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Совет по правам человека

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

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

Добавление

Миссия в Алжир**Резюме*

Специальный докладчик по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте совершила поездку в Алжир 9–19 июля 2011 года. Особый интерес Специального докладчика вызывали проводимая в стране жилищная политика и причины, по которым после десяти лет интенсивного строительства социального жилья страна, как представляется, по-прежнему сталкивается с жилищным кризисом и серьезными проблемами в плане доступности жилья и возможностей его оплаты.

Специальный докладчик с удовлетворением констатировала, что концепция жилища как основополагающего права прочно утвердилась в алжирском обществе и что государство относит жилищный вопрос к числу своих основных обязанностей в отношении населения. Специальный докладчик приветствует достигнутый государством прогресс в деле осуществления права на достаточное жилище и отмечает, в частности, строительство крупных объемов жилья, предназначенного для малообеспеченных семей.

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

Специальный докладчик отмечает, что, несмотря на достигнутый прогресс, стране предстоит приложить серьезные усилия, в частности с целью дифференциации жилищной политики с учетом существующих потребностей и с целью создания условий, позволяющих всем гражданам пользоваться этим правом без какой бы то ни было дискриминации. В настоящем докладе Специальный докладчик показывает, что демократизация жилищной политики, основанная на принципах транспарентности и прямого участия граждан и организаций гражданского общества в определении и применении этой политики, является крайне важным шагом, позволяющим перейти от строительства жилья к конкретной реализации права на жилище в Алжире.

В заключение Специальный докладчик выносит ряд рекомендаций, призванных помочь правительству в его усилиях по обеспечению эффективного осуществления права на достаточное жилище.

Annex

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, on her mission to Algeria (9–19 July 2011)

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I. Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, undertook an official visit to Algeria from 9 to 19 July 2011 at the invitation of the Algerian Government.

2. The Special Rapporteur thanks the Government of the People's Democratic Republic of Algeria for its invitation and for its cooperation during the preparatory phase and throughout her visit. She also expresses appreciation to the United Nations country team in Algeria for its support in organizing the visit, Algerian civil society for its participation and citizens for their testimony on their situation.

3. During her visit, the Special Rapporteur met with a number of representatives of State authorities at national, wilaya, daïra and municipal levels.¹ She spoke with the Ministers for Foreign Affairs, Housing and Urban Planning, and Agriculture and Rural Development, as well as with the staff of the ministries of justice, labour, employment and social security, regional development and the environment, and planning and statistics. She had meetings with the National Economic and Social Council and with the National Advisory Commission for the Promotion and Protection of Human Rights, and she also had the opportunity to meet representatives of the wilaya administration of Algiers, Oran and Boumerdes and representatives of the elected assemblies of a number of municipalities of these wilayas. Unfortunately, an airline strike prevented her from travelling to Ghardaïa as planned. She also discussed the question of housing with a number of United Nations agencies and with representatives of the diplomatic corps, as well as with representatives of civil society (non-governmental organizations, associations, trade unions, academics and experts) in Algiers, Oran and Blida.

4. The Special Rapporteur was able to visit several completed or ongoing housing projects in Algiers, Boumerdes and Oran which are part of the various housing programmes promoted by the State. She also visited housing developments, slums, chalets² and other forms of substandard housing and squatter settlements in Algiers, Blida and Boumerdes.

5. The Special Rapporteur's visit took place at a time when the Government was announcing reforms in the political parties, the representation of women in elected assemblies, the activity of associations, the administration and decentralization.³ A revision of the Constitution was also announced, and a constitutional commission was established for that purpose.⁴ The Government committed itself to undertaking those reforms following a wave of demonstrations and strikes in early 2011. It was against that background that the state of emergency, in force since 1992, was lifted on 24 February 2011, and that meetings and general consultations with representatives of civil society were held on a range of topics (including urban planning).

6. After reviewing the legal framework, the general housing situation and existing housing policies, the Special Rapporteur then addresses in her report what she considers to be the main challenges facing Algeria in the area of the right to adequate housing and concludes with a set of recommendations.

¹ Algeria is composed of 48 wilayas, 548 dairas and 1,541 municipalities. The wilaya is the country's largest administrative unit. It is made up of a number of dairas, each of which is comprised of several municipalities.

² Temporary dwellings built following natural disasters or other emergencies.

³ Speech by President Abdelaziz Bouteflika, delivered on 15 April 2011.

⁴ Ibid.

II. The right to adequate housing in Algeria: legal framework

7. Algeria has ratified the principal international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights. Article 11 of the Covenant is the main source of the right to adequate housing in international law. Algeria has also ratified other conventions of relevance to the right to adequate housing, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. It has also ratified the Convention on the Elimination of All Forms of Discrimination against Women, although with important reservations, notably with regard to articles 2, 15 (4), 16 and 29. Algeria has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the International Convention for the Protection of All Persons from Enforced Disappearance.

8. Although the right to adequate housing is not recognized in Algeria's Constitution,⁵ article 132 of the Constitution provides that international commitments entered into by Algeria — and hence the Covenant and its article 11 — have primacy over national law. The Constitution also contains provisions relating to certain aspects of the right to adequate housing. Article 40, which guarantees the inviolability of the home, stipulates that a house may only be searched in accordance with the law and on the basis of a search warrant emanating from a judicial authority. Pursuant to article 20, expropriation may only take place in conformity with the law and entails prior, just and fair compensation. Article 52 ensures the right to own private property and to inherit and recognizes “*waqf*”⁶ property. Lastly, article 59 specifies that “citizens who are under working age or who can no longer or will never be able to work are guaranteed satisfactory living conditions”.

9. During her visit, the Special Rapporteur was struck by the fact that the idea of housing as a fundamental right is deeply rooted in Algerian society and that the State considers the question of housing to be one of its main responsibilities vis-à-vis the population.

