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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

**Миссия в Индонезию\***

#### *Резюме*

Специальный докладчик по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень совершила поездку в Индонезию 31 мая – 11 июня 2013 года. В настоящем докладе она представляет полученные ею результаты, характеризующие существующее положение и политику в области жилья, а также положение, с которым сталкиваются некоторые уязвимые группы. Специальный докладчик предлагает выводы и рекомендации в отношении защиты и поощрения права на достаточное жилище.

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## Annex

[English 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 on her mission to Indonesia**

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## I. Introduction

1. At the invitation of the Government, the Special Rapporteur on adequate housing undertook an official visit to Indonesia from 31 May to 11 June 2013. The main purpose of the mission was to assess the policies and programmes aimed at promoting, on the basis of the principle of non-discrimination, the right to adequate housing in Indonesia.
2. In addition to Jakarta, the Special Rapporteur visited Makassar, Surabaya and Yogyakarta. During her visit, the Special Rapporteur met with officials and representatives of national and local Government, the judiciary, national human rights institutions, international organizations, donor agencies, the private finance and construction sectors, as well as non-governmental and grassroots organizations. She also met with communities and individuals in urban and rural areas, and heard their concerns with regard to housing issues in Indonesia.
3. The Special Rapporteur expresses her gratitude to the Government of Indonesia for the invitation, the warm welcome, constructive dialogue and openness, its support and provision of relevant information throughout and after the visit.

## II. General overview

4. In the last decade, Indonesia has enjoyed steady economic growth and demonstrated substantial gains in social indicators, with gradual declines in poverty in both urban and rural areas, and is now classified as a middle-income country.<sup>1</sup> Despite these impressive achievements, about 28.6 million people or 11.6 per cent of all households still live below the national poverty line set at US\$ 1.25 per day.<sup>2</sup> In addition, a significant part of the population (38 per cent) lives below 1.5 times the poverty line and is extremely vulnerable to falling into poverty.<sup>3</sup>
5. Indonesia is the world's third most populous country and currently has the largest share and the fastest rate of growth of urban population in Asia.<sup>4</sup> The number of urban poor is expected to rise as the country's urbanization rate is projected to increase from its current level of 50 per cent to a projected 70 per cent by 2030.<sup>5</sup>
6. The urban poor are concentrated in highly urbanized and densely populated Java, accounting for more than two thirds of the country's low-income population.<sup>6</sup> Internal migration from rural to urban areas is partly caused by the concentration of economic activity in urban centres. Additionally commercial agriculture development and extractive industries in rural areas compete with traditional economic activities for land and natural resources pushing people to migrant to the cities. Although economic decentralization is part of the Government's general development agenda, the inertia of the historical concentration of economic opportunities in Java<sup>7</sup> is still challenging its housing policies –

<sup>1</sup> Republic of Indonesia, Ministry of National Development Planning/National Development Planning Agency, *Report on the Achievement of the Millennium Development Goals in Indonesia 2011* (Jakarta, 2012), p. 5.

<sup>2</sup> Badan Pusat Statistik (BPS), Statistics Indonesia, September 2012 at : [http://www.bps.go.id/eng/tab\\_sub/view.php?kat=1&tabel=1&daftar=1&id\\_subyek=23&notab=1](http://www.bps.go.id/eng/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=23&notab=1).

<sup>3</sup> World Bank, *Protecting Poor and Vulnerable Households in Indonesia* (Jakarta, 2012), p. 13.

<sup>4</sup> AusAid, the Swiss Economic Development Cooperation, World Bank, *Indonesia, The Rise of Metropolitan Regions: Towards Inclusive and Sustainable Regional Development*, p. 25.

<sup>5</sup> World Bank, *Indonesia: Urban Poverty and Program Review*, January 2013, p. 4.

<sup>6</sup> *Ibid.*

<sup>7</sup> Paul McCarthy, *Understanding Slums: Case Studies for the Global Report on Human Settlements*

the improvement and upgrading of existing housing conditions, and the provision of adequate housing opportunities for future growth.<sup>8</sup> The high and fast demographic and economic concentration across Java and on Bali, especially in the country's two largest metropolitan regions, Jakarta and Surabaya, pose a number of difficulties, including congestion, overcrowding, inadequate provision of affordable land, inadequate transportation systems and a massive infrastructure backlog.

7. The combination of rapid urbanization, population density and high poverty rates poses serious challenges to the realization of the right to adequate housing for all in Indonesia. These challenges are compounded by the fact that the majority of Indonesia's territory is highly vulnerable to climate change and natural disasters, particularly flooding, volcanic eruptions and earthquakes.

### III. The right to adequate housing: legal and institutional framework

8. As a party to the International Covenant on Economic, Social and Cultural Rights,<sup>9</sup> Indonesia has the obligation to ensure the enjoyment of the right to adequate housing, while ensuring non-discrimination on any grounds. The right to adequate housing should not be interpreted in a restrictive sense such as merely having a roof over one's head; it includes guaranteeing (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

9. Indonesia's Constitution and additional legislation guarantee the right to adequate housing as defined by international human rights law.<sup>10</sup> The Government of Indonesia has also reiterated its commitment to the progressive realization of the right to adequate housing and to address discrimination in access to housing in the National Long-Term Development Plan 2005–2025 (RPJPN) and the National Medium-Term Development Plan (2010–2014) (RPJMN), particularly with regard to low-income households.<sup>11</sup>

10. The responsibility for housing policies and programmes is mainly shared between the Ministry of Public Housing and the Ministry of Public Works. The National Planning Agency (BAPPENAS) is responsible for the coordination of housing policies and for their compatibility with the National Development Plans. In addition, following the decentralization process (which began in the 1990s and is still underway), significant powers, including regarding land management, were partially devolved to the provinces, districts and municipalities of Indonesia.<sup>12</sup> Each province, regency or city is responsible for

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2003, *The case of Jakarta, Indonesia*, United Nations Human Settlements Programme (UN-HABITAT), p. 3-4.

<sup>8</sup> Indonesia, "Country Report Indonesia, Working Group 2: Upgrading of Slum and Informal Settlements", prepared for the fourth Asia Pacific Ministerial Conference on Housing and Urban Development, Amman, December 2012, p. 7. Available from <http://rsuwg.ir/en/Final%20WG2%20Slum%20Upgrading%20Indonesia.pdf>.

<sup>9</sup> Accession 23 February 2006.

<sup>10</sup> The 1945 Constitution of the Republic of Indonesia, article 28H; Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, article 9(2); Legislation No. 39 of 1999 concerning Human Rights, article 40; Law No. 1/2011 on Housing and Settlement, article 19 (1) and article 54 (1) addressing the State's obligation to promote access to adequate housing for low income households.

<sup>11</sup> Indonesia, "Country Report", pp. 10-11.

