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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on adequate housing as a component  
of the right to an adequate standard of living, and on the right to  
non-discrimination in this context, Raquel Rolnik\***

**Addendum**

**Follow-up to country recommendations:**

**Brazil, Cambodia, Kenya**

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\* The present document is being circulated as received in the languages of submission only as it greatly exceeds the page limitations currently imposed by the relevant General Assembly resolutions.

## **Summary**

The present report is the second of a series of reports that the Special Rapporteur is presenting to the Human Rights Council to assess the status of implementation of recommendations elaborated by the previous Special Rapporteur in the framework of the country missions he conducted.

This report focuses on three countries to which missions were conducted in 2004 and 2005: Brazil, Cambodia and Kenya. For each country, the Special Rapporteur presents a summary of information received from the Government, United Nations entities and non-governmental organizations. At the end of each country section, the Special Rapporteur formulates some recommendations based on the analysis of the information received.

Recognising significant differences amongst the situations assessed, the Special Rapporteur concludes her report with general observations based on the trends she identified concerning the status of implementation of the recommendations formulated by her predecessor. Although a rights-based approach has been incorporated into new legislation and policies or programmes, practices in housing and urban policies sometimes fail to enforce those principles. The Special Rapporteur strongly encourages all those involved in housing, whether at national or international level, to seek the incorporation of a human rights approach into their policies and, particularly, the right to adequate housing into housing and urban policies.

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## I. INTRODUCTION

1. This report is presented in accordance with Human Rights Council resolution 6/27. When taking her position, the current mandate holder, Ms. Raquel Rolnik, decided to build upon and continue the work of her predecessor, Mr. Miloon Kothari, by using the wealth of information and experience accumulated since the inception of the mandate.

2. In this context, the Special Rapporteur decided to assess the implementation of recommendations as a result of missions conducted by the mandate. This report represents the second of a series that will fulfil such a purpose and focuses on three countries in which missions were conducted in 2004 and 2005, Brazil, Cambodia and Kenya. The report draws on information and comments provided by a range of sources, including the concerned States, United Nations agencies and civil society.

3. The Special Rapporteur wishes to express her gratitude to the Governments of Brazil and Kenya as well as to all the actors in Brazil, Cambodia and Kenya that have contributed with information and comments to this report. She regrets having received no comments from the Government of Cambodia.

4. The Special Rapporteur hopes that this exercise will also serve the States, United Nations agencies and civil society to assess the progress that has been made in the field of the right to adequate housing in the concerned countries. The Special Rapporteur also hopes that these assessments, combined with the observations of treaty bodies and other review mechanisms such as the universal periodic review will provide useful indications on the implementation of human rights, including the right to adequate housing, and on issues that need to be further addressed.

## II. BRAZIL

5. The previous mandate holder, Mr. Miloon Kothari, visited Brazil from 29 May to 13 June 2004. He presented his mission report at the 61<sup>st</sup> session of the Commission on Human Rights in 2005, under document number E/CN.4/2005/48/Add.3.

6. The current Special Rapporteur, Ms. Raquel Rolnik, wishes to express her appreciation for the information that was provided to her by the Brazilian authorities and by organizations of civil society and other relevant actors.

7. Recommendation **“The Special Rapporteur recommends that the Office of the Public Defender be strengthened so that it can better attend to demands from the vulnerable for the protection of their rights. The Special Rapporteur also notes that according to the law the institution of the Public Defender should be established in all states, and he urges the three remaining states that have not complied with this provision to do so”**. (paragraph 55)

8. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

9. Information provided by other sources states that, Constitutional Amendment No. 45 was adopted in December 2004, granting administrative, functional and financial autonomy to Public Defender Offices. In this regard, figures from the Ministry of Justice show that while 31.8 per cent of the Public Defender Offices had resources to fund the institution in 2003; such percentage rose to 56 per-cent in 2005.

10. However, the number of Judicial Districts in Brazil that are served by the Public Defender Office only amounts to 39.7 per cent. Installation of Public Defender Offices is still pending in the states of Paraná, Santa Catarina and Goiás. In the case of the State of Goiás, a state law already exists providing for the creation of a Public Defender Office but it has not yet been implemented.

11. Law 11.448 adopted in January 2007, recognizes the Public Defender Office as a party entitled to bring a public-interest civil action before the judiciary. However, the National Association of the Public Attorney's Office has challenged this guarantee and has filled an unconstitutionality action, on the allegation that this faculty "directly affects" the attributions of the Public Attorney's Office.

12. Recommendation **“The Special Rapporteur would like to further recommend that the Government, in addressing the housing and living conditions of all Quilombola communities in Brazil, follow the human rights provisions of the Constitution and international human rights law, as well as the guidance offered by general recommendation XXIX on descent of the Committee on the Elimination of Racial Discrimination.”**  
(paragraph 78)

13. Information provided by the Government indicates that the registration of Quilombola territories and the recognition of ethnic rights is a duty of the State set out in the Constitution. In addition, Article 68 of the Ato das Disposições Constitucionais Transitórias of the Federal Constitution expressly recognizes the right of the Quilombola communities to ownership over the lands they traditionally occupied. Furthermore, Decrees No. 4877 and 4887 of 2003 govern the procedure for identification, recognition, delimitation, demarcation and titling of lands occupied by the Quilombola communities, and establishes jurisdiction over these activities to the Ministry of Agrarian Development, in particular to the National Institute of Colonization and Agrarian Reform (INCRA). Since September 2008, the Normative Instruction INCRA No. 49 of September 2008 regulates all procedures relating to the titling of Quilombola lands.

14. Currently, there are 851 administrative processes of land regularization in Quilombolas opened. In addition, 45 ordinances of recognition of Quilombola communities have been published, covering a total area of 225,821.41 hectares that benefit 4,015 families. Moreover, 38 collective titles were issued on behalf of the associations that legally represent the Quilombola communities, covering a total area of 303,827.19 hectares and benefiting 3,334 families. Finally, the Coordenação General de Regularização de Territórios Quilombola estimates that in 2009, 11 titles will be issued, covering a total area of 19,959.79 hectares and benefiting 885 families. It also envisages the issuance of 38 expropriation decrees covering a total area of 453,447.06 hectares and affecting 4,863 families.

15. Information provided by other sources indicates that although the Brazilian Constitution and national legislation guarantee property rights of Quilombola communities over their ancestral territories and regulates the process for their demarcation and registration, these norms have not been properly implemented by the Government. These deficiencies appear to be the result of institutional, operational, technical and financial difficulties. The Special Rapporteur has been informed that Normative Instruction INCRA No. 49 highly increases the bureaucracy involved in the titling processes. She was also informed that Government officials regularly disregard judicial orders determining the demarcation and registration of Quilombola territories.

16. As a result of the institutional deficiencies, Quilombolas communities are routinely subjected to the threat of eviction from their lands, most particularly by land owners, mining companies and private developers. Consequently, Quilombolas communities continue to be deprived of their natural resources and the means for their economic subsistence. Their traditions and cultural identity are largely damaged, and they are subject to further impoverishment, social exclusion and human rights violations.

17. Recommendation **“In order to ensure a holistic implementation of the right to adequate housing, there is an urgent need for a comprehensive national housing policy encompassing both urban and rural considerations, and equally comprehensive national housing legislation binding together existing laws and programmes. The Special Rapporteur encourages the development of the new National Housing Policy but reminds the Government that such an overarching instrument needs to incorporate relevant international human rights law and reflect relevant general comments and general recommendations issued by human rights treaty monitoring bodies. In this regard, the Government should consider elaborating a housing allowance scheme to provide for housing improvements for the poorest segments of society. The Special Rapporteur supports the use of the Workers Guarantee Fund to provide resources to the National Popular Housing Fund, and also recommends that the Ministry of Cities and the National Cities Council have the competence to determine the use of resources from the Fund”**.  
(paragraph 80)

18. Information provided by the Government indicates that the 3rd National Plan for Human Rights was launched in October 2009 and included policies related to the right to adequate housing. Guideline 3 of chapter III of the National Plan includes as one of its strategic objectives the guarantee of access to land and housing for low-income populations and vulnerable social groups. It also sets out a number of programmatic actions with a view to its realization.

19. In 2005, an institutional structuring process to design a housing policy began in Brazil with the creation of the National Social Interest Housing System (NSIHS) and its complementary policies: the National Social Interest Housing Fund, the Managing Board for this fund, and the National Social Interest Housing Plan.

20. In June 2005, Federal Law 11,124 established the NSIHS to facilitate the access to land and adequate housing by the low-income population, in particular through the allocation of subsidies. The NSIHS creates an articulated housing system composed of an executive public authority, the Ministry of Cities, the Federal Savings Bank, the National City Council, the National Social Housing Fund, municipal and state housing councils, and housing cooperatives and community associations. The logic behind the NSIHS is one of decentralization and encompasses

the transfer of funds from the National Fund to states, federal districts and municipalities. To secure adhesion, the NSHIS requires states and municipalities to create local funds, councils and housing plans, in conformity with the National Housing Policy.

21. The National Social Interest Housing Fund (NSIHF) was also created in 2005, with an annual budget of approximately one billion dollars for urbanization and housing projects for low-income populations. Apart from the NSIHF, some programmes were established for the construction, acquisition and improvement of housing: (a) the Social Interest Housing Programme that complements the financial capacity of individuals with monthly income of up to three minimum wages and benefited 175,000 families in the quadrennial 2003-2006 and 44,000 families in 2006; (b) the Housing Lease Programme that offers residential leases with the option to purchase and supported the construction of 895 projects between 2003 and 2006, benefiting 40,250 families in 2006; and (c) the Programmes for Individual and Collective Letters of Credit that use resources for housing projects from the Time of Service Guarantee Fund, and benefited 1.1 million families in the quadrennial 2003-2006 and 360,000 families in 2006.

22. With a view to assisting municipalities in the elaboration of plans for social interest housing, the NSIHS and the NSIHF also provide resources for capacity building programmes. According to official data, 1,545 local housing plans of municipalities and states are supported by these funds.

23. Information provided by the Government indicates that 5,095 municipalities have joined the NSIHS. Of this total, 2,058 federal entities have already established municipal housing funds and councils, and are fully entitled to access the resources of the NSIHF. Thus, the implementation of the NSIHS helped strengthening federal coordination, articulating programmes and resources among governmental spheres, aligning public action with a synchronized housing policy, and strengthening the institutional sector. However, some challenges have been identified by national authorities with regards to the NSIHS, such as the low institutional capacity in the housing sector of a significant part of the local entities and the limitations faced by many municipalities in the development and implementation of planning activities and housing assistance. Likewise, information provided by other sources indicates that the practice is far from the theory with regards to the NSIHS. As a consequence of a lack of compliance with the established regulations or as a result of the cumbersome bureaucracy involved in the transfer of funds from the federal government, many municipalities and states have found it difficult to access the resources of the funds. In addition, most programs using resources from the Workers Guarantee Funds, which is the main financial source for housing, bare no connection with the NSIHS and are managed outside of it. In 2009, less than 10 percent of the total funds related to housing were channelled through the NSIHS.

