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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](#).

* 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 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 draws attention to the fact that discrimination in housing continues to be one of the most pervasive and persistent barriers to the fulfilment 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, building land, housing for rental, mortgages and credit and inheritance, as well as ensuring equal security or tenure, protection against evictions, habitability, and equal and affordable access to public services, such as water and sanitation, energy, public transport and others. There continues to be a strong correlation between housing discrimination and environmental health and physical security, and access to employment, schooling and health care.

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

In the present report, the Special Rapporteur sets out the human rights obligations of States, public authorities, regional and local Governments, and public and private housing providers to ensure non-discrimination in housing. It provides an overview of how public authorities can work towards the 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 Special Rapporteur concludes with 11 key recommendations to eliminate housing discrimination and ensure that no one is left behind.

The present report is the first of two interrelated thematic reports of the Special Rapporteur. His second report, on spatial segregation, will be presented to the Human Rights Council at its forty-ninth session, 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 show evidence of a problem of global magnitude. Of particular importance and in focus in the present report, is the finding that, across local contexts, discrimination in housing is disproportionately faced by particular vulnerable groups, including many minorities, underscoring the systemic and structural character of how housing discrimination persists.

2. Over the past 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 ([A/HRC/47/53](#), para. 2). While that report 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 shifting the priority of attention and global action to fighting discrimination and advancing the principle of equality, such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the International Decade for People of African Descent 2015–2024¹ and the commitments to non-discrimination and equality embedded in the Sustainable Development Goals and the New Urban Agenda. The twentieth anniversary of the Durban Declaration and Programme of Action is an opportunity to reaffirm commitments and bring renewed urgency to the advancement and expansion of the Programme of Action.

4. When the mandate was established for 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, 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 was often a motive behind forced evictions ([E/CN.4/1992/2-E/CN.4/Sub.2/1991/65](#)). States therefore decided to include in the official title of the mandate holder an explicit reference to the right to non-discrimination, which is unique among the special procedure mandate holders focusing on a particular right ([E/CN.4/RES/2000/9](#)).

5. One of the first reports of the Special Rapporteur ([E/CN.4/2002/59](#)) had a thematic focus on discrimination and segregation in the context of the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In it, the Special Rapporteur emphasized the need to address discrimination in relation to the right to adequate housing as a critical component in the context of the indivisibility and universality of human rights (*ibid.*, para. 38), and underscored the attention given to housing and discrimination in the Durban Declaration and Programme of Action (*ibid.*, paras. 39–41).

6. In subsequent thematic reports, the mandate holder has examined the issue of the right to adequate housing for specific historically marginalized groups, such as

¹ Proclaimed by the General Assembly in resolution [68/237](#).

women, indigenous peoples, migrants and persons with disabilities.² These reports have brought focused attention to 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, the thematic reports and country visits help to 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 mandate holders. In addition, the Special Rapporteur issued a questionnaire and call for submissions, to which more than 100 responses were received, underlining the continued importance of the issues of non-discrimination in relation to housing. He also held extensive consultations with States, representatives of international organizations, local governments, equality bodies and national human rights institutions, judges and lawyers and civil society to inform the report. The questionnaire, submissions and summary reports of the consultations are available on his website.³

II. International normative framework

8. Non-discrimination and equality are fundamental principles of international human rights law and apply to all human rights, including the right to adequate housing contained in article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 2.2 of the 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.⁴ The reference to “other status” in the Covenant 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 identity, health status, place of residence, and economic and social situation, including homelessness, are all considered prohibited grounds for discrimination under the Covenant.⁵ The prohibition of discrimination in relation to the right to adequate housing is furthermore an immediate obligation that is not subject to the principle of progressive realization.

9. The prohibition of discrimination binds the State and all its institutions that exercise public authority, including agencies at the national, regional and local levels, as well as public-private entities, that in many countries for example manage social housing.⁶ It is also horizontally applicable: the obligation of States to eliminate

² A/HRC/19/53, A/74/183, A/65/261 and A/72/128.

