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Statement by Raquel Rolnik

**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**

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Mr. President, distinguished delegates, ladies and gentlemen,

I am very pleased to present to the Human Rights Council today my thematic report and my reports on my missions to Israel and the Occupied Palestinian Territory, and Rwanda. I am also presenting the Council with a report stemming from my 2010 mission to the World Bank.

Thematic report: Security of tenure, cornerstone of the right to adequate housing

The thematic report I present today discusses security of tenure, a key component of the right to adequate housing.

Setting the context

Mr. President,

Why does security of tenure matter - for my mandate but also more generally? Insecure tenure arguably annuls all other aspects of the right to adequate housing: indeed, what is the point of having a well-insulated, affordable, culturally appropriate home, to cite only some aspects of the right to adequate housing, if one is under daily threat of eviction? Security of tenure is without doubt a cornerstone of the right to adequate housing, and its absence or negation one of the most acute vulnerabilities likely to lead to a range of human rights violations.

We are today in the grip of a global tenure insecurity crisis. Access to secure housing and land is a prerequisite for human dignity and an adequate standard of living, yet many millions of people live under the daily threat of eviction, or in an ambiguous situation where their tenure status is challenged by authorities or private actors at any time.

The crisis manifests itself in many forms and contexts. Forced evictions are its most visible sign; as a Special Rapporteur I am constantly requested by individuals and communities to act on cases of forced evictions throughout the world. Further manifestations of the tenure insecurity crisis can be seen in displacement resulting from development, mega-events, natural disasters and conflicts, land grabbing, and the growing number of urban dwellers living under insecure tenure arrangements worldwide.

Tenure insecurity is a global phenomenon. Yet assessing the nature and scale of the problem is fraught with difficulties of definition as well as measurement, and comprehensive, precise data is unavailable. I discuss some of the reasons why in my report. What is not disputed, however, is that the problem is real and its implications daunting.

No one is fully protected from tenure insecurity. At the same time it is evident that the most marginalized and poorest bear the brunt of the insecurity burden. Inhabitants of self-made and unplanned settlements epitomize tenure insecurity in a very visible form, but they are by no means the only example. Refugees and internally displaced persons, tenants, migrants, minorities, nomadic and indigenous communities, sharecroppers, other marginalized groups, and among all of these women - to name only a few - are often insecure. All tenure forms, including individual freehold, can be insecure, as the recent mortgage and financial crises have shown in different countries.

Mapping and framing tenure

Before discussing the human rights implications of security of tenure, let me take one step back to help frame what we mean by tenure and tenure security. Definitions of “tenure” abound. To put it simply, ‘tenure’ describes a set of relationships with respect to housing or land, which can be established or recognized through a number of ways – i.e. statutory law, or customary, informal or hybrid arrangements. Land tenure systems and forms determine who can use and dispose of what land or housing, for how long, and under what conditions.

Attempts have been made to classify forms and systems of tenure, as you can find in my report. However it is important to note that clear-cut distinctions between systems and categories of tenure do not reflect the complexity of situations on the ground. In many cases legal plurality exists, such as when statutory tenure categories are superimposed upon customary regimes, or with respect to the diverse arrangements and hybrid systems that have emerged in response to the difficulties of existing systems to cater for rapidly expanding cities and their urban land markets.

In fact, what – in the absence of better wording and definitions – we call “informal settlements” today often represent the largest single channel of land and housing supply for the majority of the population. In my report, I discuss the legal tensions and ambiguity pertaining to these settlements, whose inhabitants are often the most vulnerable to forced evictions.

The primacy of individual freehold vs. the complexity and diversity of tenure forms

Mr. President,

Despite the prevalence of a great variety of tenure systems and arrangements worldwide, in the past few decades, most models of urban planning, land management, development and legal regimes have centered around one particular form of tenure, namely individual freehold. This common fixation on individual, formally registered, freehold has been supported by the predominant economic doctrine of reliance on private property and market forces. Consequently, home ownership rates worldwide have been climbing since the 1950s. This process has overshadowed other well-established forms of tenure, such as rental arrangements or collective/cooperative property.

Governments and international institutions have had to navigate tensions between recognizing the complexity and diversity of tenure arrangements worldwide – which is a reality! - and promoting one single form (formalized, registered freehold) as the ideal model for secure tenure and socio-economic development.