24. In 2007, the Brazilian authorities began the preparation of the National Social Interest Housing Plan, which was presented to the National Council of the Cities in December 2008. Also in 2007, the Government launched the Growth Acceleration Programme (GAP) which establishes a set of economic policies to accelerate economic growth in Brazil. Amongst other measures, the GAP encompasses the construction of adequate housing for the low-income populations as well as the urbanization of *favelas*.

25. As a further stage in the implementation and consolidation of the National Housing Policy, in 2007 the Brazilian Government initiated the elaboration of a National Housing Plan (PlanHab). The PlanHab guides the planning of public and private actions in order to better target existing resources to cope with the housing needs of the country. It aims at articulating the government agencies to overcome the dispersion of actions and funds in the housing field. Accordingly, the PlanHab establishes some possible investment scenarios until 2023 and defines four strategic axes of action: the stimulus of the civil construction chain, the establishment of a new model for subsidies and funding, the strengthening of institutional development with a view to guaranteeing an efficient performance by NSIHS agents, and the strengthening of the urban and rural policy of municipalities. Governmental sources indicate that the PlanHab was elaborated following an intense participatory process.

26. In order to address the impact of the economic crisis of 2008, the My Home, My Life Programme was launched by the Brazilian Government aiming at the reduction of the housing deficit in the country by 14 per cent. Created in 2009, the programme envisages the construction, in partnership with states, municipalities and private companies, of 1 million homes for families with incomes of up to 10 minimum wages. The programme expands access to credit for low and middle income population and encourages the participation of the private sector in the low-income housing market. It is intended as an anti-cyclical measure to combat the effects of the crisis in the Brazilian economy and tackle unemployment by boosting the civil construction market. Thus, the programme has a key role in job creation and improvement of socio-economic indicators. According to information provided by national authorities, the new programme has some substantive improvements, such as: (a) a large number of subsidies are available, specially for the lowest income families; (b) the establishment of procedures to simplify and expedite the regularization of land in urban settlements; (c) the establishment of the Guarantee Fund to cover expenses in case of default; and (d) the facilitation of the registry of properties on behalf of women. The programme also addresses land regularization and sets out the role of municipalities in the elaboration of a regularization project. Finally, the programme simplifies the bureaucratic procedures for the acquisition of houses and subsidizes its costs.

27. Information provided by other sources state that the programme establishes a direct relationship between the Government and private developers, and entrusts the local authorities with the duty of organizing the construction demand for the low-income populations. It is further reported that the My Home My Life Programme may prioritize an emergency and quantitative criteria above an urban, social and environmental criteria that is better suited for the implementation of a housing policy. Moreover, it is reported that there is no coordination between the My Home My Life Programme and the overall logic of the NSIHS. Since significant resources were allocated to this programme, without adopting an accountability mechanism, promoting a harmonization of subsidies, or implementing any other good practices of the NSIHS, concerns have been expressed that the tendency of municipalities and state governments has been to abandon institutional investments in the NSHIS in favour of the new programme. Moreover, the programme does not include a land and urban strategy. As a result, there is risk of directing the investments towards the demands of the civil construction sector rather than towards the demands of the most needed (i.e.: low-income populations, risk areas and informal settlements). Finally, although the National Plan for Housing (PLANHAB) was ready to be launched by the end of 2008, the program "My Home, My Life" did not take into account its recommendations and strategies.



28. With regards to urban development, a National Urban Development Policy has been developed by the Brazilian Government to guide public and private actions in the management of cities. Subsequently, the Ministry of Cities and state and municipal Councils of Cities were created to formulate and articulate urban development policies. Since July 2008, a bill is being drafted to create a National Urban Development System to articulate the National Urban Development Policy with state and municipal urban development policies, through decentralized, regional and participatory mechanisms. Finally, the Programme for the Strengthening of Urban Management has been established by the Ministry of Cities to improve the technical and institutional capacities of municipalities in the areas of planning, urban services and land administration.

29. Information provided by other sources indicates that the National Urban Development Policy is only a declaration of principles and intentions, and that the real process of investment allocation and decision did not change with the establishment of the National Council at the federal level. The information received also points out that although Brazil has developed a broad range of housing policies and norms that incorporate relevant international human rights standards in the right to adequate housing, these developments have not always resulted in more or better access to adequate housing and land by the low-income population. The dispersion of policies and norms related to housing, the diffusion of funds, as well as the institutional framework which have not changed with the establishment of the Ministry of Cities, have hindered the proper implementation of these measures and the actual realization of the right to adequate housing.

30. Recommendation **“The process of land and agrarian reform needs to be enhanced, including through the allocation of adequate resources for the Urbanization, Regularization and Integration of Precarious Settlements Programme created to help municipalities carry out their land regularization programmes. Legislation that deals with different forms of tenure and land title must be revised in a way that will harmonize and simplify the issuance of title deeds, including in informal urban and rural settlements, indigenous lands and Quilombola communities. The Special Rapporteur supports recommendations previously made by other actors, including the Special Rapporteur on the right to food (see E/CN.4/2004/Add.1), indicating that there is an urgent need to speed up agrarian reform and related processes for expropriation and the granting of land titles. The Special Rapporteur recommends that an inter-ministerial task force be established specifically to address the issues of redistribution of land and appropriation of large land holdings in accordance with constitutional provisions that guarantee the social function of land”**. (paragraph 80)

31. Information provided by the Government indicates that a framework of actions was adopted by the Government itself with a view to promoting the advancement of land reform in the country. The Second National Plan for Land Reform was created in 2003 to promote a balanced occupation of the territory. The National Institute of Colonization and Land Reform is the federal agency responsible for land planning and for implementing land reform policies. In particular, it is responsible for the allotment of land and credit to workers and indigenous communities selected to join the National Plan for Land Reform.

32. The activities of land regularization adopted by the government focus primarily on the occupants of the land with no titles or belonging to indigenous and Quilombolas communities. They aim at a proper allocation of land to its occupants and the provision of legal stability. In May 2007, the Federal Legislature approved Provisional Measure No. 335/06 (Federal Law No. 11.481) that regulates the use, occupation and regularization of land belonging to the Federal Government. In addition, joint actions were undertaken between the Federal Government and state governments aimed at the geo-registration and titling of property in public areas of the states. These activities were undertaken in 10 states and more than 100 municipalities, generating more than 100,000 titles for the period 2008-2010. Furthermore, the Federal law 11,977, of July 2009, facilitates the expropriation and settlement of idle lands for social interest housing, through urban demarcation and legitimating of ownership. Lastly, governmental sources indicate that the Ministry of Cities has adopted a range of measures to improve access to urban land, such as: the removal of legal bottlenecks in land regularization processes, the support to land regularization actions taken by public defenders and municipal or state officials, the designation of a Federal Real Estate for social housing purposes, the creation of the NSIHS and the NSIHF, and the investments made through the Growth Acceleration Programme.

33. With regards to the regularization, integration and prevention of precarious settlements, resources from the Growth Acceleration Programme are allocated to the upgrading and integration of slums. In addition, the following programmes are currently underway: (a) the Programme for the Urbanization, Land Regularization and Integration of Settlements, which seeks to improve housing conditions in settlements and have offered funding for home improvement to more than 100 thousand families between 2003-2006; (b) the Papel Passado Programme, which facilitated the regularization process in 26 states and 300 municipalities, benefiting an estimated of 1.3 million families living in 2,231 settlements; and (c) the Pro-Housing Programme, which facilitates access to adequate housing for people with a monthly household income of up to R\$ 1,050.

34. Information provided by other sources states that despite the efforts made by the Government with regards to land regularization and reform, there are major problems in the current process of distribution of public land and large numbers of people in the country still lack access to land. Moreover, the recent launching of a new Land Census indicates that properties are more concentrated today than they were ten years ago (Censo Agrícola 2006).

35. Land concentration in Brazil remains extraordinary high. According to information received from different non-governmental sources, the total area correspondent to rural land private properties registered in INCRA is approximately 420 million hectare. A further 200 million hectare are public rural areas, 102 million hectare are environmental reserves, and 128 million hectare are declared indigenous lands. Out of the 4,2 million rural properties registered, 2,4 million properties are smaller than 25 hectare (57,6 per cent) and take a whole extension of 26,7 million hectare (6 per cent of total area). Properties over 1,000 hectare are less than 70,000 (1,6 per cent of total rural properties) and take a land extension equivalent to 183 million hectare (43,5 per cent of total area registered).

36. In its Concluding Observations on Brazil (E/C.12/BRA/CO/2, 2009), the Committee on Economic, Social and Cultural Rights expressed its concern at “the slow progress in the land reform process notwithstanding the Constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land belonging to the

indigenous peoples, the State party's adoption of the UN Declaration on the Rights of Indigenous Peoples (2007) and its ratification of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.”

37. Brazil's Chamber of Deputies is in the process of approving a new national legislation (Law No. 3057/2000) on territorial responsibility. As the current legislation on the matter (Federal Law No. 6.766/1979) is out of date, the approval of the new bill is considered a fundamental step for regulating land parcelling, acquisition, regularization, administration and titling. It is important that the new law tackles the access to urban land for the low-income populations as part of the responsibilities of private developers in expanding and creating new urban spaces.

38. Recommendation “**Housing policies and programmes, including housing finance schemes, should strengthen their focus on the poor and vulnerable segments of the population. A reduction of the budgetary surplus target would release funds to ensure the progressive realization of economic, social and cultural rights, including housing, for the very poor, while still respecting surplus conditions imposed by international financial institutions**”. (paragraph 80)

39. As indicated in paragraphs 18 to 28, a number of programmes and funds have been elaborated by the Brazilian government in response to the housing deficit in the country using budgetary surplus and increasing the number of available subsidies. Many of those programmes particularly addressed the housing situation of the poor and vulnerable segments of the population, such as: (a) the Growth Acceleration Programme, which encompasses the construction of adequate housing and the urbanization of *favelas*; (b) the National Social Interest Housing System (NSIHS), which facilitates the access to land and adequate housing by low income populations; (c) the National Social Interest Housing Fund (NSIHF), intended for the construction of housing for low-income populations; (d) the programmes for construction, acquisition and improvement of houses framed within the NSIHF -the Social Interest Housing Programme, the Housing Lease Programme and the Programmes of Collective and Individual Letter of Credits-; (e) the My Home My Life programme that targets populations with income ranges from 0 to 3, 3 to 6, and 6 to 10 minimum wages; and (f) the programmes for the urbanization, regularization and integration of settlements -the Programme for the Urbanization, Land Regularization and Integration of Settlements, the Papel Passado Programme, and the Pro-Housing Programme.

