's consultations, Kigali.

⁹ The law provides for the following uses: housing, trade and industry, leisure, agriculture, green spaces, etc.

Rwanda. As part of the land reform process, a tax exemption is available to taxpayers who own less than two hectares of land, a positive measure that helps to improve conditions of equality between taxpayers. The great capacity of the State and its machinery for mobilization and implementation, as demonstrated in this process, is also noteworthy.

27. The process is led by the Rwanda Natural Resources Office, with the support of various development partners, such as the European Union, the United Kingdom Department for International Development (DFID) and the Netherlands. It consists in the regularization of landownership and occupation on a plot-by-plot and cell-by-cell basis. It began with a pilot phase, which ran from 2007 to 2009. The Government then adopted a strategic road map in March 2008.

28. According to the Government, the process of land registration and land titling began with the preparation and production of field sheets for each cell. This was done with the help of aerial photographs and significant other technical resources. A series of public meetings was then organized to raise awareness of the process; the meetings dealt with subjects such as the role of the adjudication committees, and the rights of persons, and other topics. The next stage is the demarcation of plots by surveyors, the adjudication committees and the local populations. Any disputes are then documented and costs are paid. A receipt is then issued. The maps are then scanned using ArcGIS software and the data are entered in a central information system. There is then another stage in which challenges and corrections can be made at the local level. The titles are printed and issued only at the end of this process.

29. This process does, however, have some significant drawbacks. First of all, even in the opinion of the Government (through its Rwanda Governance Board), very few Rwandans understand the 2005 Land Act. In fact, a study of the population of Kigali conducted in October 2010 showed that fewer than 10 per cent understood the law on land tenure. The same study showed that only 11.6 per cent of the population of Kigali were aware of the Act on expropriations in the public interest.¹⁰ Furthermore, the technical aspects of the land registration and land titling process mean that it is not easily accessible to all. For example, interviews conducted in 2010 showed that the problems rural communities had in adapting to the new legal framework had been underestimated, and there were inconsistencies between the law and the customary rules on inheritance that are still applied outside urban centres.¹¹ Hence, there is no guarantee that the current policy will resolve land disputes in the medium- and long-term, since there is no way of being sure that rural populations will continue systematically to register any land transactions that take place.

30. These facts point to a serious lack of participation and commitment on the part of the people affected by the policies and programmes.

D. Land consolidation policy

31. In the framework of the land registration and land titling policy, the Government has launched a land consolidation and productivity programme to combine land plots, which are then considered to be easier and more productive to farm than fragmented plots, with the aims of promoting rural development and transforming agriculture so as to increase

¹⁰ Rwanda Governance Advisory Board, *Land Management and Administration in Kigali City: A Citizen Perception Survey*, June 2011.

¹¹ NCR Justice and Democracy (2010) *Legal Empowerment and Customary Law in Rwanda*. Report of pilot project concerning community level dispute resolution and women's land rights. M. Veldman, M. Lankhorst, Drat.

output and improve the lives of the rural population.¹² In practice, areas that are freed up as a result of the grouping together of sites formerly used for other purposes are identified, marked and planted either with a single crop or a very small number of crops. The selection of crops has to be targeted to meet the needs of the market, as stated in the decree on land consolidation. This is done by groups of farmers organized in cooperatives or agribusinesses or working in the context of facilitated contract farming. In all these cases, the land is considered as an input and has a cash value; it is to be used to make a profit. The entire process is therefore driven by a determination to move away from food crop production or subsistence farming to commercial farming. It is ultimately a programme of agricultural intensification, based on a particular type of landownership arrangement.

32. The Special Rapporteur would like to acknowledge the results which these policies have helped to achieve. According to the authorities, the land consolidation policy and the policy of commercial agricultural intensification have brought about an improvement in the country's agricultural production.

33. With regard to the crops chosen for intensive cultivation, the Special Rapporteur was informed that the space set aside for the populations concerned was somewhat limited. The Special Rapporteur would like to draw the Government's attention to the fact that imposing the cultivation of commercial crops on the population could jeopardize the diversity of food crop production and hence the population's food security in the event of a contraction in the economy. It is therefore essential that the people, particularly the rural population, should be able to continue to practise farming that meets their daily subsistence needs.

34. As indicated by the Committee on Economic, Social and Cultural Rights in its general comment No. 4 (1991), there is a close link between the right to decent housing and certain civil and political rights. In this connection, the Special Rapporteur's interviews with different stakeholders, including civil society organizations, highlighted the existence of a very widespread practice of self-censorship, indicative of a sense of fear of openly criticizing the Government's policies and programmes. This climate, in which the freedoms of expression and association of human rights activists and defenders are restricted, is harmful to genuine participation by the populations in the implementation of land and housing policies and is hardly conducive to the realization of the right to adequate housing.

