**REPORTS ON DISCRIMINATION, SEGREGATION AND THE RIGHT TO ADEQUATE HOUSING**

QUESTIONNAIRE

**Background and Objective of the report**

The thematic reports of the Special Rapporteur on the right to adequate housing,
Mr. Balakrishnan Rajagopal, to the General Assembly in 2021 and to the Human Rights Council in 2021 will focus on the issue of discrimination in relation to the right to adequate housing, including the impact of spatial segregation in urban or rural-urban environments on the enjoyment of human rights.

Spatial segregation can be understood as the imposed or preferred separation of groups of people in a particular territory by lines of race, caste, ethnicity, language, religion or income status. Spatial, including residential segregation can have different forms depending on the territorial, cultural or historical context and is often characterized by forms of economic and social exclusion, inequity and spatial disparity in access to infrastructure, services and livelihood opportunities.

Discrimination is understood as any formal or substantive distinction, exclusion, restriction, preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination as to race, colour, sex, language, religion, national or social origin, political or other opinion, property, birth or other status - including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social status - which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.[[1]](#footnote-1)

The main objectives of the two interrelated reports will be to identify contemporary and historical forms of discrimination and segregation that affect the right to adequate housing, to highlight good practices in the prevention of discrimination and segregation and to provide guidance to States on how they can ensure their human rights obligations in relation to non-discrimination and the right to adequate housing.

To inform his reports Mr. Rajagopal welcomes contributions from States, local and regional governments, national human rights institutions, civil society organizations, academics, UN agencies and other stakeholders.

The questionnaire is detailed to allow for comprehensive collection of information covering all aspects of the right to adequate housing. However, responding to only those questions on which the responding organization, institution or entity has information, or expertise is much appreciated.

**BASIC INFORMATION**

1. Name of Individual, Organization, Institution, Agency or State: Click here to enter text.

Type of Entity\*

[x]  National Government or federal governmental ministry/agency

[ ]  Inter-governmental organization or UN agency

[ ]  Local or regional government, agency, representative or mayor

[ ]  Association, tenant union or housing cooperative

[ ]  NGO network, umbrella organization

[ ]  Community-based NGO

[ ]  Academia

[ ]  Foundation

[ ]  National human rights organization, ombudsperson

[ ]  Real estate, urban planning or construction

[ ]  Real estate investor or investment fund

[ ]  Trade Union

[ ]  Other:

2. Categorization of your Work

Please select one or more responses, as appropriate.

[x] Public administration

[ ] Advocacy

[ ] Funding

[ ] Legal Assistance

[ ] Networking

[ ] Policy

[ ] Research

[ ] Technical Assistance

[ ] Training

[ ] N/A

[ ] Other:

3. City/Town: Pretoria

4. State/Province: Gauteng

5. Country (please indicate your region or “international” if focus the work of your organization covers multiple countries); South Africa

6. Contact e-mail (will remain confidential) in case we have questions: Vuyisani.Moss@dhs.gov.za

**HOUSING DISCRIMINATION**

7. What specific forms of de facto or de jure discrimination or barriers towards equal enjoyment of the right to adequate housing do the following groups face in your country (please provide evidence with examples, studies, reports and relevant statistical information):

* People of African Descent, or Roma
* Racial, caste, ethnic, religious groups/minorities or other groups
* Migrants, foreigners, refugees, internally displaced persons
* Women, children or older persons
* Indigenous peoples
* Persons with disabilities
* LGBTQ persons
* Low income persons, including people living in poverty
* Residents of informal settlements; persons experiencing homelessness
* Other social groups, please specify

Residents of informal settlements; persons experiencing homelessness

Low income persons, including people living in poverty

Persons with disabilities

8. Discrimination in housing can affect various dimensions of the right to adequate housing and other human rights. Could you provide more details regarding the specific areas in which housing discrimination is experienced? Below are examples of various forms of discrimination that can be experienced in relation to different dimensions of the right to adequate housing:

*Accessibility*

* Discrimination in relation to access to land, including water and natural resources essential for habitation;
* Discrimination in relation to housing for rental or for acquisition or in accessing public or social housing;
* access to emergency and/or transitional housing after disaster, conflict related displacement or in case of homelessness, family or domestic violence;
* accessibility of housing for persons with disabilities or older persons, including access to housing for independent living or to care homes;
* data collection or requirements to furnish certain certifications resulting in the exclusion of particular persons from accessing housing;

