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适足生活水准权所含适足住房问题

适足生活水准权所含适足住房问题特别报告员

米隆·科塔里提交的报告

增 编

对秘鲁的访问**

* 内容提要以所有正式语文分发。报告本身在于内容提要的附件中，仅以提交语文和西班牙文分发。

** 本报告迟交是为了反映最新式发展，包括访问的后续行动的情况。

内容提要

适足生活水准权所含适足住房问题特别报告员的访问目标是，研究秘鲁的适足住房权和其他相关权利的实现状况，尤其注意男女平等和不歧视问题的各个方面，并提交相关报告。特别报告员还力求与秘鲁政府、联合国和其他国际机构及民间组织开展对话，阐明在实现权利方面与其任务相关的务实办法和最佳做法。

特别报告员发现，秘鲁的住房状况十分恶劣。估计房屋短缺数目为 120 万单元，其中需要新建 300,000 单元，改善 900,000 单元。特别报告员在访问期间接到了关于人民面临重重困难的大量申诉和信息，例如：没有所有权、市政服务设施(尤其是供水)和可靠的使用权；住房建在高风险区，采矿活动造成地表坍塌；家庭和社区面临强行拆迁；得到所有权的同时没有得到相应的市政服务；自然资源特别是水和空气受到污染。在特别报告员走访的几乎所有贫困社区，缺乏适足用水和清洁卫生条件都是最让人忧虑的问题。多年以来，政治暴力使大量人口流离失所。临时搭建的住所急剧膨胀，主要原因是贫困造成的压力。

特别报告员承认政府为解决住房问题做了多方努力，但并没有处理这个问题的所有方面。例如，他的评估是，各式各样的住房方案并没有让十分贫穷的人受益，这部分人占人口的 25%，生活在最不稳定的状况中，既不可能有所结余，也付不起参加这些方案的缴款。这类住房方案需要更加侧重于帮助贫困者的补贴政策，需要加大灵活性。另外，住房政策和其他政策还需要更多地注重妇女的土地和住房权，例如保护女性户主家庭。对于其他一些群体，如儿童、残疾人和土著人，也需要加以侧重。全球化和采矿活动可能带来的影响值得注意。特别报告员强调，政府需要进一步审查现有的方案，使之向人口中最贫困的层次倾斜，扩大对于改进自建房的援助，包括对秘鲁居民中参与社会建房的高比例人口给予承认和促进。

在农村和欠发达地区，改善住房状况似乎没有得到足够重视，得到的资源也很少。负责农村发展，包括解决住房问题的是相对较小的政府机关，其援助重点主要在于受自然灾害影响的地区。与比较富裕的地区和教育区相比，农村地区解决住房问题的体制网络大为薄弱。适足住房权不能与健康、水和食物权分离。应当把农村的全面发展作为国家住房政策和战略的一个组成部分，把改善住房和生活条件(包括水和清洁卫生)与就业和教育机会联系起来。

总而言之，需要更好地把人权融入国家政策。在访问期间，国会于 3 月 10 日通过了新的政府住房政策框架“全国住房计划——人人享有住房：2003-2007 年政策优先事项”。但是，这一政策的实施需要认真监督。特别报告员还注意到，在目前阶段，宪法并没有承认适足住房权，国会目前正在辩论是否在宪法修订本中予以确认。在这方面，特别报告员鼓励进一步开展工作拟订全国人权行动计划。

另外，对于市政服务的私有化，需要开展仔细得多的研究。特别报告员会见了很多家庭，这些人支付的电费混乱，或者由于付不起电费而面临着断电的威胁。在利马的许多贫困社区，人们只能通过水槽车获得用水，费用高达自来水的七倍。这种不利于贫困社区的差别应当立即解决。而且，重新安置政策应当确保人民的权利得到保护。在特别报告员走访的许多利马社区，被重新安置的人居住在远离自己过去生活的地方，得不到市政服务或就业。

特别报告员还注意到，非正规房地产正规化委员会(正规化委员会)在 **Hernando de Soto** 工作的激励下和世界银行的支持下批准所有权的现行做法，如果参照秘鲁按照人权文书承担的义务看，则存在着漏洞。现在迫切需要审查这项政策和正规化委员会这类机构的工作，以便确保履行这些人权义务。

特别报告员认为，虽然秘鲁住房政策的制订和执行缺少民间社会的参与，但是在把不同行为者在不同层次开展的工作相互连接起来并拿出新的解决办法方面，却属于世界最佳行列。特别重要的是，国家必须充分考虑到全国上下正在开展着出色的工作，为了出台一项更加以人为本和基于人权的住房政策，政府必须与民间社会开展积极对话。特别报告员尤其建议，住房部应当参加全国人权理事会的工作，这个理事会的任务是就人权政策向政府提出咨询意见。

特别报告员对于一些积极动态表示赞赏。其中之一是秘鲁政府对于人权委员会特别程序负责人发出了随时访问的邀请，这表现出了找到解决办法的兴趣。另的此类动态是，特别报告员走访的政府部门提出了一些十分良好的倡议，并且有着兢兢业业的工作人员。国会住房委员会也十分坚决地努力把适足住房权纳入宪法。

但是，特别报告员强调，秘鲁应对住房方面的挑战，就需要向人权“不可分割”的立场调整方向。从这样一个全面的立场出发，就应当在所有各级通报政府的政策和行为，包括预算拨款，统筹处理住房、供水、清洁卫生、供电和免受拆迁等等问题，同时确保把妇女和弱势社区放在优先位置。秘鲁政府需要重新构建处理严重住房和用

地危机的方法，将资金、文书、方案以及推动这些因素的立法政策按照轻重缓急排列优先顺序，以便把重点放在人民的努力和行动上。

特别报告员这次访问所留下的难忘印象是，秘鲁人民的热情和决心。每个社区内人民都对他给予了盛情款待，并表现出了与民间社会和当地主管部门合作，利用任何可加利用的微薄手段实现变革的承诺和努力。他希望，政府能够敞开胸怀接受这种精神，从而为在全国进一步实现适足住房权和相关人权作出贡献。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A
COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING,
MILOON KOTHARI, ON HIS MISSION TO PERU, 3-15 MARCH 2003**

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Introduction

1. At the invitation of the Government of Peru, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living undertook a country mission to Peru from 3 to 15 March 2003. The general purpose of the Special Rapporteur's mission was to examine and report on the status of realization of the right to adequate housing and other related rights in the country, with particular attention to aspects of gender equality and non-discrimination. He also sought to engage in dialogue with the Government, United Nations and international agencies and civil society, and to identify practical solutions and best practices in the realization of rights related to his mandate.

