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**Promotion and protection of human rights:  
Human rights questions, including alternative approaches  
for improving the effective enjoyment of human rights  
and fundamental freedoms**

## **Adequate housing as a component of the right to an adequate standard of living**

### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the General Assembly the 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, Balakrishnan Rajagopal, in accordance with Human Rights Council resolution [43/14](#).

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\* A/76/150.

\*\* The present report was submitted after the deadline in order to reflect the most recent developments.

# **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, Balakrishnan Rajagopal**

## **Discrimination in the context of housing**

### *Summary*

In the present report the Special Rapporteur draws attention to the fact that discrimination in housing continues to be one of the most pervasive and persistent barriers to the fulfillment of the right to adequate housing. Housing discrimination is a global problem, affecting many groups and all elements of the right to adequate housing. This includes equal and non-discriminatory access to private and public housing, to building land, housing for rental, mortgages and credit and inheritance, ensuring equal security of tenure, protection against evictions, habitability, equal and affordable access to public services, such as water and sanitation, energy, public transport and others. There continues to be strong correlation between housing discrimination and environmental health and physical security, access to employment, schooling, and health care.

Women, children, older persons, persons with disabilities, religious, racial and ethnic groups and minorities, migrants, IDPs, refugees, indigenous peoples, LGBTIQ+ persons, persons living in situation of homelessness, in informal settlements, or in poverty are particularly affected by discrimination in relation to the right to adequate housing.

The present report sets out the human rights obligations of States, public authorities, regional and local Governments, public and private housing providers to ensure non-discrimination in housing. It provides an overview of how public authorities can work towards elimination of housing discrimination through regulation and anti-discrimination legislation and ensure that victims of housing discrimination have access to justice and remedies through judicial and non-judicial mechanisms. The report concludes with 11 key recommendations to eliminate housing discrimination and ensure that no one is left behind.

This report is the first of two interrelated thematic reports of the Special Rapporteur. His second report on spatial segregation will be presented to the 49th session of the Human Rights Council in March 2022.

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## I. Introduction

1. Discrimination in housing is one of the most pervasive and persistent barriers to the fulfilment of the right to adequate housing today. While global level statistics do not exist on the scope of housing discrimination being experienced across regional contexts, at the national and regional levels extensive research, civil society testimony, studies and surveys evidence a problem of global magnitude. Of particular importance and in focus in this report is the finding that across local contexts, discrimination in housing is disproportionately being faced by particular vulnerable groups including many minorities, underscoring the systemic and structural character of how housing discrimination persists.

2. Over the last few years, social mobilization calling for racial justice in the United States of America has pushed forward a long-delayed reckoning with racism and shifted debates globally towards a focus on the systemic nature of racism and the institutions that perpetrate it, as underscored in the recent report of the High Commissioner for Human Rights.<sup>1</sup> While the report of the High Commissioner focuses on how systemic racism manifests itself in the area of law enforcement, it also points more broadly to the severe socioeconomic and political marginalization that shapes the lives of people of African descent in many States, including the lack of access to adequate housing and land rights and the increased likelihood of living in segregated, disadvantaged and hazardous neighbourhoods.

3. The present report builds on other important events that have urged prioritizing attention and global action to fighting discrimination and advancing the principle of equality, such as the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the International Decade for People of African Descent 2015-2024<sup>2</sup> and the commitments to non-discrimination and equality embedded in the Sustainable Development Goals and the New Urban Agenda. The 20<sup>th</sup> anniversary of the Durban Declaration and Program of Action is an opportunity to reaffirm commitments and bring renewed urgency to the advancement and expansion of the program of action.

4. When the mandate of the Special Rapporteur on the right to adequate housing was established, non-discrimination was a central concern. States recognized that discrimination in housing was a major barrier and that discrimination based on prohibited grounds like race, ethnicity, or nationality is often a motive behind forced evictions.<sup>3</sup> States therefore decided to include in the official title of the mandate an explicit reference to the right to non-discrimination which is unique for a Special Procedure focusing on a particular right.<sup>4</sup>

5. One of the first reports of the mandate of the Special Rapporteur<sup>5</sup> had a thematic focus on discrimination and segregation in the context of the follow-up to World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It emphasized the need for addressing discrimination in relation to the right to adequate housing as a critical component in the context of the indivisibility and universality of human rights,<sup>6</sup> and underscored the attention given to housing and discrimination in the Durban Declaration and Program of Action.<sup>7</sup>

6. Subsequent thematic reports of this mandate have examined the issue of right to adequate housing for specific historically marginalized groups such as women,<sup>8</sup> indigenous peoples,<sup>9</sup> migrants<sup>10</sup> and persons with disabilities.<sup>11</sup> These have brought focused attention to

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<sup>1</sup> A/HRC/47/53, para. 2.

<sup>2</sup> General Assembly resolution 68/237.

<sup>3</sup> Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 43rd session, Geneva, 5-30 August 1991 (E/CN.4/1992/2 and E/CN.4/Sub.2/1991/65).

<sup>4</sup> E/CN.4/RES/2000/9.

<sup>5</sup> E/CN.4/2002/59.

<sup>6</sup> E/CN.4/2002/59, para. 38.

<sup>7</sup> E/CN.4/2002/59, para. 39-41.

<sup>8</sup> A/HRC/19/53.

<sup>9</sup> A/74/183.

<sup>10</sup> A/65/261.

<sup>11</sup> A/72/128.

the particular barriers and forms of discrimination facing vulnerable groups in relation to the right to adequate housing. In addition to relevant articles of international human rights law and the interpretation and reaffirmation of these provisions by treaty bodies and other United Nations bodies in general comments, recommendations and resolutions, these thematic reports and country visits help lay a conceptual framework for addressing discrimination in relation to the right to adequate housing.

7. The present report therefore builds upon the extensive body of international human rights law and jurisprudence developed by treaty bodies and the work of previous Rapporteurs. In addition, the Special Rapporteur issued a questionnaire and call for submissions, which received more than 100 responses, underlining the continued importance of the issues of non-discrimination in relation to housing. He also held extensive consultations with States, representatives from international organizations, local Governments, equality bodies and national human rights institutions, judges and lawyers and civil society to inform his report. The questionnaire, submissions and summary reports of the consultations are available on his website.<sup>12</sup>

## II. International normative framework

8. Non-discrimination and equality are fundamental principles of international human rights law and apply to all human rights, including to the right to adequate housing contained in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2.2 of the same Covenant obliges all States “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Similar non-discrimination clauses are contained in other international human rights treaties and in the Convention relating to the Status of Refugees.<sup>13</sup> The reference to “other status” in the ICESCR indicates that the list of prohibited grounds of discrimination is not exhaustive. For example, disability, age, nationality, marital and family status, sexual orientation and gender identify, health status, place of residence, and economic and social situation, including homelessness are all considered prohibited grounds for discrimination under the Covenant.<sup>14</sup> The prohibition of discrimination in relation to the right to adequate housing is furthermore an immediate obligation, which is not subject to the principle of progressive realization.