*Habitability*

* discrimination in relation to housing conditions, overcrowding or housing maintenance;
* exposure to health risks within the home, including lack of ventilation, heating or insulation, exposure to fire or housing collapse risk, unhealthy building materials, or other unhealthy housing covered by the WHO Guidelines on housing and health;
* Exposure to other risks which render housing uninhabitable, including sexual or gender-based violence, interference with privacy and physical security in the home and neighbourhood;
* Discrimination in relation to housing renovation or permission of housing extension;

*Affordability*

* Discrimination in relation to access to public benefits related to housing;
* Lack of equal access to affordable housing;
* Discrimination in public and private housing financing;
* Discrimination related to housing and service costs, housing related fees, litigation or taxation;

*Security of tenure*

* discrimination in relation to ownership or inheritance of housing and land and related natural resources including water including on the basis of a distinction between formal and informal tenure arrangements;
* discrimination in relation to evictions, resettlement and compensation for loss or damage of housing, land or livelihoods;
* differential treatment in land or title registration, permission of housing construction;

*Availability of services, materials, facilities and infrastructure*

* discrimination in relation to access to work, schooling, health care or public benefits based on the residential address or related to a lack of an official address;
* public transportation services and transportation costs;
* provision of water, sanitation, energy, waste collection and other utility services; their quality or cost, including interruptions/blackouts including policies relating to disconnection from utility services;
* spatial disparities in access to health care, education, child care, cultural and recreational facilities;

*Location*

* discrimination in relation to freedom of choice of the place of residency within the country, within a particular region or location;
* discrimination based on place of residence or address, such as exclusion from invitation to job interviews or access to credit;
* exposure to environmental health risks, such as external air quality, flooding, toxic ground exposure; noise; risk of landslides etc.;
* living quality and physical security in the neighbourhood, including geographical disparities in policing and law enforcement;

*Cultural adequacy*

* Discrimination in relation to the recognition of culturally adequate dwellings as housing as well as equal access to public space;
* prohibition of accessing, maintaining or constructing culturally adequate housing;
* lack of recognition of mobile forms of residency.

Lack of equal access to affordable housing

Discrimination in relation to access to well-located land

Discrimination in relation to evictions, resettlement and compensation for loss or damage of housing, land or livelihoods;

Differential treatment in land or title registration, permission of housing construction;

9. Are there any particular current laws, policies or practices in your country, region or town/community that contribute to or exacerbate discrimination in relation to the right to adequate housing?

No. Discriminatory policies and legislative frameworks had been abolished since the liquidation of apartheid. The Constitution of South Africa is the source of all legislation in the country and supersedes all law. It lays the foundation for all legislation, policies and programmes informing the provision of adequate housing to citizens.

Section 26, Housing Chapter, of the Constitution fully delineates the parameters of housing rights. It stipulates that every citizen has the right to access to adequate housing. In this chapter the Constitution calls upon government institutes and agents to undertake effective legislative measures, whilst utilizing available resources efficiently, to ensure this right is progressively realised.

The Housing Act upholds Section 26 of the Constitution which provides that all South Africans have the right to access adequate housing and Government is required to take reasonable legislative and other measures within its resources to achieve the progressive realisation of this right. The Housing Act provides for the facilitation of a sustainable housing development process and it outlines general principles applicable to adequate housing and housing development in all spheres of government.

10. Can you explain exemptions in national law that allow (certain) public, private or religious housing providers to give preferential or exclusive access to housing to members of a particular group, for example based on membership, employment contract, public service, age, disability, civil status, sex, gender, religion, income or other criteria?

N/A

11. In case there may be differential treatment of particular groups in relation to housing, please explain why such treatment could be justifiable according to international human rights standards - for example positive measures benefiting a particular group to overcome systematic discrimination or disadvantage-or if it would amount to discrimination?

Click here to enter text.

**SPATIAL AND RESIDENTIAL SEGREGATION**

12. What forms of spatial segregation along racial, caste, ethnicity, religion, nationality, migration status, heritage, economic status/income or other social grounds can be observed in urban and urban-rural contexts in your country?