2. Based on provisions found in legal instruments, the Special Rapporteur has adopted a working definition of the right to adequate housing as "the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity" (E/CN.4/2001/51). Based on the notion that all human rights are interrelated and indivisible, he has adopted a holistic approach to his mandate, and has sought to explore linkages with other related rights such as the rights to food, water, health, work, property, security of the person, security of home, and protection against inhuman and degrading treatment, in all of his activities including country missions. Based on this approach, during the mission to Peru, he cross-examined a range of issues related to adequate housing, including land, forced eviction, access to water and sanitation, health, poverty, impact of globalization, gender, indigenous people, minorities and vulnerable groups.

3. The Special Rapporteur also put particular focus on the issues of women and adequate housing, pursuant to the mandate entrusted in him by Commission resolution 2002/49 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing. He used the questionnaire on women and adequate housing, which he developed in response to this resolution to solicit information from all Member States and civil society, as a basis for the discussion with the Government and civil society in Peru.

4. The Special Rapporteur met with the Minister of External Relations ; the Minister of Housing, Construction and Sanitation and senior officials of the Ministry ; the Secretary-General of the Ministry of Women and Social Development (MIMDES) ; Vice Minister of Justice ; the National Coordinator of the Commission for the Formalization of Informal Properties (Comisión de Formalización de la Propiedad Informal, COFOPRI) ; officials from the Ministry of Finance, including those responsible for the State housing programme MIVIVIENDA ; senior officials of the National Fund for Compensation and Social Development (Fondo Nacional de Compensación y Desarrollo Social, FONCODES) ; the Executive Secretary and members of the National Commission on Human Rights ; the President of the Truth and Reconciliation Commission ; the Congressional Commission on Housing ; the Deputy Commissioners of Ombudsman's Office (Defensoría del Pueblo) ; the Deputy Governor of Loreto Region ; the Presidents of the High Court of Iquitos and Cono Norte ; the Mayors of Belen in Iquitos, Villa El Salvador in Lima and San Jose de los Molinos in Ica. He met with the United Nations Resident Coordinator, a.i. , and the Resident Representative, a.i. , of the United Nations Development Programme as well as representatives of the United Nations

Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), the United Nations Human Settlements Programme (UN-Habitat), the United Nations Office for Project Services (UNOPS), the International Organization for Migration (IOM), the World Food Programme (WFP), the World Health Organization (WHO) and the Pan-American Health Organization (PAHO). He would like to thank in particular the United Nations Resident Coordinator, a.i., and the UNDP Resident Representative, a.i., for the valuable assistance and support provided for organizing the mission. He would also like to thank the Gender Focal Point from the UN-Habitat Regional Office for Latin America and the Caribbean, who accompanied him to several meetings and some of the field visits around Lima.

5. The Special Rapporteur met with a number of civil society organizations and community leaders. He would like particularly to thank the Grupo Impulsor, a coalition of civil society organizations that was formed to assist the Special Rapporteur with the mission and which ensured close coordination among civil society groups and organizations, and arranged numerous meetings, testimonies and field visits. The Special Rapporteur would also like to thank the valuable contribution of the Campaña por el Derecho a una Vivienda Digna para Todos y Todos. He acknowledges the support and active participation of the Coordinadora Nacional de Derechos Humanos (CNDDHH), Centro de Investigación, Documentación y Asesoría Poblacional (CIDAP), the Instituto de Desarrollo Urbano (CENCA) and ESTRATEGIA. He visited various communities in and around Lima (Cono Norte, Cono Este, Cono Sur and Central Lima) and also undertook field visits to Iquitos (Belen) and Ica (Nueva Esperanza, San Jose de los Molinos, Casa Blanca, and Las Garzas). During the mission, he received a large number of testimonies, both directly in interviews with communities and in the form of case studies presented by civil society. He particularly thanks those community representatives including indigenous people who travelled afar from La Oroya and Tambogrande, where the Special Rapporteur was not able to visit, to give testimonies in Lima.

I. INSTITUTIONAL FRAMEWORK

6. The housing sector in Peru for poor people, who constitute more than half of the population, is under intense pressure due to several factors, including diverse geographical features, long-standing neglect in the rural areas, and uncontrollable migration flow from rural to urban areas. These poor people often live on sand dunes and barren lands at the periphery of large cities, with precarious houses made of mats or woods, with no water supply, sewage, electricity or telephone. They do not have access roads, community centres, education or health services. Added to this, the decade of conflict created a large number of internally displaced people moving from rural areas to urban peripheries, exacerbating the already strained infrastructure and services. Another factor contributing to the characteristics of the housing sector in Peru has its roots in culture. Peruvians very much desire to possess a plot of land that they can call their own. Hence, multifamily dwellings and vertical growth of properties have not developed well nor are they, due to the cultural mindset, accepted in Peru.

7. The absence of a housing policy during the last decade is also symbolized in the Constitutional revision of 1993 that had removed the reference to the right to adequate housing. Compared to other sectors such as health and education, housing had been accorded less priority

in the allocation of resources and development of institutional networks, reflecting the general lack of political will.

8. Following the dramatic political changes that began in 2000, the Government initiated a series of consultative processes to develop strategies for the public sector reform. In 2001, *Mesas de Concertación para la Lucha contra la Pobreza* (Round tables for the fight against the poverty) were established at national, regional and local levels, providing platforms for fostering dialogue among stakeholders on development priorities and policies.

9. Building upon these platforms, the Government initiated a national dialogue in 2002 to create a common vision for the development of the country in the next 20 years. After a four-month consultation process involving political parties, NGOs, academic institutions and the private sector, the *Acuerdo Nacional* (National Accord) was signed in July 2002. The National Accord provides a framework for government commitment and strategies in 29 areas, organized around four pillars : (a) governance ; (b) equity and social justice ; (c) competitiveness ; (d) institutionality and public ethics.