More recently however, international institutions and governments have become aware of the limitations of strategies based predominantly on the formalization of urban land markets. Tenure can take a variety of forms, and ‘registered freehold’ should not be seen as the preferred or ultimate form of tenure security, but rather as one of a number of appropriate and legitimate forms.

Security of tenure under international human rights law

Mr. President,

Let me now turn to what international human rights law says about security of tenure. I conducted comprehensive research into the various sources of international human rights law, and especially the authoritative guidance and commentary of UN human rights mechanisms, in order to identify States' obligations relating to security of tenure. I also examined regional and national case law, global governance frameworks relating to land tenure and human settlements, and selected national constitutional and legislative frameworks to complement my assessment.

Guidance from UN human rights mechanisms is clear and comprehensive when it comes to ensuring security of tenure as a way to prevent forced evictions. The then Commission on Human Rights, already in 1993, noted that forced evictions constitute a gross violation of a range of internationally recognized human rights. It urged governments to *confer legal security of tenure on all persons threatened with forced evictions*. UN human rights treaty bodies and special procedures have reiterated this call since. Extensive guidance is available as to the prohibition of forced evictions and the strict procedural safeguards that must be followed when evictions are carried out.

Further guidance by UN treaty bodies notes that this protection against forced evictions is due to everyone, *irrespective of the type of tenure held*. States are further called upon to take immediate measures aimed at conferring legal security of tenure upon those persons currently lacking such protection. Thus, a focus of State action appears to be on the most disadvantaged and insecure.

The Committee on Economic, Social and Cultural Rights has also acknowledged that tenure takes a variety of forms, including rental, owner-occupier, emergency housing and informal settlements.

Now the above helps us identify *some* of the State obligations with respect to security of tenure. But not all of them. For instance, given that tenure can take a variety of forms and that States must ensure security of tenure to all, irrespective of tenure type, what are precisely States' obligations to ensure that all forms of tenure are protected equally? Guidance is incomplete in this regard. United Nations and regional human rights bodies have focused only on a limited number of forms of tenure (such as private property and indigenous communal land). Similarly, they have discussed the tenure situation of some groups (such as Roma and women), but offer little guidance on IDPs, migrants or inhabitants of informal settlements for instance.

My report flags some of the key questions that would warrant further clarification under international human rights law. And while many questions remain, it must be emphasized that people *already have a right to security of tenure*, as part of their human right to adequate housing – what needs clarification is how precisely this right can and shall be recognized, protected and realized, through a variety of tenure forms.

Selected operational and policy challenges

In the last section of my report, I discuss a number of challenges at the operational and policy level in key sectors bearing upon security of tenure.

[Briefly:

(a) First, the issue of *land governance and the political economy of land*: Fundamentally, tenure insecurity is a political economy issue—the laws, institutions and decision-making processes relating to the access and use of housing and land are highly influenced by existing power structures within society. Thus land administration and urban planning cannot be considered purely technical matters.

A land governance and political economy perspective raises some important questions. Who benefits from the status quo and who is excluded? Who sets the agenda for land governance and land management reform? Who benefits from it? These questions cannot be ignored, especially not in a context of rising interest in land and conflicted legal pluralism.

(b) Second, *land management and administration* can have - and has had - enormous positive impacts on solving land disputes and strengthening tenure security. However, many land management and administration projects, by focusing on the granting of individual freehold titles to users or owners of non-contested plots, have proven ill-suited to recognize all forms of tenure and in particular to protect the most vulnerable. This is particularly the case in urban contexts.

(c) Third, *public land* remains one of the most important potential sources of land for housing the poor, yet there remain obstacles to using public land for such purposes. Legal regimes regulating the use of public land differ greatly in their flexibility or ability to make land secure or not, and may in fact be abused to serve private interests.

(d) Fourth, *urban planning policies, laws and regulations* can have a direct impact on strengthening tenure security, or, conversely, on increasing insecurity. Some innovative planning regulations exist to secure tenure for the most marginalized – for instance to recognize existing informal settlements or to define unoccupied areas of the city as areas for social housing. Conversely, planning rules that disregard cultural specificities and are based on the housing products offered to dominant groups, coupled with rigid and costly regulatory frameworks for how land and housing should be developed, often fail to meet the needs of the poor or of marginalized groups, putting formalization out of their reach and rendering them or their homes de facto illegal.