Historically, legislative instruments and policies had promoted race-based spatial planning, separated and isolated human settlements, urban infrastructure; land governance and management. The black majority were marginalised and excluded from economic development and participation while communities were disempowered from active participation towards their housing needs. Thus the development of integrated settlements and dismantling of racially based settlement forms and the promotion of economic, social and environmental integration and a negotiated approach to land acquisition was fundamental. In 1994 the democratic government introduced a series of policies and legislation frameworks to correct the historical imbalances and inequalities. Furthermore, the National Development Plan (NDP) Vision 2030 is South Africa’s blueprint for eliminating poverty and reducing inequality by 2030. The NDP also advocates for a review of housing policies to better realise constitutional housing rights, ensure that the delivery of housing is used to restructure towns and cities and strengthen the livelihood prospects of households. Furthermore, the NDP encourages that the development of housing and land related policies should be directly linked to accommodate diverse household types, typologies and circumstances. The NDP requires planning coordination and integration at all levels to advance for the creation of liveable, equitable, sustainable, resilient and efficient spaces including supporting economic opportunities and social cohesion.

13. What impacts do these forms of spatial and residential segregation have on affected communities? Please point to indicators such as rates of poverty, un-employment and under-employment; prevalence rates of malnutrition; disparities in access to services and facilities (such as access to schooling, health care or other public benefits); disparities in access to infrastructure (lack of and/or poor quality provision of water, sanitation, transportation, energy, waste collection and other utility services); rates of exposure to environmental health risks (poor air quality, flooding, toxic ground exposure, etc).

The number of people that are now living in informal dwellings in South Africa had increased and lack of land for low income housing developments compelling the poor to live on the periphery of urban centres and economic opportunities. While the rest of the majority were relegated to Homelands in deserted and isolated rural areas inadequately housed with no proper basic services and infrastructure like water, sanitation, electricity, education, health, roads, etc.

14. Have any particular historical or current laws, policies or practices in your country, region or town/community caused or exacerbated segregation?

Absolutely yes

15. In your view, what factors (current or historical) are the principal *drivers* of spatial and residential segregation in urban and urban-rural contexts in your country?

They served to highlight and deepen South Africa’s structural inadequacies. Created dysfunctional residential property market inefficient, inaccessible and unaffordable housing finance. Absence of a viable land reform programme and appropriate measures resulting in land invasions and mushrooming of informal settlements. For the majority of rural areas, they remain marginalised due to lack of security of property rights and equitable access to economic resources as part of asset redistribution strategy. The failure to provide tenure security for indigenous communities can be attributed to the fact that community structures do not provide sufficient security of tenure due to a large incidence of dysfunctional communities and absence of an administrative system to support communities.

16. Are there examples in your country of where spatial and residential clustering has been a result of voluntary choices of residence by members of particular groups?

Financial Exclusion: The lack funding for investments that promote development in underserved markets in particular low income households has impacted the poor adversely and constrained the desired developmental impact in delivering sustainable human settlements making inclusionary housing very difficult to achieve,

17. The preservation of cultural identity, the right to self-determination of indigenous peoples and the protection of other minority rights are examples of grounds for which groups may choose to live separately. Can you comment on how these forms spatial/territorial separation are evidenced in your country, if these communities they are subject to discrimination and suffer adverse consequences from spatial segregation such as through disparities in access to services, infrastructure, living conditions, etc.?

Apartheid policies were implemented to benefit only the minority groups, the white population while the black majority were discriminated in many forms and unjustly treated. The ushering of new policies aimed at dismantling apartheid laws was met with significant resistance by extreme conservative minorities and sought to be separated from the democratic inclusive spatial integration and opted rather to remain exclusively disconnected and rejected the notion of embracing the rainbow nation.

18. In your view, are certain forms of observed residential separation/voluntary clustering compatible with human rights law and if so why? (for example to protect rights of minorities or to respect the freedom of choice of individuals to decide with whom to live together).

No

19. Are there any laws or policies requiring certain individuals (and their families) to live in particular housing provided to them or in a particular geographical area (e.g. asylum seekers, migrants, IDPs, refugees, ethnic, religious, linguistic or other minorities, indigenous peoples, persons with disabilities, public service and military personnel)?

South Africa is a signatory to international treaties and agreements and has outlawed all forms of di discriminately practices. These are also entrenched in the South African Constitution in particular the Bill of Rights.