40. Information provided by other sources highlight the importance of these programmes but consider that there is no proper coordination amongst them, particularly between the My Home My Life programme and the other federal programmes composing the National Housing Policy. In addition, the Special Rapporteur was informed that the existing funds are often tied to contingencies and that there is no clear obligation on the part of the federal, state or municipal authorities to set aside funds for the production of housing for low-income populations. The land regularization programme, Papel Passado, has no budget allocation and was partly abandoned by the government, despite the fact that a great amount of subsidized resources were allocated to the urbanization of informal settlements.

41. Recommendation **“Urgent attention must be given to those living in distressed housing and living conditions, including the homeless, slum dwellers, and families living in temporary rural camps (*acampamentos*) without basic amenities pending the allocation of land. The Government, in addition to programmes such as the National Programme to Support Sustainable Land Regularization and the Rural Housing Programme, may wish to elaborate a national policy on the regularization of land occupations”**. (paragraph 80)

42. Information provided by the Government indicates the policies adopted by the Government to respond to the housing needs of people living in distressed housing and living conditions in Brazil. Indeed, there is currently a range of public policies addressing social housing, land regularization and slum upgrading, as noted above. Official information indicates that the housing deficit in Brazil decreased from 16.1 per cent to 14.9 per cent in the period 2000 to 2005, and the proportion of urban households with appropriate conditions of housing grew from 49 per cent in 1992 to 61.5 per cent in 2005.

43. However, information provided by other sources indicates that a significant segment of the Brazilian population still lives in substandard housing, including precarious settlements. The federal government estimates that 12.4 million people live in precarious conditions in 3.2 million houses, both in rural and urban areas.

44. With regards to forced evictions, the Special Rapporteur was informed that in 2006, the Ministry of Cities, in coordination with the National City Council, approved Administrative Rule No. 587 establishing a procedure within the Federal Government to process information on forced evictions. In addition, the National Secretariat of Urban Programmes will be responsible for articulating diverse institutional mechanisms in order to achieve a negotiated solution for land conflicts. National legislation has also been reformulated in order to provide legal instruments for the protection and compensation of people against forced evictions, such as the Procedural Civil Code and the City Statute.

45. Nevertheless, many concerns have been raised regarding the massive and violent forced evictions that continue to take place in Brazil. According to the information received from non-governmental sources, numerous evictions are carried out without prior consultation or adequate notice with members of the affected communities. Evictions increased due to the augment of investments in infrastructure (as part of the Growth Acceleration Programme). The low-income population and peasants continue to be routinely subject to forced evictions, as well as easily convicted for occupying empty plots and unproductive rural land, or for being homeless. Furthermore, the right to adequate housing is not fully integrated in the agenda of infrastructure and urbanization projects, nor is it included in the informal settlements upgrading program, which sometimes includes, resettlements and relocations.

46. Non governmental sources also indicate that a practice of forced evictions has been solidifying in Sao Paulo, as a result of real estate investment and the implementation of development-based projects. Although the municipal master plan (Law No. 13.430 of 2002) assigned a few zones of special social interest for the construction of social housing and slum upgrading projects, many of them have been subject to legislative review because they are

located in valuable central areas. Furthermore, compensations for these evictions do not reach all affected families. When they do, the compensation does not suffice to cover the costs of renting or purchasing property in the city of São Paulo. As a result, affected families are forced to be resettled in irregular sites, such as *favelas* or areas of environmental preservation.

47. Urban reforms aimed at the beautification and renovation of down town areas, have also led to the resettlement in insalubrious peripheries of Rio de Janeiro, Salvador and Boa Vista. Mass and violent forced evictions were denounced in 2005 in the Sonho Real settlement, in Goiania, where 4,000 families were forcibly evicted, two people were shot dead, 100 people were injured, and 800 people were arrested. Likewise, 1,000 families (approximately 6,000 persons) were evicted in the private urban area of Fazendinha (Curitiba) in 2008. In Manaus, slum upgrading projects funded by the Inter-American Development Bank resulted in the relocation of local families away from the city.

48. The living conditions of homeless persons in Sao Paulo have considerably deteriorated owing to the closure of shelters, particularly in the centre of town. Furthermore, homeless persons and people working recycling garbage are subject to discriminatory practices such as water flushing, amongst others.

49. Overall, the living and housing conditions of the poor and vulnerable segments of society in Brazil seems to be further deteriorating since 2004. In its 2009 report, the Committee on Economic, Social and Cultural Rights noted with concern that “more than 6 million people in the State party live in precarious urban settlements, that there is a large number of homeless people and that significant migration inflows into urban areas have exacerbated the housing shortage”. The Committee expressed further concern about the absence of adequate measures to provide social housing for low-income families and vulnerable groups, while acknowledging the efforts of the State party in this regard.

50. Recommendation “**The Government should proceed with utmost caution regarding privatization of housing and essential services related to the enjoyment of the right to adequate housing, such as water, electricity and sanitation. Protective measures and guarantees must be established to ensure that the National Programme of Privatization does not compromise human rights, in particular those of minorities, women and the poor**”. (paragraph 80)

51. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

52. With regards to the effect of privatizations in the sanitation sector, information provided by other sources indicates that the approval, in 2007, of Law No. 11445 constitutes a significant improvement in the field of sanitation. It establishes the general guidelines for basic sanitation services, and contains several provisions regarding regulation, transparency, social control and popular participation in the activities of public and private sanitation providers. However, the decree has not yet been enacted and its implementation is still pending.

53. A study on sanitation conducted by the Ministry of Cities points to a lack of transparency and low accountability levels in the revision of rates for sanitation services. It also indicates that in only 38 per cent of the cases, the application of social rates was identified for low-income users.

54. Furthermore, the study points to the possible occurrence of economic-based discrimination in the access to the connections. Only 62 per cent of the 450,000 indigenous in the country have access to enough and safe water and only 23 per cent have access to sewerage. An investigation conducted in 60 Quilombola communities showed that only 30 per cent of the dwellings were connected to a water supply system and 67 per cent of them were not in proper sanitation conditions, 46 per cent of which were in direct contact with open air sewerage. Furthermore, discrimination in the access to basic sanitation services strongly affects informal or precarious settlements, where the authority's refusal to perform the connection to water supplies and sewerage to families with no property title. In addition, the use of mechanisms such as prepaid meters further restricts the access of informal settlement dwellers to services. Finally, the percentage of unconnected households is far greater for households with income equal to or less than one minimum wage. Indeed, households with income equal to or less than one minimum wage amounted to 56.1 per cent of the water deficit and 51.2 per cent for sewerage, while only 30.1 per cent of the new water connections and 27.8 per cent of sewerage benefitted these households.

55. The costs of electricity for low-income households are also a matter of concern, according to information received. Privatized electricity companies do not comply with the requirement of establishing a social fare for low-income families. Many families living in upgraded informal settlements can not afford their costs of living because no clear policy on affordable fares for the low-income populations is enforced.

56. Recommendation “**There is a need to strengthen interministerial cooperation to ensure that attention is focused on the human rights of indigenous peoples in Brazil. The Special Rapporteur would like to urge the Government to consider creating a special secretariat to allow for a comprehensive approach in matters relating to the human rights of indigenous peoples, including housing and land rights**”. (paragraph 80)

57. Information provided by the Government indicates that the public policies addressed to indigenous peoples in Brazil are centralized at the National Indian Foundation (FUNAI), which was created in 1967 to replace the Office for the Protection of Indians (SPI) that had existed since 1910. The FUNAI aggregates all public policies related to the situation of indigenous populations and its objective is to ensure that they enjoy better conditions of life, preserve their identity, and realize their rights. The FUNAI possesses regional Executive Administrations spread across the Brazilian territory and 4,500 servers. With regards to the recommendation of establishing a special secretariat, the Brazilian Government has stated their believe that the FUNAI is the institution better equipped to address the protection of indigenous populations, given their infrastructure and the extensive experience accumulated in the last century. However, they stress that further measures need to be taken to improve the human and financial resources of the institution. Currently, FUNAI is being restructured and the budget has increased by more than 40 per cent. There are also plans to hire 3100 new servers, create a career on indigenous issues, and adopt a new international cooperation agreement for institutional strengthening.

58. With regards to land demarcation, governmental authorities informed that, the Direction of Land Affairs of the FUNAI is exclusively dedicated to the work of demarcation and protection of indigenous lands.

59. Information provided by other sources indicates that some progress on land demarcation took place with the demarcation of the Raposa Serra do Sol land, located in the state of Roraima. For 30 years the indigenous communities living in this area had been demanding the legal recognition of their territory. Finally, in 2005 a presidential decree ratified that the territory constitutes indigenous land. A decision of the Supreme Federal Tribunal confirmed the endorsement, in 2007.

60. The Special Rapporteur was also informed that in 2005, an Inter-Ministerial Committee was created to address the long-standing problems among the Guarani-Kaiowa in Mato grosso do Sul and deal with the escalating social problems. An agreement was also signed to identify 36 different Guarani-Kaiowa ancestral lands with a view to their demarcation. However, the process of identification has been allegedly stalled as a result of legal difficulties, discriminatory practices and lack of political will. Consequently, the affected communities continue to live in impoverished and overcrowded reservations, in encampments on the side of highways, with no access to water or energy, and subject to threat and assault.

61. Recommendation **“The Programme of Subsidies for Social-Interest Housing should be expanded to include more families”**. (paragraph 80)

62. Information provided by the Government indicates that the National Social Interest Housing Fund (NSIHF) has an annual budget of R\$1 billion, which are transferred to states and municipalities for projects related to social interest housing programmes. In 2007, an interim order was issued to allow the direct transfer of NSIHF resources to housing cooperatives and associations. Framed in the NSIHF, the Social Interest Housing Programme has invested R\$ 444.9 million in 2006; the Housing Lease Programme invested R\$ 1.27 billion in 2006; and the Programmes of Collective and Individual Letters of Credit invested R\$ 5.47 billion in 2006.

63. Brazilian authorities informed the Special Rapporteur that through the NSIHF, and other funding sources like the Time of Service Guarantee Fund, the Federal Government has progressively expanded its investment for social housing. Between 2003 and 2008 investments were made for R\$ 94.8 billion, out of which R\$ 53.2 billion federal funds and R\$ 43.8 billion of mortgages were allocated to families of up to 5 minimum wages.