³ www.ohchr.org/EN/Issues/Housing/Pages/CFI_Segregation.aspx.

⁴ See International Covenant on Civil and Political Rights, arts. 2 (1) and 26; International Convention on the Elimination of All Forms of Racial Discrimination, art. 2; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1; Convention on the Rights of the Child, art. 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 7; Convention on the Rights of Persons with Disabilities, art. 3; and Convention relating to the Status of Refugees, art. 3.

⁵ See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras. 15–35.

⁶ See International Covenant on Economic, Social and Cultural Rights, art. 28; Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 9; and A/HRC/28/62.

discrimination also relates to ensuring 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 (A/HRC/28/62, para. 11). Furthermore, the obligation to eliminate discrimination also includes an obligation to adopt laws and regulations to prohibit and address discriminatory residential harassment by private actors, including by neighbours or landlords, so as to protect everyone from arbitrary or unlawful interference with her or his privacy and home.⁷

10. Both formal discrimination and substantive discrimination must be eliminated under international human rights law. While formal discrimination refers to laws, regulations or policies that may be discriminatory, eliminating substantive discrimination requires States to take steps to ensure the equal effective enjoyment of rights, even in the absence of any laws or 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”. 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”.⁸

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, if a person is refused a rental contract because of their age or race. Indirect discrimination refers to laws, policies or practices that 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 a situation of homelessness to have proof of a registered address in order to gain access to housing benefits or any other social benefits would be a form of indirect discrimination, as a homeless person would have no way of obtaining a residential registration certificate.

12. As underlined in the present report, systemic discrimination is often 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 sectors that create relative disadvantages for some groups and privileges for other groups.⁹

13. Often, individuals and groups that experience housing discrimination face multiple and 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 the settlement owing to a lack of other housing alternatives.

⁷ International Covenant on Civil and Political Rights, art. 17.

⁸ Committee on Economic, Social and Cultural Rights, general comment No. 20, paras. 8 and 9.

⁹ Ibid., para. 12.

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 the Protection of the Rights of All Migrant Workers and Members of Their Families; and articles 5 (3), 9, 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 that context, the Committee on the Elimination of Racial Discrimination has observed that, while conditions of complete or partial racial segregation may have been created in some countries by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. 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 stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.¹⁰ 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 that can give rise to racial segregation and work for the eradication of any negative consequences that ensue.¹¹ The Committee has, for example, made specific recommendations to address discrimination of Roma including in the field of housing and reiterated those regularly in its concluding observations.¹²

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 Human Rights Council at its forty-ninth session. He nevertheless underlines that segregated communities frequently face discriminatory treatment in gaining access to public services, 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 European Union member States to establish national equality bodies with complaint mechanisms to address discrimination. Furthermore, discrimination against women in gaining access to housing is covered by European Union directive 2004/113/EC. Regrettably, however, the proposal to adopt a horizontal equality directive in the European Union that 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

¹⁰ Committee on the Elimination of Racial Discrimination, general recommendation No. 19 (1995) on article 3 of the Convention, para. 3.

¹¹ *Ibid.*, para. 4.

¹² Committee on the Elimination of Racial Discrimination, general recommendation No. 27 (2000) on discrimination against Roma, paras. 30–32.

would be fully consistent with international human rights law and standards. In the inter-American human rights system, two anti-discrimination conventions were opened for signature and ratification in 2013, including a comprehensive convention covering multiple prohibited grounds of discrimination by public and private actors.¹³ In the African human rights system, anti-discrimination provisions in the African Charter on Human and Peoples' Rights are justiciable in the context of economic, social and cultural rights, including the right to housing, as illustrated by the ruling in *Social and Economic Rights Action Centre v. Nigeria*.¹⁴

18. The various forms of discrimination experienced in relation to the right to adequate housing are illustrated in more detail in section IV below, covering all seven elements of this right: security of tenure; availability of services; affordability; habitability; accessibility; location; and 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, which, in its paragraphs 13 and 14, 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 those acts and continue to be victims of their consequences. Institutionalized and structural discrimination, particularly through racially discriminatory policies, persisted in post-colonial and post-slavery States, which has had an impact on all aspects of the human rights of affected groups, not least their right to adequate housing.