10. In accordance with the principle that international commitments have a higher status than domestic law, all Algerian citizens may invoke international conventions, and hence the Covenant, in domestic courts⁷ in conformity with the provisions of the Covenant.⁸ The Special Rapporteur notes with concern that article 11 of the Covenant has never been invoked by the domestic courts, although housing issues are often the subject of judicial decisions,⁹ and that effective remedies for victims of violations of the right to housing are lacking. She draws attention in that connection to the weakness of the procedures available

⁵ As amended in 2008.

⁶ “(...) *wakf* is an act whereby the appropriation of the substance of a property is rendered impossible for all persons in perpetuity, the use of the property being set aside for the needy or for charitable works”. Pursuant to article 21 of Act 05-10 of 20 June 2005, “(...) *wakf* is considered to be a legal entity”, Abdelmalek Ahmed Ali, *La législation foncière agricole en Algérie et les formes d'accès à la terre*, Ministère de l'agriculture et du développement rural, Algérie, available at: <http://ressources.ciheam.org/om/pdf/b66/00801372.pdf> (French only).

⁷ In a decision dated 20 August 1989, the Constitutional Council confirmed this constitutional principle (HRI/CORE/1/Add.127, 11 February 2004, para. 31).

⁸ General comment No. 4, para. 17: “The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies.”.

⁹ See below.

to the National Advisory Commission for the Promotion and Protection of Human Rights for following up complaints of alleged violations of the right to adequate housing, although housing (together with employment) is one of the two areas concerning which complaints are most often referred to the Commission.¹⁰

III. Overview of the housing situation and housing policies in Algeria

11. During her visit, the Special Rapporteur noted that the Government's current efforts in the area of housing are being made in the context of a strong demand for housing. To understand the housing shortage, its causes and current challenges to the implementation of the right to adequate housing, it is useful to review briefly the evolution of the housing situation and housing policies since Algeria gained independence.

A. Evolution of the housing situation and housing policies from 1962 to the present

12. The Special Rapporteur notes that the country has inherited a significant housing shortage from the colonial period. According to data made available to her by the Government, only 10 per cent of the Algerian population had adequate housing at the time of decolonization. The considerable efforts made by the State to address the problem are to be seen within the context of the specific socio-economic situation stemming from the history of the decolonization of the country, but also the dominance of oil resources as the main source of State revenue.¹¹ Between 1962 and 1981, the Government adopted a socialist policy of nationalizing the housing stock and property left vacant by the former colonial power, and it placed the construction sector under direct state control, in essence becoming solely responsible for the building, distribution and administration of the housing stock.¹² Strictly speaking, during this period the State did not have a social housing policy, since it built a sole housing model for all and assigned dwellings to the population in accordance with quotas based on administrative criteria.¹³

13. Despite the Government's efforts, demand has grown steadily, and the housing shortage has continued to worsen, due to a combination of structural and economic problems.

14. Two factors are responsible for the increasing demand for housing in the country's urban centres: strong demographic growth,¹⁴ and the concentration of the population in the Tell Atlas zone in the north of the country, where the biggest cities (Algiers, Oran, Constantine and Annaba) are located. In 2008, 63 per cent of the population lived in the Tell Atlas zone, which accounts for only 4 per cent of the national territory, as against

¹⁰ Information obtained in the course of a meeting with the Commission.

¹¹ Madani Safar Zitoun, "Les politiques urbaines en Algérie: une réforme libérale inachevée", in: *L'Habitat social au Maghreb et au Sénégal*, L'Harmattan, Paris, 2009, p. 65.

¹² *Ibid.*, pp. 66–68.

¹³ Conseil National Economique et Social (CNES), *Rapport sur le logement social*, IV session plénière, October 1995, pp. 12–13 (French only).

¹⁴ République algérienne démocratique et populaire – Conseil national économique et social, en coopération avec le Programme des Nations Unies pour le développement (PNUD), *Algérie 2008: Rapport National sur le Développement humain*, pp. 70–71 (French only).

27 per cent in the semi-arid plains of the high plateaus (9 per cent of the national territory) and 10 per cent in the Sahara (87 per cent of the national territory) in the south¹⁵.

15. Another factor has always had adverse consequences for the housing situation in the country: Algeria's extreme vulnerability to natural disasters, in particular earthquakes and landslides in the Tell Atlas zone, flooding in the high plateaus and the rise in water levels and flooding in the south, a situation which has recently worsened due to climate change.

16. In addition to these structural factors, there has been the effect of the multidimensional crises which the country experienced in the mid-1980s and the 1990s and their impact on housing policies, which, clearly, were already finding it difficult to meet housing needs.

17. Beginning in the second half of the 1980s, the State, which had had to impose economic adjustment measures to offset the decline in oil prices and the increase in the foreign debt, only had limited means to finance its housing policy. Moreover, in 1981, the centrally planned housing system which had been set up had begun to be called into question because of its inability to ensure the construction of the number of housing units needed. The system did not seem viable.¹⁶ The acceleration of the phenomenon of migration to the big cities, brought about by the deterioration in living conditions, employment¹⁷ and wages,¹⁸ and the inability of the State to finance a consistent housing policy resulted in a worsening of the housing situation and the emergence of squatter camps, slums and new resettlement areas.¹⁹

18. This period, during which the system and the economic readjustment measures were called into question, was followed by two years, 1990 and 1991, of structural reforms aimed at liberalizing the property and real estate market. Act No. 90-25 of 18 November 1990 on land planning established the right of private persons to own their dwelling and land, and it abrogated provisions impeding private initiative in the urban sector.²⁰ These reforms were adopted at a time of an emerging crisis in the country²¹ which led to a major displacement of the rural population to the cities to flee the violence²² and to a reduction in State funding for initiatives in the area of urban planning and housing. The system, which had only just been reformed, was deregulated, resulting in uncontrolled urbanization. Informal housing arrangements in urban areas became increasingly common.