64. In addition to this, the My Home, My Life Programme envisages a total investment of R\$ 34 billion, with a contribution of \$ 16 billion to subsidize families with incomes of up to 3 minimum wages. The Pro-Housing Programme was allocated R\$ 1 billion in 2007, and will continue to receive such amounts until 2010.

65. Finally, the National Housing Plan (PlanHab) envisages possible investment scenarios until 2023, such as: (a) the allocation of R\$ 9 billion for social interest housing for the period 2007-2010, and (b) the expansion to 2 per cent of the Union General Budget, to 1 per cent of the states, and to 1 per cent of the municipalities, in order to meet 70 per cent of the housing deficit and a 100 per cent of the precarious settlements.

66. Information received by the Special Rapporteur also states that although the National Housing Plan was ready to be launched since the end of 2008, after two years of discussion with the National Council of Cities and all relevant stakeholders the plan has not yet been initiated.

67. Recommendation **“The international community should support the efforts of the Government of Brazil to de-link initiatives relevant to meeting the Millennium Development Goals from those aimed at debt repayment”**. (paragraph 80)

68. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

69. Recommendation **“The Public Prosecutor should be given an explicit mandate to protect economic, social and cultural rights, including the right to adequate housing. Extensive training and awareness-building for the judiciary with respect to the right to adequate housing as a component of the right to an adequate standard of living is imperative. In addition to agrarian courts, the Government is encouraged to create special courts to deal with land-related issues including adverse possession, land demarcation and regularization conflicts, disputes over judicial records of urban and rural land conflicts, and forced evictions and displacement”**. (paragraph 80)

70. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

71. Information provided by other sources states that, at present, the Public Prosecutor does not ensure adequate protection for economic, social and cultural rights, including the right to housing. The Special Rapporteur was also informed that the Law 6.766 of 1979, used by the Public Prosecutor in the inspection of the urban order, has a strong criminal law bias and does not relate to the provisions of the City Statute, the regulations on urban development, or the standards on the right to housing.

72. Further information indicates that a Technical Cooperation Agreement was adopted in 2006 between the Ministry of Cities, the National Council of Prosecutors of the States and the Federal Government. The agreements seek to ensure the participation of the Public Prosecutor in the implementation of land regularization processes, in the discussions of the City Master Plans, and in the meetings of the Ministry of the Cities, with a view to improving their knowledge and participation on issues related to the right to adequate housing and urban development.

73. The National Agrarian Ombudsman Division (NAOD) was created by the Ministry of Agrarian Development, pursuant Decree 5.033 of 2004. The NAOD has attributions to resolve tensions and social conflicts on the land in collaboration with the Judiciary, the Public Prosecutor Department and the INCRA, and in liaison with state and municipal authorities, rural social movements and the civil society. It also has competence to ensure the human and social rights of people involved in land conflicts.



74. In March 2009, the National Council of Justice published Administrative Rule n° 491 creating a National Forum for the monitoring and resolution of rural and urban land conflicts. Currently, within the scope of the Ministry of Cities and the Council of Cities, a bill is pending for the adoption of a Policy for Prevention and Mediation of Urban Land Conflicts.

75. **“There is need for education and training for civil servants and local government officials to ensure effective implementation of the Statute of the City. Master plans must reflect the territorial, economic and cultural realities of local communities”.** (paragraph 80)

76. Information provided by the Government indicates that the Ministry of Cities has established a nation-wide training network to facilitate the implementation of Master Plans and the principles of the Statute of the City. A range of training programmes, organized in partnership with local governments, universities, NGOs and private or public institutions, have been adopted to support state and municipal officials working on housing programmes.

77. Information provided by other sources indicates that a national campaign was launched in May 2005 titled "Participatory Master Plan - a City for All". The campaign encompasses activities to support the preparation of the Master Plans in cities, create awareness and capacity building, monitor the preparation of the Plans, train public authorities and organizations of civil society, create an experience-database to record best practices, and establish a national network to disseminate ideas about the on-going processes. In addition, in 2007 the government adopted the "Evaluation and Capacity Building Network for the Implementation of Participatory Master Plans", which creates a national network for evaluation and monitoring of Master Plans and trains government agents and civil society actors.

78. According to the information received by the Special Rapporteur, in 2006 and 2007 the Brazilian government conducted researches to check the progress in the preparation of the master plans. Of the 1,682 cities researched in 2006, 14.32 per cent (241) had completed their Master Plans, 73.92 per cent (1244) were in preparation process and 11.76 per cent (241) had no master plan. Of the 1,345 cities researched in 2007, more than 50 per cent included in their legislation the following City Statute Instruments provided for in the Master Plan: Special Social Interest Zones (72,2 per cent); Payment in Instalments, Compulsory building (62.4 per cent) and progressive IPTU (real estate tax) (68.9 per cent).

### General Observations

79. **The Special Rapporteur acknowledges the efforts made by the Government, international governmental organizations and non-governmental organizations to address issues related to the right to housing in Brazil.**

80. **The Special Rapporteur commends the efforts that have been made by the national authorities to implement programmes aimed at improving the living conditions of vulnerable populations, such as the National Social Interest Housing System (NSIHS), the National Social Interest Housing Fund (NSIHF), the PlanHab, and the My House, My life Programme, amongst others. However, the Special Rapporteur encourages the government to improve the coordination amongst them and their integration in the National Housing Policy. She also encourages the government to concentrate the funds coming from different sources in the National Social Housing Fund, to ensure transparency and control by state**

**officials and other stakeholders. It is important that the government fully integrates human rights and the right to adequate housing in all housing related policies and legislation.**

**81. The Special Rapporteur commends also the efforts made in Brazil to implement the Statute of the City and encourages the national government to fully integrate it within the housing production initiatives in order to address the key elements of housing as a human right. This includes not only the construction of houses but also suitable locations with access to equipment, infrastructure, employment and income opportunities.**

**82. The Special Rapporteur takes notes of the efforts made by the government to strengthen the Office of the Public Defender. Furthermore, the Special Rapporteur calls upon the Government to establish Offices of the Public Defenders in all states in order to ensure access of low-income communities to justice.**

**83. The Special Rapporteur strongly encourages the Government to provide appropriate training on human rights and the right to adequate housing to members of the judiciary and the Public Prosecutors Office, as well as to all public officials involved in housing related activities. A National Urban Ombudsman division should also be created with a view to mitigating land conflicts in the urban areas.**

**84. The Special Rapporteur recalls her concern regarding the housing and living conditions of Quilombola and indigenous communities in Brazil. She recommends that the State party urgently complete the process of demarcation and allocation of indigenous land in accordance with the Constitution and existing laws. She wishes to emphasize the need to adopt all necessary measures and to allocate resources to guarantee the right to property, housing, and land of Quilombolas and indigenous communities, taking into consideration their cultural and collective identity, lands and ancestral practices.**

**85. The Special Rapporteur notes through the information received that the question of forced evictions and development based resettlements still deserves greater attention from government given the impact they represent in the realization of the right to adequate housing. In particular, the Rapporteur suggests that greater attention should be placed on the right to adequate housing in development-based evictions, such as urban and infrastructure projects.**

**86. Finally, the Special Rapporteur encourages the government to adopt additional measures to deal with the problem of homelessness, to ensure adequate access to housing for low-income families, disadvantaged and marginalised individuals and groups.**

### **III. CAMBODIA**

**87. The former mandate holder, Mr. Miloon Kothari, visited Cambodia from 22 August to 3 September 2005. He presented his mission report at the 62<sup>nd</sup> session of the Commission on Human Rights in 2006 (E/CN.4/2006/41/Add.3).**

88. The current Special Rapporteur, Ms. Raquel Rolnik wishes to express her appreciation for the information provided to her by UN entities and by civil society organizations. The Special Rapporteur regrets not having received information from the government; she welcomes the continuation of the dialogue engaged in with the authorities and hopes that the authorities will provide her with further information in the near future.

89. Recommendation: **“There is an urgent need for a clear mapping of the housing needs of the country and interpretation of the data from a human rights perspective, aiming at the development of a comprehensive national housing policy”**. (paragraph 82)

90. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

91. Information provided by other sources states that a clear mapping of housing needs has never been made in the country at either national or local level. A draft National Housing Policy was developed in 2003-2004 by the Ministry of Land Management, Urban Planning and Construction through a consultative process. However, it has not been implemented and was subsequently abandoned. Propositions to draft a new Housing Policy or expand the current draft were expressed by the Ministry, however as of yet there have been no developments. More recently, a housing policy agreed as a “joint monitoring indicator” with the donors, has been scheduled for drafting in 2009-2010. With regards to land tenure, although there is no information of government action in the field, some efforts are being undertaken by civil society to centralize data regarding land disputes and evictions.

92. The Special Rapporteur was informed that the interpretation of housing and land data from a human rights perspective remains a serious need. A regression in implementing such an approach is noticeable compared to the situation at the time of the mission of the previous Special Rapporteur.

93. Recommendation: **“In connection with the previous recommendation, there is also a need for increasing transparency in the development of policies and openness in the assessment of priorities and results, with space for public monitoring and full participation of the affected population”**. (paragraph 82)

94. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

95. Information provided by other sources states that transparency in the development of policies and openness in the assessment of priorities and results remain unachieved, undermining the possibility of affected communities participating or challenging decisions affecting their housing situation.

96. Some laws, such as the draft Law on Expropriation, are not subject to any process of open consultations. In addition, affected populations do not receive adequate information regarding evictions and plans for resettlements, while many evictions are carried out without a court order or prior notice. Consultations generally take place at a very late stage. Similarly, no information

is provided to affected people regarding the future use of the land from which they have been evicted. Despite the support given by donors to several ministries to set up procedures for open consultations, there is still no practice of early consultations with different stake holders and affected communities. Furthermore, it has been reported that on numerous occasions the Government has censored lists of participants planning to attend consultations.

97. Despite the requirements of the Sub-Decree on Economic Land Concessions for public consultation and participation, on several occasions were evictions linked to the granting of economic land concessions carried out without appropriate consultations. Similarly, it has been reported that consultations with affected communities are not a common practice when authorities and private actors identify relocation sites. In addition, reported corrupt practices in economic land concessions and commercial developments by private actors seem to further affect the efforts for transparency. Forced evictions in the context of development projects for public interest, appear to be undertaken in processes involving somewhat higher degrees of openness.

98. In its Concluding Observations on Cambodia of May 2009 (E/C.12/KHM/CO/1), the Committee on Economic, Social and Cultural Rights noted with concern the lack of effective consultation with, and legal redress for, persons affected by forced evictions.