20. In the United States, for example, during the first half of the twentieth century, pervasive forms of direct discrimination prevented African Americans from 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 Supreme Court in 1948), to significant “extra-legal” barriers, including intimidation and violence.¹⁵ Moreover, early practices of the Federal Housing Authority loan system had both explicit and implicit racial preferences built into them, meaning that beneficiaries of the loans insured by the Authority were overwhelmingly white. African Americans had minimal opportunities to purchase homes on an equal footing with whites, which has had a lasting effect on disparities in homeownership and, in turn, the wealth gap between African American and white families.¹⁶

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

¹³ The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (2013); and the Inter-American Convention Against All Forms of Discrimination and Intolerance (2013).

¹⁴ African Commission on Human and People's Rights, *Social and Economic Action Rights Centre v. Nigeria*, Communication No 155/96, Decision of 27 October 2001.

¹⁵ Jonathan Kaplan, and Andrew Valls, “Housing Discrimination as a Basis for Black Reparations”, *Public Affairs Quarterly*, vol. 21, No. 3 (July 2007).

¹⁶ Andrew Haughwout and others, “Inequality in U.S. homeownership rates by race and ethnicity”, Liberty Street Economics, Federal Reserve Bank of New York blog, 8 July 2020.

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.¹⁷

22. The legacy of these racially discriminatory policies is still evident today. Academic literature and submissions for the present report¹⁸ point to the continuity of the socio-spatial inequalities of the apartheid era. To date, in South African cities, white elites disproportionately live 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 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.¹⁹ 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 above, 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 recognize these different forms of discrimination 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 violated. It is necessary to advance normative frameworks, policies, programmes and special measures that

¹⁷ Martin Abel, “Long-run effects of forced removal under apartheid on social capital”, paper presented during a Harvard University economic history seminar, January 2015.

¹⁸ Brij Maharaj, “The apartheid city”, in *Urban Geography in South Africa: Perspectives and Theory*, Ruth Massey and Ashley Gunter, eds. (Cham, Switzerland, Springer, 2020); and submissions by the South African Human Rights Commission, Legal Resources Centre and Ndifuna Ukwazi.

¹⁹ For a survey, see Carl H. Nightingale, *Segregation: A Global History of Divided Cities* (Chicago and London, University of Chicago Press, 2012). On Malaysia, see Vishnu Prasad, “Rule by exception: development, displacement and dissent in greater Kuala Lumpur, Malaysia”, Master in City Planning thesis, Massachusetts Institute of Technology, June 2017.

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 the following: differential patterns of eviction of ethnic or racial minorities, as well as differential treatment in land or title registration; legal prohibitions for renting apartments to individuals on the basis 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 foreclosures for racial and ethnic minorities and women; and 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.²⁰ In the United States, a proliferation of anti-immigrant local ordinances in recent years have included provisions that 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 a rental unit.²¹

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 be apparent in discrimination in relation to access to work, schooling, health care or public benefits on the basis of residential address or related to a lack of an official address, and can lead to disparities in the provision, quality or costs of basic services.

C. Affordability

31. To ensure that housing costs are tenable and do not compromise other basic needs, it is critical for States to take measures to ensure that housing is affordable to all, if necessary through rent and housing cost regulation, housing or social subsidies, mortgage schemes, the 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 a lack of equal access to affordable housing or public

²⁰ Submission by the United Nations Human Settlements Programme (UN-Habitat) Lebanon.

