Housing, Land and Property Mapping Project

Indonesia

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses, however these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by Allens lawyers, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

If you would like to make any changes to the document, please submit to the document manager Leeanne Marshall via the below table.

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Housing, Land and Property Law in Indonesia

**1 Key laws and actors**

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| [Laws](#Laws) | The three key pieces of legislation governing housing, land, building and planning in Indonesia are: [Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles](http://www.fao.org/faolex/results/details/en/?details=LEX-FAOC003920) (the ***Agrarian Law***) which governs non-forest land; [Act No. 41 of 1999 on Forestry Affairs](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC036649/) (the ***Forestry Law***) which governs forest land; and [Act No. 26 of 2007 concerning Spatial Management](http://extwprlegs1.fao.org/docs/pdf/ins163446.pdf) which governs planning.  These laws rely on a vast body of implementing regulations. The sheer size of this body of regulations means both that there is a high degree of uncertainty in the law, and that the law is highly malleable and is susceptible to being interpreted and implemented by authorities to favour State or private interests. |
| [Key government actors](#MainGovernmentActors) | The National Land Agency (*Badan Pertanahan Nasional* or BPN) is responsible for administering non-forest land. The NLA has offices at the national, provincial, regency and city levels of government.  Responsibility for administering forest land is shared between the Ministry of Environment and Forestry (*Kementerian Lingkungan Hidup dan Kehutanan*), national parks authorities and local governments (ie, regency, city or sub-district governments). |
| [Shelter cluster](#ShelterCluster) | There is no active shelter cluster in country. However, the shelter cluster has previously been activated for the 2006 Yogyakarta Earthquake, the 2009 West Java Earthquake and the 2009 West Sumatra Earthquake. |

**2** [**Common types of tenure**](#CommonTenureTypes)

|  |  |  |
| --- | --- | --- |
| **Tenure type** | **Registered Interest** | **Description** |
| [Hak milik](#HakMilik) | Yes | Equivalent to freehold ownership; only available to Indonesians. |
| [Hak guna-bangunan](#HakGunaBangunan) | Yes | A right to construct and own buildings on another person's land; only available to Indonesians. |
| [Hak guna-usaha](#HakGunaUsaha) | Yes | A right to use State land for agriculture or animal husbandry; only available to Indonesians. |
| [Hak pakai](#HakPakai) | Yes | A right to use another person's land for a specific, agreed purpose. |
| [Hak sewa](#HakSewa) | No | A lease of a building. |
| [Forest permits](#ForestPermits) | Yes | Permits available to persons living on or near forest land allowing them to establish timber plantations on or to harvest products from the forest. |
| [Customary tenure](#CustomaryTenure) | Possible but unlikely | Tenure of an indigenous group living on its ancestral land over which it has traditional ownership rights under customary law; referred to as *hak ulayat*; overlaps with *girik* title. |
| [Girik title](#GirikTitle) | No | Ownership of customary land when evidenced by payment of land tax; may be held by customary owners or by other persons who have acquired ownership via informal conveyancing with customary owners; legally recognised and reasonably secure. |
| [Garapan rights](#GirikTitleOrGarapanRights) | No | Rights to use customary land held by persons who are not the customary owners; acquired via informal conveyancing with customary owners; legal status is unclear as *garapan* may not be recognised by government. |

Land registration is not widespread in Indonesia, with only 30% of non-forest land being registered. Informal conveyancing (ie, undocumented or incorrectly documented transactions) is extremely common, both in relation to registered and unregistered land. Further, unlike in many other countries, title documents are *not* conclusive proof of land rights.

Due to these factors, the Indonesian government permits land tax receipts and/or unregistered deeds to be used to prove ownership of land. There are several Indonesian terms for land tax receipts, depending on the type of land tax paid. Some of the commonly-used terms are: *Petuk Pajak Bumi*, *Landrente*, *girik, pipil*, *Pethok D*, *Letter C or ketitir*.

**3** [**Security of tenure of vulnerable groups**](#SecurityofTenure)

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| --- | --- |
| [Customary landholders](#CustomaryLandholders) | Customary land is legally recognised and, since 2016, can be registered. Historically, however, customary ownership of land has not been adequately protected and the State has appropriated customary land for State or private use without adequate consultation or compensation. Many customary owners are dispossessed of their land. |
| [Women](#Women) | Indonesian law provides that men and women have equal rights to acquire property. However, in practice, women are half as likely to have sole ownership of land as men. Patrilineal inheritance of land is widely practiced in relation to customary land. |
| [Minority groups](#MinorityGroups) | Non-Indonesian citizens are unable to hold *hak milik*, *hak guna-bangunan*, and *hak guna-usaha* titles, which are three of the most secure forms of tenure. There have been recent instances of local Land Offices refusing to register land to Chinese-Indonesians on the basis of their ethnicity. |
| [Informal settlements](#InformalSettlements) | The term *kampung* is sometimes used to refer to informal settlements, however it is a broader term which refers to poor neighbourhoods generally. Security of tenure may vary significantly within a single *kampung*, with some residents having secure forms of tenure (registered interests or *girik*), and others having less secure forms of tenure (*garapan* or squatting). |
| [Landless people](#LandlessPeople) | The principle of adverse possession does not exist in Indonesian law. However, the customary principle of *rechtsverwerking* may permit a landless group to lawfully remain on another group's customary land if the land is vacant and the group's leader has granted permission. |

**4** [**Eviction, expropriation and relocation**](#EvictionExpropriationRelocation)

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| --- | --- |
| [Eviction](#Evictions) | Forced evictions are authorised under a myriad of provincial and municipal laws, and are widespread all over Indonesia. There are generally no legal requirements to provide compensation, however compensation may be provided on an ad hoc basis. |
| [Expropriation](#Expropriation) | *Law No. 24 of 2007 concerning Disaster Management* (the ***Disaster Management Law***) provides the Indonesian government with a broad power to expropriate land as part of disaster management. Compensation must be provided, but the *Disaster Management Law* does not specify how compensation is assessed or provided. |
| [Relocation](#Relocation) | The *Disaster Management Law* provides that the government may designate an area as unfit for habitation due to an unacceptably high risk of natural disaster. This may provide a basis for forcibly evicting and/or relocating persons living in a designated area. |

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**Disclaimer**

This report is the result of a desktop review of publicly available information. This report is not legal advice.