¹⁵ This demographic concentration is due to the many advantages of the Tell Atlas zone: more favourable natural and climatic conditions, fertile agricultural land, more water resources, the coastal and forest potential, good infrastructure, urban networks and training facilities. Commission nationale économique et sociale (CNES), *Rapport sur la ville algérienne ou le devenir urbain du pays*, douzième session, Bulletin officiel No. 6, p. 118, available at: <http://www.cnes.dz/cnesdoc/cneshtm/ville.htm> (French only).

¹⁶ CNES, *Rapport sur le logement social*, op. cit., pp. 8–9 (French only).

¹⁷ Unemployment in 1995 was estimated at 28.1 per cent. République algérienne démocratique et populaire, *Pacte National Economique et Social*, September 2006, p. 6, para. 3, available at: <http://www.ilo.org/public/french/region/afpro/algiers/download/alg-pactefr06.pdf> (French only).

¹⁸ *Ibid.*, p. 6, para. 3.

¹⁹ CNES, *Rapport sur la ville algérienne ou le devenir urbain du pays*, op. cit., p. 114 (French only).

²⁰ Madani Safar Zitoun, op. cit., p. 65.

²¹ Between December 1991 (annulment by the Government of the elections after the result of the first round indicated that the Islamic Salvation Front would win) and 2001, Algeria went through a grave crisis known as the “black decade”, in which the Government opposed a number of Islamist groups.

²² See International Displacement Monitoring Center and Norwegian Refugee Council, *Algeria: National reconciliation fails to address needs of IDPs – A profile of the internal displacement situation*, 29 September 2009, p. 9.

B. The current situation and housing policies

19. In 1999, having recovered political and institutional stability and obtained considerable financial means thanks to increases in oil prices, the Government re-established its role in urban planning. According to official sources, 810,000 housing units were built under the 1999–2004 housing programme and 912,326 under the 2005–2009 programme. The five-year plan for 2010–2014 calls for the delivery of 1.2 million housing units, and another 800,000 are to be completed between 2015 and 2017.²³

20. Despite major housing construction over the past 10 years, the housing crisis continues. In the Special Rapporteur's view, this is not only a question of the insufficient number of available housing units, but is also linked to various other factors which have contributed to the emergence of this complex, multifaceted problem.

21. The most important aspects of the problem include serious overcrowding: the existence of slums and squatter settlements devoid of minimum decent living conditions; the practice of renting small living spaces, such as rooms and garages, as housing; speculation on rental prices; the large number of evictions following judicial decisions rendered at the initiative of private persons; the perpetuation of temporary dwellings for victims of natural disasters; the decay of housing from the colonial and Ottoman periods; and the deterioration of the public housing stock.

22. The Government recognizes the existence of a housing crisis, but maintains that it has been alleviated over the past 10 years and that shortages have been greatly reduced.²⁴ In that connection, the Special Rapporteur stresses the lack of detailed up-to-date information on existing housing needs and thus the impossibility of arriving at a precise diagnosis of the housing situation in the country. Although there is recent data on the number of housing units built by the State over the past 10 years,²⁵ to the Special Rapporteur's knowledge there is no analogous data concerning quantitative or qualitative aspects of housing demand and the housing shortage. The evolution of the occupancy rate, i.e. the number of persons per occupied dwelling, seems to be used as one of the main criteria for assessing the evolution of the crisis (an evolution considered positive because of the decline in the occupancy rate from 7.15 persons per dwelling in 1998 to 6.42 in 2008),²⁶ although by its very nature the occupancy rate does not provide information on housing conditions in either quantitative or qualitative terms.

IV. Challenges and obstacles to the realization of the right to adequate housing

23. Considerable progress has been made since 1962 towards the realization of the right to adequate housing. The Special Rapporteur notes in that context the construction of a large housing stock for low-income families and the very positive development in the country towards ensuring that dwellings are supplied with clean running water, electricity

²³ Ministère de l'habitat et de l'urbanisme, *La Revue de l'Habitat*, No. 6, January 2011, pp. 6–7 (French only).

²⁴ Speech by the Prime Minister, Ahmed Ouyahaia, on 21 October 2010 before the members of the National People's Assembly: Ministère de l'habitat et de l'urbanisme, *op. cit.*, p. 9 (French only).

²⁵ According to official sources, a total of nearly 2 million housing units were built in the course of the decade 2000–2010.

²⁶ Data received from the Ministry of Planning and Statistics, elaborated on the basis of the 2008 general census of the population and housing.

and natural gas and are connected to the sewerage system.²⁷ However, major requirements relating to other aspects of that right have yet to be met.

A. The need to diversify and democratize housing policies

24. The Special Rapporteur welcomes the Government's decision to address the crisis by giving priority to combating the housing shortage. She appreciates the considerable effort made by the Government, especially over the past 10 years, to build urban and rural dwellings,²⁸ in particular free public housing, and the substantial budgetary investment in this area by the State. For the five-year period 2010–2014, more than 3,700 billion dinars, or 50 billion dollars (17.4 per cent of the national budget),²⁹ have been allocated to the housing sector. The Special Rapporteur stresses the importance of Algeria's commitment to housing, which is particularly commendable in an international context in which States have been withdrawing from that role.

25. The Special Rapporteur recalls, however, that the substantial investment by the Government in this area has until recently focused entirely on the construction of new units as a function of the availability of public land and criteria of eligibility defined in public housing programmes. Since 1999 the State has diversified its housing assistance programmes to meet the needs of different occupational categories, but the Government bases its policy exclusively on supply and on quantitative objectives set without any prior assessment of needs and without a specific strategy to address individual questions and problems. For example, for the five-year period 2010–2014, the Government undertook to build 2 million housing units, including 500,000 rental units, 300,000 units to replace substandard housing and 700,000 rural housing units,³⁰ but to the Special Rapporteur's knowledge, this distribution is not based on an assessment of regional needs.