9. The prohibition against discrimination binds the State and all its institutions exercising public authority, including agencies at national, regional and local level as well public-private entities, that in many countries for example manage social housing.<sup>15</sup> It is also *horizontally applicable*: States’ obligation to eliminate discrimination relates as well to ensure that *private actors* do not discriminate. For example, States should regulate and monitor actors in the private housing sector (e.g. private landlords, social or community housing providers and credit providers) as they may directly or indirectly deny access to housing or mortgages on the basis of race, ethnicity, marital status, disability or sexual orientation or other prohibited grounds.<sup>16</sup> Furthermore the obligation to eliminate discrimination includes as well an obligation to adopt laws and regulations to prohibit and address discriminatory residential harassment by private actors, including by neighbours or landlords to protect everyone from arbitrary or unlawful interference with her or his privacy and home.<sup>17</sup>

10. Both *formal discrimination* and *substantive discrimination* must be eliminated under international human rights law. Formal discrimination refers to laws, regulations, policies that may be discriminatory, while eliminating substantive discrimination requires States to take steps to ensure equal effective enjoyment of rights, even in the absence of any laws or

<sup>12</sup> [www.ohchr.org/EN/Issues/Housing/Pages/CFI\\_Segregation.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/CFI_Segregation.aspx).

<sup>13</sup> See Article 2.1 and 26 ICCPR, Article 2 CERD, Article 2 CEDAW, Article 1 CAT, Article 2 CRC, Article 7 ICRMW, Article 3 CRPD, Article 3 Convention relating to the Status of Refugees.

<sup>14</sup> See CESCR, General Comment No. 20, para 15-35.

<sup>15</sup> See Article 28 ICESCR; CESCR, General Comment No. 9, para 9; and A/HRC/28/62 *passim*.

<sup>16</sup> *Ibid.*, para 11.

<sup>17</sup> Article 17, ICCPR.

policies of a discriminative nature. The Committee on Economic, Social and Cultural Rights has underlined that States “must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.”<sup>18</sup> States are also encouraged “to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved.”<sup>19</sup>

11. Furthermore, both *direct and indirect* forms of differential treatment can amount to discrimination. Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground, for example a person is refused, because of his age or race, a rental contract. *Indirect discrimination* refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of the right to adequate housing. For example, requiring a person in situation of homelessness to have proof of a registered address in order to access housing benefits or any other social benefits would be indirect discrimination, when there is no way to obtain a residential registration certificate as a homeless person.

12. As this report underlines, often *systemic discrimination* is the cause of discrimination in the field of housing. Systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in the public or private sector which create relative disadvantages for some groups and privileges for other groups.<sup>20</sup>

13. Often, individuals and groups experiencing housing discrimination face *multiple intersecting forms of discrimination* on several prohibited grounds. For example, residents of informal settlements or in social housing can experience discrimination because of their place of residence, but may often also be discriminated against because they belong to an ethnic or religious minority that is living or has been forced to live in this settlement due to lack of other housing alternatives.

14. Specific provisions aimed at ensuring equality and non-discrimination in relation to the right to housing are furthermore included in Article 5 (e) iii of the Convention on the Elimination of all forms of Racial Discrimination, articles 13 (b), 14.2 (h), 16 (c) and (h) of the Convention on the Elimination of all Forms of Discrimination Against Women covering equal rights to ownership and inheritance of property, article 43.1 of the International Convention on Migrant Workers, and articles 5.3, 9.1, 9.2, 19 and 28.2 of the Convention on the Rights of Persons with Disabilities.

15. In addition, Article 3 of the International Convention on the Elimination of all Forms of Racial Discrimination condemns *racial segregation and apartheid* and requires States to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction. In this context the Committee on the Elimination of Racial Discrimination has observed that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private actors. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatised and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.<sup>21</sup> Therefore a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. In the view of the Committee, States should monitor all trends which can give rise to racial segregation and work for the eradication of any negative consequences that ensue.<sup>22</sup> The Committee has, for example, made specific

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<sup>18</sup> CESCR, General Comment no. 20, para. 8.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, para 12.

<sup>21</sup> CERD, General Comment no. 19, para. 3.

<sup>22</sup> Ibid. para. 4.

recommendations to address discrimination against Roma, including in the field of housing, and reiterated those regularly in its Concluding Observations.<sup>23</sup>

16. The issue of spatial segregation will be discussed in more detail in the next thematic report of the Special Rapporteur to be presented to the 49th session of the Human Rights Council. He would nevertheless already underline that segregated communities frequently face discriminatory treatment in access to public services, to water, sanitation, transport, education and health care. Spatial segregation does not only profoundly affect the right to adequate housing but may also result in highly discriminatory outcomes in relation to other economic, social, political and civil rights. For example, in many large cities, crime rates, the level of physical safety and the quality of policing, differ remarkably depending on the neighbourhood in which one lives.

17. The principles of non-discrimination in relation to housing can also be found in *regional human rights law*, including in Articles E and 31 of the Revised European Social Charter of the Council of Europe. The Racial Equality Directive of the European Union (2000/43/EC) prohibits racial discrimination by public and private actors, including in the field of housing, and requires EU Member States to establish national equality bodies with complaint mechanisms to address discrimination. Discrimination of women in accessing housing is covered by EU-Directive 2004/113/EC. Regrettably the proposal to adopt a Horizontal Equality Directive in the European Union which would cover all other prohibited grounds of discrimination (such as age, disability, sexual orientation, marital status and others) has so far not been successful, such a move would be important to ensure that the regional law on equality and non-discrimination would be fully consistent with international human rights law and standards. In the Inter-American System, two anti-discrimination conventions have been opened for signature and ratification in 2013, including a comprehensive convention covering multiple prohibited grounds of discrimination by public and private actors.<sup>24</sup> In the African system, anti-discrimination provisions in the African Charter are justiciable in the context of economic, social and cultural rights including the right to housing, as illustrated by the ruling in *SERAC v. Nigeria*.<sup>25</sup>

18. The various forms of discrimination experienced in relation to the right to adequate housing are discussed in more detail in Chapter IV covering all seven elements of this right, including a) security of tenure, b) availability of services, c) affordability, d) habitability, e) accessibility, f) location, and g) cultural adequacy.

### **III. Historical context: a legacy of discrimination and segregation in the right to housing**

19. The historical sources of racial discrimination, xenophobia and related intolerance and their link to the continued consequences of discrimination and inequality are clearly recognized in the Durban Declaration and Programme of Action. Specifically, it acknowledges that slavery, the slave trade and colonialism were among the major sources and manifestations of racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, Asians and people of Asian descent and indigenous peoples were victims of these acts and continue to be victims of their consequences.<sup>26</sup> Institutionalized and structural discrimination, particularly through racially discriminatory policies, persisted in post-colonial and post-slavery states impacting all aspects of the human rights of affected groups, not least their right to adequate housing.

20. In the United States of America, for example, during the first half of the twentieth century pervasive forms of direct discrimination prevented African Americans from

<sup>23</sup> CERD, General Comment no. 27, para. 30-32.

