



DISCRIMINATION IN THE CONTEXT OF HOUSING

A/76/408

Report to the 76th session of the
United Nations General Assembly by the
Special Rapporteur on the
right to adequate housing,
Balakrishnan Rajagopal

SEE ALSO THE
SPECIAL RAPPORTEUR'S
RELATED REPORT TO THE
HUMAN RIGHTS COUNCIL
ON SPATIAL SEGREGATION

INTRODUCTION

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.

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. Systemic racism manifests itself in the area of law enforcement, and 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.



DEFINING DISCRIMINATION



Formal discrimination refers to laws, regulations or policies that may be discriminatory

Substantive discrimination refers to the unequal effective enjoyment of rights, even in the absence of any laws or policies of a discriminative nature.

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.



INTERNATIONAL STANDARDS

Article 2.2 of the International Covenant on Economic, Social and Cultural Rights 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.



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.



The obligation of States to eliminate discrimination also relates to ensuring that private actors do not discriminate. For example, States should regulate actors in the private housing sector, including by adopting laws and regulations to prohibit and address discriminatory residential harassment by private actors, including by neighbours or landlords.

FORMS OF DISCRIMINATION

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:

LEGAL SECURITY OF TENURE

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 resettlement and compensation for loss or damage of housing, land or livelihoods.



AVAILABILITY OF SERVICES, MATERIALS, FACILITIES AND INFRASTRUCTURE

Discrimination in access to services is usually tied to dynamics of socio-spatial segregation. 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.



AFFORDABILITY

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 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.



LOCATION

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 environmentally risky areas, or lacking equal access to public services.



HABITABILITY

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.



CULTURAL ADEQUACY

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.



GROUPS IN FOCUS

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, LGBTQI+ persons, persons with disabilities, persons living in homelessness and people with a low income, pointing to the systemic nature of contemporary housing discrimination.



Persons with disabilities

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



Migrants, refugees and internally displaced persons

Systemic housing discrimination is 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. In an earlier report, 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.



Indigenous peoples

Across the globe, indigenous peoples have faced dispossession, genocide, historic marginalization, exclusion and discrimination. 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.



Women and gender discrimination

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.



Racial and ethnic minorities

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.

MEASURES FOR ADDRESSING SYSTEMIC DISCRIMINATION IN THE RIGHT TO HOUSING

GENERAL MEASURES

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. However, a substantial number of countries lack either legislative or constitutional measures that prohibit discrimination in access to housing or in other economic, social and cultural rights.

SPECIAL MEASURES

At the national level, different States have advanced special measures to expand access to housing for vulnerable groups

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.



ACCESS TO REMEDIES AND JUSTICE

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. 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.

NON-JUDICIAL MECHANISMS

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.

JUDICIAL MECHANISMS

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.

INTERNATIONAL MECHANISMS

Regional and international complaints mechanisms have thus far provided only limited relief to victims of housing discrimination. Most complaints procedures at the international level, however, depend on the goodwill of national authorities to implement their decisions and recommendations.