35. In sum, as the Special Rapporteur has learned from discussions with the affected populations, the policies of villagization, land registration and land titling, and land consolidation, as well as the Bye Bye Nyakatsi programme, have not been accompanied by sufficient consultation or participation. Furthermore, the haste with which some of the policies have been implemented is potentially dangerous, because it leaves little room for challenges to be made to land transactions initiated. It would seem that the authorities have played down the number of disputes and complaints arising over land transactions conducted in pursuance of these programmes. The fact is that more than 80 per cent of the complaints received by the Office of the Ombudsman in the months of May, June and July 2012 concerned land disputes of various kinds. Of the 216 complaints received in May, 176 concerned land disputes; in June, 201 of the 244 cases reported related to land; as of 11 July 2012, 122 of 151 requests for assistance received by the services of the Ombudsman also related to land disputes. If the Government wishes to build on the progress that has been made in the areas of peace, security and the economy, it must immediately create a space for consultation and genuine questioning of the land and housing programmes currently under way. It must also begin as soon as possible to carry out regular assessments that take account of its human rights obligations.

¹² Ministerial Order No. 14/11.30 of 21 December 2010 on models of land consolidation and use.

V. Urban planning and forced displacement

36. In its effort to modernize the country, and in line with the Rwanda Vision 2020 programme, the Government developed the Master Plan for the city of Kigali, which was finalized in 2007. The Plan provides for improvements to be made to existing informal settlements, which house most of Kigali's inhabitants at the time of writing the present report. It also includes plans to improve access to safe drinking water and to sanitation, as most of Kigali's inhabitants do not have clean drinking water in their homes. They do, however, have access to pit latrines.

37. For the Kigali Master Plan to be implemented, detailed district plans have to be drawn up. The first plan that has been finalized is for the Nyarugenge district and the business centre, which cover almost the whole of the city zone and thus have the best infrastructure. Most of this space is to become the business centre and a luxury residential area. As a result, low-income owners of small properties in this area have been displaced.

38. The Special Rapporteur stresses that the type of sanitation infrastructure available is not ideal for large urban areas; it is more suited to a rural environment. In fact, because of the size of the population and its sanitation needs, the presence of large numbers of pit latrines is likely to pose a threat over the long term to health, sanitation and groundwater.

39. The population displacements carried out in implementation of the Kigali Master Plan raise the issue of compliance with the applicable international standards. The 2005 law grants the right to full ownership of land only to those who use the land in accordance with the blueprint for land allocation, management and use adopted by the competent authorities. Hence, owners of small plots located in areas intended for the construction of the business centre and luxury residential sites are unable to build houses or commercial buildings of the required level. They are therefore forced to sell under pressure from the market. This poses a real problem in terms of ensuring their decision to relinquish their land is based on valid consent.

40. Many expropriations said to be "in the public interest" have also taken place during the roll-out of the Kigali Master Plan. Hundreds of owners have had property expropriated and their homes demolished, notably in the neighbourhoods of Kiyovu and Kimicanga. The relevant rules provide that only the State may order expropriations in the public interest, that such expropriations must be subject to fair and prior compensation, and that 90 days' advance notice must be given to the persons concerned before the expropriation takes place. In the present case, the persons whose properties were expropriated in Kiyovu and Kimicanga had the choice between compensation in cash and relocation to a site in Batsinda, a neighbourhood approximately 15 kilometres from the city centre. In her discussions with those relocated to Batsinda, the Special Rapporteur was told that access to many services, employment opportunities and infrastructure had been made more difficult by the move and that the new accommodation given to the individuals concerned was generally less spacious than their previous accommodation, even if the latter was sometimes of inferior quality. It was also brought to the Special Rapporteur's attention that, in some cases, people had been displaced before disputes over compensation had been resolved. These waves of displacements and expropriations have not in fact resolved the problem of informal settlements, but simply shifted it away from the city centre, for reasons that are mainly related to the market and to aesthetics. By way of proof, the proportion of Kigali residents living in informal and unplanned dwellings increased from 48.8 per cent in 2005 to 62.6 per cent in 2010.¹³ The Special Rapporteur is therefore of the opinion that the

¹³ National Institute of Statistics of Rwanda, *The third integrated housing living conditions survey* (EICV3), pp. 58–59.

Government's priority should be to improve homes where they are, rather than displacing less affluent populations to areas where their living conditions are not materially improved.