10. The lack of adequate housing, together with access to basic services such as water and sanitation, was highlighted as a major problem during the consultation and thus included as one of the priority areas in the National Accord. Norms and regulations related to housing construction and social housing are more than 30 years old and considered obsolete in the current context that needed to be improved.

11. Strengthening of a national institutional framework for housing and urban development has thus only been initiated recently. In July 2002, the Ministry of Housing, Construction and Sanitation was established, upgrading the old government units responsible for housing issues. The mission of the Special Rapporteur coincided with the formal adoption, on 10 March 2003, of the new government policy framework on housing, the National Housing Plan - Housing for All : Policy priorities for 2003-2007. The National Housing Plan consolidates various housing laws and policies previously adopted, and is designed to promote access for dignified housing for all families and to provide basic conditions for their safety, security and healthy development.

12. Pursuant to the actions defined in the National Accord, the commitments of the Government defined in the plan are : (a) to develop housing infrastructure in order to reduce the housing deficit ; (b) to increase competitiveness ; (c) to enable sustainable development ; and (d) to provide families with necessary conditions for healthy development and adequate environment. The State, at national and local level, will act as facilitator and regulator of these activities, and will promote the transfer of design, implementation and maintenance to the private sector for housing development. The role of the State is defined as preparing policies and necessary legislation, facilitating construction and registering of housing to reduce transaction costs, and promoting greater density, cheaper and safe housing.

13. The Government has estimated the housing deficit at 1.2 million units, of which there is a need for 300,000 new housing units and 900,000 renovated units. In addressing this challenge, the Government has two major programmes for housing construction and upgrading, targeting

two different income groups. The first is the MIVIVIENDA programme, which is a housing financing scheme targeted at middle-income population. The second is the *Techo Propio*

(“Roof over my head”) programme, which is a subsidy scheme targeted at the lower-middle to low-income segment of the population. Both programmes set out basic conditions for assistance as having proper legal title for ownership, and financial participation by the beneficiaries (in the form of a down payment).

14. In the area of land titles, the Government established the Commission for the Formalization of Informal Properties (Comisión de Formalización de la Propiedad Informal, COFOPRI) in 1996 under the auspices of the Ministry of Justice, with technical and financial support from the World Bank through its Urban Property Rights Project. Through the formalization of land ownership and property rights in predominantly low-income settlements, it aims to facilitate their access to credit and finance to obtain adequate housing. COFOPRI also organizes campaigns to promote a property-registration culture and to facilitate access to credit by the poor.

15. In 2001, Provincial Formalization Commissions were established in 14 departments covering 65 provinces, with COFOPRI servicing as its technical secretariat. Since its establishment, COFOPRI reported that 1.3 million titles have been granted and entered into the public registry and the land cadastre system. With the increase in the number of titles granted (115,000 in 2001 and 123,000 in 2002), COFOPRI reported that there has been a correspondent increase in the quantity and value of credit provided (US\$ 274 million in 2001 and US\$ 313 million in 2002).

II. FINDINGS AND ISSUES OF PARTICULAR CONCERN

16. Prior to and during the mission, the Special Rapporteur received many petitions and much information on impediments that people face in securing their right to adequate housing, such as : lack of title and security of tenure ; lack of civic services, particularly water and sanitation ; provision of title without the attendant civic services ; houses built on risk zones and vulnerable to flood, earthquake and landslides ; collapse of land from mining activities ; families and communities facing evictions ; pollution of natural resources, particularly water and air ; and the impact of privatization and globalization on the housing and living conditions of the poor.

A. Housing for the poor

17. Since 1997, poverty levels have been on the rise in Peru. In 2001, 54.8 per cent of the population were in poverty and 24.4 per cent in extreme poverty. The situation is much worse in rural areas in the highland or Amazon, where the incidence of poverty is almost twice that of the coastal areas. Rural-to-urban migration in search of job opportunities and better life prospects has exerted enormous pressure on the availability of land and services. The result has been the rapid growth of informal settlements over occupied lands in which most of these poor people live in overcrowded and substandard quality housing with no security of tenure and access to services. The Special Rapporteur was able to view this situation first-hand in visits to numerous rural and urban areas in the country.

18. Economic motives, however, were not the only factor in this rural-to-urban migration trend. It is estimated that the political violence which prevailed in the country between 1980 and 1993 produced around 600,000 internal displaced persons from the conflict areas. One third of these people have settled in the vicinity of Lima, often in areas without access to services and without security of tenure. For example, residents of the Project Kuelap in El Agustino District of Lima, where the Special Rapporteur visited, have been living for 17 years after displacement in rented shacks without security of tenure, access to services or financial credit to upgrade their houses.

19. The Special Rapporteur recognizes the efforts of the Government in tackling housing problems in Peru. One clear manifestation of this is the establishment of various housing programmes such as MIVIVIENDA and *Techo Propio*. However, so far these efforts have been partial and his assessment of these programmes is that they are not reaching the very poor, who represent 25 per cent of the population, living in the most precarious conditions and who do not have the ability either to save or pay their contributions in these programmes.

20. In the case of MIVIVIENDA, the Government is trying to stimulate a housing market for the middle-income segment by providing credit resources to banks, which in turn would channel resources to borrowers. With more than 3,000 credits given in 2002 and 8,000 more credits planned in 2003, the Government reports that the programme is progressing well and the market has already shown positive reaction. As the programme is designed for the middle-income population with monthly incomes of US\$ 500 or more, no direct impact to the poorer segment of the society is expected, apart from possible spin-off effects such as generation of employment opportunities.

21. On the other hand, the *Techo Propio* programme is targeted at the lower, if not the lowest, income segment of the population with monthly incomes of between US\$ 200 to 300. This is a pilot programme financed by the Inter-American Development Bank, which aims to provide quality houses with water and electricity in urban perimeters of eight major cities in Peru. Each beneficiary would contribute 10 per cent of the cost in the form of family savings, with the government subsidy covering 45 per cent and credit for the remaining 35 per cent being provided at market rate. Eight hundred (800) houses costing US\$ 8,000 each have been built so far during this pilot phase.