<sup>24</sup> Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance (2013); Inter-American Convention Against All Forms of Discrimination and Intolerance (2013).

<sup>25</sup> *SERAC v. Nigeria*, Decision, Comm. 155/96 (ACmHPR, Oct. 27, 2001).

<sup>26</sup> Durban Declaration and Programme of Action, paras. 13-14.

purchasing or occupying homes in certain neighbourhoods. This ranged from state-mandated residential segregation (struck down by federal courts in 1917) to the application of restrictive racial covenants (struck down by the U.S Supreme Court in 1948), to significant “extra-legal” barriers including intimidation and violence.<sup>27</sup> Moreover, early practices of the Federal Housing Authority (FHA) loan system had both explicit and implicit racial preferences built into them, meaning that beneficiaries of the FHA-insured loans were overwhelmingly white. African Americans had minimal opportunities to purchase homes on an equal footing with Whites and this has had a lasting effect on disparities in homeownership and in turn, the wealth gap between African American and White families.<sup>28</sup>

21. During the apartheid era in South Africa, a core part of apartheid policy revolved around land, specifically through the “Group Areas Act “of 1950 which imposed racial segregation over the ownership and occupation of land. This included the forced removal of black South Africans from their land and city centres into racially segregated townships. There were significant barriers to homeownership, and townships became overcrowded areas with inadequate access to basic infrastructure and services. It is estimated that between 1960 and 1980, 3.5 million people were forcibly removed from their lands and city centres to apartheid era townships.<sup>29</sup>

22. The legacy of these racially discriminatory policies is still evident today. Academic literature and submissions for this report<sup>30</sup> point to the continuity of socio-spatial inequalities of the apartheid era. To date, in South African cities disproportionately white elites live in in well-located city cores, close to economic activity and social services while , black South Africans are disproportionately confined to urban peripheries in dense and poorly serviced settlements that suffer from socioeconomic isolation and have very low rates of home ownership.

23. While the cases of South Africa and the United States of America have been more widely documented, the history of discrimination and segregation in access to land and housing is well known in a large number of countries, starting with the segregated townships and settlements established during the colonial period, from Brazil to Malaysia.<sup>31</sup> Examining the historical context of housing discrimination in these varying local contexts is critical to effectively understanding how such historical experiences have contributed to persisting inequalities and what implications that may hold for the advancement of effective redress for contemporary housing discrimination, including the consideration of reparations.

#### **IV. Forms of discrimination and its impacts on the right to adequate housing**

24. As noted previously, discrimination in relation to housing can be formal or substantive, direct or indirect, and caused by public or private actors. In order to design effective legal standards and practical measures to combat discrimination, it is important to

<sup>27</sup> Kaplan, J., & Valls, A. (2007). Housing discrimination as a basis for Black reparations. *Public Affairs Quarterly*, 21(3), 255-273.

<sup>28</sup> Andrew Haughwout, Donghoon Lee, Joelle Scally, and Wilbert van der Klaauw. “Inequality in U.S. Homeownership Rates by Race and Ethnicity.” Federal Reserve Bank of New York, *Liberty Street Economics*, July 8, 2020, <https://libertystreeteconomics.newyorkfed.org/2020/07/inequality-in-us-homeownership-rates-by-race-and-ethnicity.html>

<sup>29</sup> Abel, M. (2015, January). Long-run effects of forced removal under apartheid on social capital. In *Harvard University Economic History seminar*.

<sup>30</sup> Maharaj, B. (2020). The apartheid city. In *Urban Geography in South Africa* (pp. 39-54). Springer, submissions by the South African Human Rights Commission, Legal Resources Centre and Ndifuna Ukwazi.

<sup>31</sup> For a survey, see Carl H. Nightingale, *Segregation: A Global History of Divided Cities* (2012). On Malaysia, see Vishnu Prasad, *Rule by Exception: Development, Displacement and Dissent in Greater Kuala Lumpur, Malaysia* (MCP Thesis, MIT, 2017).



recognize these different forms of it in relation to all elements of the right to adequate housing.

25. Discrimination in relation to the right to adequate housing may be approached by considering the specific elements that are considered essential to ‘adequate housing’, as outlined in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights: (a) legal security of tenure including legal protection against forced evictions; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility for disadvantaged groups; (f) location; and (g) cultural adequacy.

26. When individuals or groups face discrimination in relation to housing, often multiple aspects of the right to adequate housing are being violated. It is necessary to advance normative frameworks, policies, programs and special measures that provide integral protection of the right to equality and non-discrimination in *all* aspects of the right to adequate housing.

## **A. Security of tenure**

27. Equality and non-discrimination in security of tenure is fundamental to the right to housing. Whether it is rental accommodation (public and private), ownership, lease, cooperative housing, an informal settlement or another form of housing tenure, States are under an obligation to ensure security of tenure for all persons to guarantee legal protection against forced eviction, harassment or other threats.

28. Direct and indirect discrimination in security of tenure can be manifested in a variety of forms including differential patterns of eviction of ethnic or racial minorities, differential treatment in land or title registration; legal prohibitions for renting apartments to individuals due to on their immigration status or other basis; marriage or family laws that exclude women from inheritance or the right to acquire and dispose of property; predatory lending practices that result in disproportionate rates of default and foreclosure for racial and ethnic minorities and women; discrimination in relation to resettlement and compensation for loss or damage of housing, land or livelihoods.

29. In Lebanon for example, Palestinians are not allowed to acquire or transfer property, including those who have Lebanese mothers and Palestinian fathers<sup>32</sup>. In the United States, a proliferation of anti-immigrant local ordinances in recent years have included provisions which have sought to prevent undocumented immigrants from leasing and renting housing, including penalties for landlords who rent to undocumented immigrants or fail to remove them from the rental unit.<sup>33</sup>

## **B. Availability of services, materials, facilities and infrastructure**

30. Access to basic utility services, materials, facilities and infrastructure, such as access to safe drinking water, sanitation, energy, health services, education facilities, transportation and emergency services point to the indivisibility of the right to adequate housing with other fundamental human rights. Discrimination in access to services is usually tied to dynamics of socio-spatial segregation, disproportionately affecting individuals and groups living in informal settlements, urban areas that have been subject to systemic and often historic disinvestment, and underserved rural areas. This can manifest in discrimination in relation to access to work, schooling, health care or public benefits based on residential address or related to a lack of an official address, and lead to disparities in the provision, quality or costs of basic services.

<sup>32</sup> Submission by UN Habitat Lebanon.

<sup>33</sup> Oliveri, R. C. (2009). Between a rock and a hard place: Landlords, Latinos, anti-illegal immigrant ordinances, and housing discrimination. *Vand. L. Rev.*, 62, 53.

### **C. Affordability**

31. To ensure that housing costs are tenable and not compromising other basic needs, it is critical for States to take measures to ensure that housing is affordable to all, if required through rent and housing cost regulation, housing or social subsidies, mortgage schemes, provision of public housing or through other means. Discrimination in this aspect of the right to housing can take hold in both access to public housing, for example in lack of equal access to affordable housing or public benefits/subsidies related to housing, and in access to housing in the private market, for example in disproportionate higher rental, housing and service costs or unequal access to financing mechanisms such as mortgage loans or credits for home improvements.