26. The Special Rapporteur notes the lack of information or education campaigns on the Government's housing policy, which remains unclear for the average citizen. That appears to affect, in particular, access to housing for the most underprivileged persons, who often are not even aware that they are eligible for a housing assistance programme.

27. The Special Rapporteur also wishes to stress the lack of dialogue with or involvement of civil society in the definition, implementation, administration and follow-up of housing policies and urban planning. She notes, for example, the failure to consult with civil society in the definition of criteria for the allocation of housing, and the very limited participation of civil society in commissions responsible for the allocation of public housing. That is a major obstacle to the realization of the right to housing in Algeria. The Special Rapporteur appreciates the efforts recently made by the Government to give a hearing to society (for example, by organizing meetings on urban planning or holding its first public consultations with civil society), although they have not yet resulted in changes in the way in which housing policies are elaborated and put into effect.

²⁷ Ibid. However, the Special Rapporteur notes the presence of considerable regional disparities.

²⁸ To deal with the rapid urbanization and rural migration to the big cities, the Government has started a housing programme to promote rural areas and encourage local populations to remain in rural areas. The programme provides incentives to households that earn between one time and six times the guaranteed national minimum wage to enable families to build a decent dwelling in their own rural environment.

²⁹ Ministère de l'habitat et de l'urbanisme, *op. cit.*, p. 8. For the previous five-year period (2005–2009), 1,581 billion dinars had been allocated to the housing sector and 912,326 housing units built.

³⁰ Ibid., p. 7.

B. Access to affordable housing

28. During her visit, the Special Rapporteur noted a general problem of access to housing associated with existing housing policies for basic standard dwellings and with real estate speculation. That makes the private real estate market inaccessible to the vast majority of the population.

29. The Special Rapporteur appreciates the new housing assistance policies in place since 1999, which have led to greater diversification. Today, a large part of the population appears to be eligible for these programmes, in particular the public housing programme³¹ for low-income households and the home-ownership assistance programme³² for middle-class households. In the Algiers wilaya, for example, between 1999 and 2010 a total of one third of the population applied for these programmes. Although from the standpoint of income a large percentage of the population is eligible for both programmes, major difficulties continue to prevent the persons concerned from actually obtaining adequate housing. There are many reasons for this: demand greatly exceeds supply,³³ and there are problems with the allocation of such housing and the manner in which these policies are conceived and publicized.

30. With regard to the allocation of housing, and in particular public rental units, the Special Rapporteur notes that considerable efforts still need to be made to improve transparency and that the various bodies involved in allocating housing (such as the *daira* commissions) have a margin of discretion which opens the door to patronage and corruption. That has contributed to creating a climate of suspicion and to generating a lack of confidence on the part of the population, as seen by the rioting that regularly breaks out after the posting of the lists of persons who have been assigned such housing.³⁴ The Special Rapporteur appreciates that applicants who claim that their rights have been infringed may lodge a complaint with a commission established to that effect and may thus have access to the classification of applications and learn their place on the list. However, it is problematic that the classification of all applications, with the position of all the applicants and the number of points granted to each applicant, is made public. Moreover, the Special Rapporteur has received allegations that applicants who have lodged a formal complaint have then had great difficulty obtaining public housing. There have also been many reports of the existence of a widespread black market for dwellings made available under two

³¹ See Executive Decree No. 2008-142 of 5 Jomada El Oula 1429 (11 May 2008), establishing the rules for the allocation of public housing. The programme is solely for persons who are in socially underprivileged categories on the basis of their wages. To be eligible, the monthly wage of a household must not exceed 24,000 dinars (less than twice the minimum monthly wage), and the person concerned must not have housing or must have substandard or insalubrious housing (arts. 4 and 5). In this connection, the Special Rapporteur notes that until 1998, only households with wages less than 12,000 dinars were eligible, which excluded a large part of the population.

³² See Executive Decree No. 10-235 of 26 Chaoual 1431 (5 October 2010). This programme provides assistance for the purchase of a housing unit and is for applicants who earn between one and six times the minimum monthly wage (art. 3). These are new housing units built by a real estate promoter in accordance with fixed technical specifications and financial conditions. Access to such housing is on the basis of a financial plan consisting of the purchaser's down payment, a preferential loan and direct State aid.

³³ In this connection, the Special Rapporteur notes that there is a discrepancy between the programmes for the construction of housing that have been launched and the number of housing units actually allocated.

³⁴ According to information available in the Algerian press, between January and July 2011, 90 demonstrations took place after the posting of housing allocation lists, and seven persons were said to have set themselves on fire for reasons related to access to housing.

earlier programmes. Housing units are alleged to have been assigned, bypassing the existing procedures, to ineligible persons, who then sublet or sell them at a high price, in violation of the law.³⁵

31. Some of the allocation criteria applied under the public housing programme are also problematic.³⁶ The Special Rapporteur questions in particular whether it is appropriate to set aside 40 per cent of public housing units for allocation to applicants under 35 years of age,³⁷ whereas the 35–50 age bracket is the one most in need of housing assistance. According to an analysis of demand in Algiers, applicants for housing under 35 years of age account for 9.07 per cent of all registered applications, as against 46.14 per cent for applicants aged 35 to 50 years of age.³⁸

32. The Special Rapporteur also notes with concern that slum clearance policy and situations resulting from natural disasters have increased the considerable pressure that the public housing system was already experiencing. Pursuant to article 9 of Executive Decree No. 2008-142, when assistance is required to address a local need of general interest or an exceptional situation (for example, a natural disaster), or when substandard housing is removed, the Government may authorize the allocation of public housing in response to an application submitted by the wali or the central authority, and such housing is assigned without following the usual procedure, i.e. it is not allocated in accordance with a point system based on predefined criteria, and persons who are victims of natural disasters or who live in slums may benefit from the public housing programme even when they have income exceeding 24,000 dinars, which is the basic criterion for eligibility in a normal situation. This results in considerable tension between beneficiaries of the public housing programme, who are in competition for the same housing.