22. While recognizing these efforts of the Government, the Special Rapporteur observed that the coverage of these programmes is limited, as they are at their initial piloting stage of implementation. Furthermore, the Special Rapporteur observed that even the *Techo Propio* programme does not reach the lowest segment of the population, and its programme is focused on construction of new housing while there is much greater need in the upgrading of existing housing in the country. The Special Rapporteur notes that the Government plans to expand the subsidy scheme under the *Techo Propio* programme to provide subsidy for upgradation, with a modest scale of 2,000 subsidies to be provided in 2003. **The Special Rapporteur recommends**

that the Government further review the existing programmes to orient them towards the poorest segment of the population, and to expand its assistance for upgrading self-built housing, including recognition and promotion of the significant proportion of Peru's residents involved in the social production of housing.¹ Existing rules and standards also need to be reviewed to consider more flexibility to ensure that the lowest segment of the population would benefit from these government programmes. The Government should also consider other alternative approaches that have resulted in job-creation, greater cost-saving and increased participation by the beneficiaries, particularly poor women, such as those projects in Pachacutec, jointly implemented by civil society and local authorities (see box 1 below).

Box 1

Gender and housing : the Pachacutec experience

The Pachacutec community is located in Ventanilla District, in the north of Lima, inhabited by 50,000 families living in poor conditions. There are no infrastructure services such as water and sewage. Houses are built in poor conditions on sandy ground, which present constant problems for the residents.

A non-governmental organization, ESTRATEGIA, started a unique initiative in this community to train community residents, both women and men, to promote self construction of houses at an affordable cost. The project provided materials and equipment and training for residents to make concrete bricks and beams for self-construction. The cost of construction is half of the State subsidy programme for the poor (US\$ 3,500 for a house of 36 square metres as compared to US\$ 8,000 under the *Techo Propio* programme) , and there is no advance payment requirement. Beneficiaries can pay it back in monthly instalments of \$50 for six years with no interest. Under *Techo Propio*, beneficiaries need to make a down payment of \$875, and the loan term is up to 20 years with interest.

The project has trained 240 residents, and already built a number of houses. ESTRATEGIA is going to build 10 more housing units in 2003 and start the creation of a microenterprise to provide jobs for the unemployed and start the improvement of the whole area, extending the work with the local government.

A unique feature of the project is its focus on gender equality and its conscious efforts to ensure participation of both men and women in the planning processes, training and execution of housing construction and local production of materials. ESTRATEGIA combines the technical assistance in housing construction with human rights awareness training, so that men and women become aware of their rights and can participate in meetings with local authorities.

B. Water and sanitation

23. Lack of adequate water and sanitation was a priority concern among almost all the poor communities the Special Rapporteur visited. At the national level, the current coverage is 75 per cent for water and 55 per cent for sanitation. Furthermore, the quality of water services is low, with the national average of water availability at 16 hours a day. The inefficiency of services and the lack of access to piped water have meant that the poor often have to pay much more for the water than other citizens. While the average resident in Lima pays 40 cents per cubic metre for water from their taps, the poor in informal settlements around Lima are paying up to US\$ 3 per cubic metre for low-quality water delivered by a water truck.

24. Water is a prerequisite to the realization of a range of human rights, including the right to adequate housing. The Committee on Economic, Social and Cultural Rights, in its general comment No. 15 on the right to water, stated that “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” (E/C.12/2002/11, para. 2). As in other Covenant rights, the right to water imposes certain obligations on the State parties. The Committee states :

“Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that : ... Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status” (ibid. , para. 16).

25. **In view of the critical situation that poor communities and informal settlements are facing in Peru, both in urban and rural areas, the Special Rapporteur recommends that the Government develop national strategies to improve access to water and sanitation services by the poor, including setting a social rate for water, taking into account general comment No. 15. The Government should also promote the use of low-cost and appropriate technologies managed by the communities themselves.** Lessons could be drawn from the experience of Puente Piedra (see box 2 below) and other communities, including the recognition that realization of the right to water can become an essential means for the empowerment of women.

Box 2**Community water management in Puente Piedra**

Puente Piedra communities are located on the hilltop in the northern periphery of Lima, considered to be a high-risk zone with poor accessibility and unstable ground. No water and sanitation services are available to residents, who have no choice but to buy water from water trucks at a high price. Construction of a community water tank was initiated during the election campaign period but was left unfinished.

With the assistance of Centro de Investigación, Documentación y Asesoría Poblacional (CIDAP), the community decided to finish this water tank and to establish their own community water supply and management system. Pipelines were built to channel water to every block of the community, and the water use by each family is measured by a community representative. Each family is charged for the use of water, which, after including the community management cost and some savings for additional community work, still comes out cheaper than buying water individually from the water truck.

As a result of this community water system, residents can now enjoy 24-hour access to water. With the relatively low-cost assistance by a civil society organization (CIDAP), they were able to gain experience in how to manage the water by themselves, and are now planning to use this experience and savings made to establish additional community services. Women in the community play a critical leadership role in managing the water system.

Puente Piedra also benefited from another innovative programme that combines the use of appropriate low-cost technology and employment strategy for improving community infrastructure. The community proposed to organize themselves to work under the UNDP programme “*Programa a trabajar* (Back-to-work)”, which has provided materials and technologies for the community workers, mostly women, to build access roads and secure footpaths as well as common space for the community.

C. Neglect for rural housing

26. The Special Rapporteur has observed that there seems to be a general lack of emphasis on the situation of housing in rural areas. Most government interventions focus on urban housing issues and there seems to be no clear government policy on rural housing. The Special Rapporteur was informed that the responsibilities for the rural development including housing falls within the purview of FONCODES, a relatively small government agency whose assistance focuses mostly on areas affected by natural disasters. The institutional network to address housing issues in the rural areas is significantly weaker than in health or education sectors. **The Special Rapporteur recommends that the Government of Peru learn from the experience of other countries in developing an institutional network of housing institutes in rural areas, such as in Mexico (see E/CN.4/2003/5/Add.3).**

27. To obtain a better appreciation of housing and living conditions in rural areas, the Special Rapporteur visited Belen community in Iquitos, in the Amazon province of Loreto, one of the poorest regions in Peru. Loreto Province is also home to a large number of indigenous people. Many of them have been displaced from the jungle due to terrorism in the past or the economic activities of private companies. The population of Iquitos, the capital of Loreto, has thus grown rapidly from approximately 50,000 to 386,000 over the last 15 years. However, the economy remains underdeveloped, because of its isolated geographical position surrounded by the jungle with few transportation links to other parts of the country, and general neglect in the past by the central Government.