1. Introduction
   1. Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met.

The Australian Red Cross (***ARC***) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies' (***IFRC***) response to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

Australian Red Cross, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

* + The first section, entitled ['common tenure types'](#CommonTenureTypes), provides an overview of the different types of housing and land tenure in Indonesia. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by the main forms of tenure.
  + The second section, entitled '[security of tenure of vulnerable groups](#SecurityofTenure)', considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing. This section focuses primarily on women,minority groups, indigenous groups and landless people, each of which face particular legal barriers.
  + The third section, entitled '[eviction, expropriation and relocation'](#EvictionExpropriationRelocation), considers Indonesian law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.
  1. Background information on Indonesia

The Republic of Indonesia (***Indonesia***) is the world's largest archipelagic state, comprising more than 17,000 islands in the Indian and Pacific oceans, approximately 6,000 of which are inhabited. Indonesia has five tiers of government.

* + First, the national government.
  + Second, there are 30 provinces (*provinsi*) and three special districts: Aceh, Yogyakarta and metropolitan Jakarta.
  + Third, each province is further divided into regencies (*kabupaten*) and cities (*kota*). Regencies, which generally encompass non-urban land, are headed by a regent (*bupati*). Cities are headed by a mayor (*wali kota*).
  + Fourth, each city or regency is divided into sub-districts (*kecamatan*) headed by civil servants (*camat*) who report to the regent or mayor, as applicable. The provinces of Papua and West Papua are exceptions and are, instead, divided into districts headed by chiefs.
  + Fifth, each sub-district is divided into administrative villages (*desa*) or urban communities (*kelurahan*). An administrative village is headed by an elected village head, while an urban community is headed by a civil servant (*lurah*) who is responsible to the sub-district government. Although the term *desa* is widely used, several other terms are in usage (*nagari*, *dusun*, *pekon*, *lembang*).

The first, second and third tiers of government each have their own legislature and government.

According to the 2015 census, Indonesia has a population of 257.6 million, of which 53.7 per cent lives in urban areas.[[1]](#footnote-1) The island of Java accounts for over 57 per cent of the Indonesian population and is extremely densely populated. 21 per cent of the population live in Sumatra, and the remaining 22 per cent inhabit the islands of Kalimantan, Sulawesi, Bali, Nusa Tenggara, Maluku and Papua.

The capital Jakarta is the largest city with an approximate population of 10.3 million, followed by Surabaya at 2.8 million, Bandung at 2.5 million, and Medan at 2.2 million.[[2]](#footnote-2) The total urban population of Indonesia is approximately 135.6 million.[[3]](#footnote-3) The results of the 2015 census indicate that most Indonesians do not migrate inter-provincially, tending to remain in the province in which they were born.[[4]](#footnote-4)



(Map sourced from Map from: Central Intelligence Agency, Indonesia <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>)

Indonesia is extremely linguistically diverse, with over 700 languages and dialects spoken throughout the country.[[5]](#footnote-5) The official language is Indonesian (Bahasa Indonesia), which is a modified form of Malay. Most Indonesians tend to learn a local dialect as their primary language and learn Indonesian at school.

As of 2010, 40 per cent of the population identified as Javanese, the politically and culturally dominant ethnicity.[[6]](#footnote-6) 15.5 percent of Indonesians identified as Sundanese, and less than 4 per cent of Indonesians identified as either Malay, Batak, Madurese or Betawi.The remainder of the population identified as being of an 'other' ethnicity.

1. Common tenure types
   1. Tenure types
      1. **What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.**

The three key pieces of legislation governing housing, land, building and planning in Indonesia are:

* + - [*Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles*](http://www.fao.org/faolex/results/details/en/?details=LEX-FAOC003920);
    - [*Act No. 41 of 1999 on Forestry Affairs*](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC036649/); and
    - [*Act No. 26 of 2007 concerning Spatial Management*](http://extwprlegs1.fao.org/docs/pdf/ins163446.pdf).[[7]](#footnote-7)

These statutes are drafted in broad, high-level terms and rely on a vast body of implementing regulations and decrees. There is a high degree of uncertainty in housing, land, building and planning law due to the sheer size of this body of subordinate legislation, and the existence of ambiguities in and conflicts between different instruments.[[8]](#footnote-8) As a result, the law is highly malleable and is susceptible to being interpreted and implemented by authorities to favour State or private interests.[[9]](#footnote-9)

* + 1. **What types of tenure exist?**

There are two main categories of land in Indonesia:

* + - first, the approximately two-thirds of Indonesia's land which has been designated as 'forest' and is regulated by *Act No. 41 of 1999 on Forestry Affairs* (the ***Forestry Law***) and its implementing regulations and decrees (***Forest Land***);
    - second, the remaining third of Indonesia's land which has not been designated as forest and is regulated by *Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles* (the ***Agrarian Law***) and its implementing regulations and decrees (***Agrarian Law Land***).

All land in Indonesia, including both Forest Land and Agrarian Law Land, is ultimately subject to State control. This is mandated by article 33(3) of the *Constitution of Indonesia* (the ***Constitution***) and article 2(1) of the *Agrarian Law*. It is possible, however, to distinguish between:

* + - land which is *directly* controlled by the State, meaning any land which is not privately held (***State-controlled land***); and
    - land which is *indirectly* controlled by the State, meaning land which is presently held by private interests, but is ultimately subject to State control.[[10]](#footnote-10)

There are two main categories of private land tenure which exist in both Forest Land and Agrarian Law Land:

* + - first, ***statutory tenure***, meaning any of the forms of tenure established and governed by statute, including but not limited to registered interests;[[11]](#footnote-11) and
    - second,***customary tenure***, meaning the tenure of Indigenous groups who hold land in accordance with their traditional laws and customs.[[12]](#footnote-12)

In addition, there are forms of tenure which derive from, and are typically granted by persons holding, statutory tenure or customary tenure.

The relationships between these types of land and land tenure are shown in the diagram below. The following sections examine in detail the types of tenure which exist in Forest Land and Agrarian Law Land.

* + - 1. **Types of Tenure in Agrarian Law Land**
         1. **Statutory tenure**

Under the *Agrarian Law* land and buildings located on that land are legally distinct, rather than being one piece of property. Therefore, ownership of land and a building located on the land may be held by different persons, as in the case of a *hak guna-bangunan* (discussed in paragraph 2 below).

**Right of ownership (*hak milik*)**

A *hak milik* is equivalent to freehold ownership and is the fullest land right a person can acquire in Indonesia.[[13]](#footnote-13) A *hak milik atas satuan rumah susun* is a subtype of *hak milik* used for strata title (ie, apartments). A *hak milik* is a registrable interest in land.