### **D. Location**

32. Location in housing can be a primary determinant for access to essential services and facilities as well as employment and other livelihood opportunities. It also has implications for the public health of inhabitants, particularly if housing is built in proximity to sources of pollution. Discrimination in relation to this aspect of adequate housing occurs for example when public or social housing is located in areas that are inaccessible to essential services and facilities, in areas that pose environmental health risks, or if certain groups are only provided with land for settlement located in environmental risky areas, or lacking equal access to public services. An example of this discrimination is in Pata-Rat (Cluj-Napoca) Romania where Roma families, who were living in the centre of the city, were forcibly evicted by the municipality and relocated to an area outside of the city centre, where a garbage dump is located. This has exposed residents both to an area of environmental hazard and located them in an area with a lack of access to basic services and infrastructure, including lack of public transportation.<sup>34</sup>

### **E. Habitability**

33. Certain individuals and groups can be forced to live in accommodations with inadequate living conditions that can compromise their physical safety and health. Overcrowding is one of the most pervasive forms of inhabitability faced by individuals and groups subject to discrimination in the access to adequate housing, particularly affecting migrants, refugees and IDP communities as well as low-income individuals and families. In the European Union, for example, civil society testimony and regional studies point to the disproportionate number of migrant households that face overcrowded conditions. It is estimated that 35% of migrants across the EU live in overcrowded households including rates that are significantly higher in countries like Greece (55%), Italy (54%) and Bulgaria (60%).<sup>35</sup> Worldwide it is estimated that at least one billion of the urban population live in informal settlements, in which the urban poor, immigrants, religious, ethnic and other minorities are concentrated.<sup>36</sup> A significant proportion of this housing does not meet basic habitability standards, but often no or inadequate measures are taken by public authorities to upgrade these settlements in close consultation with their residents and to provide basic services to them.

### **F. Cultural adequacy**

34. The right to housing includes respect and consideration of the expression of cultural identity, for example in the way housing is constructed or located, or in the way policies are implemented. When such considerations are not accounted for, it can result in discriminatory outcomes for vulnerable individuals and groups. For example, in China, civil society groups point to widespread State-led resettlement programs of Tibetan communities that have been

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<sup>34</sup> Civil society testimony during the consultation on 7 May 2021.

<sup>35</sup> <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20200228-1>

<sup>36</sup> UN-Habitat, World Cities Report 2020, p.4

detrimental to them by placing families in an external model of sedentary houses and requiring them to give up their animals and forfeit their grazing rights. It is estimated that since the 1980s 1.8 million Tibetan nomads have been relocated into sedentary homes through the resettlement programs.<sup>37</sup>

## V. Groups in focus

35. The effects of housing discrimination and socio-spatial segregation are disproportionately experienced by historically marginalized groups, particularly racial and ethnic minorities, migrants, refugees and IDPs, women, indigenous people, LGBTIQ+ persons, persons with disabilities, persons living in homelessness and people with low income, pointing to the systemic nature of contemporary housing discrimination. The factors that shape the type of housing discrimination faced by vulnerable groups are multifaceted and intersectional (meaning that discrimination on more than one ground which is overlapping and reinforcing), and vary in the context of different local social, economic and legal structures. This section outlines key normative human rights standards applicable to address housing discrimination experienced by specific groups that have been subject to historical or other forms of discrimination and social exclusion. The groups and standards covered are far from comprehensive. Many other groups face housing discrimination, such as children, young adults, older persons, single parent households, residents of informal settlements, foreigners, stateless persons, members of a particular religion or caste, sex workers and others. As noted earlier in the report, the obligation of States under international human rights law to prevent, prohibit and eliminate discrimination in relation to housing extends to all possible groups.

36. To understand and effectively address systemic discrimination in the right to adequate housing, it is imperative to focus on the forms of discrimination being faced by vulnerable groups in specific contexts. Otherwise, it is difficult for national, regional and local governments to advance and enforce appropriate legal protections, policies, programs and special measures, and allocate adequate resources to address such discrimination. The regular and consistent collection of adequate, disaggregated data is critical to understand housing discrimination faced by marginalized groups. Moreover, in the design, implementation and monitoring of such policies, programs and measures States should actively consult with and involve individuals of these groups through their representative organizations.

37. Housing discrimination often goes unreported because it is difficult to document, or victims lack information on their rights and how to file complaints. It is also common for victims of discrimination to fear retaliation by their housing provider, landlord, or even neighbours or to feel that nothing can or will be done about the discrimination they experience.<sup>38</sup>

### A. Persons with disabilities

38. The Convention on the Rights of Persons with Disabilities specifies that persons with disabilities have the right to full inclusion and participation and to live independently in the community. The Convention recognizes their right to adequate housing to be enjoyed on an equal basis without discrimination. This includes the obligation of States to identify and eliminate obstacles and barriers to accessibility and to take all appropriate steps to ensure that reasonable accommodation is provided<sup>39</sup>. States must ensure public and social housing programs are accessible to persons with disabilities and the elderly<sup>40</sup>, and that appropriate measures are also taken to ensure that private entities offer facilities and services that take into account all aspects of accessibility for persons with disabilities.<sup>41</sup>

<sup>37</sup> Submission by International Campaign for Tibet.

<sup>38</sup> 2021 Fair Housing Trends Report, National Fair Housing Alliance.

<sup>39</sup> CPRD, articles 5, 9 and 28.

<sup>40</sup> CPRD, article 28, para. 1 (d); CRPD/C/GC/2, para. 42.

<sup>41</sup> CPRD, article 9, para. 2 (b).

39. Across the globe, persons with disabilities face significant discrimination and inequality in accessing adequate private and public housing, as recognized in the 2017 report of the previous Special Rapporteur, including disproportionate vulnerability to homelessness, institutionalization and deprivation of choice, stigmatization, egregious conditions in informal settlements, lack of accessible, affordable housing and heightened vulnerability in face of natural disasters, conflict and other humanitarian situations.<sup>42</sup>

40. The housing conditions of persons with disabilities in contexts across the globe reflect this systemic and intersectional discrimination. In Mexico, for example, national data points to how close to 50% of people with disabilities are in poverty and of those, over 22% lacked basic access to basic services in their housing.<sup>43</sup>

41. Reports from civil society organizations and research widely point to the lack of accessible, adequate, affordable housing for persons with disabilities as a central aspect of the discrimination being faced.<sup>44</sup> For example, in Spain, civil society organizations report that 20.3% of the population with disabilities live in substandard housing (problems with leaks, humidity, rot); 58.7% of the population with disabilities face excessive housing costs and 70% of residential buildings in Spain are not handicap accessible.<sup>45</sup>

## **B. Migrants, refugees and internally displaced persons**

42. Several human rights standards protect the right to adequate housing of migrants, refugees and internally displaced persons.<sup>46</sup> A key relevant provision is found in the Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), which underscore the right to non-discrimination and the right to adequate housing for refugees and displaced persons,<sup>47</sup> including the principle that States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

43. Submissions received from Europe, Asia and North America point to systemic housing discrimination faced by migrants, refugees and internally displaced persons, particularly in conjunction with multiple grounds of discrimination, namely (but not limited to) racial, ethnic and gender discrimination.<sup>48</sup> For example, a 2021 report of the Fundamental Rights Agency of the European Union, finds that discrimination in access to housing is mainly triggered by the first or last name (44 %), followed by skin colour or physical appearance (40 %) and citizenship (22 %). Eight in ten (84 %) respondents with a sub-Saharan African background mention their skin colour as the main reason for the most recent incident of discrimination in access to housing. The report also finds that migrant women face multiple challenges.