²¹ Rigel C. Oliveri, "Between a rock and a hard place: landlords, Latinos, anti-illegal immigrant ordinances, and housing discrimination", *Vanderbilt Law Review*, vol. 62, No. 1 (2009).

benefits/subsidies related to housing; and in access to housing in the private market, for example, in disproportionately 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, in particular 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 Cluj-Napoca, Romania, where Roma families, who had been living in the centre of the city, were forcibly evicted by the municipality and relocated to Pata Rît, an area outside of the city centre where a garbage dump is located. This has exposed residents 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.²²

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 access to adequate housing, in particular affecting communities of migrants, refugees and internally displaced persons, 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 per cent of migrants across the European Union live in overcrowded households, including rates that are significantly higher in countries like Italy (54 per cent), Greece (55 per cent) and Bulgaria (60 per cent).²³ Worldwide, it is estimated that at least 1 billion of the urban population live in informal settlements, in which the urban poor, immigrants and religious, ethnic and other minorities are concentrated.²⁴ 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 or to provide them with basic services.

F. Cultural adequacy

34. The right to housing includes respect for 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 programmes

²² Civil society testimony during the consultation on 7 May 2021.

²³ Eurostat, "Migrant integration: overcrowding rate", 28 February 2020.

²⁴ UN-Habitat, *World Cities Report 2020: The Value of Sustainable Urbanization* (Nairobi, 2020), p. 4.

of Tibetan communities that have been 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 programmes.²⁵

V. Groups in focus

35. The effects of housing discrimination and socio-spatial segregation are disproportionately experienced by historically marginalized groups, in particular racial and ethnic minorities, migrants, refugees and internally displaced persons, women, indigenous people, LGBTIQ+ persons, persons with disabilities, persons living in homelessness and people with a 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 can be on multiple overlapping and reinforcing grounds, and vary in the context of different local social, economic and legal structures. The present section outlines the key normative human rights standards applicable for addressing the housing discrimination experienced by specific groups that have been subjected 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 above, 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 that vulnerable groups face in specific contexts. Otherwise, it is difficult for national, regional and local governments to advance and enforce appropriate legal protections, policies, programmes and special measures, or allocate adequate resources to address such discrimination. The regular and consistent collection of adequate, disaggregated data is critical to understand the housing discrimination faced by marginalized groups. Moreover, in the design, implementation and monitoring of such policies, programmes and measures, States should actively consult with and involve individuals of those groups through their representative organizations.

37. Housing discrimination often goes unreported because it is difficult to document or because victims lack information about their rights or 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.²⁶

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

²⁵ Submission by International Campaign for Tibet.

²⁶ National Fair Housing Alliance, “2021 fair housing trends report”, 2021.

and to take all appropriate steps to ensure that reasonable accommodation is provided.²⁷ States must ensure public and social housing programmes are accessible to persons with disabilities and the elderly,²⁸ 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.²⁹

39. Across the globe, persons with disabilities face significant discrimination and inequality in gaining access to adequate private and public housing, as recognized in the 2017 report of the previous mandate holder, 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 the face of natural disasters, conflict and other humanitarian situations (A/72/128, paras. 12–32).

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 reveal that close to 50 per cent of people with disabilities are in poverty and, of those, over 22 per cent lack basic access to basic services in their housing.³⁰

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.³¹ For example, in Spain, civil society organizations report that 20.3 per cent of the population with disabilities live in substandard housing, including problems with leaks, humidity and rot; 58.7 per cent of the population with disabilities face excessive housing costs; and 70 per cent of residential buildings in Spain are not accessible to persons with disabilities.³²

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.³³ A key relevant provision is found in the principles on housing and property restitution for refugees and displaced persons, which underscore the right to non-discrimination and the right to adequate housing for refugees and displaced persons,³⁴ 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, in particular in conjunction with multiple other grounds of discrimination, namely, but not limited to, racial, ethnic and gender discrimination.³⁵ For example, in a 2021 report, the Fundamental Rights Agency of the European Union found that discrimination

²⁷ Convention on the Rights of Persons with Disabilities, arts. 5, 9 and 28.

²⁸ *Ibid.*, art. 28 (2) (d); see also general comment No. 2 (2014) on accessibility, para. 42.

²⁹ Convention on the Rights of Persons with Disabilities, art. 9 (2) (b).

³⁰ Submission by Mexico – Secretaría de Bienestar, Consejo Nacional para Prevenir la Discriminación y la Comisión Nacional de Vivienda.