<sup>12</sup> Law No. 22 of 1999, Law 32 of 2004 and Government Regulation No. 38 of 2007 regarding the Distribution of Governmental Authorities among the National, Provincial, and District/Municipal Administration.

its own development planning, as well as its implementation and monitoring. However, a highly complex mix of a hierarchal and top-down system of development and spatial planning exists, with the central Government retaining the authority to override local spatial plans for special areas, when deemed strategic and of national importance.<sup>13</sup>

11. The decentralization of planning and land administration does not seem to be supported by an enhanced institutional capacity in the regions in terms of the quality of human resources, organizational tools and financial capacity. On the fiscal side, most of the local governments are highly dependent on transfers from the central Government. The tight fiscal situation leaves little room to initiate programmes for development. Additionally, inter-institutional coordination, both at the central and local levels, is still a challenge. The Government has made efforts by establishing the National Board on Policies and Monitoring of the Construction of Housing and Settlement (BKP4N), but in practice the agency has not had all the instruments required to coordinate different bodies and sectors.<sup>14</sup>

#### IV. Current housing situation and policies

12. According to article 2(1) of the International Covenant on Economic, Social and Cultural Rights, Indonesia has an obligation to make the maximum use of its available resources for the progressive realization of the right to adequate housing. Although the Government of Indonesia increased its budget allocation to the housing sector by over 60 per cent between 2010 and 2013, the overall budget allocated to housing, infrastructure and development has remained only about 1.8 per cent of the national budget in the last four years.<sup>15</sup> According to official estimates, 7.9 million housing units are considered of substandard conditions (with two of the three basic structures – wall, floor, and roof – in need of repair).<sup>16</sup>

13. Infrastructure has also not kept up with rapid urbanization, particularly in informal settlements. For example, in 2009, the proportion of households with sustainable access to an improved water source in urban areas was 47 per cent, showing little improvement since 2000. The proportion of households with sustainable access to improved sanitation was 55.6 per cent in 2011 (compared to 32 per cent in 2000).<sup>17</sup> Data of the National Land Agency (*Badan Pertanahan Nasional* (BPN)) shows that more than 3 million households do not have access to water and sanitation.<sup>18</sup>

14. Indonesia is currently in the midst of a housing affordability crisis, as recognized by the Government. The high urban population growth, the shortage of land for housing and urbanized land, and the sharply increasing housing and land prices are limiting the availability of affordable housing, particularly for low- and middle-income households in urban areas and has led to rapid expansion of informal settlements.<sup>19</sup> Less than 8 per cent of the housing produced by the housing market costs less than Rp 400 million (US\$ 40,000).

<sup>13</sup> IS Academy on Land Governance for Equitable and Sustainable Development, Food security and land governance Factsheet on Indonesia:

<http://www.landgovernance.org/system/files/Indonesia%20Factsheet%20-%202012.pdf>.

<sup>14</sup> Ministry of Public Housing Strategic Plan 2010-2014, p. 8.

<sup>15</sup> Information provided by the Government of Indonesia, 11 October 2013.

<sup>16</sup> Information provided by Ministry of Public Housing, in Jakarta, 31 May 2013.

<sup>17</sup> Information provided by the Government of Indonesia, 11 October 2013.

<sup>18</sup> Information and comments provided by the Government of Indonesia, November 2013.

<sup>19</sup> Ministry of Public Housing Strategic Plan 2010-2014, p. 7; Indonesia, "Country Report", p. 14.

With around US\$ 4,000–6,000 per year as average income per capita of the urban population, the majority simply cannot afford to buy a house from the market.<sup>20</sup>

15. Historically, the Government of Indonesia has not invested in public housing<sup>21</sup> and until very recently has dealt with the limited capacity to provide affordable adequate housing by enabling self-help housing and the growth of informal settlement and investing selectively in slum upgrading. More recently, though, Governmental housing policies have been concentrating on the development of housing markets and housing financing systems.

## A. Self-help housing and slum upgrading

16. According to official estimates, 80 per cent of housing development in Indonesia has been constructed through informal self-help systems of housing provision.<sup>22</sup> The extent of areas officially classified as “slums” was estimated at 59,000 hectares in 2011 (23 per cent of the urban population living in slum areas in 2009)<sup>23</sup> and is projected to reach 71,860 hectares by 2025 at an annual growth of 1.37 per cent.<sup>24</sup> Historically, the “self-regulated” informal housing has helped the State to externalize the cost of providing low-cost housing for the poor.<sup>25</sup>

17. An important part of these informal settlements is the urban *kampung* (village), an indigenous urban settlement mostly inhabited by lower middle class and poor people, a mixed-use highly densely populated area, for working and living.<sup>26</sup> In general, *kampungs* are characterized by poor quality housing, lack of secure tenure, and lack of access to water, sanitation, drainage, and flood-control facilities, as well as by ambiguously defined legal status. However, housing conditions in the *kampungs* vary, as over time some have been connected to city facilities such as piped water, roads and drainage systems. With limited Government service provision, residents often access basic services through self-produced connections or unregulated intermediary service providers, to whom they typically pay higher fees for lower quality services.<sup>27</sup>

<sup>20</sup> During the first quarter of 2013, house prices rose by 25 per cent compared with the same period in 2012. In Jabodetabek, only 8 per cent of the housing stock is targeted toward lower-income households (with the average price of Rp 400 million per unit) and only 15 per cent to lower-middle-income (compared to 28 per cent to the upper-middle-income segment between Rp 1.4 billion and Rp 2 billion per unit). (Data provided by property consultant Cushman & Wakefield Indonesia, Kompas, 13 May 2013.)

<sup>21</sup> On a limited scale, the Indonesian Government has provided public housing through Perum Perumnas, a public real estate company. However, due to various limitations, from 1974 to 2004, Perumnas could only develop 453,000 houses and a substantive portion of its land was left vacant. See Danang Widoyoko, *Good Governance and Provision of Affordable Housing in DKI Jakarta, Indonesia, Case Study* (Water, Engineering and Development Centre, Loughborough University, Jakarta, 2007).

<sup>22</sup> Information provided by Ministry of Public Housing, Jakarta, 31 May 2013.

<sup>23</sup> See Millennium Development Goals Indicators, available at: <http://mdgs.un.org/unsd/mdg/seriesdetail.aspx?srId=710>.

<sup>24</sup> Indonesia, “Country Report”, p. 13.

<sup>25</sup> Abidin Kusno, “Housing the Margin: *Perumahan Rakyat* and the Future Urban Form of Jakarta” (Indonesia, 2012) vol. 94, pp. 23, 32.

<sup>26</sup> It is estimated that 60 per cent of the Jakarta residents live in *kampungs*. Paul McCarthy, *Understanding Slums: Case Studies for the Global Report on Human Settlements 2003, The case of Jakarta, Indonesia*, UN-HABITAT; Jieming Zhu, *Symmetric Development of Informal Settlements and Gated Communities: Capacity of the State – The Case of Jakarta, Indonesia* (Asia Research Institute, 2010), p. 9.

<sup>27</sup> World Bank, *Indonesia: Urban Poverty and Program Review*, January 2013, p. 6.

18. During her mission the Special Rapporteur visited several *kampungs* in Jakarta, Makassar, Surabaya and Yogyakarta, and was deeply impressed by the strength of the community life in these “urban villages”. *Kampungs* are an intrinsic part of urban history and have been essential to providing low-income housing and contributing to economic development of the city through labour and consumption, and to the cultural and social fabric of Indonesian society.<sup>28</sup>

19. Although the administrative and legal insertion of these settlements vary from city to city, as some are recognized in city plans and others are not, one portion of them is consensually classified by the State as “illegal”. These are the *kampungs* that are located along riverbanks, canals, railways, green paths and parks, often in flood-prone zones, in contradiction to local and national spatial plans, rendering them completely “invisible” in city plans, “illegal” and vulnerable to evictions as well as natural hazards, such as floods and earthquakes.<sup>29</sup> All levels of Government refrain from implementing housing policies and programmes in these settlements and rarely invest in facilities and infrastructure. As a result, living conditions in these settlements are worse than in other types of *kampungs*. These settlements clearly house the poorest among the urban poor, including internal migrants without identification cards.<sup>30</sup>

20. At the national level, the only official policy towards these settlements is eviction, in some cases followed by relocation to low-cost rental apartments (*Rusunawa* – see section on affordable housing).<sup>31</sup> However, there is some ambiguity and tolerance in practice, given the limited capacity of local Government to provide alternatives. As a result, these settlements tend to be evicted when a development project buys the land and the local Government is called to facilitate the project. During her visit, the Special Rapporteur visited several informal settlements located along river banks in Surabaya (Stren Kali) and Yogyakarta (along the Code River), that have been upgraded by the residents to conform with spatial planning and environmental requirements. These are good examples of inclusive development and the Special Rapporteur calls on the local and national Government to learn from these models in other locations, ensuring the security of tenure of the residents of these settlements.