A *hak milik* can only be held by Indonesian citizens and certain Indonesian entities, namely State banks, associations of agricultural cooperation, and religious and social organisations designated by the head of the National Land Agency (***NLA***).[[14]](#footnote-14) Private companies and dual citizens cannot own a *hak milik*.[[15]](#footnote-15)

A *hak milik* can be transferred to a third party, provided that person is legally permitted to own a *hak milik*.[[16]](#footnote-16) Further, a *hak milik* can be used to secure a debt through use of a security title (*hak tanggungan*).[[17]](#footnote-17)

A person with a *hak milik* may grant the following types of tenure over their land (each of which is described in further detail below):

* right of use of structures (*hak guna-bangunan*)
* right of use (*hak pakai*); and
* right of lease (*hak sewa untuk bangunan*).

**Right of use of structures (*hak guna-bangunan*)**

A *hak guna-bangunan* is a right to construct and own buildings on land which is not one's own.[[18]](#footnote-18) A *hak guna-bangunan* is a registrable interest in land. It may be held by Indonesian citizens and body corporates which are incorporated under Indonesian law and domiciled in Indonesia.[[19]](#footnote-19)

A *hak guna-bangunan* has a maximum duration of 30 years, although this term can be extended by up to 20 years.[[20]](#footnote-20) Upon the expiration of an extension, a new *hak guna-bangunan* may be granted on the same land with the same terms.[[21]](#footnote-21)

A *hak guna-bangunan* may exist in relation to either State-controlled land, or land which is privately-owned as a *hak milik*. In the former situation, a *hak guna-bangunan* is created by a Government determination.[[22]](#footnote-22) In the latter situation, a *hak guna-bangunan* is created by agreement with the landowner.[[23]](#footnote-23)

A *hak guna-bangunan* can be transferred to a third party, provided that third party is legally permitted to hold a *hak guna-bangunan*.[[24]](#footnote-24) Further, a *hak guna-bangunan* can be used to secure a debt through use of a security title (*hak tanggungan*).[[25]](#footnote-25)

**Right to cultivate (*hak guna-usaha*)**

A *hak guna-usaha* is a right to use and occupy State-controlled land for agricultural and/or animal husbandry purposes.[[26]](#footnote-26) A *hak guna-usaha* is a registrable interest in land. The minimum area for a *hak guna-usaha* is five hectares.[[27]](#footnote-27) If the area is 25 hectares or more, the holder has an obligation to invest in and properly manage the land.[[28]](#footnote-28)

A *hak guna-usaha* has a maximum duration of 35 years, although this term can be extended by up to 25 years.[[29]](#footnote-29) A *hak guna-usaha* may be held by Indonesian citizens, and body corporates which are incorporated under Indonesian law and domiciled in Indonesia.[[30]](#footnote-30)

A *hak guna-usaha* can be transferred to a third party, provided that third party is legally permitted to hold a hak guna-usaha.[[31]](#footnote-31) Further, a *hak guna-usaha* can be used to secure a debt through use of a security title (*hak tanggungan*).[[32]](#footnote-32)

**Right of use (*hak pakai*)**

A *hak pakai* is a right to use land which is not one's own for a specific purpose, as agreed by the parties.[[33]](#footnote-33) A *hak pakai* is a registrable interest in land.

A *hak pakai* may be granted for a definite term, or for as long as the land is used for a specific purpose.[[34]](#footnote-34) Further, a *hak pakai* may be granted for free, for a certain payment, or for any kind of service.[[35]](#footnote-35) A person who holds a *hak pakai* is obligated to return the land and buildings to the owner in the same state as at the commencement of the term.

A *hak pakai* can be held by Indonesian citizens, foreign citizens domiciled in Indonesia, body corporates incorporated under Indonesian law and domiciled in Indonesia, and foreign body corporates having representation in Indonesia.[[36]](#footnote-36)

A *hak pakai* may exist in relation to either State-controlled land, or land which is privately-owned as a *hak milik*. In the former situation, a h*ak pakai* is created by an official decree and can only be transferred to a third party with Government approval.[[37]](#footnote-37) In the latter situation, a *hak pakai* is created by agreement with the land owner and can only be transferred to a third party if permitted under that agreement.[[38]](#footnote-38)

**Right of lease (hak sewa untuk bangunan)**

A *hak sewa* *untuk bangunan* is a lease of the whole or part of a building, either for commercial or residential purposes. The leaseholder is entitled to use the building in exchange for rent, which may be paid upfront or at intervals.[[39]](#footnote-39) Unlike the above types of tenure, a *hak sewa* *untuk bangunan* is not a registrable interest.

A *hak sewa* *untuk bangunan* may be held by Indonesian citizens, foreign citizens domiciled in Indonesia, body corporates incorporated under Indonesian law and domiciled in Indonesia, and foreign body corporates having representation in Indonesia.[[40]](#footnote-40)

* + - * 1. **Customary tenure**

The term *masyarakat adat* is used to refer to an indigenous community living on its ancestral land, over which it has traditional ownership rights under customary law. Customary ownership of land is known as *hak ulayat*.[[41]](#footnote-41)

As indicated in [section (b) above](#WhatTenureExists), any land which is not privately held is directly controlled by the State. The *Agrarian Law* does not clearly recognise or protect *hak ulayat* as a form of private tenure. This creates a problematic lack of a clear legal distinction between customary land and State-controlled land.[[42]](#footnote-42)

As a result, customary land has been widely treated as State-controlled land and appropriated for State and private use without consultation with customary owners, or compensation being paid to customary owners.[[43]](#footnote-43)

In 2016, *Regulation 10/2016* was introduced to enable indigenous communities (*masyarakat adat*) to register their customary land (*hak ulayat*). However, the processes for registering customary land are in their infancy and have not been widely adopted. The process for registering customary land is outlined in [section 2.2(a)(ii) below](#Section22aii).

Ownership of unregistered customary land may be evidenced by an official letter or receipt showing the owners have paid land tax. This has caused unregistered customary land ownership to be referred to as *girik title* after the name of the tax imposed on customary land during the Dutch colonial period.[[44]](#footnote-44)

* + - * 1. **Tenure deriving from customary tenure**

There are informal conveyancing practices for transferring customary land and rights to use customary land. It is, therefore, important to distinguish between:

* a customary group using its customary land in accordance with its traditional practices (*masyarakat adat*); and
* non-customary owners who have acquired ownership or use rights over customary land via informal conveyancing (*girik* or *garapan*).