³¹ See submissions by Recht op die stad/Right to the City, Rotterdam, Netherlands; Habitat for Humanity Poland; Kazakhstan Parliamentary Development Fund.

³² Submission by CERMI, Spain.

³³ These include art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, art. 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and art. 21 of the Convention relating to the Status of Refugees (which extends equal treatment between refugees and all comparable aliens).

³⁴ See E/CN.4/Sub.2/2005/17, principles 2, 3 and 8.

³⁵ See for example submissions by Recht op die stad/Right to the City, the European Federation of National Organisations Working with the Homeless.

in access to housing was mainly triggered by the first or last name (44 per cent), followed by skin colour or physical appearance (40 per cent) and citizenship (22 per cent). In total, more than 8 out of 10 (84 per cent) of respondents with a sub-Saharan African background mentioned their skin colour as the main reason for the most recent incident of discrimination in access to housing. The report also found that migrant women faced multiple challenges.

44. In her recent report on housing, land and property issues in the context of internal displacement ([A/HRC/47/37](#)), the Special Rapporteur on the human rights of internally displaced persons underscores how addressing housing, land and property issues is essential to preventing displacement. In an earlier report ([A/65/261](#)), the previous Special Rapporteur on adequate housing found that migrants faced discrimination in gaining access to both private and public housing, including increased vulnerability to violence, forced evictions and segregation, and disproportionately experienced inadequate and unhealthy housing conditions, such as overcrowding.

45. In the Republic of 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 or alarms, or other basic safety conditions. A 2020 survey by the Republic of Korea Ministry of Employment and Labour found that 99.1 per cent of migrant workers stayed in such dormitories provided by their employer and that 74 per cent of those dormitories were temporary buildings (containers, prefabricated panels, vinyl houses).³⁶ In countries like Argentina, Spain and Zambia,³⁷ for example, it is reported that a majority of migrants are forced to live in segregated informal settlements owing 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.³⁸

47. Across the globe, indigenous peoples have faced dispossession, genocide, historic marginalization, exclusion and discrimination. Research and civil society testimony point to the continued discrimination that indigenous people face in their right to adequate housing, an issue underscored in a report of the previous mandate holder published in 2019. This can be apparent in the non-recognition of land rights, discrimination in the private housing market, increased vulnerability to homelessness, forced evictions and displacement, segregation, barriers to access to social or 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 the illegal seizure by coal companies of land and houses that have also had a detrimental impact on their right to a safe, clean, healthy and sustainable environment, including quality of drinking water,³⁹ as demonstrated in a 2019 survey in Khakassia that found that nearly 25 per cent of water pipes in rural districts did not meet hygienic requirements. In India, many communities such as the Irula tribal

³⁶ Submission by the Civil Society Committee with Migrants in Korea.

³⁷ See submissions by Xumek – Asociación Civil para la Promoción y Protección de Derechos Humanos, Platform for on International Cooperation on Undocumented Migrants, Habitat for Humanity Zambia.

³⁸ For more details, see [A/74/183](#), paras. 6–7.

³⁹ Submission by Anti-Discrimination Centre Memorial Brussels.

community face historic dispossession, ongoing marginalization and discrimination, often manifested as segregation and barriers to gaining access to social housing, as tribal families are often excluded from State housing programmes because they lack documentation, secure tenure and access to financial institutions.⁴⁰

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 examined in several reports.⁴¹ The Convention on the Elimination of All Forms 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 ensure that women are given equal access to justice and equal rights to property free of discrimination in all matters relating to marriage and family relations.⁴²

49. As underscored in the reports of the Special Rapporteur and in submissions received for the purpose of the 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 per cent of total households facing housing deficits and, of those, households headed by Afro-Brazilian women are a majority.⁴³ It is estimated that 63 per cent 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 multifaceted. 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 per cent of women with children had experienced discrimination in gaining access to rental housing.⁴⁴ In South Africa, it has been reported that women face significant legal burdens in gaining access to the redistribution of property if their marriage ends.⁴⁵

51. More broadly, data across regions finds that 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 show that in 80 per cent 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.⁴⁶

⁴⁰ Submission by Habitat for Humanity International India.