21. Indonesia has a long history of slum improvement programmes, dating back to the 1960s. The Kampung Improvement Program (KIP), which started in 1969 in Jakarta, is considered one of the most important and successful slum upgrading projects in the world. However, in recent years, relatively few other programmes and resources have been directed at slum improvement and, if so, they have been of a more limited scale.

22. Some of the more recent programmes include (a) the Support for Self-help Housing Stimulus (*Bantuan Stimulan Perumahan Swadaya* (BSPS)), (focusing on housing rehabilitation, operated by the Ministry of Public Housing); (b) the Neighbourhood Upgrading and Shelter Sector Project (NUSSP),<sup>32</sup> that was implemented from 2005 to 2010 in 32 cities by the Ministry of Public Works and focused on both infrastructure and housing, funded by the Asian Development Bank; and (c) the National Programme for Community Empowerment Urban (*Program Nasional Pemberdayaan Masyarakat*

<sup>28</sup> Jo Santoso, *The Fifth Layer of Jakarta* (Tarumanagara University, 2011).

<sup>29</sup> World Bank, *Indonesia: Urban Poverty and Program Review*, January 2013, p. 5.

<sup>30</sup> The Special Rapporteur witnessed that some settlements have been upgraded by residents over time. *ibid.*, p. 11.

<sup>31</sup> Republic of Indonesia, Ministry of National Development Planning/National Development Planning Agency, *Report on the Achievement of the Millennium Development Goals in Indonesia 2011* (Jakarta, 2012), p. xii.

<sup>32</sup> Best Practices, NUSSP encourages the empowerment to eliminate slums, Ministry of Public Works and ADB, 2012, <http://www.adb.org/sites/default/files/pub/2012/neighborhood-upgrading-project-indonesia.pdf>

*Perkotaan* (PNPM) Urban) (financial and technically supported by the World Bank).<sup>33</sup> All these programmes involve allocation of small grants to communities, the cooperation of central and local Government, the communities themselves and in some cases public-private partnerships.<sup>34</sup>

23. The PNPM Urban Program, which has been operating in all urban areas of Indonesia since 1999, is currently the largest slum upgrading programme. PNPM-Urban is designed on the premise that – while many urban issues require larger infrastructure solutions (urban public transport, utility-supplied water, piped sewerage and storm drainage, urban roads) – community-level infrastructure will better respond to needs and cost less when it is planned and constructed by communities themselves. Its focus is on empowering communities to make decisions about their investment’s needs and priorities.<sup>35</sup>

24. Although these programmes have improved housing habitability, cost-effectiveness and empowerment of low-income communities, they have not been sufficiently linked to local and regional development and spatial planning. Improving road or drainage networks or the provision of utilities across the country cannot be effectively planned and implemented at the community level. Areas that are at particularly high risk to climate and natural hazards may require complex infrastructure planning or resettlement decisions which are beyond the scope of the community.<sup>36</sup> As mentioned, these programmes are not implemented in informal settlements that are located on land which is not designated for habitation, excluding a large number of settlements where housing and infrastructure needs tend to be greatest.

25. The Special Rapporteur is concerned by the fragmentation of programmes between various agencies and the inefficiency of existing coordination mechanisms. She recommends that the Government reinstate a national comprehensive and holistic slum upgrading programme, adequately funded, monitored and coordinated with spatial and development planning.

26. The Special Rapporteur is concerned that, as urban land becomes scarce and urban land prices skyrocket (particularly in Jabodetabek), the inner city *kampungs* face the threat of powerful economic and development forces. Retail and commercial buildings surround *kampungs*, but municipalities rarely include or prioritize the *kampungs* in their development plans. Labelling *kampungs* as “slums” can lead to misconceptions and reflects a misunderstanding of their function in Indonesian city fabric.<sup>37</sup> This terminology increases the insecurity and ambiguity of the settlements, opening ground not only to development-based evictions but also increasing their exposure to market pressures. It underlines the current predominant housing policy, which sees the *kampung* as a phenomenon to be eradicated (see next section).

27. The Special Rapporteur calls on the national and local Government to ensure that *kampungs* are integrated into city planning and protected from market-induced displacements. The Government should also upgrade these *kampungs* and service them with adequate infrastructure, facilities and services, including redevelopment when required. In cities such as Surabaya and in community-driven projects throughout the country (Tanah Tinggi in Jakarta and Stren Kali and Boezem Morokrembagan in Surabaya), the Special Rapporteur visited the implementation of alternatives in this direction, which prove that this is not only desirable but also feasible.

<sup>33</sup> “Indonesia: Evaluation of the Urban Community Driven Development Program – Program Nasional Pemberdayaan Masyarakat Mandiri Perkotaan (PNPM-Urban)”, Policy Note, January 2013.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, pp. 2–3.

<sup>36</sup> *Ibid.*, p. 11.

<sup>37</sup> See Law No. 1/2011 on Housing and Settlement, and Indonesia, “Country Report”, p. 13.



28. A strong degree of security of tenure is also needed to secure the existence of *kampungs*. In Jakarta, more than 50 per cent of the land parcels are unregistered with the Government and do not have title, leaving residents vulnerable to eviction.<sup>38</sup> The Special Rapporteur met during her visit with communities that have invested efforts and resources in upgrading their *kampungs* but still do not have land certificates or other form of tenure security.

## B. Affordable housing (*Rusunawa* and *Rusunami*)

29. In 2007 the Government of Indonesia launched the National Program for 1000 Towers to increase adequate housing supply in metropolitan cities, in the form of low-cost rental walk-up flats (*Rusunawa*) and ownership in high-rise, low-cost apartments (*Rusunami*). Under this programme, the central Government provides tax incentives, ease of permits and infrastructure to reduce the development cost and subsequently the rent/purchase cost of the apartment, while the local Government provides the land for the project development.<sup>39</sup> By 2011, all 1,000 towers were expected to have been built all over Indonesia.

30. Despite the initial substantive budgetary investment<sup>40</sup> and the fact that all major real estate developers joined the programme, it soon became clear that developers had taken advantage of all the facilities from the State for *Rusunami* apartments (subsidy and location) to build middle-class condominiums instead of low-cost apartments. The opportunity to acquire scarce land within the city limits was probably the main driving force behind the developers' interest. In reality, only a few units were made available for low-income households and the rest were high-end apartments.<sup>41</sup>

31. The affordable rental housing, which supplies rental apartments at a subsidized low rent, (*Rusunawa*), is implemented by several Government agencies (including local Government, the Ministry of Public Housing and the State agency Perumnas), and has two target groups – informal settlers who were evicted and relocated, and Government employees or students.

32. To date, this programme has been implemented on a relatively small scale (between 2010 and 2013 – 435 twin towers with 14,185 units were built by the Ministry of Public Housing in the country, and the numbers built by other national or provincial agencies are also modest). The limited scale is especially relevant considering that in Jakarta alone one of the target groups for these apartments (families to be relocated from river banks) amounts to tens of thousands of people (according to information provided to the Special Rapporteur during the mission, approximately 34,000 people residing along the Ciliwung River within the Jakarta province are to be relocated to these apartments) while there are only 5,600 units of low-cost rental apartments in the greater Jakarta area (some of them already occupied).

<sup>38</sup> World Bank, *Jakarta: Urban Challenges in a Changing Climate* (2011), p. 21.