28. In Belen, one of the poorest communities in Iquitos, residents live in overcrowded housing in very precarious conditions, elevated from the ground due to constant flooding from the Amazon and the Nanay rivers. As 50 to 60 per cent of the residents have no access to water and sanitation services, water-borne diseases are rampant, affecting children the most. The infant mortality rate in Iquitos is 4.9 per cent. Furthermore, the river water is reportedly contaminated with mercury from the companies dredging for gold on the other side of the Nanay river in Brazil. The poor housing and living conditions and lack of employment have also led to a number of other social problems in Belen, such as crime and youth delinquency, prostitution, street children, sexual abuse of women and children, and the spread of HIV/AIDS.

29. From the meetings with the local authorities and regional government, it is clear that they are committed to improve the lives of the communities, particularly women and children, and have designed targeted programmes on housing. However, they lack the necessary means and resources, particularly from the central Government. Despite Loreto being the largest and one of the poorest regions, only 2.4 per cent of the central Government's budget is allocated to Loreto. The Special Rapporteur was invited to a civil society meeting in which representatives of the community presented five issues which they felt were priorities : (a) lack of housing infrastructure ; (b) lack of basic services such as water and sanitation ; (c) lack of legal tenure which they could use as a collateral to access credit or to have a secure home ; (d) lack of access to credit ; and (e) lack of safety and security.

30. The Special Rapporteur observed that these issues raised by the people of Belen were representative of the neglect of needy rural communities in many areas of the country. Also, the situation in Belen reinforces the notion of the indivisibility of human rights - that human rights to housing, health, water, food, work and the environment should be seen as a whole, mutually reinforcing concept. A good illustration of a multisectoral response to housing problems is the "Healthy Housing" project implemented by PAHO/WHO. In September 2002, the President of the Council of Ministers, the Minister of Health and the Director of PAHO jointly signed a declaration for the implementation of "Healthy housing for healthy persons and families" in Peru. The Special Rapporteur welcomes the focus on rural housing under this initiative, and notes the ongoing collaboration with FONCODES. He further recommends that the Ministry of Housing, Construction and Sanitation take an active part in the initiative. In this regard, he recommends all parties to take fully into account guidance and standards found in the general comments of the Committee on Economic, Social and Cultural Rights, particularly general comments No. 4 on the right to housing, No. 14 on the right to the highest attainable standard of health and No. 15 on the right to water.

31. The Special Rapporteur also visited the city of Ica and its surrounding rural areas. He visited communities relocated after major floods, and villages where seasonal workers live in abandoned houses after the flood damages. Some of them continue to live in areas with high risk of inundation or landslide in cases of earthquake or torrential rain. Serious and immediate consideration should be made by the Government to ensure the safety of such residents, and to improve measures for disaster prevention and management. Mapping of such communities should be undertaken by the local authorities, with support from the central Government.

32. For the improvement of housing and living conditions in rural areas, the Special Rapporteur considers it essential that the Government give priority attention to the development of an integrated rural development plan or strategy, taking into account the indivisibility of all human rights. The right to adequate housing cannot be separated from the right to health, water and food. Integrated rural development should be a part of national housing policy and strategy, linking improvement of housing and living conditions (including water and sanitation) with job and education opportunities. Active participation of the community, including residents involved in the social production of housing and civil society groups and non-governmental organizations, should be ensured in elaborating such a strategic vision to improve rural housing in Peru.

D. Security of tenure and the right to adequate housing

33. Lack of tenurial rights among the poor poses an enormous challenge in Peru. There still remains significant confusion among the different institutions granting titles, including the State, COFOPRI and the local authorities. COFOPRI has been under criticism for its alleged involvement in granting titles under political influence during the regime of former president Alberto Fujimori. There is a constitutional challenge against COFOPRI for the titles it granted to certain families, taking away land from hundreds of thousands of families who had been occupying these lands in a peaceful manner, in some cases for more than 20 years. These people have had to sue for the possession of their plots against those owner-acquired titles between 1998 and 2001, which meant that it has not yet been possible to regularize the physical and legal possession of a vast area surrounding the capital.

34. This lack of clarity in the title or legal status of land has meant that, in the meantime, the Government is not in a position to provide basic services and utilities. For example, in the UPIS Huáscar settlement in San Juan de Lurigancho district of Lima, residents have been struggling for 27 years for the recognition of their titles. Originally, they were evicted by the Government from another area, near Acho. In 1976, they were resettled in Huáscar, on what was believed to be State land. The Government promised that they will be provided with basic services within eight months but this was never realized. In 1982, the residents found out that the land they live on is privately owned. For this reason, COFOPRI is not in a position to grant title to the residents, nor the local authority could intervene, as the land is being appropriated for the planned construction of a ring road. **The Special Rapporteur urges the Government of Peru, notwithstanding the complex legal issues, to settle the land claims of the UPIS Huáscar settlement in accordance with the right to adequate housing they have gained during their long struggle.**

35. There is a need for better coordination and clarification of responsibilities among different institutions relevant to housing and civic services. An example of this is the confusion of land titling and provision of civic services. In some cases, people received titles from COFOPRI or local authorities, although clearly the land they live on is not safe or suitable for habitation and therefore no services are provided. In other cases, people have titles but receive no services, or vice versa. There are also communities that do not receive services because they do not have titles. At the time of the Special Rapporteur's visit, he was informed of an initiative at the Congress where legislators have submitted a number of laws to dismantle COFOPRI, which also authorizes the utility companies and authorities to provide basic services to those residents in places where municipalities consider that there are stable housing and human settlements regardless of the status of litigation over those lands.

36. Based on the testimonies received and the above observations, the Special Rapporteur is of the view that current policies and practices regarding land titling, which is to grant formal titles to informal settlers as a means of fostering economic growth, a theory that has long been advocated by the renowned Peruvian economist Hernando de Soto, have not led to the significant improvement in the right to adequate housing for the poor. The Special Rapporteur has identified several flaws in the approach advocated by de Soto² and adopted by COFOPRI with support from the World Bank³ (see box 3 below).