The exact nature of, and correct terminology for, the latter type of tenure is unclear. It appears that the term '*girik*' may be used to refer both to *masyarakat adat*, and to non-customary owners who have acquired ownership rights over customary land via informal conveyancing. It appears that the term '*garapan*' may be used to refer to non-customary owners who have acquired use rights over customary land via informal conveyancing.

* + - 1. **Types of Tenure in Forest Land**

The *Forestry Law* distinguishes between:

* ***State Forest*** meaning all Forest Land which is *not* privately owned under *hak milik* titles (approximately 97 per cent of Forest Land); and
* ***Private Forest*** ***meaning*** Forest Land which is privately owned under *hak milik* titles (approximately 3 per cent of Forest Land).[[45]](#footnote-45)

State forest is further divided into three zones: Production Forest, Protected Forest and Conservation Forest.[[46]](#footnote-46) The taxonomy of Forest Land is shown in the diagram on the following page. The following sections summarise the types of tenure which may exist in State Forest land.

* + - * 1. **Customary tenure in State Forest**

Upon its introduction in 1999, the *Forestry Law* categorised customary forest as State Forest (ie, State-controlled land), rather than Private Forest (ie, privately-owned forest land).[[47]](#footnote-47) Article 1(6) of the *Forestry Law* stated '*customary forest is a State forest that is located in the territory of customary law communities*'.[[48]](#footnote-48)

As a result, the Ministry of Environment and Forestry (***MOEF***) and other government authorities have treated customary forest as if it were State-controlled land, and have granted licences and other interests over customary forest without adequate consideration or protection of customary owners' rights.

In a landmark decision in 2013, the Constitutional Court of the Republic of Indonesia removed the word 'State' from article 1(6) of the *Basic Forestry Law*.[[49]](#footnote-49) The effect of this decision is that customary forest has moved from the category of State Forest into the category of Private Forest, in recognition of the fact that it is owned by Indigenous groups.[[50]](#footnote-50)

The MOEF has amended its regulations and policies to comply with the Constitutional Court's 2013 ruling, however practical change has been slow.[[51]](#footnote-51) The MOEF has, for example, imposed significant evidentiary burdens on groups claiming customary ownership of forest land.[[52]](#footnote-52) Promisingly, however, in December 2016, the Forestry Minister issued a Decree acknowledging nine indigenous communities' rights to approximately 13,000 hectares of customary forests.[[53]](#footnote-53)

* + - * 1. **Statutory tenure in State Forest land**

The *Forestry Law* and its implementing regulations and decrees establish numerous types of statutory tenure which may exist in State Forest land.

**Types of tenure and land rights available to companies**

Private or State-owned companies may be granted licences to use Production Forest for various purposes (eg, logging, timber plantations and ecosystem restoration).[[54]](#footnote-54) Approximately 35 million hectares of Production Forest is currently subject to licences granted to 537 companies, which are predominantly private rather than State-owned companies.[[55]](#footnote-55)

**Types of tenure and land rights available to local communities**

The following types of tenure or land rights may be available to persons or groups from 'local communities', meaning persons living on or near the relevant forest area.

* + - ***Community Forest Permit*** — A group of local farmers may apply for a Community Forest Permit(*Hutan Kemasyarakatan* or *HKm*) which has a duration of 35 years and allows them to either:
    - harvest non-timber forest products in a designated area which is zoned as Protected Forest; or
    - harvest timber and/or non-timber forest products in a designated area which is zoned as Production Forest.[[56]](#footnote-56)
    - ***Village Forest Permit*** — A village government or other village-based institution (including customary institutions) may apply for a Village Forest Permit (*Hutan Desa*) which has a duration of 35 years and allows the village members to harvest non-timber forest products.[[57]](#footnote-57) Village Forest Permits may be issued in respect of forest which is designated as Production Forest or Protected Forest.
    - ***Permit for a Community-Based Timber Plantation*** — A local community group may apply for a Permit for a Community-Based Timber Plantation which has a duration of 35 years and allows it to establish a timber plantation.[[58]](#footnote-58) This type of permit can only be issued in respect of an area zoned as Production Forest.
    - ***Partnership*** — A local community may enter into a Partnership (*Kemitraan*) with a company whereby the local community is entitled to harvest non-timber forest products, while the company is entitled to engage in timber plantation and/or logging.[[59]](#footnote-59)

The uptake of these forms of tenure by local communities has been very slow due to complex and time-consuming bureaucratic requirements.[[60]](#footnote-60) As a result, these forms of tenure are not widespread and only exist in relation to a small proportion of State Forest land.[[61]](#footnote-61)

* + 1. **Which, if any, of these types of tenure provide a high degree of security of tenure?**

Unlike many other countries in South-East Asia, registration does not provide conclusive proof of the existence of an interest in land.[[62]](#footnote-62) Registration does, however, generally confer a relatively high degree of security of tenure because it constitutes 'strong' evidence of an interest in land.[[63]](#footnote-63)

Therefore, with the exception of the *hak pakai*, each of the forms of statutory tenure under the *Agrarian Law* identified in [section 2.1(b) above](#WhatTenureExists) confer a reasonably high degree of security of tenure. A *hak milik* provides the highest degree of security of tenure because it is equivalent to freehold title and has an indefinite duration.

* + 1. **How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**

At the time of writing, the NLA has not published data regarding the most common types of tenure in urban and rural areas in Indonesia. It is possible to generalise that customary land is more common in rural areas, while statutory tenure land is more common in urban areas. However, registration has not been widely implemented, with only 30 per cent of Agrarian Law Land being registered.[[64]](#footnote-64)

The MOEF is currently working with an Indonesian NGO, the Nusantara Masyarakat Adat Alliance (*Aliansi Masyarakat Adat Nusantara* or *AMAN*), to prepare a large-scale mapping of customary land.[[65]](#footnote-65) In some district's AMAN's customary land mapping is already complete and has been submitted to the relevant regional government.[[66]](#footnote-66) AMAN may, therefore, be able to provide resources regarding the location and boundaries of customary land.

* + 1. **What are the main government and non-government bodies (eg, representative bodies) which administer or deal with housing, land and property?**
       1. **Agrarian Law land**

The NLA (*Badan Pertanahan Nasional* or BPN) is responsible for administering land governed by the *Agrarian Law*.[[67]](#footnote-67) It operates at three levels:

* + - the Central NLA is responsible for national land administration;
    - the Provincial Offices, are responsible for land administration at the provincial level; and
    - the Land Offices are responsible for land administration at the regency and city level.[[68]](#footnote-68)

The NLA is part of the Ministry of Agrarian and Spatial Planning.