(e) A fifth challenge, relevant to all other challenges, is *how to recognize and record the diversity of tenure forms and rights*: Flexible tools and approaches are being developed and implemented to that end. Questions remain as to the minimum conditions that these approaches should fulfill to ensure security of tenure, what type of institutional arrangements are required for implementation, and whether such approaches can be replicated in diverse contexts and at scale.

(f) And a final challenge, which I have discussed in previous reports (A/HRC/16/42 and A/66/270): *Conflicts and natural disasters* tend to exacerbate tenure insecurity for affected

populations. In the aftermath of conflict or disaster, there is a real risk that existing discrimination on the basis of tenure status will be reinforced, thus preventing individuals from accessing aid. Short-term responses by humanitarian actors and Governments addressing conflicts and natural disasters often have long-term impacts; the challenge is to ensure that these reinforce, rather than undermine, tenure security.]

Concluding remarks

Mr. President,

Ensuring security of tenure for all is one of the most compelling challenges of today's world and is fundamental to preventing the most egregious forms of eviction, displacement and homelessness. It is also essential for human dignity and for people to sustain adequate standards of living.

The 'mapping exercise' presented in my report is a first step in my study on security of tenure. It draws lessons from decades of practical experience in international development, land management and urban planning with respect to securing tenure, and compares and contrasts this depth of expertise with existing standards and guidelines under international human rights law. My aim undertaking this study on security of tenure was simple: to encourage cross-fertilization across diverse fields of practice with the aim to more effectively and comprehensively ensure security of tenure for all. No doubt that more work remains to be done to achieve that goal, as evident in the many legal and operational challenges discussed in my report.

Against this backdrop I have decided to continue my study on security of tenure in my last year as Special Rapporteur. In the light of the diversity and complexity of applications of security of tenure and their related challenges, I will focus my attention this year on *security of tenure for urban poor, in particular the question of informal settlements*. I intend to conduct further research and consultations with a wide range of stakeholders. The dialogue with Member States will be particularly important in order to develop more specific guidance on issues that are deeply rooted in the diversity of urban realities across regions. I look forward to working with many of you in the coming months.

Mission to Israel and the Occupied Palestinian Territory

Mr. President, distinguished delegates, ladies and gentlemen,

From 10 January to 12 February 2012 I visited Israel and the Occupied Palestinian Territory (East Jerusalem, West Bank and Gaza).

Israel has made remarkable achievements in securing adequate housing for massive waves of immigrant Jews during the first decades following independence. In my report, however, I note with concern that since the 1990s, the Government of Israel has increasingly disengaged from the housing sector, relying mostly on market incentives. Privatization, deregulation and commercialization of public assets have further led to increasing inequalities in access to adequate housing and an affordability crisis in the housing sector.

Israel's "laissez-faire" housing policy within the "green line" stands in stark contrast with its continued dedication of public financial and technical resources to promote the expansion of settlements in the Occupied Palestinian Territory. The State engagement in the settlement enterprise not only violates international law and seriously worsens the living conditions of Palestinians under occupation, but also ends up depriving Israeli nationals of important resources that could be used to promote access to adequate housing within the internationally recognized boundaries of the country.

During my visit I witnessed multiple examples of discriminatory housing and land policies that exclude, discriminate against and displace minorities living in Israel and the Occupied Palestinian Territory. In very different legal and geographical contexts, from the Galilee and the Negev to the West Bank, I was struck by repeated complaints from Palestinians and other minorities concerning lack of, or discriminatory, planning seriously hampering the urban and rural development of these communities, rendering them vulnerable to eviction and demolition. If the rights to housing of all Palestinians and Israelis are to be respected, the Israeli State and the international community must urgently address the profound historical imbalances described in my report.

I was particularly struck by the inadequate housing conditions and insecurity of tenure Bedouin communities inhabiting the Negev face. Despite the fact that Bedouins have had a presence in the region for hundreds of years Israel has consistently refused to recognize land ownership of most Bedouin groups or the existence of many Bedouin villages. Approximately 80,000 Bedouins (almost half of the entire Bedouin population) currently lives in one of the over 40 unrecognized villages or one of the 10 villages that were recently recognized by the State. The unrecognized villages have never been provided with basic public services or infrastructure, including water and sanitation connections.

I was concerned to learn that the Government has recently adopted the Praver Plan for the unrecognized villages in Negev, despite the strong concerns I had raised with relevant authorities about it, particularly with regard to insufficient and inadequate compensation and inadequate recognition of Bedouin land rights.