⁴¹ See, inter alia, [E/CN.4/2006/118](#) and [A/HRC/19/53](#).

⁴² Convention on the Elimination of All Forms of Discrimination against Women, arts. 1, 14 (2), 15 (2) and 16 (1).

⁴³ Submission by Zero Eviction Campaign in Brazil.

⁴⁴ Submission by Inquilinos Agrupados de la Ciudad de Buenos Aires.

⁴⁵ Submission by Legal Resource Centre South Africa.

⁴⁶ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and UN-Habitat, "Harsh realities: marginalized women in cities of the developing world", 2019.

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. It directly calls upon 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.⁴⁷ The Durban Declaration and Programme 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. It calls on States to take appropriate measures to prevent racial discrimination in housing, including multiple forms of discrimination and adopt positive measures to promote the access of individuals and groups of individuals to adequate housing.⁴⁸

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 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 that regard, the Special Rapporteur expresses his grave concern about the persistent systemic discrimination and segregation in gaining access to the right to housing experienced and reported by particularly vulnerable groups, especially 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 entitled “Being Black in the EU”,⁴⁹ the Fundamental Rights Agency of the European Union points to the various ways in which racial discrimination and social exclusion affect access to housing for people of African descent: 84 per cent of respondents mentioned their skin colour as the main reason behind the discrimination they experienced when looking for housing; 45 per cent reported living in overcrowded housing, compared with 17 per cent of the general population in the European Union; and 15 per cent of respondents owned their own home, compared with 70 per cent of general population in the European Union.

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.

⁴⁷ International Convention on the Elimination of All Forms of Racial Discrimination, arts. 3 and 5 (3).

⁴⁸ A/CONF.189/12, paras. 33, 49 and 100.

⁴⁹ European Union Agency for Fundamental Rights, *Being Black in the EU: Second European Union Minorities and Discrimination Survey*, Summary (Vienna, Publications Office of the European Union, 2019).

Measures can include legislative, executive, administrative, budgetary and regulatory instruments at every State level (national, local or regional government), or by housing providers and agencies, as well as plans, policies, programmes and preferential regimes in housing for “disadvantaged” groups.⁵⁰

A. General measures, including legislative steps

57. States are under an obligation to adopt legislative measures that 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, 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.⁵¹ Similar laws can be found in many countries, including Australia, Canada and the United Kingdom of Great Britain and Northern Ireland, that seek to prohibit discrimination by public and private actors. Local governments can also enact anti-discrimination programmes, as the local authorities in Berlin have done with the “rent fairly-live fairly” programme to monitor discrimination in the rental housing market and offer assistance in gaining access to housing.⁵²

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 as many public agencies that deal with housing, do not prohibit discrimination legislatively. Even in those 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 – those norms are 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, legislatively⁵³ as well as through judicial rulings.⁵⁴ In States where equity bodies, national human rights bodies or ombudsperson offices actively address issues of housing discrimination, such entities can also play an important role in the advancement of measures against discrimination in housing.

⁵⁰ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, para. 13.

⁵¹ On the United States experience, see Ingrid Gould Ellen and Justin Peter Steil, eds., *The Dream Revisited: Contemporary Debates about Housing, Segregation and Opportunity in the Twenty-First Century* (New York, Columbia University Press, 2019).

⁵² Submission by Germany.

⁵³ See e.g., United Kingdom of Great Britain and Northern Ireland, Equality Act 2010. See also the Affirmatively Furthering Fair Housing rule in the United States, referred to below.

⁵⁴ The Supreme Court of Appeal of South Africa invalidated a racially restrictive testament by invoking the constitutional values of non-discrimination and equality, in its judgment on the case of *The Curators Ad Litem to Certain Potential Beneficiaries of Emma Smith Educational Fund v. The University of KwaZulu-Natal and Others*, Case No. 510/09, Judgment of 1 October 2010.