44. In her recent report on housing, land and property issues in the context of internal displacement, the Special Rapporteur on human rights of internally displaced persons underscores how the right to housing as well as addressing land and property is essential to preventing displacement.<sup>49</sup> An earlier report of the previous Special Rapporteur on the right to adequate housing found that migrants face discrimination in accessing both private and

<sup>42</sup> A/72/128, paras. 12-32

<sup>43</sup> Submission by Mexico - Secretaría de Bienestar, Consejo Nacional para Prevenir la Discriminación y la Comisión Nacional de Vivienda.

<sup>44</sup> See submissions by Recht op die stad / Right to the City, Rotterdam, Netherlands; Habitat for Humanity Poland; Kazakhstan Parliamentary Development Fund.

<sup>45</sup> Submission by CERMI, Spain.

<sup>46</sup> These include Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 43 of the International Convention for the Protection of Rights of All Migrant Workers and members of Their Families, and Article 21 of the Convention relating to the Status of Refugees (which extends equal treatment between refugees and all comparable aliens).

<sup>47</sup> Principles 2,3 and 8 of the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons.

<sup>48</sup> See for example submissions by submission Recht op die stad / Right to the City, the European Federation of National Organisations Working with the Homeless (FEANTSA).

<sup>49</sup> A/HRC/47/37.

public housing, including increased vulnerability to violence, forced evictions, segregation and also disproportionately experience inadequate and unhealthy housing conditions such as overcrowding.<sup>50</sup>

45. In South Korea, for example, migrant workers are frequently relegated to inadequate housing conditions in buildings provided by employers such as vinyl houses, containers and dormitories, often without proper sanitation, heating, fire extinguishers/alarms and other basic safety conditions.<sup>51</sup> A 2020 survey of the South Korean Ministry of Employment and Labour found that 99.1% of migrant workers stay in such dormitories provided by their employer and that 74% of those dormitories are temporary buildings (containers, prefabricated panels, vinyl houses).<sup>52</sup> In countries like Argentina, Spain and Zambia,<sup>53</sup> for example, it is reported that a majority of migrants are forced to live in segregated informal settlements due to discrimination in accessing housing.

### C. Indigenous peoples

46. The right to adequate housing of indigenous peoples must be understood in accordance with the principles and rights set forth in the United Nations Declaration on the Rights of Indigenous Peoples, such as the principle of self-determination and the land rights of Indigenous Peoples<sup>54</sup>.

47. Across the globe, indigenous peoples have faced dispossession, genocide, historic marginalization, exclusion and discrimination. Research and civil society testimony points to continued discrimination faced by indigenous people in their right to adequate housing - an issue underscored by a report of the previous Special Rapporteur published in 2019. This can manifest in the non-recognition of land rights, discrimination in the private housing market, increased vulnerability to homelessness, forced evictions and displacement, segregation, barriers in access to social/public housing and beyond. For example, in the Republic of Khakassia and Kemerovo Oblast in the Russian Federation, indigenous communities have filed dozens of complaints regarding coal companies' illegal seizure of land and houses, which have also had a detrimental impact on their right to safe, clean, healthy and sustainable environment including quality of drinking water<sup>55</sup> as demonstrated in a 2019 survey in Khakassia that found that nearly 25% of water pipes in rural districts do not meet hygienic requirements. In India, many communities, such as the Irula tribal community, face historic dispossession, ongoing marginalization and discrimination, often manifested as segregation and barriers to accessing social housing as tribal families are often excluded from state housing programs because they lack documentation, secure tenure, and access to financial institutions.<sup>56</sup>

### D. Women and gender discrimination

48. The consideration of women's right to adequate housing has been a focus of the mandate since its onset and was examined in several reports.<sup>57</sup> The Convention on the Elimination of Discrimination Against Women reaffirms the right to housing for women, free of discrimination, including the recognition that States shall take appropriate measures to eliminate discrimination against rural women and ensure their right to housing, and that

<sup>50</sup> A/65/261.

<sup>51</sup> Submission by the Civil Society Committee with Migrants in Korea.

<sup>52</sup> *Ibid.*, p. 3.

<sup>53</sup> See submissions by Xumek - Asociación Civil para la Promoción y Protección de Derechos Humanos, Platform for on International Cooperation on Undocumented Migrants (PICUM), Habitat for Humanity Zambia.

<sup>54</sup> For more details, see the report of the previous Special Rapporteur, A/74/183, paras. 6, 7.

<sup>55</sup> Submission by Anti-Discrimination Centre Memorial Brussels.

<sup>56</sup> Submission by Habitat for Humanity International India.

<sup>57</sup> See among others, E/CN.4/2006/118 and A/HRC/19/53.

women be ensured equal access to justice and equal rights to property free of discrimination in all matters relating to marriage and family relations.<sup>58</sup>

49. As underscored in the reports of the Special Rapporteur and in submissions received for the purpose of this present report, women across different regions often face multiple, intersectional discrimination on the basis of economic status, disability, race or ethnicity, documentation status and other prohibited grounds. In Brazil, for example, women headed households make up 60% of total households facing housing deficits and of these, households headed by Afro-Brazilian women are a majority.<sup>59</sup> It is estimated that 63% of households headed by Afro-Brazilian women with children under the age of 14 are below the poverty line, which is twice the national average.

50. Despite the ongoing attention to the gender dimensions of the right to adequate housing and non-discrimination, discrimination in the right to housing for women has remained pervasive and multi-faceted. The gender-based discrimination women face is often manifested in access to private rental housing, access to homeownership, inheritance, security of tenure, vulnerability to homelessness, forced evictions and inadequate housing conditions. In Argentina, for example, a 2018 national survey found that 25% of women with children have experienced discrimination in access to rental housing.<sup>60</sup> In South Africa, it is reported that women face significant legal burdens in accessing redistribution of property if their marriage ends.<sup>61</sup>

51. More broadly, data across regions finds women disproportionately face inadequate housing conditions. In an analysis based on data from 59 low- and middle-income countries in Latin America and the Caribbean, Central and Southern Asia, and sub-Saharan Africa, data shows that in 80% of countries analysed, women are overrepresented in urban slums in areas cut off from essential services and at the root of this phenomenon are gender-based inequalities that limit women's rights to housing and asset ownership.<sup>62</sup>

## **E Racial and Ethnic Minorities**

52. The Convention on the Elimination of All Forms of Racial Discrimination, recognizes the right to equality in the enjoyment of the right to housing, without distinction as to race, colour or national or ethnic origin, directly calls on State parties to condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.<sup>63</sup> (The Durban Declaration and Program of Action further recognizes the persistence of racism, racial discrimination, and xenophobia in contributing to long-standing inequality in terms of access to, inter alia, education, health care and housing.<sup>64</sup> It calls on States to take appropriate measures to prevent racial discrimination in housing, including multiple forms of discrimination<sup>65</sup>, and adopt positive measures to promote the access of individuals and groups of individuals to adequate housing.<sup>66</sup>

53. The marginalization and exclusion of individuals and groups on the basis of race, colour, descent or national or ethnic origin is both a primary driver of historical housing discrimination and socio-spatial segregation, and one of the most persistent forms of such discrimination that remains to date. Legacies of structural and institutional racism in state

<sup>58</sup> Convention on the Elimination of All Forms of Discrimination against Women, Articles 1,14.2, 15.2, 16.1.