20. In your view, what are the principal *barriers* to diminishing spatial, including residential segregation?

South Africa is among the highest levels of inequality in the world when measured by Gini index and the country’s Gini coefficient was 0.65 points as measured by IMF. The World Bank study found that the top one percent of South Africans own 70.9% of the nation's wealth while the bottom 60% of South Africans collectively control only 7% of the country's assets. Overwhelming majority >80% are dependent in one way or the other on government support for their housing needs. South Africa's economic stagnation is faced with enormous fiscal challenges plus high unemployment rate currently at 32.6% while the official unemployment rate among youth (15-34 years) is now standing at 46.3% while expanded definition of unemployment rate is 43.2%. The mortgage finance affordability is also barrier towards reversing apartheid spatial planning as well located land is unaffordable for low and moderate income households as key essential drivers are cost of land, house prices, disposable income and the mortgage interest rates. Last but not least high levels of consumer indebtedness are also part of the barriers.

**MEASURES AND GOOD PRACTICES TO CURB DISCRIMINATION AND REDUCE SEGREGATION**

21. What laws, policies or measures exist at national or local level to prevent or prohibit discrimination in relation to the right to adequate housing?

There are number of policies and legislative frameworks that seek to promote adequate housing in South Africa. These include The Constitution of South Africa is the source of all legislation in the country and supersedes all law. It lays the foundation for all legislation, policies and programmes informing the provision of adequate housing to citizens. Section 26, Housing Chapter, of the Constitution fully delineates the parameters of housing rights. It stipulates that every citizen has the right to access to adequate housing. In this chapter the Constitution calls upon government institutes and agents to undertake effective legislative measures, whilst utilizing available resources efficiently, to ensure this right is progressively realised.

The Housing Act upholds Section 26 of the Constitution which provides that all South Africans have the right to access adequate housing and Government is required to take reasonable legislative and other measures within its resources to achieve the progressive realisation of this right.

The Spatial Planning and Land Use Management Act (SPLUMA) seeks to repeal many apartheid era laws has left SA’s planning laws that are fragmented, complicated and inconsistent. SPLUMA provides to develop a uniform, effective and comprehensive system’ of planning that ‘promotes social and economic inclusion.

Historically, legislative instruments and policies had promoted race-based spatial planning, separated and isolated human settlements, urban infrastructure; land governance and management. The black majority were marginalised and excluded from economic development and participation while communities were disempowered from active participation towards their housing needs. Thus the development of integrated settlements and dismantling of racially based settlement forms and the promotion of economic, social and environmental integration and a negotiated approach to land acquisition was fundamental. In 1994 the democratic government introduced a series of policies and legislation frameworks to correct the historical imbalances and inequalities.

The National Development Plan (NDP) also advocates for a review of housing policies to better realise constitutional housing rights, ensure that the delivery of housing is used to restructure towns and cities and strengthen the livelihood prospects of households. Furthermore, the NDP encourages that the development of housing and land related policies should be directly linked to accommodate diverse household types, typologies and circumstances. The NDP requires planning coordination and integration at all levels to advance for the creation of liveable, equitable, sustainable, resilient and efficient spaces including supporting economic opportunities and social cohesion.

22. Have your State, regional or local Government adopted any positive measures, such as measures of affirmative action, to reduce discrimination, segregation or structural inequality in relation to housing? To what extent have such initiatives been successful to address housing discrimination and segregation?

Yes. Quite a series of measures: **The Broad-Based Black Economic Empowerment Act** to establish a national policy on broad-based black economic empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services**.**

**The Home Loan and Mortgage Disclosure Act** aimed at promoting equity and fairness in lending and disclosure by financial institutions. The Act aims to stamp out discriminatory and unfair practices by encouraging banks and financial institutions to grant home loans to all its clients.

**The Housing Consumer Protection Measures Act** introduced to protect home-owners from inferior workmanship. Builders are responsible for design and material defects for three months, roof leaks up to a year, and any structural failures of houses up to five years.

**The Prevention of Illegal Eviction and Unlawful Occupation of Land Act** which provides a process for fair eviction of unlawful occupiers and sets out detailed procedures for the eviction of unlawful occupiers.

**The National Credit Act** aims to ensure that all consumers will have equal rights and these rights will be protected and that complaint mechanisms are formalised and regulated to ensure maximum protection and compensation for consumers.

**The Municipal Systems Act** which obliges municipal councils to consult the local community about municipal services. Communities should have a say in the way in which services are delivered by the municipal administration or through a service agreement.

23. Have any particular laws, policies or measures been implemented to limit or reduce residential segregation? To what extent have such policies raised human rights concerns?