59. However, large loopholes continue to exist in the regulation of private housing providers and landlords. Regrettably, the equality legislation⁵⁵ or the judicial rulings⁵⁶ of some countries still allow individual landlords to refuse to rent 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 the freedom to choose a co-habitant to live with 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 involved 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 particularly significant in combating 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.⁵⁷

61. Many States have promoted specific policies, plans and programmes to advance equality in access to housing, and examples of these can provide important indications of the types of positive measures that can help to diminish and eliminate discrimination in the right to adequate housing. In broad terms, these interventions at the national and local levels address the advancement of equality and non-discrimination for particular groups as they relate to access to affordable social/public 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.

1. 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 programme to expand access to affordable housing for migrants through the provision of temporary rental subsidies for vulnerable migrant families in cities with the largest concentrations of migrant populations.⁵⁸ In Chile, the State has advanced access to housing for specific vulnerable groups by forming interministerial agreements of collaboration between the Ministry of Housing and specific State agencies to facilitate access to housing subsidies and programmes for vulnerable groups.⁵⁹ In the United States, the federal

⁵⁵ 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; and [CERD/C/DEU/CO/19-22](#), para. 12.

⁵⁶ See e.g., the ruling of the Supreme Court of India in the case of *Zoroastrian Cooperative Housing Society and Another v. District Registrar Cooperative Societies and Others*, Judgment of 14 April 2005. 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.

⁵⁷ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 8.

⁵⁸ Testimony of the Government of Colombia on 30 April 2021, at a public consultation with States, international organizations and United Nations entities.

⁵⁹ See submission of the Ministry of Housing and Urbanism of the Government of Chile.

Government has recently issued executive actions to re-enact the Affirmatively Furthering Fair Housing Rule,⁶⁰ 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.

2. 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 owing 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.⁶¹ 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, the Defensoría del Pueblo de la Nación, the national human rights institution, plays a central role in access to justice in cases of housing discrimination and takes special measures to further address the needs of vulnerable groups, for example, in proactively supporting 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.⁶² In Villeurbanne, France, the local municipality is part of a national association of “welcoming cities and territories” and prioritizes programmes to advance the inclusion of migrants. This includes emergency accommodation for migrants and monitoring discrimination, including in housing, and supporting access to justice for victims of discrimination.⁶³

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.

65. The obligation of States to ensure equality and non-discrimination implies an obligation to ensure an effective investigation into 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 that result in discrimination can, in most cases, be meaningfully addressed through legislative or policy measures, rather than by individuals having to seek justice.

⁶⁰ Joseph R. Biden, Jr., President of the United States of America, “Memorandum on redressing our nation’s and the federal government’s history of discriminatory housing practices and policies”, 26 January 2021.

⁶¹ Testimony from the Municipality of Barcelona on 14 May 2021 at a public consultation with local and regional governments.

⁶² Submission by the *Ministerio Público de la Defensa del Poder Judicial de la Ciudad Autónoma de Buenos Aires*, Argentina.

⁶³ Testimony from the Deputy Mayor of Villeurbanne on 14 May 2021 at a public consultation with local and regional governments.

67. Courts alone are not responsible for ensuring justice for housing discrimination. As mentioned in a report of the previous mandate holder (A/HRC/40/61), 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 the local, national or international levels. In the event that non-judicial mechanisms cannot 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 the 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, mediating between tenants, homeowners, credit providers and public institutions and negotiating out-of-court settlements. Their services should be accessible at low costs 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, 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 Federal Anti-Discrimination Agency of Germany has carried out a survey on racial discrimination in the housing market in Germany, 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.

B. Judicial mechanisms

71. Ultimately, it is also essential that victims of housing discrimination are 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, only about 10 cases relating to discrimination in access to social housing found their way into courts over a 10-year period, and of those only 2 decisions affirmed that the plaintiffs had actually been victims of discrimination.⁶⁴ In South Africa or the United States, where legal avenues against discrimination do exist, as mentioned above, the record of judicial intervention to address discrimination in housing is patchy and disappointing.

⁶⁴ See submission by the *Defenseur des droits*.