<sup>39</sup> Indonesia reply to Special Rapporteur's questionnaire on housing finance, 2012, p. 5. <http://www.ohchr.org/Documents/Issues/Housing/Housingfinancing/Indonesia.pdf>.

<sup>40</sup> In 2009, funding for the programme amounted to Pr 2.3 trillion (US\$ 230 million), Kusno, "Housing the Margin", p. 47.

<sup>41</sup> *Ibid.*, pp. 47–48; Connie Susilawati and Sutoto Yakobus, "New affordable strata title housing solutions: a case study in Surabaya, Indonesia", in Wang, Yaowu, Yang, Jay, Shen, Geoffrey, & Wong, Johnny (Eds.) *Proceedings of 2010 International Conference On Construction & Real Estate Management* (China Architecture & Building Press, Royal on the Park Hotel, Brisbane), pp. 397–402, December 2010.

33. Additional challenges related to *Rusunawa* deserve attention. One relates to the difficulties in providing maintenance for these apartment blocks. Subsidized rental schemes can only succeed in the long term when Governmental budgeting is available to also subsidize maintenance of the public spaces and facilities in these buildings, since low-income tenants cannot afford these high costs.<sup>42</sup> Of concern is the non-transparent selection of beneficiaries and the fact that apartments are available only for persons carrying Jakarta identification cards (city residency cards).<sup>43</sup> However, the most crucial issue with regard to the *Rusunawa* programme is the location. According to information received from various sources, and the Special Rapporteur's own impression during the visit, there is currently a long waiting list for apartment towers which are located in good locations (close to employment opportunities and public services and – in the case of relocated communities – close to the original habitation site) coupled with low occupancy rates for buildings which are located in remote areas. The Special Rapporteur calls on the Government to ensure that relocation sites are located as near as possible to the original habitation sites.

### C. Housing finance for homeownership

34. The most worrisome aspect of housing policy is that slum upgrading and affordable housing schemes such as *Rusunawa* are currently being sidelined in terms of budget allocation while funding increased for programmes to improve access to financing for middle-income households to access homeownership. According to the Ministry of National Development Planning, the largest current investment in the housing sector is tax subsidies for developers and down payment and interest subsidies for buyers (Facility of Liquidity for Housing Finance Program (*Fasilitas Likuiditas Pembiayaan Perumahan* (FLPP), 2010). According to the FLPP programme, banks receive long-term funding with very low interest rate (0.5 per cent) from the Government, which is then blended with commercial rate funding (at a 70:30 per cent ratio). The programme is to benefit first homebuyers with a maximum monthly income of Pr 3.5 million (for houses) and Pr 5.5 million (for apartments) and a tax payer identification (NPWP).<sup>44</sup> Beneficiaries will receive a subsidized mortgage with a fixed interest rate of 7.25 per cent for 20 years.<sup>45</sup>

35. According to the Mid-Term National Development Plan 2010-2014, 1,350,000 units were projected for FLPP, while only 380 twin block were projected to *Rusunawa*.<sup>46</sup> By May 2013, 211,102 units were completed through the FLPP programme at a cost of approximately Pr 8,000 billion. In comparison, the budget allocated by the Ministry of Public Housing to slum upgrading for the same period was Pr 1 billion (655 hectares) and by the Ministry of Public Works Pr 971 billion while the overall estimate of slum area is around 60,000 hectares nationwide).<sup>47</sup>

<sup>42</sup> Although some local Governments (e.g. Surabaya) are subsidizing the maintenance, until recently, this was not a national policy. Since 2012, the Ministry of Public Housing established a *Rusunawa* maintenance programme, which to date has been implemented on approximately 150 twin block towers.

<sup>43</sup> Ombudsman of the Republic of Indonesia, Information provided during the meeting on 30 May 2013.

<sup>44</sup> Ministry of Public Housing, 31 May 2013. The Ministry of Public Housing is currently piloting a FLPP for non-fixed income households with weekly/daily/monthly instalments in South Sumatra.

<sup>45</sup> Information presented by Ministry of Public Housing on 31 May 2013.

<sup>46</sup> Information provided by the Ministry for National Development Planning (Bappenas) on 31 May 2013; Republic of Indonesia, Ministry of National Development Planning/National Development Planning Agency, *Report on the Achievement of the Millennium Development Goals in Indonesia 2011* (Jakarta, 2012), p. 104.

<sup>47</sup> Information presented by Ministry of Public Housing on 31 May 2013.

36. According to BPN, 91 per cent of the Indonesian population is categorized as low-income with limited procuring power;<sup>48</sup> however, the FLPP clearly targets only those with a relatively stable income, working in the formal market. The policy excludes the self-employed workers in the informal sector (60 per cent of the work force) and workers with unstable incomes that could not constitute marketable mortgage-backed securities. In other words, the policy targets the top 9 per cent of the population. Of additional concern is the fact that low-income households and informal workers, while excluded from the FLPP, are nonetheless negatively affected by its effects – the increase in demand for land and housing, and the escalating land and housing prices.<sup>49</sup>

37. The FLPP has already encountered implementation difficulties, and by 2012 only 280,555 units were completed through this programme, illustrating its incompatibility with the needs of the majority of the population.<sup>50</sup> The programme has also encountered difficulties from the supply side, with developers complaining about the scarcity of urban land, difficulties in acquiring building permits and lacking the cooperation of local Government in providing infrastructure for these projects.<sup>51</sup>

## V. Development and planning regulations

38. As previously indicated, the limited availability of urbanized land is one of the main constraints on the housing sector in Indonesia, affecting the availability and affordability of housing for the poorest segments of the society. The situation has become more severe in the last 15 years, as private developers dominate urban development. Recently, real estate became a top commodity traded in the stock exchange market.<sup>52</sup> The commercialization of urban land is widespread, followed by uncontrolled land speculation and monopolization which contributes to skyrocketing prices, particularly in urban centres, reducing land affordability for lower-income households.<sup>53</sup> Most houses produced by real estate corporations are targeted for financial investments by the upper 10 per cent of urban population. A study by the Center of Metropolitan of Tarumanagara University reports that in Jabodetabek in the last decade, more than 30 large-scale real estate projects, occupying more than 30,000 hectares of land, had accommodated only 7 per cent of the total population growth of the period (approximately 10 million).<sup>54</sup>

<sup>48</sup> Ministry of Public Housing Strategic Plan 2010-2014, pp. 7–8.

<sup>49</sup> See more subsidized mortgage programmes for low-income households in document A/67/286, *The Right to Adequate Housing: Note by the Secretary-General*.

<sup>50</sup> Information provided by the Ministry for National Development Planning (Bappenas) on 31 May 2013.

<sup>51</sup> Kusno, “Housing the Margin”, p. 38; Information provided by Real Estate Indonesia (REI) on 4 June 2013, Jakarta and by Association of Housing Development (APERSI), 10 June 2013, Jakarta.

<sup>52</sup> Information provided by BTN Bank on 4 June 2013, Jakarta.

<sup>53</sup> Marja C. Hoek-Smit, *Implementing Indonesia’s New Housing Policy: The Way Forward – Findings and Recommendations of the Technical Assistance Project “Policy Development for Enabling the Housing Market to Work in Indonesia”*, June 2002 (World Bank and Government of Indonesia), p. 3.

<sup>54</sup> Suryono Herlambang, “25 years of the new town development in Jakarta Metropolitan Area: an evaluation” (Universitas Tarumanagara, Workshop on Spatial Justice in Asian Cities, January 2013, Jakarta).