99. Recommendation: **“Urgent attention must be given to those living in distressed housing and living conditions, including slum and relocation site dwellers, with the immediate provision of basic amenities”**. (paragraph 82)

100. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

101. Information provided by other sources indicates that more than 40 resettlement sites exist in and around Phnom Penh where approximately 80,000 people had been relocated to. In 2009, the Committee on Economic, Social and Cultural Rights expressed its concern over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone and that at least 150,000 Cambodians continue to live under threat of forced eviction. Similarly, rural landlessness rose from 13 per cent in 1997 to between 20 and 25 per cent in 2007.

102. In most cases of forced evictions, adequate alternative housing or compensation for losses has not been provided. Evicted families often do not receive titles for their new location site. In rural areas, evicted families are deprived of shelter and farming land for livelihoods. In addition, evictions are usually carried out violently by the police, the military police or private armed forces.

103. While many affected families have been left homeless, many of those who accessed alternative housing were relocated to sites and houses considered inadequate in terms of habitability, infrastructure (proper housing, sanitation, potable water, sewage services), affordability, access to facilities (distance to hospitals, schools and other basic facilities) and location (access to employment opportunities, travelling costs, fertility of the land). In many cases the resettlement sites are empty lands with no available shelters or facilities, and located in

even more deprived and marginalized areas. Overall, the majority of relocated families face further hardships and impoverishment after the eviction. Relocation practices thus appear to consistently violate the human rights of the affected populations.

104. In its report to the Committee on Economic Social and Cultural Rights of 2008, the government identified four urban sites that were to be used as social land concessions: Dey Krahorm Area, Borei Keila Area, Train Station-A and Train Station-B. The plan was to improve the housing conditions in these areas through land-sharing projects that would provide on site upgrading and tenure security. However, it has been reported that three of these areas were given to private companies for commercial development and caused the forced eviction or resettlement of the local residents in peri-urban areas. Moreover, community leaders in Dey Krahorm Area, Train Station-A and Train Station-B have been criminally convicted for demanding fair compensation.

105. Out of the four land-sharing projects, only the initiative in Borei Keila has gone forward and was subject to some planning. However, no consultations with the affected families took place and corruption and discrimination have reportedly marred the process of assessing eligibility for housing in the new buildings. According to the information received, only one third of the residents have received apartments, while 21 families have been evicted and resettled in inadequate sites and 11 families are waiting for allocation of sites still under construction.

106. By the same token, it has been reported that the community of Boeng Kak Lake is currently under threat of eviction and that two villages of 160 families had to leave their homes under duress.

107. In May 2009, the Special Rapporteur expressed her grave concern over the possible imminent eviction of "Group 78", who have been involved in a legal battle over their land since 2004, as well as the forced eviction and threats of forced eviction in Sambok Chap in Tonle Bassac, Mittapheap in Sihanoukville, Boeung Kak Lake, Dey Krahorm and Borei Keila in Phnom Penh, among others.

108. In all cases of high-end development projects, compensation and relocation sites have been inadequate and affected populations have been subject to further impoverishing. Discrimination is also present in this context. Very few of the families living with HIV/AIDS have been allocated new houses and the majority have been evicted. At the municipal level, some efforts were undertaken to improve the situation of the urban poor but mainly with a charity approach rather than as a sustained policy.

109. Overall, the Special Rapporteur notes a lack of enforcement of the right to housing in the country, where land-grabbing and forced evictions are extended practices and insecurity of tenure and landlessness constitute a constantly growing problem. By the same token, the Committee on Economic, Social and Cultural Rights has noted with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies.

110. Concerns have also been expressed regarding the role of public authorities, who usually fail to protect families in vulnerable housing situations. It has been reported that on numerous

occasions Government officials support or participate in illegal land-grabbing by private investors, issue dubious land titles or eviction orders, prevent victims from accessing the courts to protect their housing rights, and fail to enforce the applicable law.

111. Recommendation: **“The housing-related provisions of the 2001 Property Law should be immediately implemented, including those of the newly adopted sub-decrees. Regulations should be adopted that include provisions regarding the housing situation of families living in State property and clarify the legal situation of all land swaps that occurred between the 2001 Property Law and its own adoption. In addition, information concerning all land swaps under negotiation should be immediately disclosed. In the meanwhile, besides halting all swaps, full attention should be given to the families already affected to guarantee adequate housing conditions and security of tenure in their relocation sites. Whenever evictions are still pending, all efforts should be made to actually consider relocation as a last resort and ensure consultation with the affected community”.**  
(paragraph 82)

112. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

113. Information provided by other sources states that the implementation of the provisions of the 2001 Property Law (better known as the 2001 Land Law) and its sub-decrees has been insufficient and slow.

114. In line with the 2001 Land Law that recognizes possession rights after 5 years of inhabiting the land, a programme of land titling was launched in 2002 administered by the Ministry of Land Management and financed with donors funding. The aim of the programme was to transform possession rights into ownership rights and ensure security of tenure. The programme was mainly focused on rural areas and on lands with clear status, but it overlooked urban areas and informal settlements. As a consequence, urban residents and residents in informal settlements have received few titles and possess no tenure security.

115. On the other hand, the 2001 Land Law and the Cambodian Constitution require land expropriation in the public interest to be followed by fair and just compensation. In the case of evictions relating to private land dispute, the law requires the issuance of a court order. However, information from several sources indicates that numerous evictions are undertaken without court orders, in the absence of exceptional circumstances, and without verification of ownership by the party seeking the eviction. In addition, expropriations in the public interest are carried out without prior adequate planning. Moreover, alternatives to eviction are often unexplored and there are scant opportunities for those affected to participate in the decisions regarding their resettlement. As previously mentioned, consultations with affected communities are inadequate and information regarding options for relocation or compensation is not transparent. Consequently, the affected families are forced to accept inadequate relocation or compensation plans.

116. In its concluding observations of 2009, the Committee on Economic, Social and Cultural Rights has expressed grave concern over the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties.

117. Land swaps are similarly carried out without provision of fair or just compensations. However, it has been reported that the current general trend indicates that existing land swaps do not appear to be leading to the eviction and displacement of families. Exceptions occur though, as was the case of the swap and removal of 21 families living with HIV/AIDS in the “green shed” in Borei Keila. On the other hand, information regarding past swaps and swaps under negotiation continues to be undisclosed, maintaining the pattern observed by the former Special Rapporteur in 2006.

118. Recommendation: **“A national evictions act should be adopted in accordance with international human rights standards, especially CESCR’s general comments 4 and 7”**. (paragraph 82)

119. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

120. Information provided by other sources indicates that no national evictions act has been adopted yet, leaving a vacuum regarding a rationale for evictions and ways to conduct them. Although the government is in the process of drafting regulations on expropriation and resettlement as a result of State public works, currently there are no guidelines addressed to both public and private developments underway.

121. With assistance of the Asian Development Bank, in 2004 the Ministry of Economics and Finance began drafting the Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects. Two drafts of the sub-decree have been released in May and September 2007, but it has been reported that the drafts fall short of international standards on the matter. Although some consultations with civil society were carried out in the process of elaborating the drafts, their participation has been hampered by inadequate schedules for the submission of their inputs. The release of a third draft is currently stalled and further consultations ruled out, while the Asian Development Bank has closed the project to support it.

122. Meanwhile, a new Law on Expropriation is being drafted by the Ministry of Economics and Finance, which reportedly contains no provisions protecting against forced evictions.

123. Recommendation: **“The judiciary and the Cadastral Commission have an important role in housing conflicts and their work should be strengthened through strict respect for the rule of law and due process, including the establishment of impartial investigative procedures to verify the authenticity of ownership claims and impartial review of court and administrative decisions.** (paragraph 82)

124. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

125. Information provided by other sources indicates that no real progress has been made in this area. The roles and jurisdiction of the three official institutions dealing with land disputes (the Cadastral Commissions, the legal system, and the National Authority for Land Dispute Resolution – NALDR) is unclear. Formally, the Cadastral Commission has jurisdiction over untitled land, the judiciary over titled land, and the NALDR over land beyond the jurisdiction of the Cadastral Commission. However, the jurisdictions of the NALDR and the Cadastral Commission often overlap. According to the information received, the work and impartiality of these three institutions needs to be improved.

126. The Cadastral Commission and the courts are reportedly considered to be inefficient, costly and slow, as well as lacking integrity and biased in favour of rich and well-connected disputants. The Cadastral Commission reportedly fails to adjudicate and register land and remains a weak institution. It also has difficulties resolving conflicts involving parties unwilling to reach a resolution, multi-parties cases, or cases where one party is powerful or rich. Meanwhile, the legal system is accused of corruption, lack of independence and unequal treatment. In addition, courts are reportedly accused of failing to enforce the applicable law, accepting coerced confessions and disregarding the presumption of innocence. On a different note, the courts have been increasingly used to constrain the action of affected communities and civil society organizations attempting to protect housing and land rights.

127. At the same time, the NALDR is a political entity without an established legal framework or procedures. Its work is often carried out on an ad hoc basis. Moreover, controversial and high profile cases are often referred to it, which usually result in decisions favouring the powerful parties and not the communities.

128. In general, the institutions dealing with land disputes appear to be subject to abuse of power and corruption. This institutional layout leaves affected populations exposed to intimidation and mistreatment, without access to the titling system, and with increased chances of land-loss and displacement.

129. Recommendation: **“Specific policies should be developed to address discrimination against women in relation to equal access to and ownership of housing and land. Such policies should address the disproportionately adverse impact that forced evictions, displacement and poor living conditions have on women”**. (paragraph 82)

130. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

131. Information provided by other sources indicates that efforts have been made by the Ministry of Land Management to mainstream gender and promote equality in the access to land titles. Accordingly, reports indicate that a large proportion of titles are given to female heads of households and that married couples receive joint titles. However, no policies have been implemented to assist women in situations of eviction or displacement.



132. Recommendation: **“Measures aiming at the realization of the indigenous peoples’ right to adequate housing should include respect for their traditional lands and elaboration of culturally sensitive land and housing policies. Until the adoption of the sub-decree on collective ownership of indigenous lands, a moratorium on land sales affecting indigenous peoples should be considered by relevant authorities”.** (paragraph 82)

133. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

134. Information provided by other sources states that the 2001 Land Law recognizes collective ownership rights of indigenous communities over their land. Articles 18 and 23 of the law grant temporary land tenure security and prevent the transfer of traditional lands belonging to indigenous communities. In addition, Article 23 refers to a law on communities to determine their legal status. Along with Article 23, Title VI refers to a process for land mapping and registration to determine the boundaries of indigenous land overtime. The Law also refers to a legal and policy framework for the titling of collective titles. Regrettably, none of these provisions have been enforced by the authorities as of yet.