33. The Special Rapporteur also notes that eligible persons who have not yet benefited from these programmes, as well as persons who are not eligible, have great difficulty finding adequate housing because of high real estate and rental prices. That is a particularly serious problem, since the eligible population may remain on lists of applicants for years before being assigned housing.

34. The strong demand for housing together with the absence of a regulatory strategy has led to considerable speculation on real estate and on rental apartments in the private sector, resulting in prices that the vast majority of Algerians are unable to afford.³⁹ According to unofficial sources, prices have increased fivefold since 2004.⁴⁰ The black market for dwellings under the low-income public housing and middle-income homeownership programmes encourages speculation, thus driving up housing prices. It is reported that private rental agencies often introduce arbitrary criteria, for example payment of a year's rent in advance. The Special Rapporteur also notes that the down payment for the purchase of a dwelling under the middle-income homeownership programme (between 700,000 and 1,000,000 dinars) is too high for the target groups. That constitutes an obstacle to access to adequate housing and may be a cause of the indebtedness and impoverishment of the households concerned.

³⁵ Executive Decree No. 2008-142 of 11 May 2008, arts. 44 and 47.

³⁶ Housing units are allocated by a *daira* commission on the basis of a standardized questionnaire with the help of a point system that uses uniform nationwide criteria and takes into account the income of the applicant and spouse, housing conditions, family and personal circumstances and the length of time that the application has been pending. *Ibid.*, art. 34.

³⁷ Executive Decree No. 2008-142, art. 11.

³⁸ Data provided by the housing and urban planning unit of the Algiers wilaya.

³⁹ At the same time, the rents set by the offices for promotion and management of the public housing stock, which are much lower, have been stable since 1998.

⁴⁰ “Le prix du mètre carré est de 80 000 DA”, *El Watan*, 25 October 2010.

35. Lastly, the Special Rapporteur notes that the programmes to promote housing accessibility and affordability are being conducted at a time of a high vacancy rate in the housing stock (14 per cent nationally, according to official sources, or nearly 1 million units).⁴¹ This situation is contributing to the real estate bubble and the explosion in real estate prices.⁴²

C. Habitability and services, materials, amenities and infrastructure

36. The difficulty of finding affordable housing has meant that the living conditions of part of the Algerian population are very precarious or informal.

37. During her visit, the Special Rapporteur noted serious overcrowding. Many large families (as many as 11 persons) live in a single room,⁴³ and many families share houses or hotels, each family renting a single room. It is common practice to rent rooms and garages to families, that thus are forced to live in particularly difficult and insalubrious conditions. In most cases, these are persons who are eligible for a dwelling under the public housing programme and have been on a waiting list for a long period.

38. The Special Rapporteur has also noted that many slums and other forms of makeshift housing⁴⁴ do not provide minimum decent living conditions and that many of them (285,000 housing units according to data obtained from the Ministry of Housing) are not structurally sound and are thus very vulnerable in the event of an earthquake. In the sole wilaya of Algiers, for example, 24,300 temporary structures were built between 1998 and 2008, and substandard housing as a percentage of total housing stock rose from 5.9 per cent to 9.1 per cent over the same period,⁴⁵ or approximately 20 per cent of currently available housing.⁴⁶ Whereas in the past, the Government had conducted programmes to rehabilitate substandard housing, in 2005 it embarked on a policy aimed at a complete eradication of slums by 2014. The goal of the programme for the reduction of substandard housing is to resettle families living in slums in new public housing units. However, slum residents often have to wait under very difficult conditions for many years or even decades; a considerable period of time may elapse between their registration in the waiting list and the actual allocation of a dwelling under the public housing programme. That being the case, the Government must also work to improve the living conditions of slum residents.

⁴¹ Data received by the Ministry of Planning and Statistics and elaborated on the basis of the results of the 2008 population and housing census. Many of these vacant housing units are said to be new units received through the black market. See “950 000 logements neufs inoccupés en Algérie”, *Liberté*, 19 February 2011. The Special Rapporteur notes that, according to official sources, only 27 per cent of vacant housing are habitable.

⁴² “L'éternel marasme du logement”, *Liberté*, 19 April 2011.

⁴³ Until 2002, public housing units could be composed of a single room, which contributed to overcrowding. In 2002, the Government decided to do away with single-room apartments, and in 2006 two-room apartments were also discontinued.

⁴⁴ According to information received from the Ministry of Housing and Urban Planning, in 2007 there were 560,000 slum dwellings, of which 379,000 were made of bricks and disparate materials, at 12,355 locations. The Special Rapporteur notes, however, the lack of exact figures on slums or of a Government definition of substandard housing. See also: International Federation for Human Rights, Ligue Algérienne pour la Défense des Droits de l'Homme, Collectif des Familles des Disparues en Algérie, FIDH/LADDH/CFDA, *La “mal-vie”*: rapport sur la situation des droits ECOSOC en Algérie, May 2010, p. 16.

⁴⁵ SAFAR ZITOUN Madani, *Alger d'aujourd'hui: une ville à la recherche de ses marques sociales*, in “Insaniyat” No. 44–45 (2009), p. 13.

⁴⁶ Wilaya d'Alger, *PDAU d'Alger-Habitat*, June 2010, p. 4.

39. A large part of the population is living in badly decayed dwellings that date back to the colonial or Ottoman periods⁴⁷ or in public housing that is in a very poor state of repair and is not usually maintained by the tenants, the private owners or the State. In 2008, a technical and socio-economic assessment carried out for the Algiers wilaya conurbation found that 70 per cent of housing was in a moderate or advanced stage of disrepair.⁴⁸ According to information received by the Ministry of Housing and Urban Planning, beneficiaries of a dwelling under the public housing programme often do not pay their rent and pay only 100 dinars every two months for basic maintenance.⁴⁹ These problems are also related to the fact that the households concerned are not involved in the elaboration and implementation of housing policies. She appreciates the efforts which the Government has recently made to rehabilitate the old housing stock⁵⁰ and public housing units, but stresses that, given the scale of the problem, action by the State in this sector must be stepped up, and new ways of maintaining public-sector housing must be explored.