* + - 1. **Forest land**

Responsibility for administering Indonesia's forest land, which accounts for two-thirds of the country's land mass, is shared between national and local governments as follows:

* + - Production Forest is administered by MOEF;
    - Conservation Forest is administered by national parks authorities which are part of the MOEF; and
    - Protection Forest is administered by local governments (ie, regency, city or sub-district governments).[[69]](#footnote-69)
      1. **Planning**

Responsibility for developing and implementing planning law and policy is shared between the first three tiers of government (ie, national, provincial and city/regency government).[[70]](#footnote-70) The Coordinating Agency for National Spatial Planning (*Badan Koordinasi Penataan Ruang Nasional* or BKPRN) is responsible for coordinating planning activities across all three levels of government.[[71]](#footnote-71)

* 1. Documenting tenure
     1. **What statutory instruments or legal documents (eg, title deed or leases) are used to create or transfer tenure?**
        1. **Statutory tenure**

The creation, transfer, encumbrance or nullification of a *hak milik*, *hak guna-usaha* or *hak guna-bangunan* must be registered.[[72]](#footnote-72) In order to be registrable, a deed recording the transaction must be executed before a Land Deed Official (*Pejabat Pembuat Akta Tanah* or *PPAT*) in the province where the land is located. Upon registration, the NLA issues a land certificate (*Sertifikat Tanah*) accompanied by a survey certificate (*Surat Ukur*) which documents the location and dimensions of the land.[[73]](#footnote-73)

* + - 1. **Customary tenure**

As indicated in [section 2.1(b)(i)(B) above](#CustomaryTenure), it is now possible for customary land to be registered.

Legal recognition of a *masyarakat adat* is a pre-requisite to the registration of customary land. In order to be legally recognised, a *masyarakat adat* must participate in a verification process requiring it to identify its history, traditional lands, customary law and governance.[[74]](#footnote-74)

Once recognised, a *masyarakat adat* may apply to register its customary land by submitting an application to the regent or mayor of the area where its customary land is located. If the customary land is located across the borders of more than one regency or city, the application must be submitted to the provincial governor.[[75]](#footnote-75)

In addition to proving that it has been legally recognised, the *masyarakat adat* must prove:

* + - the community still lives in association;
    - there is a customary hierarchy or social structure;
    - the territory to which the customary laws apply is clearly defined; and
    - traditional laws and authorities are still observed.
    - it has physically occupied the land for at least 10 consecutive years;
    - the group still uses the land to support its daily needs;
    - the land is the main source of the group's livelihood; and
    - the land forms part of the group's social and economic activities.[[76]](#footnote-76)

Upon receipt of an application, the regent, mayor or governor will verify whether the information about the *masyarakat adat* and its land is correct. If the application is successful, communal land rights will be recognised and granted, either to all members of the *masyarakat adat*, or to the group's leader on behalf of its members.[[77]](#footnote-77) Subsequently, the *masyarakat adat's* group rights must be registered with the NLA.[[78]](#footnote-78)

* + 1. **What non-legal document or actions (eg, verbal agreement or handshakes) are used to create or transfer tenure?**

The system of executing and registering deeds described in [section (a)(i) above](#Sectionai) is very expensive due to high fees charged by PPATs and substantial taxes collected by the NLA.[[79]](#footnote-79) As a result, informal conveyancing is very common.[[80]](#footnote-80) For example, deeds may be executed but not registered, or tenure may be created or transferred pursuant to verbal agreements.

As stated in [section 2.1(d) above](#Section21d), only 30 per cent of Agrarian Law Land is registered, leaving an estimated 60 million land parcels unregistered.[[81]](#footnote-81) Land tax receipts are commonly used to prove ownership or possession of unregistered land.[[82]](#footnote-82) There are several Indonesian terms for land tax receipts, depending on the type of land tax paid. Some of the terms are: *Petuk Pajak Bumi*, *Landrente*, *girik, pipil*, *Pethok D*, *Letter C or ketitir*.[[83]](#footnote-83)

In response to the limited uptake of land registration and the prevalence of informal conveyancing, in 1997 the national government introduced regulations providing that, if a person wishes to register their land, they may prove ownership using tax receipts, unregistered deeds, or deeds which have not been witnessed by a PPAT.[[84]](#footnote-84) These documents may, therefore, be used to evidence tenure.

* 1. Customary ownership
     1. **Is customary ownership of land legally recognized? If so, what is the basis for legal recognition?**

As indicated in [sections 2.1(b)(i)(B](#CustomaryTenure)) and [2.2(a)(ii) above](#Section22aii), customary ownership of land may be legally recognised. Following the introduction of *Regulation 10/2016*, indigenous communities (*masyarakat adat*) are able to register their customary land (*hak ulayat*).

In theory, the introduction of *Regulation 10/2016* means there is now a process to ensure that communal rights can be as secure as freehold ownership (*hak milik*). If this process is widely implemented, it could result in significant empowerment of indigenous communities throughout Indonesia. However, as discussed in [section 3.2(c) below](#Section32c), there are many anticipated challenges to this new system.

* + 1. **What are the sources of customary rules?**

Customary rules comprise the traditional norms and practices adopted by each *masyarakat adat*. Customary rules are generally not codified in writing, meaning that they may be ascertained from members of the *masyarakat adat* itself, or secondary sources recording the *masyarakat adat's* norms and practices.

* + 1. **What are the customary rules governing housing, land and property?**
       1. **Patrilineal, matrilineal and bilateral kinship systems**

The customary rules governing land inheritance and ownership are closely tied to whether a *masyarakat adat* practices patrilineal, matrilineal, or bilateral descent. All three forms of kinship system are prevalent in Indonesia, albeit to different extents.

* + - Patrilineal descent is the most common type of kinship system and is highly prevalent in Sumatra, Kalimantan, Maluku, Sulawesi, and the Eastern Lesser Sundas.
    - Matrilineal descent is far less prevalent but is practiced by some *masyarakat adat*, such as the Minangkabau of West Sumatra and Southern Tetun of West Timor.
    - Some *masyarakat adat* in Kalimantan, Sulawesi and Java have bilateral kinship systems.