135. The Committee on Economic, Social and Cultural Rights has noted with concern that the 2001 Land Law providing for the titling of indigenous communities' communal lands has not been implemented effectively and that so far, no indigenous community has received any land title.

136. Similarly, although the 2001 Land Law envisages the disciplining of government officials involved in improper concession, confiscation or use of land, measures to comply with this provision have not been implemented. By the same token, the 2001 Land Law provides for the right of indigenous people to traditionally owned and used forests, while the 2002 Law on Forestry protects the rights of customary users in cases of forest protection or concessions. However, the access of indigenous communities to the forests they traditionally use remains obstructed.

137. After seven years, a draft Sub-Decree on Procedures to register Indigenous Communal Land has been adopted. However, it has been reported that the text does not adequately address indigenous collective land titling. In addition, civil society groups have not been consulted in the drafting of the Sub-Decree. According to the new norm, titling of communal land is subject to prior legal registration of the indigenous community with the Ministry of Interior through a cumbersome process in which the community must prove its existence. In practice, this process hampers the titling of communal land. Despite the recommendation of the previous Special Rapporteur, no moratorium on land sales affecting indigenous peoples has been granted prior to the adoption of the Sub-Decree. Although temporary protective measures were agreed between the Government and the donors to protect indigenous land, many of the interim measures were never developed or implemented. As a result, expropriation of indigenous land continued to be routinely carried out.

138. Other measures foreseen by the government to ensure the realization of indigenous rights include the Policy on Titling and Rights to use Land of Indigenous Communities approved by the Government in April 2009, as well as the regulations and mechanisms for collective land titling that are being discussed as part of the Government-Donors Joint Monitoring Indicators (JMI) since 2006.

139. Pressure on indigenous lands rich in resources has been increasing, in particular in connection to the activities of the extractive industries. Similarly, numerous cases of occupation of indigenous land by private companies or individuals have been reported. Clearing of traditionally owned land and natural resources continue to represent a serious threat to the rights of indigenous communities. For example, it has been reported that 21 per cent of the areas under environmental protection in Mondulkiri and Ratanakiri has been allocated to mining concessions, while 7 per cent has been allocated to Economic Land Concessions. In this context, the members of indigenous communities are subject to constant misinformation and pressured to sell their lands. They are also victims of intimidation, harassment and criminal prosecution for attempting to protect their rights.

140. In 2009, the Committee on Economic, Social and Cultural Rights noted that the rapid increase in economic land concessions in recent years has resulted in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for communities who depend on land and forest resources for their survival. The Committee also noted with concern, the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral lands and natural resources.

141. Recommendation: **“Measures should be adopted to facilitate the work of human rights and development NGOs in the country, with full respect for the rights to freedom of association, expression and movement”**. (paragraph 82)

142. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

143. Information provided by other sources states that affected communities, grass roots organizations and NGOs are increasingly subject to intimidation, assault and unlawful imprisonment in their daily work. Their freedom of movement, assembly and expression are also routinely restricted. In some provinces, workshops and meetings with communities require the granting of official permission. Intimidation of organizers and participants of such meetings also takes place on a regular basis.

144. Reports received by the Special Rapporteur indicate that the criminal system is increasingly being used to intimidate and constrain the activities of civil society organizations, by pressing unwarranted criminal charges against members who attempt to protect housing and land rights. NGOs organizing workshops to inform affected communities about their legal rights,

the ways to peacefully exercise them, and the available administrative and judicial recourses, are also often accused of “incitement”. According to information received, in 2008 approximately 150 land activists were arrested and faced prosecution on spurious criminal charges. In June 2009, 50 to 60 activists remained detained in relation to land disputes, often on bogus charges.

145. In September 2008, Prime Minister Hun Sen expressed his intention to establish a law on NGOs that has been widely perceived as a means to further restrict the activities of civil society organizations and curtail their freedom of association and expression. The law is expected to be applied to national organizations as much as international ones. In addition, a draft law on demonstrations restricting freedom of assembly and a new Penal Code with restrictive provisions on defamation are currently before Parliament.

146. The possibilities to oppose forced evictions and land grabbing in the country are becoming more restricted. The Committee on Economic, Social and Cultural Rights regretted the repression of human rights activists defending housing and land rights in Cambodia, and the use of the court system to legitimize forced evictions and falsely prosecute housing rights defenders.

147. Recommendation: **“The existing obstacles against the implementation of the right to adequate housing are of enormous proportions and facing the challenges will require joint efforts by not only the Government, but also national non-governmental actors and the international community alike”**. (paragraph 82)

148. The Special Rapporteur regrets that she did not receive any comments on this recommendation from the Government and hopes that information will be provided in the near future.

149. Information provided by other sources indicates that the relationship between government and civil society is increasingly deteriorating. However, it is expected that the efforts made by the international community to collaborate with the government in this field will help bridge the existing gap.

150. The international community has clearly advocated for a moratorium on mass evictions in Cambodia. When evaluating their strategies in the country, donors are encouraged to take into consideration the recommendations on the subject made by the Special Rapporteur, the Committee on Economic, Social and Cultural Rights and the UN Country Team.

### **General observations**

151. **The Special Rapporteur regrets that no information has been received from the Government regarding the implementation of the recommendations and the status of the right to adequate housing.**

152. **The Special Rapporteur acknowledges the efforts made by the Government, international governmental organizations and non-governmental organizations working to address issues related to the right to housing in Cambodia. However, much remains to be done by State authorities to adequately address in its policies, legislation and programmes the question of the right to adequate housing.**

153. **The Special Rapporteur wishes to reiterate the urgent need for a clear mapping of the housing needs in the country, as well as a need for greater transparency and openness in the adoption of policies and measures relating to housing.**

154. **Particular efforts still need to be devoted to the situation of those living in distressed housing and living condition and often subject to large-scale forced evictions, insecurity of tenure, landlessness, and inadequate resettlement programmes and sites. It is essential that all measures related to housing be carried out in full respect of the human rights of the affected populations and that the role of public authorities in their protection be strengthened.**

155. **Although the government is in the process of drafting regulations on expropriation and resettlement, no national evictions act has been adopted yet. Other norms and regulations relating to housing are currently under consideration. It is important that all efforts aiming at the improvement of legislation and policies, fully integrate human rights and the right to adequate housing, and be open to public discussion before being enacted.**

156. **The Special Rapporteur is concerned about the lack of realization of indigenous people's rights in Cambodia and the increasing pressure and intimidation to which they are subject. She has also expressed concern about the growing pattern of intimidation, assault and unlawful imprisonment of non governmental organizations and affected communities. It is important that the government adopts all necessary measures to protect the rights of indigenous populations and to enable organizations of the civil society to carry out their work.**

157. **It is crucial that actors dealing with issues related to the right to adequate housing, including public officials and institutions, United Nations agencies and international organizations and donors, fully integrate a human rights-based approach into their work and take into consideration economic, social and cultural rights, including the right to adequate housing. The international community and its aid should not neglect ESCR issues and should not ignore the different dimensions of the right to adequate housing in their activities, planning and programmes. The Special Rapporteur strongly encourages all actors, whether national or international, involved in housing to receive adequate training on human rights and the right to adequate housing.**

158. **Finally, in order to have a more accurate vision of adequate housing in the country, the Special Rapporteur hopes that she will receive further information from all concerned actors.**

#### **IV. KENYA**

159. **The former mandate holder, Mr. Miloon Kothari, visited Kenya from 9 to 22 February 2004. He presented his mission report at the 61st session of the Commission on Human Rights in 2005 (E/CN.4/2005/48/Add.2).**

160. **The current Special Rapporteur, Ms. Raquel Rolnik, wishes to express her appreciation for the information that was provided to her by the Government of Kenya, civil society organizations and other relevant actors.**

161. Recommendation: “The population in Huruma village is living in extreme poverty, and in such an emergency situation, **the Special Rapporteur recommends that the Government establish an emergency assistance programme to ensure that immediate steps are taken to remedy this and similar situations**”. (paragraph 67)

162. Information provided by the Government indicates that an Inter-Ministerial Committee, chaired by the Head of Public Service, was formed. Permanent Secretaries from key ministries, including the Ministry of Housing, made up the committee. As a result of their discussions and recommendations, residents from Huruma village were resettled in Solio Ranch in Laikipia district. According to the information provided by the Government, people have been given residential plots, land for farming and farm inputs. In addition, infrastructural services, such as water, schools and security have been made available.

163. Information provided by other sources states that in March 2009 the Government purchased 15,000 acres of land at Solio Ranch. The sources state that while this is an attempt by the Government to provide secure tenure to the affected persons, the resettlement planning process and implementation has been faulted. Information received by the Special Rapporteur suggests that the process was not open and fair, and that a number of beneficiaries were excluded. In addition, the Government has allegedly not ensured provision to the Huruma community of basic services and amenities, such as water and sanitation, schools, roads and health facilities.

164. Recommendation: “**It is essential that there be full incorporation of the human rights perspective, including a clear commitment to non-discrimination and gender equality, at all levels of governance, policy-making and implementation. The integration of human rights perspectives in sectoral policies, housing and slum-upgrading programmes, and the constitutional and legal framework, and the application of human rights-sensitive indicators would be a first step towards the implementation of international human rights standards and the realization of the relevant Millennium Development Goals**”. (paragraph 82 (a))

165. Recommendation: “**The Government must give particular attention to existing inequalities when elaborating policies and strategies in order to ensure that women’s rights are fully recognized. Although the Ministry of Gender has an essential role to play, the gender dimension is cross-cutting and all ministries need to become more involved and sensitized**”. (paragraph 82 (e))

166. Information provided by the Government states that measures are being implemented in order to include a non-discriminatory and gender equal perspective in public policies. The current guiding policy document, Vision 2030, “aims at creating a cohesive equitable and just society based on democratic principles and issue based policies grounded on the rich but diverse culture and traditions”.

167. The Vision’s specific pillar on gender equality and non-discrimination is the social pillar. This aims at establishing, inter alia: (a) gender mainstreaming in Government policies, plans, budget and programmes; (b) affirmative action to ensure 30 per cent representation of women at all decision-making levels; (c) the appointment and capacity building of gender officers in ministries and parastatals; (d) intervention for peace in the region, as well as the resolution of

land issues to reduce both the influx of refugees from neighbouring countries and the number of internally displaced persons; (e) empowerment of people with special needs to make them self supporting; (f) re-drafting of the Matrimonial Property Bill to provide for equal rights of both spouses with respect to ownership, acquisition, management, administration, enjoyment and disposition of property; and (g) review of the Marriage Bill in order to consolidate marriage laws and assist people in understanding their marriage status, rights and liabilities.