40. The Special Rapporteur also noted the problem of the perpetuation of temporary housing for victims of natural disasters. An undetermined number of persons still live in the temporary dwellings built in the aftermath of the Boumerdes earthquake of May 2003. The victims had all been provisionally resettled in 14,700 housing units built in the six months following the earthquake. The authorities had subsequently offered them the choice between aid for on-site reconstruction, subsidies for purchasing their own dwelling, or assistance in resettlement in public housing. Although there are no precise figures, it is said that, eight years after the earthquake, a small number of families are still living in these temporary dwellings, in the vast majority of cases persons who had chosen on-site reconstruction, an option which has proved to be more drawn out and complicated than resettlement in public housing. These structures are now used by persons waiting to be allocated public housing. Theoretically, the administration has authorized these persons to remain on account of their particularly difficult situation. In practice, some are living there without authorization, for example relatives of the victims, or persons who have sublet the housing from the victims. Initially conceived as a temporary solution, these structures house persons under very difficult, confined and insalubrious conditions.

D. Location of housing

41. As already pointed out, until very recently the Government's approach to housing questions was exclusively quantitative. That resulted in large-scale construction, rather than the promotion of adequate housing, against a background of a shortage of available public

⁴⁷ CNES, Rapport sur le logement social, op. cit., p. 7. The current housing stock is composed of nearly 2 million units. Built before independence, most of these dwellings are privately owned.

⁴⁸ Wilaya d'Alger, *PDAU d'Alger-Habitat*, June 2010.

⁴⁹ As tenants, beneficiaries of public housing are required to pay rent that is equivalent to approximately one-ninth of the national minimum wage, rent being calculated on the basis of the surface area and the national adjusted reference figure for a square metre applicable for calculating rent. This figure is set annually by a decree issued by the ministers responsible for housing (Executive Decree No. 2008-142, art. 54). The tenant is also required to pay for the cost of maintenance of the communal parts and to make a deposit. According to her information, the rent and the deposit are minimal and should not in principle pose problems for the beneficiaries of this housing.

⁵⁰ In 2008, the Government launched a programme of financial support for owners of housing chosen under an urban renewal initiative. The initiative, which since 2010 has been embarked on in Algeria's four biggest cities, is aimed at restoring, renovating and maintaining the housing stock in this category.

land in urban areas. Until recently, there has not been any real regional planning policy, and this has led to considerable urban sprawl.

42. Thus, public housing policy has resulted in construction on the outskirts of urban areas, and many new housing settlements are located at a great distance from public services and the labour market. Owing to this circumstance, together with the uncontrolled growth of squatter settlements on the outskirts of urban areas and rural migration to the capital, the urban fabric has begun to unravel and decay, and cities are unable to fulfil all their functions or provide basic services and infrastructure. The result of an analysis of current and future infrastructure needs of the Algiers wilaya⁵¹ testifies to this situation. The existing cultural, sport and social assistance infrastructure is vastly inferior to needs (and is virtually non-existent in some municipalities), and the education and health-care infrastructure is almost everywhere inferior to existing needs, although less so than in the other three areas.

43. The Special Rapporteur appreciates the Government's decision to allocate 150 billion dinars, or an amount equivalent to the sums invested during the entire last decade, for the improvement of urban areas over the five-year period 2010–2014.

44. The Special Rapporteur considers that, with the adoption of the regional planning blueprint⁵² in 2010, Algeria has an important reference document for urban renewal, the promotion of more inclusive cities, the restoration of urban functions and the improvement of housing for the population. She also appreciates the adoption in 2010 of a land use and development plan for Algiers, which calls for the creation of a metropolitan zone in the capital through a restructuring of transport, urban renewal within the city's current boundaries, and infrastructure projects. However, there are a number of obstacles to the implementation of these plans, in particular with regard to available urban land.

E. Security of tenure and forced evictions

45. During her visit, the Special Rapporteur received numerous testimonies of evictions, often carried out on the basis of judicial decisions following procedures instituted by private owners against tenants. The Special Rapporteur notes that the problem of evictions is closely associated with the question of legal security of tenure for tenants and their ability to pay. She expresses concern at a phenomenon which seems to be on the rise,⁵³ especially since the adoption of the new Code of Civil Procedure in 2008. Under the new Code, eviction cases are dealt with on an urgent basis by an interim relief judge and thus are heard as a matter of priority.⁵⁴ The deadline for a summons to appear may be reduced to 24 hours.⁵⁵ Interim orders are immediately enforceable, with or without surety, notwithstanding legal remedies,⁵⁶ and as such they are not subject to appeal or annulment.⁵⁷

46. According to information brought to the Special Rapporteur's attention, families that should have been resettled in the context of urban renewal projects or the clearance of substandard housing have been de facto victims of evictions, because they were excluded from the resettlement plan without any explanation or compensation. Such cases have been reported in a number of Algerian cities.

⁵¹ Wilaya d'Alger, *PDAU d'Alger-équipements collectifs*, June 2010, pp. 31–35.

⁵² Adopted by Act No. 10-02 of 16 Rajab 1431 (29 June 2010).

⁵³ Non-governmental sources have reported 694 cases of evictions between 23 July 2009 and 6 July 2007.

⁵⁴ Algerian Code of Civil and Administrative Procedure, art. 299.

⁵⁵ *Ibid.*, art. 301.

⁵⁶ *Ibid.*, art. 303.

⁵⁷ *El Watan*, "Le drame des familles expulsées", article of 4 January 2011, p. 9.