In patrilineal kinship systems, a woman does not generally inherit her father's property, nor does she co-own her husband's property. She is, instead, is entitled to use property owned by male family members and her husband.[[85]](#footnote-85) In contrast, in matrilineal kinship systems, land is generally inherited from mother-to-daughter.[[86]](#footnote-86)

There are, of course, exceptions to these generalisations. For example, in Bataknese groups in North Sumatra, a woman may own property individually based on a grant from her family, through a process called *Holong Ate*, meaning 'kinship love'.[[87]](#footnote-87)

* + - 1. **Examples of customary rules governing HLP**

The following examples illustrate the diversity in customary rules governing housing, land and property amongst *masyarakat adat* groups.

* + - In the Batak Karo group from North Sumatra, the use of communal land is strictly controlled by the chieftain.Any personal use of the communal land must receive prior approval from the chieftain. After obtaining approval, the land user must display a clear sign over the land to indicate to other members of the group that they will use or occupy the land.[[88]](#footnote-88)
    - In the Dayak Kiyu Meratus ethnic group from South Kalimantan, each family is granted approximately three hectares of land for their livelihood. This land can only be transferred within the group due to the belief that the lands and forests are sacred and must be preserved in accordance with the group's customary law.[[89]](#footnote-89)
    - In the North Toraja Regency of South Sulawesi Province people commonly use buffalos, rather than money, to purchase land. Buffalos are highly valued as a symbol of social status.[[90]](#footnote-90)
    - In the Minangkabau ethnic group from West Sumatra, if a member of *masyarakat adat* wishes to cultivate a plot of land for fulfilling his or her needs, he or she must first obtain a permit or approval from the chieftain of the *masyarakat adat*. If he or she ceases to cultivate the land, it reverts to communal land.[[91]](#footnote-91)
    1. **What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?**

As discussed in [section 2.1(b)(i)(B) above](#CustomaryTenure), under the *Agrarian Law*, there is a problematic lack of distinction between customary land and State-controlled land. This has resulted in customary land being treated as State-controlled land and appropriated for State or private use. Although customary land can now be registered under *Regulation 10/2016*, this regulation has not yet been widely implemented, meaning customary ownership remains highly vulnerable to State interference.

* 1. Informal Settlements
     1. **What are the locations and boundaries of informal settlements?**

The term *kampung* is sometimes used to refer to informal settlements in Indonesia. A kampung is, however, a broader term which refers to poor neighbourhoods generally.[[92]](#footnote-92) Although a kampung may contain areas which have been informally settled, many persons who live in kampungs do have some form of legal title to their land, including registered land interests or *girik* title.[[93]](#footnote-93) Thus, kampungs should not be viewed synonymously with informal settlements.[[94]](#footnote-94)

It is clear that informally settled land is highly prevalent in each of Indonesia's major cities.[[95]](#footnote-95) There is, however, scarce information available about the precise locations and boundaries of informal settlements, and the tenure arrangements in informal settlements. Some information is available regarding Jakarta.

In Jakarta, it is illegal to settle and build on streets, in areas within 10 metres of a river or body of water, in parks and green spaces, along railroad tracks or under flyovers and bridges.[[96]](#footnote-96) Jakarta's informal settlements are concentrated in these types of areas, particularly in the city's north. Several of the city's informal settlements are highly susceptible to flooding, which has intensified in recent years.[[97]](#footnote-97) For example:

* + *Kampung Muara Baru*is located along the eastern shore of the Waduk Pluit lake in north-west Jakarta, and houses approximately 70,000 people.[[98]](#footnote-98)
  + *Kampung Melayu* is located along the bank of the Ciliwung River and houses approximately 50,000 people.[[99]](#footnote-99)
    1. **What kinds of tenure arrangements are in place in informal settlements?**

There are, at least, five categories of tenure in kampongs:

* + registered land rights (eg, *hak milik*);
  + *girik* title;
  + *garapan* rights;
  + no legal rights (ie, squatting) coupled with tacit approval from the landowner, sometimes including by receipt of rent or taxes;
  + no legal rights (ie, squatting) coupled with hostility from the landowner, sometimes including threatened or actual evictions.[[100]](#footnote-100)

The first two forms of tenure are legally recognised and reasonably secure. The last two forms of tenure are informal and may be insecure, depending on the nature of the landowner and the occupier. The status of *garapan* rights is unclear as many government officials do not recognise this form of tenure.[[101]](#footnote-101) Kampung residents with *garapan* rights may, nonetheless, consider themselves to have strong security of tenure.[[102]](#footnote-102)

Importantly, a kampong may have a mix of all of the above five types of tenure, in which case only part of the kampong will qualify as an informal settlement.[[103]](#footnote-103)

1. Security of Tenure of Vulnerable Groups
   1. Women
      1. **Can women legally own, rent or inherit land and housing?**

Indonesian law provides that men and women have equal rights to acquire property, both under the *Agrarian Law* and customary law. Article 9 paragraph 2 of the *Agrarian Law* provides:

[e]very Indonesian citizen, either men or women, has the same opportunity to acquire any right over land as well as to obtain the benefit from such land, either for their own interest or their family.

In a landmark decision in 1961, the Supreme Court declared that women and men have equal inheritance rights under customary law.[[104]](#footnote-104) This was subsequently confirmed in *Law No. 1 of 1974 on Marriage*.[[105]](#footnote-105)

The only legal restrictions on a woman owning, renting or inheriting land are that she must have legal capacity to enter into the relevant land transaction, and must ordinarily be either 18 years old or married.[[106]](#footnote-106)

* + 1. **In practice, do they? If not, why not?**

In practice, the incidence of women's landownership is significantly lower than men's, and women are half as likely to have sole ownership of land as men.[[107]](#footnote-107) Notwithstanding the Supreme Court's 1961 decision, patrilineal descent and inheritance is widely practiced in relation to customary land.

Women's access to land does, however, vary between different geographical areas depending on the content of local customary law. For example, in Poso Regency in Central Sulawesi, an area where patrilineal kinship systems predominate, approximately 90 per cent of land is owned by men and only 10 per cent is owned by women.[[108]](#footnote-108) By contrast, in areas where matrilineal kinship groups predominate, such as Padang City in West Sumatra, it is common for women to hold land title.[[109]](#footnote-109)

* 1. Indigenous groups
     1. **Is indigenous customary ownership (or custodianship) of land legally recognised?**

As discussed in [section 2.3(a) above](#Section23a), customary ownership of land is legally recognised. Indigenous communities may now register their customary land under *Regulation 10/2016*. This Regulation is, however, still in its infancy and has not been widely implemented.