<sup>59</sup> Submission by Zero Eviction Campaign in Brazil.

<sup>60</sup> Submission by Inquilinos Agrupados de la Ciudad de Buenos Aires.

<sup>61</sup> Submission by Legal Resource Centre South Africa.

<sup>62</sup> UN WOMEN / UN-HABITAT, *Harsh Realities: Marginalised women in cities of the developing world*. New York, NY; 2019, available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/harsh-realities-marginalized-women-in-cities-of-the-developing-world-en.pdf?la=en&vs=747>.

<sup>63</sup> CERD, Article 3 and 5.3.

<sup>64</sup> A/CONF.189/12, para. 33.

<sup>65</sup> A/CONF.189/12, para. 49.

<sup>66</sup> A/CONF.189/12, para. 100.

housing and land policies, political and institutional factors, discriminatory practices by private actors, pervasive racial stereotypes, prejudice and bias have all contributed to structural inequalities in the right to adequate housing.

54. Across regional contexts, the impacts of housing discrimination faced by groups on the basis of race, colour or national or ethnic origin is evidenced in disproportionate exposure to inadequate housing conditions, increased vulnerability to evictions, barriers to homeownership and rental opportunities and, in many States, continued policies of direct and indirect segregation. In this regard, the Special Rapporteur expresses his grave concern about the persistent systemic discrimination and segregation in accessing the right to housing experienced and reported by particular vulnerable groups, particularly Roma communities in Europe and Asia, Palestinian citizens/residents in Israel and the West Bank and people of African and Middle Eastern descent in Europe, the United States, and other wealthy countries.

55. In its 2018 report “Being Black in the EU”,<sup>67</sup> the Fundamental Rights Agency of the European Union points to the various ways racial discrimination and social exclusion affects access to housing for people of African descent: 84% of respondents mentioned their skin colour as the main reason behind the discrimination they experienced when looking for housing, 45% reported living in overcrowded housing compared to 17% of the general population in EU, and 15% of respondents owned their own home, in contrast to 70% of general population in the EU.

## **VI. General and special measures for addressing systemic discrimination in the right to housing**

56. According to international human rights law, States should ensure non-discrimination and substantive equality to address systemic discrimination through the adoption of general and special measures, including affirmative action. Measures can include legislative, executive, administrative, budgetary and regulatory instruments at every State level (national, local or regional government), by housing providers and agencies, as well as plans, policies, programs and preferential regimes in housing for “disadvantaged” groups.<sup>68</sup>

### **A. General measures including legislative steps**

57. States are under an obligation to adopt legislative measures which seek to address discrimination on grounds recognized under international human rights law and provide effective judicial or other mechanisms through which such rights can be enforced. Many States have indeed adopted legislative measures including constitutional, legislative and executive measures in this regard prohibiting discrimination by public, and less commonly, private actors. In the United States of America, for example, the Fair Housing Act was adopted in the 1960s, to prohibit discrimination by public and private actors in the provision of and access to housing, despite its acknowledged lack of robust implementation.<sup>69</sup> Similar laws can be found in many countries including Australia, Canada and the United Kingdom which seek to prohibit discrimination by public and private actors. Local governments can also enact anti-discrimination programs as the local authorities in Berlin, Germany, have done with the “Rent Fairly-Live Fairly” programme to monitor discrimination in the rental housing market and offer assistance to access housing.<sup>70</sup>

58. However, a substantial number of countries, including the most rapidly urbanizing countries in Asia and Africa, lack either legislative or constitutional measures that prohibit discrimination in access to housing or in other economic, social and cultural rights. As a result, private landlords, homeowners, and other private entities in the housing sector, as well

<sup>67</sup> <https://fra.europa.eu/en/publication/2019/being-black-eu-summary>

<sup>68</sup> (CERD/C/GC/32, para. 13)

<sup>69</sup> On the US experience, see *The Dream Revisited: Contemporary Debates about Housing, Segregation and Opportunity* (Ingrid Gould Ellen and Justin Peter Steil eds, 2019).

<sup>70</sup> Submission by Germany

as many public agencies which deal with housing, do not prohibit discrimination legislatively. Even in countries with modern constitutions such as South Africa, where the constitutional norms that prohibit discrimination apply not only vertically but also horizontally – i.e., to private actors – it is often poorly understood and discrimination by private actors continues in large measure. Nevertheless, robust models for preventing public and private discrimination in housing do exist, legislatively<sup>71</sup> as well as through judicial rulings.<sup>72</sup> In States where Equity Bodies, National Human Rights Bodies or Ombudsman offices are actively addressing issues of housing discrimination, these entities can also play an important role in the advancement of measures against discrimination in housing.

59. However, large loopholes continue to exist in the regulation of private housing providers and landlords. Regrettably, the equality legislation<sup>73</sup> or the judicial rulings<sup>74</sup> of some countries still allow individual landlords to refuse renting out a housing unit or room to a person from another group if they share the same apartment or live together on the same plot. While individual preferences and freedom of choice of selecting a co-habitant to live together in the same housing unit may not amount to discrimination, it is highly questionable if categorically denying access to housing for tenants belonging to a different group would be permissible if it involves merely the sharing of common spaces such as a staircase or a communal garden by the landlord and the tenant in a building with multiple separate housing units.

## B. Special measures

60. The purpose of special measures can be especially significant for addressing systemic discrimination by accounting for the needs of groups that have suffered historical or persistent prejudice. This consideration of differentiation in treatment is an important dimension in the principle of non-discrimination.<sup>75</sup>

61. Many States have advanced specific policies, plans and programs to advance equality in access to housing, and examples of these can provide important indications on the types of positive measures that can contribute to diminishing and eliminating discrimination in the right to adequate housing. In broad terms, these interventions at the national and local level address the advancement of equality and non-discrimination for particular groups as they relate to access to social/public affordable housing and rental or homeownership in the private housing market, pointing to how different scales and institutional levels of governance can advance different types of positive measures.

<sup>71</sup> See e.g., Equality Act 2010, United Kingdom, available at <https://www.legislation.gov.uk/ukpga/2010/15/contents>. See the AFFH rule in the United States, referred to below, n .82.