47. The Special Rapporteur is particularly concerned about the large number of evicted persons who have become homeless due to the lack of State resettlement or compensation measures. According to reports, evictions have even taken place during the “winter truce”, which extends from 15 November to 15 March and concerns persons over 60 years of age, although this is strictly forbidden by Executive Decree No. 507 bis of 13 May 2007, which ensures that persons over 60 years of age may remain in their housing. The Special Rapporteur draws attention to existing international standards for eviction, and in particular the obligation to guarantee that persons affected by an eviction process have the right to legal assistance and access to the courts as well as to social assistance and housing support if they are destitute.

V. Specific situations

A. Gender discrimination in access to adequate housing

48. During her visit, the Special Rapporteur noted that, despite legal improvements, in particular the 2005 reform of the Family Code, Algerian women still do not have the same status as men within the family⁵⁸ and continue to be victims of de jure discrimination in access to housing. According to Algerian law (articles 142 and 144 of the Family Code), women cannot claim the same part of an inheritance as men, since they have the right to only half of what men are entitled to.

49. The Special Rapporteur heard many testimonies and received numerous reports on the various types of gender discrimination that exist. Single, divorced and widowed women are particularly vulnerable to discrimination in the allocation of housing. The commissions responsible for the assignment of housing often do not even accept housing applications from single women; that prevents these persons from lodging an appeal, and it is very rare for them to be allocated housing. Moreover, housing is assigned to the person who submits the application; in couples, that is almost always the husband, and thus in most cases the certificate of title of tenancy or ownership bears his name.⁵⁹ The Special Rapporteur has also received testimonies according to which, when the commissions allocate housing to single women, the communities concerned challenge these decisions, and women who are beneficiaries of such housing are stigmatized.

50. With regard to divorced women, article 72 of the Family Code provides that, if a couple has children and the woman is granted custody,⁶⁰ the father must ensure that she has decent housing or else must pay her rent. Moreover, a woman who has custody has the right to remain in the matrimonial home until the father implements the judicial decision. Although this provision of the Family Code constitutes a positive development compared to its earlier version,⁶¹ major problems persist. Firstly, women without children or who have

⁵⁸ The Family Code is in contradiction with article 29 of the Algerian Constitution, which recognizes equality before the law without any discrimination on the basis of gender.

⁵⁹ According to official sources, of a sampling of 245,000 middle-income housing units benefiting from State aid as part of the 2005–2009 home-ownership programme, 24 per cent were registered in the wife’s name.

⁶⁰ Pursuant to article 64 of the Family Code, custody is vested in the first instance in the mother, then in the father and then in the closest relatives.

⁶¹ Under the earlier version of the Family Code (art. 52), only in cases in which the wife obtained custody of the children and she did not have a guardian who agreed to take her in did she and her children have the right to her own housing, in keeping with the husband’s possibilities. However, the matrimonial home was excluded from that decision if it was the sole housing.

not been granted custody of their children do not benefit from any protection. In such cases, the Special Rapporteur notes that fathers sometimes attempt to obtain custody of the children so that they can continue to live in the matrimonial home. Secondly, article 72 does not guarantee that a woman who has child custody can stay in the matrimonial home; this is not ensured until the father implements the judicial decision concerning housing. In cases in which women are granted child custody, it is the judge who decides case by case and may rule that the wife must continue to live with her children in the matrimonial home or that the husband must pay his former spouse an amount deemed to be sufficient to pay her rent. However, the amount set by the judge is based on official rental prices, whereas actual market prices are much higher. Moreover, it is reported that judges do not always rule on the question of housing. In both those cases, women do not have the means to pay the rent, and often their only alternative is either to become homeless or to remain in the home of their former spouses, where they are often victims of violence. The Special Rapporteur is particularly concerned by the insufficient number — and in some cities the lack — of shelters for women who are victims of domestic violence (for example, Oran had opened two shelters before 1990, but they have since been closed because of their state of disrepair, and Algiers, Constantine and Annaba each have only one such shelter).

51. Although the phenomenon of homelessness seems to be rather marginal in Algeria, women (sometimes accompanied by their children) constitute the highest share of this group. This may concern women who are divorced or have been repudiated by the husbands, women or girls who are considered to have dishonoured their families, and women who are victims of violence. In short, women become even more vulnerable when they are homeless.

52. The Special Rapporteur notes the insecure situation of women who live alone. In particular, she notes with concern the phenomenon of “punitive expeditions” targeting women who live alone and which are carried out on the pretext of defending moral standards, for example in Hassi Messaoud and in M’sila (in the latter case, which occurred shortly before the Special Rapporteur’s visit, the houses of women living alone had been set on fire).⁶² The Special Rapporteur also notes with concern the recent cases of violence committed against women living alone and which were allegedly perpetrated by police officers in the homes of the victims in Hydra, Algiers.⁶³

B. Internally displaced persons, families of disappeared persons and Saharan refugees

53. The Special Rapporteur notes that persons displaced during the “black decade” and who have not returned to their places of origin are often poorly housed in the country’s urban centres (including in slums).⁶⁴ There is no specific policy guaranteeing the right to adequate housing for this group. There does not seem to be any programme to facilitate their safe return to their place of origin if they so wish, to meet their specific housing needs in localities where they currently live or to guarantee their right to restitution or compensation for lost housing.

⁶² “Algérie: En l’absence de l’État, tout individu peut se substituer à la loi”, *El Watan*, 21 July 2011.

⁶³ “Les agresseurs encouragés par le silence des autorités”, *El Watan*, 14 August 2011.

⁶⁴ The Special Rapporteur notes the controversy over the number of displaced persons. According to official sources, by 2007 there were no longer any internally displaced persons, because virtually all of them had returned to their places of origin. According to other sources, a large number of displaced persons are still living in the cities. See: International Displacement Monitoring Center and Norwegian Refugee Council, *op. cit.*, pp. 9 ff.