39. In response, the Government has put in place several development regulations<sup>55</sup> to promote adequate distribution of land development to low-income groups, such as the so-called “1:2:3 policy” (mandating that each development project maintains a proportion of one high-income unit, two middle-income units and three low-income units) and that 25 per cent of the development provides for modest homes.<sup>56</sup>

40. However, the Special Rapporteur was informed both by Government officials and civil society organizations that these regulations are not implemented by developers and there is no effective monitoring and enforcement. She was encouraged to hear that the Ministry of Public Housing and the Governor of Jakarta are considering new measures to strengthen the enforcement of these regulations.<sup>57</sup>

41. Even though a limited portion of State land is still available in cities, recent initiatives, such as the selling of Indonesia State railroad company land stock, has provoked not only evictions but also the use of public land for commercial purposes. The Special Rapporteur calls on the Government to ensure that available State land is allocated to low-income housing, either to support new housing alternatives for the poor or to recognize existing settlements and thus provide them with security of tenure and improved living conditions.

## VI. Security of tenure and land issues

42. A complex, unresolved, inequitable and exclusionary land tenure system exists in Indonesia, exemplified by the fact that approximately 69 per cent of the land is owned by 16 per cent of the population.<sup>58</sup>

43. Indonesia’s land legislation is based on colonial norms and practices, over which post-colonial reforms have been imposed. All land in Indonesia falls into one of two categories, forest estate (about 70 per cent of the land) and non-forest estate (the remaining 30 per cent). Forest estate is under the responsibility of the Ministry of Forestry, regulated by the Basic Forest Law of 1967. Non-forest estate is managed and administered by BPN, according to the Basic Agrarian Law of 1960. As such, land is administered under a dual system through two different Government agencies responsible for forestry and non-forestry lands, respectively. This dual system, together with colonial legacies and lack of integration of customary rights, have all generated numerous challenges, including widespread tenure insecurity, limited recognition of the customary rights of individuals and communities, and the unsustainable management of natural resources.<sup>59</sup>

<sup>55</sup> Law No.1/2011 on Housing and Residential Areas; and Minister of Housing Regulation No.10/2012, May 2012.

<sup>56</sup> Information provided by Ministry of Public Housing, 31 May, Jakarta.

<sup>57</sup> Information provided by the Vice Governor of Jakarta on 1 June 2013 and by the Ministry of Public Housing, 31 May 2013. See also <http://en.indonesiainancetoday.com/read/28298/Govt-Monitors-Balanced-Residential-Ratio>.

<sup>58</sup> Erna Heryani and Chris Grant, “Land Administration in Indonesia”, Australia 3<sup>rd</sup> FIG Regional Conference Jakarta, Indonesia, October 3–7, 2004, p. 5.

<sup>59</sup> Keith Clifford Bell, Shivakumar Srinivas and Juan Martinez, “Reforming Indonesia’s complex legal environment for land governance: Complementary top-down and bottom-up approaches”, presentation at the Annual World Bank Conference on Land and Poverty, Washington DC, April 2013, p. 6; *Ibid.*, p. 4.

44. The Basic Agrarian Law recognizes private ownership and vests control of all unregistered land to the State, which holds title to all land in Indonesia.<sup>60</sup> According to BPN, only 30 per cent of non-forest land is formally titled,<sup>61</sup> leaving an estimated 60 million land parcels unregistered. In recent years, BPN has registered an average of roughly 1 million parcels per year.

45. An individual's claim of ownership of a land parcel may be informally registered with *kelurahan* offices. This kind of land right claim can be registered with BPN, but has no legal validity in itself. The difference between formally registered land (with BPN) and informally registered land (with the *kelurahan*) has significant symbolic and material consequences. As previously mentioned, *kampung* lands are virtually all unregistered, while those of the formal sector – exclusive neighbourhoods of developers' built housing – make up the bulk of the registered residential parcels.<sup>62</sup>

46. Since 2006, the Government has in place a programme – the People's Service for Land Certificate (*Layanan Rakyat untuk Sertifikat Tanah (LARASITA)*) – to certify land for low-income populations and people living in remote and rural areas, which includes mobile registration services.<sup>63</sup> The Government has also allocated budgetary resources for the National Agrarian Operation Project (*Proyek Operasi Agraria Nasional (PRONA)*), to facilitate massive land certification and registration, mainly for low-income households.<sup>64</sup> Land certification under PRONA is free of charge; however, some additional costs incurred for the completion of complex registration requirements and proceedings, as well as limited information on the proper certification procedures, still exclude large portions of Indonesia's population from the registration system. This is exacerbated by limited information on zoning plans and regulations, which result in deviations, precluding the possibility of official registration and increasing the risk of evictions.<sup>65</sup> Indonesia ranks 107th out of 177 countries analysed with regard to the difficulty of registering private transactions, and the cost in Indonesia averages 10.7 per cent of the value of the property, which is three times the average cost in the region.<sup>66</sup>

47. The overall tenure insecurity is compounded by the parallel sets of customary *adat* laws<sup>67</sup> and State law in Indonesia, causing confusion, land conflicts, problems for *adat* communities, evictions and forest destruction. Neither the Basic Agrarian Law nor the Basic Forestry Law provide adequate recognition to customary land practices or allow for registration of collective tenure.

48. Although article 56 of the Basic Agrarian Law (BAL) recognizes the continuing validity of rights derived from *adat*, or customary law, the right-holder cannot register the right or have it fully recognized by the State until he or she purchases a certification from BPN confirming that the land is not State land. *Adat* land can only be registered and certified after having been rendered into one of seven private law land rights recognized in article 16 of the BAL. Thus, although in many cases the land right originates in *adat* law

<sup>60</sup> IS Academy on Land Governance for Equitable and Sustainable Development, Food security and land governance Factsheet on Indonesia:

<http://www.landgovernance.org/system/files/Indonesia%20Factsheet%20-%202012.pdf>, p. 5.

<sup>61</sup> World Bank 2013 land governance; Information provided to the Special Rapporteur by BPN on 3 June 2013, Jakarta.

<sup>62</sup> Kusno, "Housing the Margin", pp. 30–32.

<sup>63</sup> Information provided by BPN, 3 June 2013 and by the Government of Indonesia, 11 October 2013.

<sup>64</sup> Information provided by Government of Indonesia, 11 October 2013.

<sup>65</sup> Ministry of Public Housing Strategic Plan 2010–2014, p. 7.

<sup>66</sup> United States Agency for International Development (USAID), "Country Profile – Property Rights and Resource Governance, Indonesia", p. 10.

<sup>67</sup> *Adat*, customary land law, governs Indonesia's traditional communal land tenure system and rights. It varies widely across the archipelago.

since well before the creation of the Indonesian State in 1945, BPN officials impose a presumption that all unregistered land is State land until proven otherwise. Moreover, *Hak ulayat* (which can be translated as “a communal right of allocation”) cannot be registered.<sup>68</sup> This deters communities from applying collectively for land certificates.<sup>69</sup>

49. The 1967 Basic Forestry Law and the 1967 Law on Mining essentially rendered all forest land the property of the State and eliminated the *adat* rights of communities living in these areas, depicting them as illegal “squatters”.<sup>70</sup> However, according to the Ministry of Forestry, only 14 per cent of forest lands have been legally defined (gazetted), which further creates tenure insecurity. Confusion and disagreement over forest land and its use have led to uncertainty over which entity owns or controls the forests. Unrecognized private rights, including *adat* communal land, within the forest estate continue to create conflicts, since there about 33,000 villages (approximately 48 million people) located within or around the forest estate that have been living there for generations, even centuries, but their claims to the land are not recognized by the State.<sup>71</sup>

50. Conversion of land uses has had significant impact on natural resources and land rights of forest-dependent communities. Between 2004 and 2009, the Forestry Ministry allocated 1.2 million hectares of forests for mining activities, and plans to allocate a further 2.2 million hectares of forests between 2010 and 2020. Palm oil production is also a main factor in changes in forest land uses, as Indonesia now controls 14.3 per cent of the world’s vegetable oil market. It is estimated that the establishment of 66 per cent of all currently productive oil-palm plantations involved forest conversion.<sup>72</sup>