41. Act No. 18/2007 of 19 April 2007 on expropriations in the public interest also includes many provisions that are potentially not in compliance with the relevant international standards. The main provision concerns the definition of the public interest. In addition to the public works outlined in the non-exhaustive list given in article 5 of the Act, section 2 defines a public interest activity as one carried out in the public interest by the Government, a public institution, a non-governmental organization, a legally recognized association operating in the country or an individual. Work carried out in relation to implementation of master plans for urban development, national land management in general and basic infrastructure, and any other activities undertaken in the public interest that have been approved by an order of the Minister responsible for the expropriation, issued on his or her own initiative or on the request of other persons concerned, are also considered to be public interest activities. In practice, this very broad definition of the public interest, which does not expressly exclude activities carried out, for example, by private individuals for profit, is problematic and could lead to the wrongful application of the concept. For example, in Kiyovu, people have had plots expropriated and then sold on to private investors for the construction of luxury commercial buildings which, at the time of the Special Rapporteur's visit, were still unoccupied because of the exorbitant rents being asked. Similarly, many plots where homes had been destroyed several months previously were still lying empty because of a lack of buyers.

42. Overall, the design of the city, as reflected in the Kigali Master Plan, leaves little scope for the creation of good quality social housing. During her visit, the Special Rapporteur met with many stakeholders who acknowledged the absence of any major social housing projects, particularly in urban areas. The aim of the housing plans being implemented by the national social security agency is not to provide quality housing for the middle classes or vulnerable populations either. The Government must do more to establish programmes that afford genuine access to housing, including for the less affluent sectors of society. The Special Rapporteur also considers that the existing laws and policies are not systematically implemented, as illustrated, inter alia, by expropriations conducted on the basis of market demand and by the failure to pay compensation within a reasonable time to many of the persons whose property is expropriated. The urban development plans for Kigali are not inclusive either, which is contrary to the Rwanda Vision 2020.

43. The Government must take urgent action to establish informal housing improvement programmes in order, gradually but systematically, to ensure the right to housing for all.

44. The Special Rapporteur would like to point out that the type of sanitation infrastructure available in Kigali is not ideal for large urban areas; it is more suited to a rural environment. In fact, given the size of the population and its sanitation needs, the presence of large numbers of pit latrines is likely to pose a threat over the long term to health, sanitation and groundwater.

VI. Particular situation of the Batwa

45. As a matter of principle, the Government is opposed to using the concepts of indigenes (*autochtonie*), the native population (*indigénat*) and the minority. Although they are used in international human rights law, these concepts are perceived by the authorities as being divisive, as is that of "ethnic group".¹⁴ While no group's identity

¹⁴ Special Rapporteur's Consultations with members of the Parliament, Kigali, 9 July 2012. However, it is noteworthy that the Constitution itself makes a clear reference to "ethnic

appears to be denied a priori, there is certainly a possibility of certain groups being subject to direct or indirect discrimination because of their identity. Several mechanisms for the promotion and protection of human rights, including the special mechanisms of the African Commission on Human and Peoples' Rights, have deemed that the Batwa of Rwanda are "indigenous" populations.¹⁵ The Government has decided instead to describe these populations as "historically marginalized", estimating their number to be between 25,000 and 30,000.¹⁶

46. The Batwa, who also live in several countries of the Great Lakes region, perceive and define themselves as a group with a specific way of life, constituting a minority or an indigenous population. The right of individuals to identify themselves, individually or with others, as belonging to an indigenous group or to a minority is well established in international human rights law and serves as a key criterion in the definition of the existence of minorities or indigenous peoples.¹⁷

47. The Special Rapporteur consulted both representatives of non-governmental organizations that support the Batwa and Batwa populations themselves. She visited the *umudugudu* of Karubibi and was able to see the particularly difficult conditions in which the Batwa people live there. The initiative taken by the First Lady of Rwanda of building housing for the population of this *umudugudu* is laudable, but it is an inadequate response to the requirements of international human rights law relating to the right to decent housing. The houses that the Special Rapporteur visited in the *umudugudu* had neither adequate sanitation nor drinking water. Getting access to school is difficult for the children of this *umudugudu*, as the nearest school is several kilometres away.

48. The Special Rapporteur also gleaned from her discussions that the way that the general population of Rwanda views the Batwa is based on very negative stereotypes and prejudices. As a consequence, the Batwa are often employed in poorly paid work that is considered to be degrading. In general, the structural inequalities which these populations sometimes face put them in a more vulnerable position than other segments of the population in terms of access to and enjoyment of all human rights. These populations have more difficulty gaining access to land, landownership and decent housing.