54. The Special Rapporteur also notes the administrative problems which the families of disappeared persons must overcome, in particular spouses and mothers of families, in order to be able to take part in housing programmes, obtain social security and enjoy the right to own and inherit property, as well as the direct impact of those problems on their right to housing.⁶⁵

55. Lastly, the Special Rapporteur notes the extremely difficult living conditions of Saharan refugees in the Tindouf camps, and in particular their very poor housing. According to reports which she has received, the tents in which such persons live need to be replaced at least every five years, but the international organizations active there are unable to do so due to lack of funds. Thus, these persons have had to build their own dwellings, but such structures are unsuited to the climate and terrain and are vulnerable to the flooding that is typical of the region.

VI. Conclusions and recommendations

56. The Special Rapporteur appreciates the considerable effort made by the Algerian State in the area of housing, in particular the construction of free public housing. She notes, however, that major efforts still need to be made to diversify policies in accordance with existing needs in the country and to incorporate the various components of the right to adequate housing. A democratization of housing policy based on transparency and the direct involvement of citizens and organizations of civil society in the definition and implementation of these policies would constitute a very important step in shifting the focus from housing construction to the actual realization of the right to housing in Algeria.

57. The Special Rapporteur recommends that the State should take effective measures to raise the awareness of the members of the judiciary of the right to adequate housing as recognized in the Covenant and to ensure that legal training takes full account of the enforceability of that right. She also recommends the adoption of measures to strengthen the effective remedies available to victims of violations of the right to housing. She advocates, *inter alia*, ensuring the independence and effectiveness of the National Advisory Commission for the Promotion and Protection of Human Rights, and she recommends the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. As part of the ongoing revision of the Constitution, she also recommends that the right to adequate housing should be recognized as a constitutional right.

58. The Special Rapporteur urges the Government to engage in a genuine dialogue in order to define housing policies and institutionalize standing mechanisms to monitor the implementation of those policies. She recommends in particular the establishment of an independent housing agency. She also calls on the Government to promote, respect and protect the right of everyone to freedom of association and the right to organize, as well as the rights of human rights defenders, in particular those active in the area of housing, as defined in General Assembly resolution A/RES/53/144.

59. The Special Rapporteur recommends the establishment of public awareness programmes so that the population is informed about housing assistance programmes actually available and can easily request assistance.

⁶⁵ See: FIDH/LADDH/CFDA, *op. cit.*, pp. 59–63.

60. The Special Rapporteur urges the Government to assess and analyse existing housing needs and to diversify its housing policies accordingly. In particular, she urges the Government to:

- Ensure that the policy for the reduction of substandard housing is accompanied by policies to improve living conditions in slums, together with participatory initiatives
- Introduce policies for the regulation of the public housing market, rent incentives and ceilings, together with policies to assist tenants (such as rent subsidies), and measures to encourage the use of vacant housing
- Introduce housing policies aimed at integrating the urban landscape and a housing construction policy that takes into account infrastructure, public spaces and transport, and not just housing units
- Strengthen recently launched housing rehabilitation policies and establish mechanisms to ensure maintenance, in particular of public-sector housing
- Take all necessary measures to enable internally displaced persons to return safely to their place of origin if they so wish, to meet their specific housing needs and to ensure their right to restitution or compensation

61. In order to guarantee a transparent allocation of apartments under the public housing programme for low-income households, the Special Rapporteur urges the Government to set up a single national list of registered housing applications that specifies the number of points which each application has received and the position of each applicant on the list. The classification of all applications should be made public and accessible, for example on the website of the municipality, *daira* or *wilaya*.

62. The Special Rapporteur recommends a concerted assessment of criteria for the allocation of public housing and, if necessary, their amendment.

63. The Special Rapporteur recalls the importance of guaranteeing the right of persons subject to an eviction procedure to legal assistance, access to the courts, social assistance and housing when they are destitute. She recommends that eviction orders should be subject to appeal or annulment. She also urges the Government to ensure that the “winter truce” is respected and that persons over 60 years of age are not evicted under Executive Decree No. 507 bis. She encourages the Government to ensure that, in the framework of urban renewal or slum clearance projects, no one becomes a *de facto* victim of a forced eviction and is rendered homeless. She recalls the obligation of the State to ensure that victims of forced evictions either receive compensation or are adequately resettled.

64. In the light of widespread *de jure* and *de facto* gender discrimination, the Special Rapporteur urges the State to take the necessary legislative measures to recognize that women have the same legal capacity as men in civil matters by ensuring the same rights for both spouses with regard to ownership, use and disposal of property and by guaranteeing the legal basis for equal access to housing for single, widowed and divorced women. In this connection, she calls on the Government to withdraw its reservations to articles 2, 15 and 16 (h) of the Convention on the Elimination of All Forms of Discrimination against Women.

65. The Special Rapporteur encourages the Government to take affirmative action measures for women with regard to access to housing. She recommends in particular that, when a couple participates in a housing programme, the certificate of title should always bear the name of the couple and not the name of the person who submits the

application. In cases of divorce, she recommends that judges should set the amount of rent that the husband must pay to his former wife on the basis of market prices.

66. The Special Rapporteur urges the Government to take all necessary measures to eliminate the obstacles which the families of disappeared persons must overcome, in particular spouses and mothers of families, in order to be able to take part in housing programmes, obtain social security and enjoy the right to own and inherit property.

67. The Special Rapporteur stresses that violence against women and the right to adequate housing are closely linked. She appreciates the establishment of specialized entities for the protection of children and women who have been victims of aggression committed by members of the wilaya police force, and she urges the competent authorities to take all necessary measures to prevent, investigate and punish acts of violence against women. She also calls on the Government to provide for a sufficient number of shelters for women who are victims of violence.

68. The Special Rapporteur urges the international community to provide sufficient funding to ensure decent living conditions, including adequate housing, for Saharan refugees in the Tindouf camps.