* + 1. **Does customary ownership provide indigenous people with a high degree of security of tenure?**
    2. **If not, what are the barriers to indigenous people owning and/or living on their land?**

There are many barriers to indigenous people owning and/or living on their land. Until recently — 2013 for Forest Land and 2016 for Agrarian Law Land — legal recognition of customary ownership has been very weak. As a result, a large number of customary owners have long been dispossessed of their customary lands.

Following the introduction of *Regulation 10/2016*, customary land may be registered. The new of system registering customary land is, however, new and relatively untested, and there are many anticipated challenges, including the following:

* + - it is uncertain how customary land subject to conflicting title claims (as is often the case) will be dealt with;
    - many *masyarakat adat* groups will experience difficulty accessing the assistance required to undertake the application process to obtain recognition because:
    - particularly in remote areas, *masyarakat adat* cannot readily access NGO or legal assistance; and
    - levels of education and literacy amongst some groups are low, and not all *masyarakat adat* groups speak Bahasa Indonesia;
    - the system is not well suited for *masyarakat adat* groups that have been forcibly displaced from their customary lands or have been forced to radically change their traditional way of life;
    - the sheer number of *masyarakat adat* groups means that even if the process is implemented smoothly, it is likely to take a long time for large scale recognition of indigenous land rights to take place;
    - the NLA has indicated that further technical regulations and guidance is required before any recognition process can be fully implemented, and it is unclear when those regulations are likely to be issued.

At time of writing the Government is processing two communal rights claims for Baduy and Kampung Naga communities. These claims will provide a good case study as to the effectiveness of *Regulation 10/2016*.

* + 1. **Is there conflict between indigenous groups regarding land ownership?**
    2. **If so, to what degree? Are there mechanisms for resolving these conflicts?**

Conflicts between indigenous group do occur and are generally due to disagreements regarding land boundaries.[[110]](#footnote-110) Conflicts are usually settled by village authorities, although some disputes cannot be resolved at this level and are referred to court or to the NLA. Four different institutions possess overlapping jurisdiction to resolve land-related conflicts: the civil courts; the criminal courts; the administrative courts; and the NLA.[[111]](#footnote-111)

The NLA's jurisdiction specifically relates to disputes arising from errors in land administration, registration or titling. For example, where landowners contest that the boundary between their land has been incorrectly recorded on the title due to an error in measurement or mapping.[[112]](#footnote-112) The NLA has authority to cancel or amend land certificates, or to issue a determination that there has been no error in the administration, registration or titling of the land.[[113]](#footnote-113)

* 1. Minority Groups
     1. **Can minority groups (ie, ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**
     2. **If so, are they subject to special conditions or restrictions?**

All Indonesian citizens have equal legal rights to own and rent land and housing. Both the *Constitution* and the *Agrarian Law* contain provisions which prohibit formal discrimination between Indonesian citizens in respect of property rights.[[114]](#footnote-114)

Non-Indonesian citizens are unable to hold *hak milik*, *hak guna-bangunan*, and *hak guna-usaha* titles, which are three of the most secure forms of tenure.[[115]](#footnote-115) Indonesia's relatively strict citizenship laws mean that immigrants, including second-generation immigrants, may be unable to hold these titles.

Unless an applicant is married to an Indonesian citizen, obtaining Indonesian citizenship is a demanding process which requires, among other things, proof that the applicant has a steady income and can speak Bahasa Indonesia.[[116]](#footnote-116) These requirements also apply to second-generation immigrants born in Indonesia to non-Indonesian parents.[[117]](#footnote-117)

* + 1. **In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

There is some evidence that, in practice, discrimination against ethnic and religious minorities undermines their ability to legally own and rent land and housing. For example, in Yogyakarta there is an official policy of refusing to register land to non-indigenous Indonesians.[[118]](#footnote-118) Accordingly, there have been recent instances of local Land Offices refusing to register land to Chinese-Indonesians solely on the basis of their ethnicity.[[119]](#footnote-119)

There are also recent instances of forced evictions motivated by animosity towards minority groups. For example, in January 2016, approximately 7,000 members of a religious minority, the Fajar Nusantara Movement, were violently and forcibly evicted from several villages in West Kalimantan by local 'mobs'.[[120]](#footnote-120) The military and police allegedly failed to take steps to end the eviction and, subsequently, forcibly relocated a large number of the minority.[[121]](#footnote-121)

* 1. Landless People/Squatters
     1. **Do landless people/squatters have rights to land and/or housing (eg adverse possession)? If so, are those rights respected?**

The principle of adverse possession does not exist in Indonesian law. The customary principle of *rechtsverwerking* permits a landless group to lawfully remain on another group's customary land if the land is vacant and the group has been granted permission from the customary group's leader.[[122]](#footnote-122)

This principle is not recognised by all customary groups and, even where it is recognised, there are differences in its implementation.[[123]](#footnote-123) Customary groups have varying requirements regarding how long land must be vacant before it may be occupied by another group.[[124]](#footnote-124)

* 1. Other groups
     1. **Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

There is a significant population of persons who have been internally displaced due to natural disasters, or ethnic or religious conflict. Internally displaced persons (***IDPs***) generally have difficulty accessing secure tenure and are likely to live in informal settlements.[[125]](#footnote-125) Examples of internally displaced persons with limited security of tenure are provided below.

* + In the city of Kupang in East Nusa Tenggara, an estimated 22,000 IDPs from Timor-Leste live in informal settlements in and around the city.
  + In the Sei Lepan district of North Sumatra, an estimated 3,000 ethnic Javanese IDPs who fled the Aceh conflict between 1999 and 2003 live in an informal settlement. They are in a long-running land dispute with the local government, which maintains that they are encroaching on an adjacent national park.
  + On Maluku Island, an estimated 5,400 IDPs live with host families or in temporary settlements in four sub-districts (Buru, South Buru, central Maluku and West Seram).[[126]](#footnote-126)

In addition to the above, there are reports of forced evictions of lesbian, gay, bisexual and transgender individuals by private landlords.[[127]](#footnote-127)

1. Eviction, Expropriation and Relocation
   1. Evictions
      1. **Are there laws or regulations prohibiting forced evictions?**
      2. **In practice, are those laws adhered to?**

Article 28H(4) of the *Constitution* provides that '[e]very person shall have the right to own personal property and such property cannot be unjustly expropriated by any other party'. This article does not, however, protect residents of informal settlements.

In 2013, UN Special Rapporteur Raquel Rolnik reported that forced evictions are authorised under a myriad of provincial and municipal laws, and are 'widespread' all over Indonesia.[[128]](#footnote-128) For example, in 2007 a public order regulation was introduced in Jakarta (*Perda 8/2007*) making it illegal to settle and build in certain designated areas, such as within 10 meters of rivers and other bodies of water.