Box 3

Tenurial rights alone : Creating a false sense of security

When viewed from the perspective of Peru's obligations to the international human rights instruments, including the human right to adequate housing (that includes access to civic services) for women and men, it is clear that the narrow and individualistic "property" and "civil law" approach of COFOPRI is in conflict with the comprehensive human rights approach based on the principles of indivisibility of human rights, non-discrimination and gender equality. Merely providing title to families without ensuring access to water, sanitation and electricity and security of home and person, including equal rights to women, can only lead to a false sense of security. Moreover, there appears to be no convincing data to demonstrate that gaining titles, as advocated by de Soto, leads to access to loans and credit for the poor, faced as they are with a formal (public and private) financial system that favours servicing higher-income groups. The neglect, in the current scheme, of poor women and the respect of their human rights, including the provision of subsidies, is a case in point. The centralized approach of COFOPRI has also deprived municipalities of involvement in realizing the housing and land rights of their residents. The Special Rapporteur is of the view that the more urgent needs regarding housing for the poor in Peru revolve around the need for policies that favour the social production of housing. This includes upgrade possibilities and the need to integrate women's views in developing housing and planning laws and policies and to enable the creation, for example, of livelihood options for women involved in construction and related areas.

37. **The Special Rapporteur recommends that an independent study be commissioned to examine the basic premise underlining the COFOPRI programme, so as to improve its policy and institutional framework to meet the provisions under international human rights instruments and thereby also to achieve the target set in the Millennium Development Goals to bring significant improvement in the lives of slum dwellers and inhabitants of informal settlements, to increase access to water and to sanitation.**

E. Participation in planning, from local to national levels

38. The Special Rapporteur observed that, historically, there has been a lack of civil society participation in both the formulation and implementation of housing policy in Peru. There appears to be very little dialogue between civil society and different parts of the State, and within different levels of the Government. It is important to institute, both at the national and at the local levels, planning mechanisms, such as master planning or integrated and local development plans, in collaboration with civil society, especially taking into account the critical role played by women.

39. Notwithstanding the above, there are some encouraging examples found at local level where such dialogue has led to more participatory community planning, such as the case of Villa El Salvador (see box 4 below). **The Special Rapporteur encourages a wider consultative process be instituted to further develop and monitor national housing policy from a human rights perspective, possibly under the National Commission on Human Rights or *Mesas de Concertación para la Lucha contra la Pobreza*.**

Box 4

Participatory budgeting in Villa El Salvador

Thirty years ago, Villa El Salvador was a mere piece of desert land in the southern outskirts of Lima. As the community developed in the 1980s and 1990s, residents organized themselves and decided to manage the development of their community. Traditional means of participation through neighbourhood assemblies were found to be inadequate in reflecting the social heterogeneity of the community fully inclusive of the different needs of women, young people and the elderly. A large-scale citizens' referendum (*consulta urbana*) was held in 1999, after which the community elaborated the Integral Development Plan of Villa El Salvador for 2010. As a next step, the municipal investment budget for the year 2000 was elaborated through a wide participatory process : 30 per cent of this budget was decided by the residents, divided up in 10 sectors. They developed a plan for urban renewal and decided to establish common areas (community park, community kitchen, etc). This has led to strengthening of a sense of community, and residents now find the new challenge to institutionalize this process further, so that there will be a system in place where people can discuss and claim their rights, regardless of the changes and political orientation of the municipal authorities.

F. Women and housing

40. The existence of a high level of inadequate and insecure housing and living conditions in Peru disproportionately affects women. The Special Rapporteur attended the conclusion of the first metropolitan meeting of “Women and Habitat : Building Our Cities” , held in Lima on 7 March 2003, to celebrate International Women’s Day. The meeting was organized by the Campana por el Derecho a una Vivienda Digna para Todos y Todas, with CENCA as the focal point for access to land, and the non-governmental organization ESTRATEGIA as the focal point for gender and habitat. For the first time, the meeting brought together women as well as men from different communities in Lima and civil society organizations gathered to exchange experience, disseminate information and discuss strategies for integrating women’s perspectives in the planning and implementation of programmes and policies. Discussion groups listed common problems faced by women in terms of housing as : lack of water, sanitation and basic services ; poor condition of houses yet the materials for building and repair are too expensive ; lack of security of tenure ; lack of safe footpaths ; and lack of government assistance (government programmes such as MIVIVIENDA and *Techo Propio* do not reach them). The meeting concluded with the adoption of a plan for the future, which recognized that the importance of : (a) participation of women in the decision-making process concerning urban and rural improvement ; (b) dissemination of information related to women’s rights to housing and land for the improvement of the quality of life ; (c) further developing linkages among women’s groups to share experience at local, regional, national and international levels.

41. **The Special Rapporteur was encouraged by the growing community women’s movements to claim their rights to safety and security at home and in their communities exemplified at the meeting and in subsequent community visits. There needs to be much greater stress in housing and other policies on women’s rights to land, housing, and protection of female-headed households, for example, who have no other protection. At the same time, the needs of indigenous people and of vulnerable groups such as children and persons with disabilities should be looked at very carefully. For example, in Peru, it is estimated that approximately 13 per cent of the population have some form of disability. Efforts should be made to ensure that houses are adequate and accessible for the needs of the persons with disability. Furthermore, consideration should be made so that the persons with disability could use their homes as production centres to create self-employment opportunities.**

42. The Special Rapporteur was also impressed with the work of the MIMDES in providing assistance to communities that were affected by the political violence and efforts to integrate gender approach into housing construction and to provide technical assistance and material to women and in particular widows from the political violence. It was pointed out that, although 36 per cent of households are headed by women, there is no specific legislation for the protection of women in housing laws and policies. **The Special Rapporteur recommends that the Ministry of Housing, Construction and Sanitation work closely with MIMDES to review the legal framework to ensure greater protection of women. The questionnaire developed by the Special Rapporteur on the subject of women and adequate housing should give useful guidance in reviewing the existing policies and legislation.**⁴ He also recommends that MIMDES work closely with the National Commission on Human Rights

to further develop a conflict prevention programme which would include reconstruction elements, and to integrate human rights education, including on economic, social and cultural rights. He further encourages the MIMDES to take a lead in preparing a national report on the status of women and adequate housing by 2004, focusing on the experience of Peru in narrowing the gap between the legislation and the implementation of women's right to adequate housing and other relevant rights. This would be a valuable contribution for the study on women and adequate housing which the Special Rapporteur will be preparing for the Commission on Human Rights in 2005.