In other countries, such as India or Israel, judicial interventions have contributed substantially to the creation and maintenance of discrimination.⁶⁵

73. There are several reasons for this dire global reality: many people who are victims of housing discrimination lack the resources to seek remediation through the court system, are hesitant to seek justice owing to a lack of trust or face difficulties in proving that they have actually been victims of discrimination on a prohibited ground. The prospect of retaliation, lengthy or 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 on finding 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 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 to the International Covenant on Economic, Social and Cultural Rights, offering individuals an opportunity to file complaints after the 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 other stakeholders, such as business enterprises, but given his broad mandate and his limited capacity, the Special Rapporteur is only able to act on a few selected key cases of a grave, systematic or strategic nature. Neither the United Nations human rights treaty bodies nor the Special Rapporteur has any enforcement powers that would to ensure that the victims would actually receive an effective remedy.

76. At the regional level, the Inter-American system, with its *amparo* remedies in article 25 (1) of the American Convention on Human Rights,⁶⁶ or the European Committee of Social Rights provide possible pathways for hearing 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

⁶⁵ 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, No. 3 (2007); Gautam Bhan, *In the Public's Interest: Evictions, Citizenship and Inequality in Contemporary Delhi* (Athens, Georgia, University of Georgia Press, 2016); D. Asher Ghertner, *Rule by Aesthetics: World-Class City Making in Delhi* (New York, Oxford University Press, 2015); and Alexandre Kedar, Ahmad Amara and Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights* (Stanford, California, Stanford University 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.

⁶⁶ See also Inter-American Court of Human Rights, advisory opinion OC-9/87, 6 October 1987, para. 23.

fundamental norm such as non-discrimination is unable to be implemented in an effective manner in law or practice after so many decades.

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:

(a) **Adopt comprehensive anti-discrimination legislation covering all protected groups, including: women; children; persons with disabilities; LGBTQI+ persons; migrants, internally displaced persons and refugees; foreigners; persons from racial, ethnic or religious groups and minorities; and persons living in a situation of homelessness or in informal settlements; and prohibit 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;**

(b) **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;**

(c) **Establish accessible and sufficiently resourced non-judicial mechanisms, such as equality bodies, ombudspersons, national human rights institutes and housing rights advocates, at the local, regional and national levels, that have the competence to investigate individual and collective complaints of housing discrimination, including systemic forms of housing discrimination, and that 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;**

(d) **Collect and publish on a regular basis data on housing and housing discrimination, disaggregated by age, gender, income, race, disability, ethnicity, religion, nationality, minority, sexual orientation, location, and internally displaced person, refugee and residence status, as well as housing status, for example, homeless, informal, formal, tenant or homeowner, and any other relevant group membership, in order to monitor discrimination in relation to housing, including habitability, affordability and accessibility of housing and services, security of tenure and access to justice and remedies;**

(e) **Ensure that such data collected on housing discrimination are with the participation of and reflect the experience of groups affected by or at risk of housing discrimination, and that the proposals that emerge from the analysis include the groups' views on how housing discrimination experienced by them could be overcome;**

(f) **Establish sufficient compensation and reparation schemes for victims of discrimination in housing, especially those who belong to historically marginalized groups;**

(g) **Regularly monitor and identify any forms of systemic discrimination in relation to housing and adopt special measures and policies at the national,**

regional and local levels to eliminate such discrimination, in conformity with international human rights law;

(h) 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;

(i) Ensure that housing and anti-discrimination legislation provides sufficiently dissuasive fines and sanctions for housing discrimination perpetrated by public authorities and private entities, including public and private housing providers;

(j) Provide training for the judiciary and administrative and town planning bodies, as well as private entities that function in the housing sector, such as real estate agents, in the fundamental elements and requirements of anti-discrimination laws and policies, including international human rights standards, to encourage the application of laws in a fair and independent manner;

(k) Undertake awareness-raising campaigns for the general public to ensure greater awareness of non-discrimination in the provision of housing and related services, focusing in particular on groups at elevated risk of housing discrimination that have been historically marginalized.