51. Due to the decentralization process, district and municipal Governments now manage land, determine resource use and spatial planning, and manage revenues and budgets.<sup>73</sup> The Special Rapporteur was informed that in many cases developers acquire permits for plantation, mining or development activities from local Governments, without prior knowledge of the residents actually living on the land and sometimes in contradiction to spatial plan or zoning regulations.<sup>74</sup> Indonesia has witnessed nearly 2,000 cases of conflicts which involved 600,000 households regarding 10 million hectares of forest land.<sup>75</sup>

52. In this context, the Special Rapporteur welcomes recent decisions of the Constitutional Court recognizing customary rights over forest land and coastal area to communities traditionally living there, and calls on the Government to adjust legislation and policy in order to implement these decisions as soon as possible.<sup>76</sup> She also calls

<sup>68</sup> IS Academy on Land Governance for Equitable and Sustainable Development, Food security and land governance Factsheet on Indonesia:  
<http://www.landgovernance.org/system/files/Indonesia%20Factsheet%20-%202012.pdf>, p. 3.

<sup>69</sup> USAID, “Country Profile”, p. 8.

<sup>70</sup> *Ibid.*, pp. 4, 6–7; IS Academy on Land Governance for Equitable and Sustainable Development, Food security and land governance Factsheet on Indonesia:  
<http://www.landgovernance.org/system/files/Indonesia%20Factsheet%20-%202012.pdf>, p. 4.

<sup>71</sup> Bell, *et al.*, “Reforming Indonesia’s complex legal environment for land governance”, pp. 8–12.

<sup>72</sup> USAID, “Country Profile”, p. 5.

<sup>73</sup> UN-HABITAT, *Slum Upgrading Facility Land and Slum Upgrading* (Nairobi, 2009), p. 37–38.

<sup>74</sup> Blair Palmer (2012). “Challenges in Improving Governance of Indonesia’s Dwindling Forests”, in *In Asia: Weekly Insight and Features from Asia* (The Asia Foundation, April 2012).  
<http://asiafoundation.org/in-asia/2012/04/18/challenges-in-improving-governance-of-indonesias-dwindling-forests/>.

<sup>75</sup> Maharani Hapsari (2011). “The Political Economy of Forest Governance in Post-Suharto Indonesia”, Chapter 3 in *Limits of Good Governance in Developing Countries*. p. 103-137 (Gadjah Mada University Press, November 2011).

<sup>76</sup> Decision no. 45 PUU-IX, 2011 on criteria and procedures for the determination and creation of forest estates in the country; Decision No.35/PUU-X/2012 of 16 May 2013, acknowledging traditional community rights and role with regard to communities historically residing in forest areas; Decision

attention to the Guidelines on large-scale land acquisitions and leases developed by the Special Rapporteur on the right to food.<sup>77</sup> The Government of Indonesia may find these guidelines useful when considering the revision of the 1967 Basic Forestry Law and the 1967 Law on Mining.

53. Conflicts over land in both rural and urban areas are widespread in Indonesia and prevent registration and tenure security. According to one study, 65 per cent of administrative court cases involve land disputes.<sup>78</sup> Land disputes cases are the number one category of complaints received by the National Commission on Human Rights (*Komnas Ham*)<sup>79</sup>, mostly related to public and private development activities resulting in involuntary resettlements, and the number is increasing. The Ministry of Law and Human Rights (two thirds of complaints) and the Ombudsman (one of the top five) also informed the Special Rapporteur during her visit that complaints on issues related to land are the most prevalent.

54. Indonesia lacks a complete inventory of reliably geo-referenced land parcels for both forest and non-forest lands. Additionally, there is no single authority in charge of resolving land disputes and both formal and informal arrangements are in place to address them. Four different institutions have overlapping competences: the civil court, the criminal court, the administrative courts, and a dispute settlement forum established by BPN to handle disputes relating to land misadministration and errors in land registration or titling. Litigation of land disputes is time-consuming and often prohibitively expensive for the poor, particularly in the absence of quality legal aid for low-income households and the absence of a transparent and accessible land information system.<sup>80</sup> Large-scale land disputes are commonly resolved by political means because there is no civil process that is viewed as consistent or legitimate by the disputants. The inadequacy of the current system has prompted calls for the creation of a Land Court.<sup>81</sup>

## VII. Forced evictions

55. The combination of fast development, a complex and exclusionary tenure system and the ambiguous presence of informal settlements in urban centres is causing widespread forced evictions and forced resettlement all over the country, in contradiction to international human rights obligations and standards. During her visit, the Special Rapporteur heard numerous testimonies of communities that have been forcibly evicted from rural or urban areas, by both private actors and various Government authorities. In her view, this is one of the most serious issues in Indonesia.

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no. 55/PUU-VIII/2010 on Criminal Acts in the Plantation Law.

<sup>77</sup> Special Rapporteur on the right to food, Large-scale land acquisition and leases: A set of minimum principles and measures to address the human rights challenge (A/HRC/13/33/Add.2).

<sup>78</sup> Human Rights Watch, "Condemned Communities – Forced Evictions in Jakarta", September 2006, <http://www.hrw.org/reports/2006/09/05/condemned-communities-0>.

<sup>79</sup> National Commission on Human Rights Annual Report of 2011, pp. 44–46, 254–56.

<sup>80</sup> IS Academy on Land Governance for Equitable and Sustainable Development, Food security and land governance Factsheet on Indonesia: <http://www.landgovernance.org/system/files/Indonesia%20Factsheet%20-%202012.pdf>.

<sup>81</sup> See Timothy Lindsey, "Square pegs & round holes: Fitting modern title into traditional societies in Indonesia", in *Pacific Rim Law and Policy Journal*, 7 (1998), pp. 699–719. See also Daniel Fitzpatrick, "Disputes and pluralism in modern Indonesian land law" in *Yale Journal of International Law*, 22, (1997) pp. 171–212.

56. Forced evictions are a gross violation of a wide range of internationally recognized human rights.<sup>82</sup> The term “forced eviction” refers to any eviction that is not carried out in accordance with international law and standards, regardless of whether the evicted persons hold legal title to the land and regardless of whether the eviction took place with the use of force. This is the case even when the eviction is to serve legitimate public interests, such as preventing risks.

57. Mass forced evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law, which includes a number of strict conditions, such as (a) the obligation to provide full information on the purpose of the evictions; (b) legal remedies and legal aid to persons who are in need of seeking redress from courts; and (c) the taking of all appropriate measures to ensure adequate compensation and/or adequate alternative housing or resettlement. Evictions should not involve the use of force and should not result in individuals being rendered homeless. The solution should be reached by meaningful consultation with the affected communities to ensure that relocation results in the improvement of their standard of living or at least does not result in its deterioration.<sup>83</sup>

58. Despite these international standards, a myriad of national, provincial and municipal laws and regulations authorizes local Government to conduct evictions of settlements from privately owned land or from areas which are not intended for habitation according to the regional master plan.