G. Impact of globalization

43. The Special Rapporteur was concerned at those testimonies that he received during the mission which relate to the activities of multinational mining companies in Tambogrande (see box 5 below). These have affected the right to adequate housing and other relevant rights including the right to health and the right to the security of persons. He also received testimony from indigenous people in Iquitos who were affected by river water poisoning from activities of a mineral processing plant across the river.

44. The Special Rapporteur would also like to express concern with the neglect by governmental authorities of the community of La Oroya in the central Andes, which has been facing a serious health crisis due to pollution from the metallurgical complex belonging to a multinational company. According to a study carried out by the Ministry of Health in 1999, the effects of lead poisoning in the area was such that 18.3 per cent of the children studied should have been urgently admitted to a hospital and their homes subjected to environmental assessment. Further, 67 per cent of the children studied should have received medical evaluation and observation. The metallurgical activities have also affected other economic activities due to contamination of water and soil erosion. From the testimonies presented to the Special Rapporteur by affected people from both the Old and New Town of La Oroya, it was clear that there is an urgent need for government at all levels to respond to the grave problem of poverty and environmental conditions that have a severe impact on the right to housing, health and water of the community.

45. **Keeping in mind the human rights violations caused in areas such as Tambogrande and La Oroya, it would be pertinent for the Government of Peru to keep in mind the primacy of human rights when it engages for example in the negotiations and implementation of Free Trade Agreement of the Americas or the expansion of other trade, investment and finance agreements under the WTO, such as the General Agreement on Trade Services (GATS). Peru should contribute to ensuring that these agreements do not compromise the existing obligations on human rights and do not create situations where the poor in Peru will face violations from activities of multinational companies and other implications of globalization. Given the progressive stand on human rights internationally taken by the Government of Peru, the Special Rapporteur is of the view that Peru could take a lead in using its obligations to the international human rights instruments to argue against new - or the expansion of existing - trade and investment agreements, at the regional or international levels, that would compromise its ability to implement its existing obligations under the human rights instruments in areas such as housing, food, health and water.**

Box 5

Tambogrande

Tambogrande is a community of 75,000 inhabitants located in a fertile agricultural valley in the northern province of Piura, bordering Ecuador. The inhabitants have been working the land for the past 80 years, recovering the eroded areas and improving productivity. Since the area has been found to contain rich minerals, Tambogrande has been considered as a potential site for a controversial mining project by a Canadian-based Manhattan Minerals Corporation (MMC). Peasants and indigenous communities in the area have expressed their concern about the implications of such mining projects. The mining would require water to be diverted from a local river, which would force the relocation of about 8,000 citizens. Furthermore, the mining would have significant environmental consequences, including the pollution of water, land and air from debris, dust and other mining remains.

The project has aroused protests and demonstrations by peasant communities in the Piura department (with the support of the bishop of Piura). Neither MMC nor State authorities in the area have listened to local communities' demands. Some violent episodes have been reported involving supporters and detractors of the mining activities, including the destruction of mining equipment and a MMC camp.

In June 2002, the Tambogrande community conducted a consultation with support of national and international NGOs, which resulted in 98.7 per cent of those who participated in the consultation disapproving of mining projects in agricultural areas, such as the one in Tambogrande. Still, people are being forced to sell their lands to the mining companies, and threats and violence continue against the members of the anti-mining organizations.

While President Toledo of Peru promised to review the concessions, 10 other companies are reported to receive concessions in the area. It is feared that the investment rules proposed under the FTAA would make such review of concessions already granted difficult, as corporations could initiate legal proceedings against the Governments which attempt to regulate investment in order to protect the environment and public health. From the perspective of local communities, FTAA is seen as giving more rights to foreign companies than to rights to self-determination and an adequate standard of living.

H. Impact of privatization of civic services

46. The Special Rapporteur is of the view that there is a need for much more careful study of the impact of privatization of civic services on poor communities across Peru.⁵ The Special Rapporteur met many families who are paying inordinate amounts for electricity, or those in Las Garzas community in Ica who are threatened to be cut off because they have not been able to pay. In many poor communities in Lima, people only have access to water through tankers that

cost them as much as seven times the rates for piped water. This type of inconsistency and discrimination against the poor has to be tackled immediately and the regulatory role of the State institutionalized. In this context, the Special Rapporteur commends the work of the Ombudsman's Office in reviewing the public service provisions in Peru and recommends that more support should be given to such independent monitoring and review of Peru's obligations towards its people under international human rights instruments, including the obligations recommended in general comment No. 15 cited in section 3.B above on water and sanitation.

I. The right to housing for tenants

47. The Special Rapporteur received numerous testimonies from tenants' organizations, such as the *Coordinadora Vecinal Para la Renovacion y Defensa de los Inquilinos*, regarding the tenuous condition of tenants (particularly living in historic and dilapidated structures in Lima) regarding security of tenure, threat to health and life and protection against unsustainable rent increases. The Special Rapporteur raised these issues with relevant legal and administrative authorities in Lima, including the Congressional Commission on Housing, calling for the protection of the right to adequate housing for tenants. The Special Rapporteur welcomes, in this context, the adoption in December 2003 by the Congress of the Republic of Peru (Law No. 28138) of a bill protecting slum tenants from evictions. **The Special Rapporteur commends the work of civil society organizations in promoting this bill and recommends to the Congress Housing Commission to also push for the adoption of other legislations that would promote urban renovation and protect the right to adequate housing of tenants in Peru.**