<sup>72</sup> The South African Supreme Court of Appeals invalidated a racially restrictive testament by invoking the constitutional values of non-discrimination and equality. See *Curators Ad Litem to Certain Potential Beneficiaries of Emma Smith Educational Fund v The University of KwaZulu-Natal and Others* (510/09) [2010] ZASCA 136 available at <http://www.saflii.org/za/cases/ZASCA/2010/136.html>.

<sup>73</sup> For example, Germany's General Equal Treatment Act does not apply to private landlords who rent out less than 50 housing units and allows for exceptions to 'maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social, and cultural conditions'. These provisions of the Act have been repeatedly criticized by the Committee on the Elimination of Racial Discrimination as not compliant with international human rights law, see CERD/C/DEU/CO/18, para 17, CERD/C/DEU/CO/19-22, para 12.

<sup>74</sup> See e.g., the ruling of the Indian Supreme Court in *Zoroastrian Cooperative Housing Society vs District Registrar*, available at [https://indiankanoon.org/doc/713373/?\\_cf\\_chl\\_jschl\\_tk\\_\\_=pmd\\_vW1dIv6SDE675SHnQe372IHsM2\\_qjJEnq2Zegx11J0I-1633997878-0-gqNtZGzNAjuchBszQfl](https://indiankanoon.org/doc/713373/?_cf_chl_jschl_tk__=pmd_vW1dIv6SDE675SHnQe372IHsM2_qjJEnq2Zegx11J0I-1633997878-0-gqNtZGzNAjuchBszQfl). The court upheld the by-laws of a Parsi Housing Society that prohibited selling property to non-Parsis. It did so by invoking the Parsis' fundamental right to the freedom of association, their rights as a minority to preserve their culture, and by refusing to apply constitutional principles to private contractual acts.

<sup>75</sup> CERD/C/GC/32, para. 8



### (a) National level measures

62. At the national level different States have advanced special measures to expand access to housing for vulnerable groups. In Colombia, for example, the Ministry of Housing, in collaboration with other actors, has established a program to expand access to affordable housing for migrants through the provision of temporary rental subsidies for vulnerable migrant families in cities with the largest concentration of migrant populations.<sup>76</sup> In Chile, the State has advanced access to housing for specific vulnerable groups by forming inter-ministerial agreements of collaboration between the Ministry of Housing and specific State Agencies to facilitate access to housing subsidies and programs for vulnerable groups.<sup>77</sup> In the United States of America, the federal government has recently issued executive actions to re-enact the Affirmatively Furthering Fair Housing Rule (2015),<sup>78</sup> federal regulations that actively address housing discrimination by requiring local jurisdictions that receive federal money to examine barriers to fair housing access and to create plans for rectify these barriers..

### (b) Local level measures

63. Special measures to address housing discrimination have also been advanced by local governments. Local jurisdictions can play a crucial role in addressing discrimination and advancing fair access to housing due to their primary role in regulating land use and rental housing. In Barcelona, Spain, an office of non-discrimination has been established at the municipal level to monitor, in collaboration with civil society groups, discrimination including housing discrimination.<sup>79</sup> It has found discriminatory patterns in the private real estate market, particularly from landlords towards residents with foreign surnames, and has developed an awareness campaign to address this issue. In Buenos Aires, Argentina, the Defensor del Pueblo de la Nación plays a central role in access to justice in cases of housing discrimination and takes special measures to further address the need of vulnerable groups - for example in proactively accompanying residents in resettlement processes to ensure adequate housing solutions are provided and in taking stock of the particular needs of the persons in situations of homelessness through a city-wide census.<sup>80</sup> In Villeurbanne, France, the local municipality is part of a national network ANVITA (National Association of Welcoming Cities and Territories) and prioritizes programs to advance migrant inclusion. This includes emergency accommodation for migrants and monitoring discrimination, including in housing, and supporting access to justice for victims of discrimination.<sup>81</sup>

## VII. Access to remedies and justice

64. Victims of housing discrimination need effective remedies against discrimination, including remedies for systemic discrimination experienced in the field of housing. This includes access to justice in relation to housing discrimination experienced by particular individuals or communities, but may also require broader legal and policy-based remedies, such as special measures envisaged to overcome structural discrimination experienced by particular groups.

<sup>76</sup> Testimony of Colombian Government, April 30th 2021 Public Consultation with States, International Organizations and UN Entities

<sup>77</sup> See submission of Ministry of Housing and Urbanism of the Government of Chile

<sup>78</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>

<sup>79</sup> Testimony from the Municipality of Barcelona, May 14 2021 Public Consultation with local and Regional Governments

<sup>80</sup> Submission by Ministerio Público de la Defensa del Poder Judicial de la Ciudad Autónoma de Buenos, República of Argentina

<sup>81</sup> Testimony from the Deputy Mayor of Villeurbanne, May 14 2021 Public Consultation with local and Regional Governments

65. The obligation of States to ensure equality and non-discrimination implies an obligation to ensure an effective investigation of allegations of housing discrimination by independent bodies, and meaningful avenues to ensure compensation and guarantees of non-repetition for victims.

66. States should also ensure that discrimination by private actors in the field of housing is subjected to appropriate sanctions that are severe enough to effectively discourage housing discrimination. Many acts of private actors which result in discrimination can, in most cases be meaningfully addressed through legislative or policy measures, rather than by individuals having to seek justice.

67. Courts alone are not responsible for ensuring justice for housing discrimination. As mentioned by a report of the previous Special Rapporteur, access to justice for the right to adequate housing can usually be best secured, by a range and mix of administrative, non-judicial and judicial mechanisms that should be easily accessible to victims of housing discrimination at local, national or international levels (A/HRC/40/61). Should non-judicial mechanisms not be in a position to provide effective remedies, victims of housing discrimination should not be barred from seeking justice through the formal judicial system.

## **A. Non-judicial mechanisms**

68. Ombudspersons, non-discrimination and equality bodies at local and national levels, legal departments of tenant unions, and National Human Rights Institutions should play an important role in addressing various forms of housing discrimination by receiving complaints and providing advice to victims, mediation between tenants, homeowners, credit providers and public institutions and negotiating out of court settlements. Their services should be accessible at low cost and be available for persons with no or very low income, free of charge.

69. It is important that equality bodies also have the mandate to look into all prohibited grounds of discrimination under international human rights law. In addition to assessing individual complaints, they should also be able to respond to collective complaints and have the competence to undertake on their own, studies and reports to analyse and address particular and systemic forms of housing discrimination and submit recommendations to local, regional or national parliaments and governments. A recent example may be drawn from Canada where the Office of a Federal Housing Advocate can, under the 2019 National Housing Strategy Act (NHSA), receive submissions by individuals and groups on systemic issues and submit findings and recommendations to the Government.