59. Communities most vulnerable to evictions are those living in informal settlements on land that has been designated for public use (for example, green space, river banks, along rail tracks) and that have been occupying this land for years (in some cases more than 30 years). Although these settlements are now branded as “illegal squatting”, this term is misleading, for the derogatory term obscures the fact that the occupation took place with permission and/or tolerance from the State, over decades.<sup>84</sup> Most evictees or communities under continued threat of eviction that met with the Special Rapporteur considered that they had secured some form of tenure over the land from which they were evicted (or were under threat of eviction), after decades of occupation with no contestation (or encouragement) from public or private entities, and eventually receiving a variety of Government-provided services, as well as after years of paying land taxes.<sup>85</sup>

60. The Special Rapporteur visited several “illegal” *kampungs* in Jakarta (Pluit Reservoir, communities living along the Ciliwung River, and the Duri Tambora community), in Surabaya (the Stren Kali river community) and in Yogyakarta (communities living along the river Code). In several cases (such as the settlement in Pluit reservoir and the Stren Kali community), the communities have been living there with the tacit agreement of the municipality or the authorization of State-owned companies. (Such is the case of the Duri Tambora community and the PT KAI railroad company.) The Special Rapporteur is alarmed with the plan to relocate 200,000 people living on the river banks and slum areas in Jakarta in the next five years, particularly as alternative, adequate and sustainable solutions of relocation or compensation are currently not available.

61. While Government policy with regard to “regularized” settlements with land certificates is to offer alternatives such as compensation, alternative land or housing or in

<sup>82</sup> Resolutions 1993/77 and 2004/28 of the Commission on Human Rights.

<sup>83</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 7, paras. 15–16. See also the Basic principles and guidelines on development-based evictions and displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18).

<sup>84</sup> Kusno, “Housing the Margin”, pp. 42–43.

<sup>85</sup> UN-HABITAT, “*Slum Upgrading Facility*”, pp. 33–36



situ upgrading, in the case of “illegal” slums, the Government refuses to consider compensation or in situ upgrading, and provides only relocation options to low-cost rental apartments in high-rise buildings (Rusanawa). It is the Special Rapporteurs’ impression that this solution is unsustainable for several reasons. Firstly, as previously mentioned, the supply of low-cost rental apartments is extremely limited. Secondly, as witnessed by the Special Rapporteur during her visit, low-cost rental buildings are located far away from the evicted communities’ original location and employment opportunities.

62. During her visit, the Special Rapporteur heard testimonies that in some instances evictees received no compensation at all. This is particularly the case for residents without identification cards or people living on land that is not designated for habitation – who are considered “illegal squatters”. In other instances, residents complained that the compensation offered was insufficient to find adequate or comparable alternative housing and to restore their livelihoods. As an alternative to monetary compensation, the State may provide appropriate and sufficient alternative accommodation or land, consistent with the needs of the affected community.

63. Recently, amendments have been promoted to clarify the legal framework of evictions and land acquisition. In January 2012, the Indonesian Parliament adopted Law No. 2 on Acquisition of Land for Development for Public Purposes and subsequently Presidential Regulation no. 71/2012 was adopted. The 2012 legislation revised the legislative framework underlying land acquisition, applicable to all land acquisition for public-interest projects that can be carried out by Government institutions after 7 August 2012. The Special Rapporteur welcomes the inclusion of urban slum planning, land consolidation and rental housing for low-income households under the definition of “public interest”.<sup>86</sup> She also welcomes the mandatory consultation and participation procedure with affected communities and the broad definition of “affected communities” under article 15. She calls on both central and regional Government to guarantee access to full information on both development and acquisition plans to potentially affected communities in order to enable their meaningful consultation and participation in the development process. The Special Rapporteur is concerned, however, that the provisions about compensation and resettlement fall short of international human rights standards and obligations, as they exclude affected communities and individuals residing on State land in violation of spatial planning or zoning regulation.<sup>87</sup> She is also concerned that unregistered right holders occupying land according to customary law may also be denied compensation in the absence of registered evidence.

## VIII. Access to housing of vulnerable groups

64. The obligation of non-discrimination is a fundamental principle of international human rights law, of immediate application. Article 2(2) of the Covenant of Economic, Social and Cultural Rights obliges each State party “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Non-discrimination is an immediate and cross-cutting obligation under the Covenant.<sup>88</sup> States have an immediate obligation to adopt measures to eradicate discriminatory practices both in the public and in the private spheres. States’ obligation to ensure the realization of the right to adequate housing extends to the obligation to protect individuals and communities from actions or omissions by third parties. During her visit,

<sup>86</sup> Article 10(o).

<sup>87</sup> Article 40.

<sup>88</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 7.

the Special Rapporteur heard testimonies and received information that some groups encounter discrimination in accessing adequate housing from both State and non-State actors. The following section will shortly address the situation of these groups.

## A. Gender and sexual orientation

65. Although the 1974 Marriage Law stipulates that property purchased during marriage shall be co-owned by the spouse, women in Indonesia still face discriminatory practices with regard to property and inheritance rights based on customary and cultural practices in different regions. While women in Java are sometimes registered as co-owners, in other regions, such as Southeast Sulawesi and the islands of East Nusa Tenggara, women generally possess neither individual nor joint rights to land, deriving their rights through a husband or male relative.<sup>89</sup> According to information provided by *Komnas Perempuan*, in a number of regions (such as Batak in North Sumatera, Bali, and Sasak and Flores in Nusa Tenggara), a married woman loses her access to inheritance rights and is disentitled of all assets following divorce. The Special Rapporteur met with women from Sumba region who offered testimonies of their difficulties in obtaining land certificates, despite the fact that they have been occupying the land for many years and have been regularly paying land taxes to local authorities.<sup>90</sup>

66. Even in regions where cultural practices favour women's property rights, research indicates that very few titles are issued in the names of both husband and wife during registration. In Java, about 65 per cent of new titles are issued in the names of men, 30 per cent in the names of women, and only 5 per cent in the names of either husband and wife or siblings. Land rights are generally titled in the name of a woman only when the land is her separate property, while marital property is usually titled in the husband's name. It appears that this is due to lack of information and awareness of both the public and registration officers about the option of joint registration.<sup>91</sup>

67. In this context, the Special Rapporteur recalls the Committee on the Elimination of Discrimination against Women's general recommendation No. 21 on equality in marriage and family relations which states that "the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family" (para. 26).

68. The Special Rapporteur expresses her concern about the inadequate provision of shelter solutions to victims of domestic violence. In the last five years, the majority of cases reported are on domestic violence, especially violence against wives. In 2012 alone, 8,315 cases of violence against wives were noted (66 per cent of reported cases). However, legal assistance and safety houses are still scarce and difficult for victims to access. Units handling women and children victims of violence are not equipped with adequate infrastructure.<sup>92</sup> The Special Rapporteur recalls the observations of the Committee on the

<sup>89</sup> USAID, "Country Profile", p. 9.

<sup>90</sup> Enforcing women's right to land and other property in Sumba, East Nusa Tenggara – excerpted from Women Coalition's assessment of implementation of Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women as reported to the United Nations Committee on the Elimination of Discrimination against Women, New York, 2012.

<sup>91</sup> USAID, "Country Profile", p. 9.

<sup>92</sup> See <http://www.komnasperempuan.or.id/en/2013/09/position-statement-stop-the-criminalisation-of-women-victims-of-domestic-violence/>.

Elimination of all forms of Discrimination against Women in this regard and calls on the Government to ensure that adequate and secure shelter for women is available.<sup>93</sup>

69. During her visit, the Special Rapporteur also heard testimonies from lesbian, gay, bisexual and transgender (LGBT) individuals who have encountered discrimination in the private housing sector. She received reports of several cases of forced evictions of LGBT people by private landlords in various regions across Indonesia. She recalls that States have the obligation to protect against abuses of human rights by third parties, including discrimination and forced evictions, and to adopt the necessary measures to enable and assist individuals in enjoying their human rights.

## B. Internal migrants

70. Despite the fact that nearly one in every four urban residents has migrated from rural areas, many of them still do not have identity cards for their current residential location and do not receive any public services (such as education and health).<sup>94</sup> Internal migrants are particularly vulnerable to the consequences of forced evictions. In the absence of identification cards, they are denied compensation or relocation. In many cases, the Special Rapporteur heard testimonies that the only solution offered to them is relocation back to their place of origin. However, such an option is not a sustainable solution, given the concentration of economic and employment opportunities – as well as services, education and health – in urban centres, particularly in Java.