Mission to Rwanda

I visited Rwanda from 5 to 13 July 2012. Let me say at the outset that I commend the Government of Rwanda for its understanding of the concept of "adequate housing" and for its efforts and successes in the fight against poverty and the improvement of living conditions for its population.

My report analyses in detail a number of policies and programmes implemented in Rwanda in the areas of housing and land management:

(a) First, the *villagization (or Imidugudu) policy* encourages the establishment of consolidated, planned, prebuilt housing in rural centres, in a country where the population has traditionally lived in scattered dwellings. The policy was purportedly initiated to improve housing and living conditions for the rural population. Its implementation seems to vary depending on villages: I have visited a model village where inhabitants' living conditions had dramatically improved with their relocation, while in other villages people indicated that they

had been forcefully displaced, and that their living conditions had not improved. An evaluation of the policy of villagization to identify successes and failures might be warranted.

(b) Second, the *Bye Bye Nyakatsi programme* was designed and implemented as part of the Government's modernization and villagization policy. Under the programme, thatched-roof houses (nyakatsi) were banned and replaced with houses with generally metal roofs. This programme was widely enforced, with only 2% of the households remaining with thatched roofs. It however left a number of people homeless at least for some time. Serious concerns also remain as to the full adequacy of the houses whose roofs were changed, in particular with respect to lack of sanitation.

(c) Third, the *land registration and land titling programme* aims at improving security of tenure and resolving the many disputes over land. The programme has had some important successes, such as ensuring equal rights for spouses to land ownership. Issues remain with respect to the lack of understanding by rural populations of the applicable legal framework, and their lack of participation in the programmes. The same concern applies to the land consolidation policy (which is in effect a programme of agricultural intensification through the consolidation and combination of land plots).

(e) Fourth, the implementation of the *Kigali urban Master Plan* has resulted in a number of population displacements, in particular of low-income owners and inhabitants of informal settlements. Overall, I am concerned that the master plan leaves little scope for the low-income population to access affordable and adequate housing.

Finally, my report addresses the specific situation of the Batwa people. The Batwa have difficulties accessing land, land ownership and adequate housing, and enjoying a range of economic and social rights. The adoption of temporary special measures is crucial to correct the discriminatory practices of the past, of which this population continues to be victim.

Mission to the World Bank

I undertook an official visit to the World Bank Group from 26 October to 1 November 2010. At the 16th session of this honourable Council I presented a preliminary note on my mission (A/HRC/16/42/Add.4) and in the report I am submitting today I am presenting my final conclusions and recommendations.

In light of the World Bank's current two-year consultative process to review and update its environmental and social safeguard policies, I have decided to focus my final report on the World Bank's safeguards, the most pressing of the issues I identified during my mission.

Firstly, I would like to stress the importance of the World Bank's safeguard on Involuntary Resettlement (OP 4.12 and BP 4.12) in encouraging respect for and the realization of the right to adequate housing for people resettled in connection with World Bank-financed projects. I commend the Bank for playing a leading role in international development and for being the first international financial institution to develop this safeguard, which later served as a model to other international and regional financial institutions. I also highlight a number of ways in which Bank's current policy and practice with regard to involuntary resettlements could be improved.

At a more fundamental level, the report stresses the importance of incorporating human rights standards and obligations *in a comprehensive manner* into the safeguards framework of the Bank.

I also wish to welcome the Bank's commitment to examine "emerging areas" as part of the safeguards review, including land tenure. I recommend the Bank adopt new policy requirements to secure and protect the tenure rights of vulnerable groups during the implementation of Bank-financed operations.

Finally, I note that current Bank operations include financing not only projects but also broader State reforms, such as development policy operations and Program-for-Results financing, which can have adverse implications for the right to adequate housing but are currently not subject to the Bank's current safeguards policy framework or equivalent requirements to prevent harms. I therefore recommend that the Bank develops an adequate framework to ensure that human rights due diligence is conducted in all its operations in order to ensure that the risks of violations of the right to adequate housing are avoided or mitigated through robust risk management, genuine participation and accountability systems.

I urge the World Bank to consider the observations and recommendations made in the present report and I am looking forward to further engaging with the Bank in the current safeguards review process.

Mr. President, distinguished delegates, ladies and gentlemen, I thank you for your attention and look forward to my interaction with you.