70. Non-judicial mechanisms can also play an important role in informing tenants, homeowners, marginalized communities and other actors in the housing sector about their rights and obligations, in public awareness-raising, and in independent monitoring of housing discrimination. For example, the Anti-Discrimination Office of Germany has carried out a survey on racial discrimination in the housing market in Germany,<sup>64</sup> run a public awareness raising campaign and published a guide for tenants, homeowners and advice offices on housing discrimination, explaining the national legal framework and opportunities for submitting complaints and interventions.<sup>66</sup>

## **B. Judicial mechanisms**

71. Ultimately, it is also essential that victims of housing discrimination be able to seek justice through the formal judicial system. However, even in countries that have well established anti-discrimination legislation, courts have not heard many cases relating to housing discrimination.

72. For example in France, according to the national equality body, *Defenseur des Droits*, only about ten cases relating to discrimination in accessing social housing found their way into courts over a 10 year period, and of those, only two decisions affirmed that the plaintiffs had actually been victims of discrimination.<sup>82</sup> In the United States of America or South

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<sup>82</sup> See submission by the *Defenseur des droits*.

Africa, where legal avenues against discrimination do exist as mentioned before, the record of judicial intervention to address discrimination in housing is patchy and disappointing. In other countries such as Israel or India, judicial interventions have contributed substantially to the creation and maintenance of discrimination.<sup>83</sup>

73. There are several reasons for this dire global reality: many affected people who are victims of housing discrimination lack resources to access courts, are hesitant to seek justice due to a lack of trust, and face difficulties to prove that they have actually been victims of discrimination on a prohibited ground. The prospect of retaliation, lengthy, time consuming processes and few successful outcomes discourage them from seeking justice through the formal justice system. Instead of engaging in a court battle, victims choose often to concentrate their efforts to find alternative housing, and housing discrimination continues with impunity.

### C. International mechanisms

74. Regional and international complaints mechanisms have thus far provided only limited relief to victims of housing discrimination. One reason is of course that many States have not yet agreed that international human rights bodies, such as the Committee on Economic, Social and Cultural Rights, can receive individual complaints. While several housing rights cases have been examined under the Optional Protocol, offering individuals an opportunity to file complaints after exhaustion of domestic remedies, it has to date only been ratified by 26 States.

75. The communication procedure of the Special Rapporteur continues to provide an essential avenue for victims to address discrimination in housing. It must however be noted that ensuring effective relief for victims of housing discrimination through this route has strong limitations. The Special Rapporteur can raise cases of housing discrimination with concerned Governments, and with other stakeholders such as business enterprises, but given his broad mandate and his limited capacity, the Special Rapporteur is only able to act on some few selected key cases of a grave, systematic or strategic nature. Neither UN human rights treaty bodies, nor the Special Rapporteur have any enforcement powers that would ensure that the victims actually receive an effective remedy.

76. At a regional level, the Inter-American system, with its *amparo* remedies in Article 25 (1) of the Inter American Convention on Human Rights,<sup>84</sup> or the European Committee of Social Rights provide possible pathways to hear complaints relating to housing discrimination that are of a systemic nature.

77. Most complaints procedures at the international level, however, depend on the goodwill of national authorities to implement their decisions and recommendations. It is a telling commentary on the effectiveness of the human rights system that a fundamental norm such as non-discrimination is unable to be implemented in an effective manner in law or practice after so many decades.

<sup>83</sup> See Balakrishnan Rajagopal, Pro-Human Rights but Anti-Poor? A Critical Evaluation of the Indian Supreme Court from a Social Movement Perspective, *Human Rights Review*, vol. 18, 2007, no. 3, pp. 157-187; Gautam Bhan, *In the public's interest: evictions, citizenship and inequality in contemporary Delhi* (Univ. of Georgia Press, 2016); D. Asher Ghertner, *Rule by aesthetics: World-class city making in Delhi* (Oxford Univ. Press, 2015); Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, *Emptied lands. A legal Geography of Bedouin Rights* (Stanford Univ. Press, 2018). See also submissions received from Adalah; BADIL Resource Center for Palestinian Residency and Refugee Rights; Housing and Land Rights Network – Habitat International Coalition and Vrinda Grover, Advocate, Supreme Court of India.

<sup>84</sup> See also Inter-American Court of Human Rights, Advisory Opinion OC-9/87 of 6 October 1987, para 23.

## VIII. Recommendations to States and other actors

78. The Special Rapporteur recommends that States, regional, local and other public authorities, public and private housing providers, as appropriate:
79. Adopt comprehensive anti-discrimination legislation covering all protected groups, including women, children, persons with disabilities, LGBTIQ+ persons, migrants, IDPs and refugees, foreigners, racial, ethnic, religious groups and minorities, persons living in situation of homelessness and in informal settlements and prohibiting any form of discrimination in relation to the right to adequate housing by all public and private entities, including public and private housing and credit providers.
80. Review existing housing, tenant, land, building, town planning, zoning, banking, population registration, and social legislation and related regulations to ensure that they prevent and prohibit discrimination in relation to all elements of the right to adequate housing under international human rights law.
81. Establish accessible and sufficiently resourced non-judicial mechanisms (equality bodies, ombudspersons, NHRIs, housing rights advocates) at local, regional and national level, that have the competence to investigate individual and collective complaints of housing discrimination, including systemic forms of housing discrimination; monitor discrimination in relation to housing through statistical analysis, surveys and other means; make recommendations for eliminating housing discrimination and provide legal advice and effective remedies to victims of housing discrimination. Such bodies should have the competence to refer cases of housing discrimination to courts which must be appropriately empowered. If such bodies already exist, enhance their competencies and resources in order to allow them to fulfil their role.
82. Collect and regularly publish data on housing and housing discrimination, disaggregated by age, gender, income, race, disability, ethnicity, religion, nationality, minority, IDP, refugee and residence status, sexual orientation, location, housing status (homeless, informal, formal, tenant, homeowner) and any other relevant group membership to monitor discrimination in relation to housing, covering habitability, affordability and accessibility of housing and services, security of tenure and access to justice and remedies.
83. Ensure that such data collected on housing discrimination is with the participation of and reflects the experience of groups affected by or at risk of housing discrimination, and that the proposals which emerge from the analysis include their views on how housing discrimination experienced by them could be overcome.
84. Establish sufficient compensation and reparation schemes for victims of discrimination in housing, especially those who belong to historically marginalized groups.
85. Regularly monitor and identify any forms of systemic discrimination in relation to housing and adopt special measures and policies at national, regional and local levels to eliminate such discrimination in conformity with international human rights law.
86. Ensure that tenant unions, consumer protection associations and other public or private advisory offices are adequately trained and equipped to provide victims of housing discrimination with effective legal advice and social protection.
87. Ensure that housing and anti-discrimination legislation provides sufficiently dissuasive fines and sanctions for housing discrimination by public authorities and private entities, including public and private housing providers.
88. Provide training for the judiciary, administrative and town planning bodies, and private entities which function in the housing sector (such as real estate agents) on the fundamental elements and requirements of anti-discrimination laws and policies including international human rights standards, so that application of laws is encouraged to be fair and independent.

**89. Undertake awareness-raising campaigns for the general public, to ensure greater awareness of non-discrimination in the provision of housing and related services, especially focusing on groups at elevated risk of housing discrimination which have been historically marginalized.**

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