This regulation permitted an aggressive program of forced evictions under former Governor Basuki Purnama between 2014 and 2017.[[129]](#footnote-129) In 2015 and 2016, residents of two informal settlements on the Ciliwung River in Jakarta were rapidly and forcefully evicted in order to facilitate flood mitigation works on the River.[[130]](#footnote-130)

It is common for there to be no consultation prior to forced evictions. Research conducted by Indonesian Legal Aid found that 84 per cent of the forced evictions from informal settlements in Jakarta during 2015 were conducted without any prior consultation with residents.[[131]](#footnote-131)

* 1. Expropriation
     1. **Are there laws or regulations permitting the government to expropriate land?**
     2. **If so, are those laws or regulations applicable in the context of a disaster?**

Land may be expropriated by the government under the following acts:

* + *Law No. 2 of 2012 on Land Acquisition for the Public Interest* (***Law No. 2/2012***);
  + *Law No. 24 of 2007 concerning Disaster Management* (***Law No. 24/2007***).
    - 1. **Law No. 2/2012**

*Law No. 2 of 2012 on Land Acquisition for the Public Interest* (***LAPI***) and its implementing regulations and decrees permit the government to acquire land for development projects which serve the public interest, including hospitals, airports, low-cost housing, schools and power plants.[[132]](#footnote-132) Land acquisition under *LAPI* occurs in the following stages.

* + - First, the government agency which seeks to acquire land must prepare a Land Procurement for Public Interest Plan identifying (amongst other things):
    - the location, size and value of the land;
    - the nature of the proposed project; and
    - the timeline and budget for the project.[[133]](#footnote-133)
    - Second, the agency has a 60-day period to notify and consult with persons whose land will be acquired. If the agency and landowners reach agreement for the land to be acquired, the agency may seek national government approval for the location of the project.[[134]](#footnote-134)
    - Third, if a landowner objects, the period is extended by 30 days, following which any outstanding objections are referred to the national government. The national government, having considered the objection, may accept or reject the objection.[[135]](#footnote-135)
    - If the objection is accepted, the agency must submit seek approval for an alternative location.[[136]](#footnote-136)
    - If the objection is rejected, the location will be approved. However, the objector may appeal to the State Administrative Court and, if unsuccessful, lodge a further appeal with the Supreme Court.[[137]](#footnote-137)
    - Fourth, once the location has been approved, the agency must submit an application to the NLA which identifies the current ownership and use of the land, and specifies a proposed amount of compensation.[[138]](#footnote-138)
    - Fifth, NLA consults with the landowners to agree on the amount of compensation, using the assessment provided by the agency as a reference point. If the NLA and a landowner cannot reach agreement, the landowner may appeal to the District Court, and may lodge a further appeal with the Supreme Court.[[139]](#footnote-139)
    - Sixth, the landowner relinquishes their rights and is paid the agreed or judicially determined amount of compensation.[[140]](#footnote-140) A landowner must provide evidence of their control or ownership of the land in order to receive compensation.[[141]](#footnote-141)

Although landowners are entitled to be consulted and compensated, these protections are not available to persons without property rights, such as residents of informal settlements.

The large number of steps required under *LAPI* means that the process of land acquisition may take several years and is impracticable in the context of a natural disaster.

* + - 1. **Law No. 24/2007**

Article 32 of the *Law No. 24 of 2007 concerning Disaster Management* (the ***Disaster Management Law***) provides the government with a broad power to revoke or reduce a person's property rights as part of disaster-management policy.[[142]](#footnote-142)

The term 'disaster management' is to defined to include disaster risk management and prevention, emergency response and rehabilitation.[[143]](#footnote-143) This means the government's power to acquire land under article 32 is not restricted to emergency responses.

Unlike *LAPI*, the *Disaster Management Law* does not establish a clear process for acquiring land, and does not contain any requirement to consult with landowners.

* 1. Relocations
     1. **Are there laws or regulations governing relocation?**
     2. **Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?**

We have not found evidence of any law or regulation governing forced relocations. Article 32 of the *Disaster Management Law* provides that the government may designate an area as unfit for habitation due to an unacceptably high risk of natural disaster.[[144]](#footnote-144) This may provide a basis for forcibly evicting and/or relocating persons living in a designated area.

* 1. Compensation for Expropriation and Relocation
     1. **Are there laws or regulations providing compensation for being who are relocated, forcibly evicted, or whose land is expropriated?**
     2. **In practice, are these laws or regulations adhered to?**
        1. **Compulsory acquisition**

When land is acquired for public development projects under *LAPI*, the government is required to pay 'fair and adequate compensation' to landowners.[[145]](#footnote-145) Compensation may be provided as money, land replacement or share ownership.[[146]](#footnote-146) Compensation is also required to be paid under the *Disaster Management Law*. However, the *Disaster Management Law* does not specify how compensation is determined, or the manner in which it can be provided.

* + - 1. **Forced eviction**

Compensation and relocation assistance may, but is not required to, be available to residents of informal settlements who are forcefully evicted. For example, when residents of two informal settlements on the Ciliwung River in Jakarta were forcefully evicted in 2015 and 2016, they were offered compensation and resettlement housing.[[147]](#footnote-147) Many residents were, however, unable to access compensation and relocation assistance because it was only available to persons with either a land certificate or a Jakarta identity card.[[148]](#footnote-148)

* + 1. **Is there an active shelter cluster in the country? If not, has the shelter cluster been activated during any previous disasters?**

There is no active shelter cluster in country. However, the shelter cluster has previously been activated for the:

* + - 2006 Yogyakarta Earthquake;
    - 2009 West Java Earthquake; and
    - 2009 West Sumatra Earthquake.[[149]](#footnote-149)

1. Statistics Indonesia, 'Population of Indonesia: Results of the 2015 Intercensal Population Survey' (2015) <https://bps.go.id/website/pdf\_publikasi/Penduduk-Indonesia-hasil-SUPAS-2015\_rev.pdf>. [↑](#footnote-ref-1)
2. Central Intelligence Agency, *Indonesia* <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>. [↑](#footnote-ref-2)
3. Statistics Indonesia, 'Population of Indonesia: Results of the 2015 Intercensal Population Survey' (2015) <https://bps.go.id/website/pdf\_publikasi/Penduduk-Indonesia-hasil-SUPAS-2015\_rev.pdf>. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. US Library of Congress, 'Language' <http://countrystudies.us/indonesia/42.htm>. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
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