168. A Sessional Paper on Gender and Equality Development (No. 2, 2006) also guides the Government in its activities. The paper highlights identified gender inequalities, identifies factors contributing to the unequal status of men and women, and emphasises the Government's commitment to address gender concerns that stand in relation to international human rights instruments to which Kenya is a party. The Ministry of Housing integrates the above-mentioned policies in its own plans and projects, especially on slum upgrading projects.

169. Furthermore, the Special Rapporteur was informed that the Government has committed itself to adopting a human rights based approach. In 2007, in its publication "Water Sector Reform and the Human Right to Water in Kenya" the Ministry of Water and Irrigation (MWI) declared that human rights principles (namely, non-discrimination, inclusion of vulnerable and marginalised groups, access to information and participation, and transparency and accountability) together with the Millennium Development Goal orientation, shall guide the water sector reform process in Kenya.

170. Information provided by other sources states that the human rights provisions of the Proposed Constitution (2005) and the Bomas Draft Constitution (2004) have been held in abeyance. Indeed, constitutional review processes have been delayed and are to a great extent politicized. In addition, international human rights treaties have not been incorporated into domestic law, which makes it difficult to invoke human rights in Court.

171. Women's inheritance rights are still not guaranteed under the current constitution which establishes exceptions to the general clause of non-discrimination with respect to personal law, regarding, among others, adoption, marriage, divorce, burial and devolution of property on death. It also establishes exceptions with respect to customary laws applicable in the case of members of a particular race or tribe (Constitution Article 82.4.b and c). In addition, the Marriage, Matrimonial Property and Gender Equality and Affirmative Action bills remain pending.

172. Concerning security of tenure in housing and land, non-governmental sources indicate that the system is discriminatory with respect to women. The system allows for women to acquire national identity cards in the name of either their fathers or husbands. This affects women in the context of providing evidence of transactions involving purchase of land or housing, and also affects transferable rights in case of divorce or death. It is further reported that access to housing of the majority of women depends on their husbands, fathers, sons or brothers. When those relationships deteriorate, women face disinheritance, as well as land and property grabbing. Moreover, laws on marriage and succession discriminate against women, in particular in areas of fair divorce settlement, maintenance and inheritance. For instance a woman's right to matrimonial property under the Matrimonial Act is based on her contribution towards the purchase of the home.

173. Furthermore, a recent study shows that the lack of security of tenure on housing and land causes women to leave their rural homes to seek refuge in rental houses in nearby town centres. They also migrate to cities like Nairobi and Kisumu where they have no option but to live in highly inadequate housing conditions in urban informal settlements. In addition, unfair divorce or separation leaves women homeless and vulnerable to domestic violence and harassment, which forces a number of women to migrate to the cities and consequently into slums.

174. As concerns both the issue of representation of women in decision-making and the adoption of a gender perspective, information provided by other sources identifies a number of national documents that work towards this aim. The Ministry of Water and Irrigation, for example, addresses gender issues in the National Water Resources Management Strategy, as well as in the National Water Services Strategy. In Sessional Paper No. 1 of 2004, the Ministry of Gender, Sports and Culture calls for collaborative processes in promoting gender awareness and equity in all development efforts. Furthermore, a gender perspective can also be found in the Social Dimensions for Development Programme, the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007), the Kenya Demographic Health Survey and the Kenya Economic Surveys.

175. Despite these efforts, there is an evident need to improve overall and general coordination between all relevant and interlinked ministries and departments. The inclusion of gender perspectives in national policies and strategies requires certain finances. In this regard, coordination between key governmental actors would allow for financial allocations to be maximised.

176. Recommendation: **“The Special Rapporteur recommends that the Government further review existing programmes as well as policies and laws being developed, in order to orient them towards the poorest, vulnerable or marginalized segments of the population, such as indigenous peoples, persons living with HIV/AIDS, disabled persons, the Watta community, other formerly or currently destitute pastoralists, and forest dwellers. The Special Rapporteur recommends that the Government establish an emergency assistance programme for extreme cases of humanitarian crisis, such as the community in Huruma village in Kieni forest, who are being denied the right to adequate housing”.**

(paragraph 82(b))

177. Information provided by the Government indicates that it is fully committed to addressing the needs of all vulnerable groups. To this end, the Ministry of State for Special Programmes has been created. Its mandate is articulated as, but not limited to: (a) development and promulgation of Special Programmes policies; (b) coordination of the campaign against HIV/AIDS; (c) coordination of Disaster Risk Reduction programmes; (d) support of the National AIDS Control Council; (e) administration of the Humanitarian, Mitigation and Resettlement Fund; (f) food relief management; (g) management of the Strategic Grain Reserve; and (h) resettlement of Internally Displaced Persons.

178. National authorities further indicate that they have given priority attention to the rights of people living with HIV/AIDS, by establishing institutional structures and facilitating the necessary funding to curb the pandemic and its impact upon affected persons, as well as the larger population. Key actions in this area include the establishment of a National AIDS Control Council which coordinates HIV/AIDS activities nationally. AIDS Control Units have been

established in all public agencies to coordinate matters related to HIV/AIDS. Furthermore, constituency HIV/AIDS Control Committees now coordinate HIV/AIDS control activities at the grassroots level, whilst widespread involvement of civil society organizations is encouraged. In addition, voluntary counselling and training centres have been established countrywide, which aim to be accessible to all, including the poor and vulnerable.

179. The Government's commitment to facilitating a paradigm shift from condemnation to acceptance of persons living with HIV/AIDS is reflected in a policy that advocates for non-discrimination, non-stigmatization, acceptance, treatment and support, and positive living with HIV/AIDS. Government ministries and institutions are expected to familiarise themselves with the policy.

180. Concerning the situation of the rights of disabled persons, the Government refers to the Persons with Disabilities Act, which was passed in 2003. This Act recognizes vulnerable and physically challenged citizens. It aims to empower them through the provision of specific rights and privileges that allow for their economic independence. Furthermore, the Act established the National Council for Persons with Disabilities, which is mandated to formulate and develop measures and policies designed to achieve equal opportunities for persons with disabilities.

181. Information received from the Government identifies a selection of policies, programmes, strategies and regulations that are in place to address the plight of poor and marginalised groups. In addition to the Vision 2030 document, the Government also has a National Housing Policy and the Kenya Slum Upgrading Programme. The economic pillar of Vision 2030 aims to achieve an economic growth rate of 10 percent per annum and to sustain this until 2030.

182. To help address emergency and humanitarian crises, the Government established a Disaster Prevention and Risk Management Policy. Many programmes have been developed over time under this policy, which do not distinguish between economical spheres and also include the poor. The Ministry of State for Special Programmes coordinates responses to emergencies and works together with the Kenyan Red Cross, as well as with other humanitarian related organizations.

183. Information received from other sources stresses that people living with HIV/AIDS in Kenya continue to experience conditions of extreme poverty that make it difficult for them to afford decent and adequate housing. As housing often plays a key role in prevention, treatment and care of HIV/AIDS, vulnerable victims need to be provided with economic empowerment, financial support or social housing. In this regard, it is unclear how and to what extent the issue of HIV/AIDS and housing is being considered in the Comprehensive Housing Policy currently being developed.

184. The existent governmental Housing Policy indicates that "escalating housing costs have tended to push prices steadily beyond the reach of the majority of urban dwellers in Kenya" and promises the "provision of housing for low-income earners who are the majority of urban dwellers". However, information from non-governmental sources suggests that this commitment has not been put into practice. Available public housing, especially in Nairobi, greatly falls short of demand. Furthermore, the National Housing Corporation is said to almost exclusively concentrate on the middle- and high-income market due to better returns than would be the case for low-cost housing.



185. The inability of the Government to effectively respond to the unprecedented post-election violence of 2007-2008 suggests a lack of capacities to deal with humanitarian crises. Contingency plans were tested and fell short. As the Committee on Economic, Social and Cultural Rights (CESCR) highlighted, financial assistance provided to internally displaced persons following the post-election violence, under the National Resettlement Fund, was inadequate. Many internally displaced persons benefited neither from assistance for resettlement nor assistance for their reintegration into society. In this regard, the Committee recommended that where resettlement or return to their homes was not possible, those affected should be provided adequate access to housing and employment.

186. Recommendation: **“A comprehensive approach needs to be adopted to address the issues of forced evictions, security of tenure, legalization of informal settlements and slum upgrading, and to ensure close consultation with those affected at the planning stage and with respect for the right to participation in decision-making in these areas. With respect to evictions, the Government should immediately put into practice the procedure called for under general comment No. 7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions. In the meantime, an absolute moratorium on forced evictions should be implemented. United Nations agencies and programmes, as well as the donor community, are encouraged to play a more active role in ensuring that international human rights law is respected in slum-upgrading schemes and other development programmes, including processes that may lead to forced evictions”.** (paragraph 82(c))

187. Information provided by the Government suggests that issues related to the right to adequate housing must primarily be considered in relation to slums and informal settlements in urban areas. Many of these problems come as a result of rapid urbanization unmatched in pace by the production of affordable housing and related infrastructure and services. According to information received from other sources, the lack of legal security of tenure constitutes a key obstacle to the realisation of the right to adequate housing, as slum dwellers are not protected from arbitrary rent increases, unreasonable restrictions on the use of their homes and land, and dispossession. The Government has informed that it aims, in a first instance, to improve the situation and eventually to solve it entirely. To this end, it has instituted certain policies and legislative steps, as outlined in the following paragraphs.

188. Long term housing strategies are guided by the National Housing Policy Sessional Paper No. 3 of 2004. Information provided by the Government outlines the strategies contained within this policy as follows: a) streamlining the acquisition of land for housing the poor, adoption of appropriate tenure systems, planning standards and prevention of unwarranted destruction of existing housing stock and displacement of the residents; b) facilitation of slum upgrading through an integrated institutional framework that accommodates participatory approaches involving relevant stakeholders while enhancing coordination at the national level; and c) supply of minimally developed but upgradeable low income housing to prevent proliferation of slums.