49. Above and beyond the efforts made to assist all "historically marginalized" groups, the Special Rapporteur would like to draw the Government's attention to the need to focus attention on the Batwa with a view to taking urgent measures to address the unequal treatment that they experience in all areas of economic, social and political life in the country. To grant them recognition of their special status, as recommended by the African Commission on Human and Peoples' Rights International Work Group for Indigenous Affairs, would seem to be an appropriate step towards the establishment of temporary special measures to correct the discriminatory practices of the past, of which these populations continue to be victims.

origin" in its articles 11 and 58. It is therefore a reality that also exists in Rwanda and cannot be denied, as noted by Gay McDougall, the independent expert on minority issues, in her report on Rwanda (A/HRC/19/56/Add.1).

¹⁵ African Commission on Human and Peoples' Rights, and International Work Group for Indigenous Affairs, *Report of the African Commission's Working Group on Indigenous Populations/Communities: Mission to the Republic of Rwanda* (1–5 December 2008).

¹⁶ Ministry of Local Government, National Social Protection Strategy (January 2011).

¹⁷ A/HRC/19/56/Add.1, paras. 12 and 13.

VII. Conclusions and recommendations

50. The theoretical approach that the Government has taken to the concept of decent housing is commendable. The efforts that the Government has put into rebuilding the State and the nation are also to be commended, as are the results it has achieved in combating poverty and improving people's living conditions. Progress has also been made in many areas, including with regard to access to education, water and sanitation.

Policy of *imidugudu*

51. The *imidugudu* policy should be implemented in full consultation with the populations concerned, whose free and informed consent must be sought; the parties to land exchanges or victims of expropriation should be compensated before such transactions take place, in accordance with Act No. 18/2007 of 19 April 2007 on expropriations in the public interest; persons displaced to *imidugudu* villages should be afforded conditions in their new place of residence at least equal to those that obtained in the location where they lived previously; population displacements should never lead to a deterioration in living conditions; an administrative or judicial review system should be introduced to allow for challenges to be made to transactions conducted in connection with this policy; and a participatory system should be established to evaluate the policy.

Land registration and land titling programme

52. The Special Rapporteur recommends that the Government: ensure that the populations concerned truly understand the process of land registration and land titling; establish measures to guarantee greater and freer access to the law courts for the referral of disputes relating to this process; reduce the speed with which the process is implemented so as to allow for genuine involvement on the part of the populations affected, including those of the diaspora; and ensure that the most vulnerable groups are not excluded from the process.

Land consolidation policy

53. The Special Rapporteur notes with appreciation the improvement that the Government has made to agricultural production in recent years. She recommends that the Government encourage families to maintain a minimum level of subsistence agriculture so that they do not become completely vulnerable to market fluctuations. She also recommends that the Government ensure that proper consultations are held prior to implementation of land consolidation programmes and that effective remedies are available to persons who wish to challenge transactions conducted in connection with this policy.

Urban planning and expropriations

54. In line with general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Special Rapporteur invites the Government to adopt a more inclusive approach to development of the city when implementing the Kigali Master Plan. Expropriations should not be used as a first resort, but only in cases of absolute necessity. The Government should always explore possibilities for improving housing in situ. Where expropriations do take place, they should be conducted in accordance with the law and the persons affected should be provided with fair and prior compensation or the possibility of being rehoused under conditions at least equal to those that they previously enjoyed (including with respect to access to

opportunities, goods, services and infrastructure). The Special Rapporteur invites the Government to revise Act No. 18/2007 of 19 April 2007 on expropriations in the public interest so as to provide a more restrictive and equitable definition of the public interest, with a view to guarding against further possible misinterpretations of the concept.

Indigenous populations

55. The Special Rapporteur would like to remind the Government of its obligations under the provisions on equality and non-discrimination set forth in various international instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the African Charter on Human and Peoples' Rights. On this basis, she invites the Government to recognize the distinctive nature of the Batwa and to take temporary special measures, as a matter of urgency, to remedy, on a sustainable basis, the inequalities from which this group suffers because of political, historical and geographical circumstances and various other factors that do not necessarily fall under the responsibility of the current leadership.

Right to participate, right to an effective remedy, and other civil liberties

56. The right to housing cannot be fully realized without genuine participation by the population. The right to participate presupposes the freedoms of expression and association, but also the possibility for persons who consider that their legitimate rights have been violated to apply to a competent authority to obtain fair compensation. This is of paramount importance for the consolidation of peace and security. The Special Rapporteur urges the Government to provide a safer and freer forum for the expression of diverse opinions by the various stakeholders.