71. While it might be common practice to establish minimum residency requirements for certain forms of State assistance, location-based identification or resident cards cannot constitute a form of *de jure* or *de facto* discrimination in accessing basic services and assistance, such as access to justice (against forced eviction) or due protection. Residents should be allowed to establish residency through other forms of proof, and allowed to access compensation, alternative housing and assistance where they have suffered harm or loss through eviction.

## C. Religious minorities

72. The Special Rapporteur is concerned with reports received about forced relocation of religious minorities (particularly Shi'a and Ahmadiyya communities) that have been instigated by mobs, and based on religious incitement.<sup>95</sup> According to testimonies presented to the Special Rapporteur during her visit, homes, schools and places of worship have been burnt or destroyed in these attacks, forcing hundreds of families in different communities out of their homes into temporary shelters and accommodation without access to basic facilities, services and security.

73. The Special Rapporteur was informed about 130 people, including women and children, belonging to the Ahmadiyya community, who have been living in temporary accommodation in harsh conditions in Mataram, Lombok for more than seven years after being forced to flee their homes in Ketapang, West Lombok in February 2006. Their houses were destroyed by mobs, which attacked the community because of their religious beliefs.

<sup>93</sup> CEDAW/C/IDN/CO/6-7/R.1, para. 38(c).

<sup>94</sup> World Bank, *Indonesia: Urban Poverty and Program Review* (January 2013), p. 7.

<sup>95</sup> Remarks by the United Nations High Commissioner for Human Rights during her visit to Indonesia, Jakarta, 13 November 2012.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12781&LangID=E>.

The forcibly evicted families have been unable to return to their homes and rebuild their lives.<sup>96</sup>

74. The Special Rapporteur also met with representatives of a Shi'a community (of about 168 people) from Karang Gayam village in the Sampang district on Madura island, who were forced to flee their homes in August 2012 when an anti-Shi'a mob of around 500 people attacked the community, killing one person and injuring dozens and setting fire to their homes. They are currently residing in a temporary shelter in a sports complex on Madura island, Java.

75. The Special Rapporteur is concerned that authorities have failed to adequately protect these communities from forced evictions and acts of violence. She calls on the Government to ensure that displaced communities have immediate access to essential services such as food, clean drinking water and health services, and to guarantee their safe return to their homes, providing them with the necessary assistance to rebuild their homes that were damaged or destroyed.

## **IX. Post-disaster reconstruction**

76. Indonesia has suffered several devastating natural disasters in the last decade, which have caused extensive loss of lives and severe destruction of housing and infrastructure of entire communities in various regions across the archipelago. From 2001 to 2010, there were 9,473 natural disasters, including earthquakes, tsunamis and eruptions, and non-natural disasters caused by human activities, such as floods, landslides and fires in cities and forests, several regions being hit by two or more natural disasters in less than five years.

77. Needless to say that the reconstruction and rehabilitation of communities affected by disasters pose an enormous challenge for the Government, both in technical and budgetary terms. The Special Rapporteur visited communities in Sleman (Yogyakarta province) that were affected by volcanic eruption, and was able to assess the Community-Based Settlement Rehabilitation Reconstruction Projects (REKOMPAK) that are being implemented in those regions.

78. The Special Rapporteur would like to stress her positive impression with the design and implementation of the REKOMPAK programme, which should serve as a worldwide example of good practice in post-disaster reconstruction and rehabilitation programmes. From a human rights perspective, the programme is responsive, cost-effective, community-driven, and appears to provide durable and sustainable solutions. The rehabilitation alternatives are tailored with the full participation of the affected communities, in accordance with the regional characteristics and culture. Of course, difficulties in implementation and sustainability of the programme persist, such as the right of communities to receive State support (both in terms of risk management and in situ rehabilitation), even in cases in which they refuse to relocate to a different site, or for rental tenants who were affected by the disaster. The flexibility of the programme can be used to address these complexities.

79. This policy harnesses one of the major assets of this country – the strength of communities and the tradition of social cohesion and self-organization of communities. This asset could and should be mobilized in other national housing policies and in planning processes at all levels.

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<sup>96</sup> Amnesty International, *Displaced and forgotten: Ahmadiyya in Indonesia* (Index No. ASA 21/006/2010).

## X. Conclusions and recommendations

80. The coming years offer a window of opportunity for the Government of Indonesia to proactively manage the urbanization and development processes in order to ensure inclusive growth and poverty reduction and to rectify past distortions of the housing and land sectors. Legislation, policies and programmes, both at the national and regional levels, should encourage efficient urban spatial structures for all, sustainable land use planning, investments in critical infrastructure, strengthened tenure security and the provision of basic services including for those in informal settlements.

81. To this end, the Special Rapporteur offered specific recommendations throughout the report. She also calls on the Government to consider the following:

### National Housing Strategy

(a) The Government should consider adopting a National Housing Strategy to be designed with effective public participation and based on updated, cross-cutting and disaggregated data on housing situation and needs. One of the main tasks of the Strategy should be to further clarify and facilitate the responsibility of and coordination between the various Government Ministries, provincial and local Governments and other stakeholders involved in the housing and land sectors, while finalizing the implementation of the decentralization process, and providing local Governments with the necessary resources to carry out their responsibilities;

(b) The strategy should focus on the needs of those who face difficulties in accessing adequate housing through market mechanisms and promote a variety of tenure forms (including private and social rental), as well as homeownership;

(c) The strategy should be designed, implemented and monitored ensuring meaningful and ongoing participation of the population, as well as in housing and land policies and programmes, both at the national and local level, including budget allocation and spatial planning;

(d) The strategy should offer the opportunity for the Government to renew its commitment to allocate adequate funds to a national holistic slum upgrading policy which should also include informal settlements on land not intended for habitation;

(e) The strategy should include maintenance programmes to be implemented nation-wide in all *Rusunawa* complexes;

### Land management and administration

(f) Land policy should protect the interests of low-income households, indigenous communities and communities occupying land based on customary (*adat*) law;

(g) The Government should ensure security of tenure – legal recognition of possession, communal land rights, forest land ownership. To this end, land regime should be revised so as to resolve ambiguities between customary (*adat*) and formal land laws;

(h) Urban spatial plans and land use regulations should be designed to ensure an inclusionary and diversified urban environment and to recognize the *kampung* as an essential part of Indonesian urban fabric;

(i) Land management policies should regulate markets to restrain speculation and monopolies and be adequately and efficiently enforced and implemented;

(j) State land holdings should be reviewed and compared to existing and projected needs for land; consider allocating public land for low-income housing as well as recognizing the tenure rights of existing settlements;

(k) Existing regulations on land title and registration should be reformed in order to simplify the process, reduce the costs to individuals, permit collective and communal rights, provide flexible requirements on the forms of title evidence required, increase efficiency and diminish delays;

(l) Effective mechanisms for the settlement of conflicts over land and the use and management of natural resources should be developed to make them accessible and affordable for low-income households;

#### **Forced evictions**

(m) The Government of Indonesia should bring its national and municipal legislation and regulations regarding forced evictions, land acquisition and land concessions in line with international human rights law and standards;

#### **Promoting equality and non-discrimination in access to housing**

(n) The Government should review and repeal national and regional laws, policies and practices which perpetuate discrimination (by State and non-State actors) in access to adequate housing of marginalized groups (such as women, LGBT people, internal migrants and religious minorities);

(o) The Special Rapporteur encourages the State to ensure that victims of domestic violence across the country have access to shelters that are easily accessible, with priority given to female heads of households and victims of domestic violence.

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