III. CONCLUSIONS AND RECOMMENDATIONS

48. **The challenges in the housing sector in Peru need to be tackled from a human rights perspective, based on the principles of indivisibility and interrelatedness of human rights. Such a holistic approach should inform the Government's policies and actions at all levels including budgetary allocations, to take together such issues as housing, water, sanitation, electricity and protection from evictions together, all at the same time ensuring priority to women and vulnerable communities. The Government of Peru needs to restructure its approach to the grave housing and land crisis by prioritizing funds, instruments, programmes, and the legislation and policies that drive these, to focus on people's efforts and initiatives. Such an approach needs to be based on the primacy of a human rights approach, including recognition of the valuable role that the participation of women and the social production of housing can play in building communities to become sustainable.**

49. **At the same time, the Special Rapporteur welcomes the decision of the Government of Peru to extend an open invitation to the special procedures of the Commission on Human Rights, which he views as an important step in developing constructive dialogues and furthering the efforts of the Government to meet its obligations towards its people for the realization of rights committed under international instruments it has ratified.**

50. In addition to the recommendations contained throughout the report, the Special Rapporteur respectfully submits the following recommendations for the consideration of the Government of Peru and other concerned parties :

(a) National housing policy needs to take into account obligations of Peru under relevant international instruments it has ratified. The legislative and executive branches of the Government should be encouraged to reinsert the recognition of the right to adequate housing for the revision of its Constitution ;

(b) In further elaborating and implementing housing policies and programmes, the Government should ensure a participatory process by establishing closer relationship and ensure participation of civil society and other stakeholders in the policy-making process ;

(c) Closer links should be established between the national housing and other sectoral policies with the current efforts to elaborate a national human rights action plan, in order to ensure their consistency and congruence. The first task is to map the housing needs of the country and interpret the data from a human rights perspective. Such an approach will also assist the Government of Peru to realize the Millennium Development Goals on equality of women, reduction of slums, access to water and sanitation among others, in a manner consistent with the country's human rights obligations ; ⁶

(d) Specific legislation and policies, including provision of subsidies and loans, should be developed to strengthen women's rights to housing and land. Such legislation needs to be developed in consultation with women affected and needs to focus generally on realizing the rights of women living in poverty, the protection of households headed by women and other vulnerable women in inadequate housing and living conditions ; ⁷

(e) Specific legislation and policies should be developed to protect poor tenants, including those living in historic and dilapidated buildings, from evictions and to improve their health and housing and living conditions that are often life-threatening ;

(f) Housing policies and programmes should strengthen its focus on the poor and the most needy segment of the population, including reorientation of existing housing finance programmes and seeking additional assistance through international cooperation ;
8

(g) Recognition and support is necessary from all levels of government towards the process of social production of housing (SPH) and support of organized forms of SPH such as cooperatives. In this context microcredit and community savings schemes may be more effective than formal finance schemes. Lessons can be learned from schemes such as the family plot housing improvement scheme in Mexico City, Mexico ;

(h) Appropriate rural housing policies should be developed, taking into account the current context of decentralization and empowering regional and local governments. The Government should seek to learn from experience of other countries, such as Mexico that have established a network of housing institutes across the country ;

(i) **The current policies and practices of granting land titles need to be reviewed to clarify the institutional responsibilities and processes. The mandates of institutions like COFOPRI need to be brought into line with the human rights obligations of Peru. Taking these as its starting point, an independent study of such institutions and the practice of granting tenurial rights, as advocated in the work of Hernando de Soto and the policies of the World Bank, could be undertaken by the Ombudsman's Office or other appropriate independent body ;**

(j) **The Government should undertake a full assessment of eviction policies and current practices to ensure that the rights of people are protected ;**

(k) **While, understandably, the national housing policy and programmes have only recently been initiated, and are showing some progress, the overall situation of housing in Peru requires that, in certain cases, the Government will have to take immediate measures and provide emergency assistance. The Special Rapporteur recommends that the Government consider developing a humanitarian programme in the area of housing, including the assessment of areas where housing conditions are especially at risk ;**

(l) **The Government should move rapidly to alleviate the housing and land crisis brought about by unbridled involvement of private corporations, as in Tambogrande and La Oroya. Government should ensure that such situations are not allowed to recur and that globalization policies, at regional and international levels, are not accepted by the Government as they compromise the human rights of Peru's residents ;**

(m) **The Government should proceed with utmost caution regarding privatization of housing including essential services of water, sanitation and electricity, to ensure that the human rights of the residents of Peru, in particular women and the poor, are not compromised.**

Notes

¹ For an excellent review of such practices see *Social Production of Habitat in Latin America*, TRIALOG 78, vol. 3, 2003. See www.trialog-journal.de.

² See Hernando de Soto (1986), *The Other Path*, London, I.B. Tauris and Co. Ltd., and (2001) *The Mystery of Capital*. London, Bantam Press.

³ For a well-argued critique of de Soto's work see also Edesio Fernandes, "The Influence of de Soto's *The Mystery of Capital*", *Land Lines*, January 2002.

⁴ See also the preliminary report on women and housing (E/CN.4/2003/55). The report and text of the questionnaire on women and housing, in various languages, is available at www.unhcr.ch/housing.

⁵ For a general review of the impact of privatization of water and sanitation on the right to adequate housing, see report of the Special Rapporteur (E/CN.4/2002/59). Also see Miloon Kothari, "Privatising human rights - the impact of globalisation on access to housing, water and sanitation" in *Social Watch 2003 - The Poor and the Market*, Third World Institute. The article is also available in Spanish and six other languages at www.socialwatch.org.

⁶ A particularly useful set of indicators to assist in this inevitable task are found in the report of the Expert Group Meeting on Housing Rights Monitoring, organized jointly under the United Nations Housing Rights Programme by the United Nations Human Settlements Programme (UN-Habitat) and the Office of the High Commissioner for Human Rights (OHCHR) in Geneva on 26-28 November 2003, available at www.unhabitat.org/programmes/housingrights/expert_group_meeting.asp, together with relevant background material.

⁷ See recommendations in E/CN.4/2003/55 and the recommendations from the Latin American Consultation on Women and Housing (December 2003), Mexico, available at www.unhchr.ch/housing.

⁸ The Government of Peru can also call for the utilization of these provisions, especially in the International Covenant on Economic, Social and Cultural Rights, so that the 148 States parties to this Covenant do not undertake any measures bilaterally or in a multilateral forum, such that Peru is forced to compromise on its human rights obligations.
