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Mandate 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.

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Excellency,

I have the honour to address you in my capacity as 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 pursuant to Human Rights Council resolution 15/8.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the **Law for the Transformation of Areas under Disaster Risk ("the Bill")**, which has been under discussion in Parliament and appears to have been adopted on 18 May 2012. I wish to acknowledge the efforts and investment of your Excellency's Government in the context of disasters risk reduction. However, information received indicates that the Bill, should it be implemented in its current form, would threaten the enjoyment of the right to adequate housing of more than six million households.

In light of the seriousness of the possible implications of the adoption of the Bill, I would very much appreciate if your Excellency's Government could contact me about the allegation detailed below at your earliest convenience.

According to the information received:

Overall, it is alleged that the Bill presents a number of problematic provisions, in particular a lack of legal certainty, accountability mechanisms, administrative or judicial recourses for affected communities, coupled with extensive decision-making powers of Government and local authorities with regard to the determination of buildings to be demolished and the actual demolition process. It is alleged that the implementation of the Bill as it is may lead to mass forced evictions, infringements on the rights to property and housing, and to an increased number of people made homeless or in worse housing and living conditions than they were prior to the Bill's implementation. Reports received indicate that there

has been very little consultation with potentially affected communities and civil society organizations during the drafting of the Bill.

More specifically, according to the draft Bill received, the following problems are reported:

Legal certainty:

The alleged lack of clear definitions of key terms in the Bill and an overall lack of legal certainty raise questions as to the scope of the Bill and its actual interpretation and the possibility for judicial review of its implementation.

For instance, the term ‘areas under disaster risk’, as set forth in draft article 1 of the Bill is not defined. Draft article 1(1) states as the Bill’s objective to “set forth any work and processes ...regarding the improvement, settlement and renovation of areas under disaster risk, as well as any other lands and plots which accommodate hazardous buildings...”.

In addition, article 2(d) defines a “hazardous building” as a building which is identified as having completed its economic life. The term “economic life” is also not defined or elaborated further and the link between the end of economic life and the stated object of the Law (disaster risk prevention) is not clear. Reports on this issue vary, however information received indicates that based on the adopted version of the Bill, over six million buildings and housing might be considered to be “hazardous.”

Similarly, the Bill does not seem to outline nor call for a clear methodology and process to conduct risk assessments. According to article 3(1), local authorities are authorized to identify hazardous buildings and report to the Ministry of Environment and Urban Planning (the “Ministry”). The Bill does not appear to outline the criteria by which risks are assessed and ‘hazardous buildings’ are categorized as either being fit for improvement or renovation (as envisaged in draft article 1(1) of the Bill), or subject to demolition.

With regard to compensation and relocation of the evicted persons, articles 5(1) and (2) state that alternative housing or workplaces “*may*” be allocated or rent allowances paid to the owners, tenants or inhabitants of the buildings which are evacuated by agreement. Criteria or conditions determining in which cases such compensation or relocation support will be offered, and the exact terms of the support, are not specified.

Information, participation of and consultation with affected persons:

The Bill specifies (article 5(1)) that “agreement with the owners is of fundamental priority in implementations carried out in the demolition of hazardous buildings”. However the Bill includes no reference to the obligation of the Ministry, TOKI and the local authorities to provide information to the public with regard to the various implementation stages of the Bill. Moreover, there is no reference to the

obligation to consult with the affected households with regard to risk assessment, demolition, rehabilitation and resettlement planning and there are no clear criteria or guidelines on such consultations. The Bill does not establish a mechanism through which the owners, residents or other potentially affected persons may participate in the risk assessment process or contest the decision of the local authorities.

Opportunity for review or appeal of decisions:

The Bill does not appear to provide for any independent monitoring mechanism, nor for opportunities for review or appeal for affected communities and individuals. The following concerns were raised in this regard:

- The Bill provides no option to revise the risk assessment conducted by authorities, neither does it provide for opportunities to appeal the assessment once affected persons are notified of the planned demolition of their home.
- In situations whereby an agreement on building demolitions of two thirds of the owners cannot be achieved (as per article 6(2) of the draft Bill), the Ministry, TOKI or the local authorities are authorized to expropriate the property. It is unclear what the opportunity for review or appeals are in these cases, and how provisions related to the Expropriation Law Nr. 2942 (referenced in article 6(2)) will be implemented.
- In addition, value assessment is allegedly under the sole authority of the Ministry, TOKI or the local authorities. Concerns have been expressed that affected households will not have the opportunity to present an alternative value assessment or to contest the assessment made by the authorities.
- Likewise, it is alleged that individuals who owns or inhabits buildings which fall outside the definition of hazardous buildings but are “deemed necessary [to be demolished] by the Ministry for the integrity of the implementation” of the Bill (draft article 3(7)) have no recourse to ask for review or appeal of the decision made on their buildings. Criteria to identify these buildings are also unclear.
- Finally, the Bill (at article 4(3) draft Bill) allegedly empowers the Ministry, TOKI and local authorities to interrupt the supply of electricity, water and natural gas to buildings in the risk areas and risky buildings during the implementation of the Bill. Concerns have been raised that, in the absence of adequate appeal mechanisms to challenge the identification of hazardous buildings, the interruption of basic services may amount to constructive evictions.

Criminalization of appeal:

Finally, concerns have been raised that any contestation on the implementation of the Bill might be criminalized. Indeed, article 8(3) states that a criminal complaint

shall be filed against any person interfering with the identification, eviction, demolition, or evaluation process of risky buildings.

While I do not wish to prejudge the accuracy of these allegations, I would like to remind your Excellency's Government about the strict procedural protections that should be followed in cases of eviction, which would be applicable and relevant to those decisions over land use and expropriation foreseen in the Bill. Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, to which Turkey is a party, states that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions". The Committee on Economic, Social and Cultural Rights commenting on the right to adequate housing in its General Comment No. 4, stressed that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With "due priority to those social groups living in unfavorable conditions," the right to housing includes guaranteeing: (a) **legal security of tenure**; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

As stated in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross violations of a wide range of internationally recognized human and mass evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. In its General Comment No. 7 on forced evictions, the Committee on Economic, Social and Cultural Rights elaborated upon the procedural protection required under human rights law as follows:

"15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to

provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

Restrictive measures on freedom of movement (and choice of place of residence, in this context) must also conform to the principle of proportionality. The Human Rights Committee, in its General Comment No. 27 on article 12 of the International Covenant on Civil and Political Rights, which Turkey ratified in 2003, states with respect to restrictions on freedom of movement:

“Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”

With regard to disaster risk reduction measures, the above calls for a balancing act between the rights of those affected and the interests of the State in mitigating the damage and ensuring public safety. In view of this I wish to recall my latest report to the General Assembly (A/60/270) which discusses in some detail ways to respect and ensure the right to adequate housing in disaster response. Your Excellency’s Government may find it useful.

As it is my responsibility, according to the mandate entrusted to me by the Human Rights Council, to clarify allegations brought to my attention, I would greatly appreciate detailed information from your Excellency’s Government concerning the above situation and about the measures taken by the competent authorities. I would in particular appreciate to receive information on the following points:

1. Are the facts alleged in the above summary of the case accurate?
2. Did consultations take place with the potentially affected communities, civil society organizations and other relevant stakeholders during the drafting process of the Bill? If yes, please give the details, date and outcome of these consultations.
3. Which other measures pertaining to disaster risk reduction, besides destruction of risky buildings and relocation of people, have been foreseen either in the above mentioned Bill or in other laws or regulations? When risky areas or risky buildings are identified, are alternatives to relocation foreseen?
4. Which criteria guide the assessment of risky areas or hazardous buildings and the decision as to whether a building can be renovated or improved (scenarios foreseen in article 1(1) of the draft Bill) or whether

it must be destroyed? In which law or regulation are these criteria set out?

5. What measures have been foreseen to ensure that relocations are proportionate to the desired result, and that they do not result in people becoming homeless or living in worse housing and living conditions?
6. What are the administrative and legal recourses available to affected individuals and communities to contest decisions based on the Bill, in particular with respect to: assessment of hazardous buildings, decisions to destroy buildings and relocate owners and occupiers, determination of 'risky' areas, assessment of buildings' value, resettlement or rehabilitation plans, decision to offer financial support to affected persons?
7. Is free legal aid for affected persons foreseen in the Bill or will it be mandated in related/subsequent regulations?

I would greatly appreciate receiving from your Excellency's Government within 60 days the above-mentioned additional information. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Raquel Rolnik

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