189. To alleviate the serious problems that slum settlements present, the Government initiated the Kenya Slum Upgrading (KENSUP) Programme in 2000, in collaboration with stakeholders such as UN-HABITAT. The programme seeks to improve the lives of 5.4 million people living and working in slums and informal settlements in urban centres nationwide. KENSUP provides a coordination framework in order to deliver effective slum upgrading, which includes the

provision of basic urban infrastructure, social amenities and affordable housing with minimal or no forced evictions of residents. Since 2004, the Government has consistently given slum upgrading budget priority as a core poverty eradication programme. KENSUP is guided by the Implementation and Financing Strategy 2005-2020 document. This document identifies, inter alia, a need for (a) community mobilisation; (b) city/town development strategies; (c) provision of secure tenure, social infrastructure and physical infrastructure; (d) shelter improvement; and (e) prevention of slum proliferation.

190. Despite the existence of the KENSUP programme, information from other sources indicates that Kenya does not have a clearly defined or codified slum upgrading policy or legislative framework in place. As a result, despite meticulous attention to project formulation, experience with slum upgrading projects has shown great room for improvement. Upgraded properties in former slums are likely to be allocated to well connected and middle class people, rather than the slum dwellers for which they are intended. If this happens, it could mean forced displacement and homelessness for the former slum residents. The Kibera-Soweto pilot project launched in 2004 threatens to have this unfortunate outcome. Similarly, slum upgrades could miss their target by attracting sub-letting and encouraging landlordism. Additional challenges still needing to be overcome include the informal but locally accepted commercialisation of basic services such as water and refuse collection, which fails to secure adequate standards.

191. Information provided by the Government states that eviction procedures are guided by the Evictions Policy Guidelines and that both the interests of citizens and of the environment are considered. According to the Government, the core purpose of an eviction is to safeguard the security, dignity, and social welfare of citizens, and to ensure the good of the country. A concept paper on evictions is being drafted and will be considered by civil society stakeholders for enrichment.

192. Information provided by other sources recalls the Government's commitment made before the UN Human Rights Commission in 2004 to halt evictions in all informal settlements until compliance with established international human rights standards could be guaranteed. Despite this commitment, there are still reports of widespread forced evictions. One recent example is the eviction of over 2,000 families from Embobut forest by government agencies, in May 2009. As was the case with other evictions, the Embobut evictions lacked legal basis and the victims have yet to be compensated. Although official sources stated that such forest evictions need to be carried out to protect and conserve water catchment areas and forest cover, they were reportedly characterised by violence, lack of consultation and inadequate resettlement plans. A lack of adequate warning and compensation also characterised forced evictions justified by either public infrastructure demands, such as road bypasses and power lines, or private developers claiming ownership of land on which settlements stood.

193. According to national authorities, a Housing Bill has been drafted aimed at providing for effective coordination, facilitation, capacity building and mentoring of issues related to the housing sector. The draft Housing Bill proposes to establish a Housing Fund and an authority for the provision of housing. However, non-governmental sources pointed out that the draft fails to address the issues of forced evictions and slum upgrading.

194. The Government has also drafted a National Land Policy, which was recently approved by the Cabinet. It provides an overall framework and defines the key measures required to address issues such as land administration, access to land, land use planning, restitution of historical injustices, environmental degradation and informal urban settlements. Assessments from other sources state that, in its present form, the National Land Policy would provide for increased transparency and accountability. However, it is unclear when and if the policy will be adopted and in what form.

195. Recommendation: **“Human rights education, particularly on economic, social and cultural rights, should be improved. The Special Rapporteur is encouraged by the establishment of the National Human Rights Commission, and recommends that its capacity to undertake training and awareness-raising activities to this end be strengthened. A particularly useful model which could be considered for cities and provinces of Kenya is the “Human Rights Cities” initiative developed by the People’s Movement for Human Rights Education (PDHRE) which is currently being coordinated jointly by PDHRE and UNDP”.** (paragraph 82(d))

196. The Special Rapporteur regrets that she did not receive any comments in relation to this recommendation from the Government and hopes that information will be provided in the near future.

197. Information provided by other sources states that the Kenya National Commission on Human Rights (KNCHR) is strategically positioned to independently monitor the implementation of the right to adequate housing. This is due to a current absence of justiciable rights to housing, which is hoped to be overcome. However, while the KNCHR enjoys a great deal of operational independence, it does not have financial independence. Budgetary constraints help to explain why, despite successful efforts to train civil servants and sensitize the general public on human rights, a substantial gap in human rights education and training remains. The KNCHR on its own, or together with civil society actors, is unable to fill this gap. Hence, a need for stronger commitments from the government in relation to policies, programmes and resources dedicated to human rights education seems evident.

198. Observations provided by other sources also suggest that the Government has increased its efforts to ensure stakeholder participation in policy and strategy development. Nevertheless, a disproportionate reliance on newspapers for sharing information suggests room for improvement. Not only might newspapers not be readily accessible for the most vulnerable and marginalised groups, but low literacy rates and language barriers may also prevent information from reaching many target groups. An illustrative example is the fact that whilst women constitute over 50 percent of Kenya’s population, they own just 5 percent of the land and remain largely unaware of their property rights, often due to illiteracy.

199. Recommendation: **“The Government should consider the establishment of a tribunal on informal human settlements as a quasi-judicial body. The tribunal could be instituted under a relevant statute, such as the Government Lands Act, to provide remedies to the intractable problem of allocation of public land by the administration and authorities through illegal and irregular practices, including land speculation and land-grabbing. Such a tribunal should be empowered to investigate and determine the validity and merit of claims to property rights by settlers, and be guided by the principles of equality and non-**

**discrimination. It should stipulate conditions for granting security of tenure over public land to deserving settlers and ensure that public land remains a common use resource”.** (paragraph 82 (f))

200. The Special Rapporteur regrets that she did not receive any comments in relation to this recommendation from the Government and hopes that information will be provided in the near future.

201. Information received from other sources indicates widespread support for the former Special Rapporteur’s recommendation that a tribunal on informal human settlements be established. This is primarily because existing legislation, such as the Rent Restriction Act, does not explicitly extend to residents of informal settlements. A Commission of Inquiry into Illegal and Irregular Allocation of Public Land exists. It is mandated to investigate land allocation, to gather information relating to unlawful and irregular allocation, to compile lists of lands affected and actors involved, and to provide advice on issues of land recovery and taxes. In June 2004, the Commission released a report, which recommends the establishment of a Land Title Tribunal in order to embark upon the process of revocation and rectification of titles in Kenya. In its annex, the report included a draft Bill for the establishment of such a tribunal. Despite this promising step, a tribunal of this kind has yet to be created.

**202. “The Government could approach the OHCHR Technical Cooperation Programme and other institutions for assistance in the development and implementation of human rights programmes and action plans”.** (paragraph 82(g))

203. The Special Rapporteur regrets that she did not receive any comments in relation to this recommendation from the Government and hopes that information will be provided in the near future.

204. Information received from other sources suggests that the Government has approached international institutions for assistance where it has deemed cooperation to be desirable and feasible.

**205. “The authorities should enhance their cooperation with United Nations agencies and international institutions, in particular UN-Habitat and OHCHR, to adopt and integrate human rights in developing indicators and benchmarks for implementing and monitoring the Millennium Development Goals. The Government is also encouraged to work in partnership with NGOs and other civil society organizations proposing alternative development plans”** (paragraph 82 (h))

206. The Special Rapporteur regrets that she did not receive any comments in relation to this recommendation from the Government and hopes that information will be provided in the near future.

207. Previous sections of this report have indicated cooperation with UN agencies and international institutions on projects that aim to contribute to the implementation of the Millennium Development Goals. This is especially the case for the follow up section to the recommendations contained within paragraph 82 (c) of E/CN.4/2005/48/Add.2, which directly relates to the achievement of Millennium Development Goal 7, Target 11, to significantly

improve the lives of 100 million slum dwellers by 2020. The fact that the Millennium Development Goals have yet to be fully achieved, suggests that there remains room for improvement in relation to cooperation.

### **General observations**

**208. The Special Rapporteur commends the efforts that have been made by governmental authorities, UN bodies and non-governmental organisations in working to address issues linked to the right to adequate housing. However, much still remains to be done, particularly in relation to matters on which the Government did not provide information to the Special Rapporteur.**

**209. When taking measures to improve the situation of people living in extreme poverty and emergency situations, such as the former population of Huruma village, greater emphasis needs to be placed not only on the end result but also on the process. Relocations in Kenya are frequently marked by flawed implementation processes in which basic human rights of those affected are compromised. The Special Rapporteur urges the Government to take action to improve this record.**

**210. The Special Rapporteur strongly encourages the Government to expedite the delayed constitutional review. It is widely accepted that numerous current constitutional norms are discriminatory, inter alia, with respect to the rights of women and other vulnerable and marginalised groups, as well as the rights of people living in temporary accommodation. In finalising existent reform drafts, it is important to ensure that all economic, social and cultural rights, including the right to adequate housing and transparent eviction procedures, are entrenched.**

**211. Despite initial efforts, great room for improvement remains in relation to the introduction and improvement of legislation addressing the issues of forced evictions, security of tenure, legalisation of informal settlements and slum upgrading. The draft National Land Policy needs to be adopted by Parliament in order to come into force. At the same time, the draft Housing Bill must be revised to address the issues of forced evictions and slum upgrading, and thereby fully recognise the right to adequate housing. It is important that the Government honours its commitment made in 2004 to halt evictions in informal settlements until compliance with international human rights standards can be guaranteed, that is, until appropriate policies have been drafted and introduced as national legislation.**

**212. Furthermore, the Special Rapporteur sees a need for stronger governmental commitments aimed at the improvement of human rights education.**

**213. Finally, the Special Rapporteur wishes to reiterate her predecessor's calls for the establishment of a tribunal on informal human settlements, similar to the Land Title Tribunal proposed by the Commission of Inquiry into Illegal and Irregular Allocation of Public Land in 2004.**

## V. CONCLUSIONS

214. In addition to the observations included at the end of each section in regard to the States concerned, an analysis of the recommendations included in the present report reveal some key issues that the Human Rights Council should consider.

215. A rights-based approach has been incorporated by States into new legislation. However, their implementation and practices in housing and urban policies and programmes sometimes fail to enforce those principles. The Special Rapporteur believes that actors dealing with issues related to the right to adequate housing, including public officials and institutions, United Nations agencies and international organizations and donors, too often continue to work without applying a rights-based approach and ignoring the different dimension of the right to adequate housing in their activities, planning and programmes. This lack of integration of a human rights perspective contributes to mixed results of programmes and initiatives. The Special Rapporteur strongly encourages all actors involved in housing issues, whether national or international, to receive adequate training on human rights, particularly on the right to adequate housing.

216. Apart from the assessment of progress through the Universal Periodic Review and by Treaty Bodies and Special Procedures, the Special Rapporteur believes that it is important for States to internally review the progress made in human rights by organizing periodic national consultations with the active participation of civil society and all relevant actors.

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