Yes. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act governs the eviction process in the event of a land invasion. The aim of the Act is to protect both the occupiers and the landowners and covers residential tenants including illegal occupants and defaulting tenants. Section 26 (3) of the Constitution provides that no one may be evicted from their homes, or have their homes demolished, without an order of court, made after considering all the relevant circumstances. The poor and the vulnerable groups should be legally protected and their rights be enshrined.

24. What is the role of the media, as well as other non- governmental organizations, of religious and governmental institutions, in fostering a climate that reduces or exacerbates discrimination in relation to housing and segregation?

The non- governmental organizations in South Africa are very visible and vibrant in holding government account for its constitutions, legal and development obligations and responsibilities and their advocacy role to holding government to account is well documented.

South Africa's 1996 constitution protects press freedom. The government has consistently emphasised the importance of media not only in sharing credible information with the public but also to holding government to account.

25. Which institutional mechanisms exist to report, redress and monitor cases of discrimination or segregation in relation to the right to adequate housing and how effective have they been to address discrimination?

The National Home Builders Regulatory Council (NHBRC) set-up to to protect home-owners from inferior workmanship. Builders are responsible for design and material defects for three months, roof leaks up to a year, and any structural failures of houses up to five years. The National Department of Human Settlements- Office of the Disclosure established towards promoting equity and fairness in lending and disclosure by financial institutions. It stamps out discriminatory and unfair practices by encouraging banks and financial institutions to grant home loans to all its clients and through its reports it has been effective. The Office of Public Protector to investigate matters and to protect the public against matters such as maladministration in connection with the affairs of government, improper conduct by a person performing a public function.

26. In your view, what are the principal barriers to seek justice for discrimination/segregation in relation to the right to adequate housing?

 Heavy dependency on government and national fiscus. Rapid urbanisation rate leading to mushrooming of informal settlements and people living in densely populated areas. Lack of access to well-located land by the urban for a diverse range of housing delivery options and typologies. Inability to provide tenure security for rural communities due to a lack of an efficient land administration system with guaranteed tenure security. No significant mechanism through which private sector capital can be promoted towards to catalyzing the delivery of affordable, integrated and sustainable human settlements.

27. Can you specify how individuals and groups subject to structural discrimination or experiencing segregation can submit complaints to administrative, non-judicial or judicial bodies to seek relief? Please share any leading cases that have been decided by your courts or other agencies in this respect.

The first underlying principle of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE)is that people should generally not be evicted into a situation of homelessness and that temporary alternative accommodation should be provided to those facing homelessness by the relevant public authorities, usually municipalities. This principle has been confirmed in a range of cases under the PIE Act. The landmark ruling which famously known as the **Grootboom judgement** by the Constitutional Court found in Grootboom’s favour and held that the South African Government had not met its obligation to provide adequate housing for the residents of Cape Town’s informal settlement. The judgement held that emergency shelter must be provided for those with no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations. Another specific court ruling was the **Ndlovu v Ngcobo, Bekker and Another v Jika:** Ndlovu was a case of holding over in which the consent of the owner had lapsed: On the lawful termination of the tenant's lease, he had refused to vacate the property. In Bekker, a mortgage bond had been called up and the property sold in execution and transferred to the plaintiffs. The former owner, however, refused to vacate. In a majority judgment The Constitutional court held that, by the very nature of things, a mortgagor, being an owner, could not be an unlawful occupier. Only once the property had been sold in execution and transferred to a purchaser could the possession of the former mortgagor or owner become unlawful. To call a mortgagor an unlawful occupier was incongruous. The Court also held that the Act distinguished between unlawful occupiers who had occupied for less than six months and those who had occupied for more than six months. The former had fewer rights, as the court, in considering the application for their eviction, did not have to consider whether or not land had been made available or could reasonably be made available for their relocation. In the event of a sale in execution over bonded property, however, those with less than six months' occupation received more protection, because the court had to have regard to the needs of the elderly, children, disabled persons and households headed by women.

**DATA ON DISCRIMINATION IN HOUSING AND SPATIAL/RESIDENTIAL SEGREGATION**

28. Is any data on housing disparities, housing discrimination and spatial segregation collected and publicly available? If so where can it be accessed? Are there any practical or legal barriers to collect and share such information in your country?

Yes. Statistics South Africa- a national institution mandated to collect, produce and disseminate public data about the economic, demographic, social and environmental trends. It provides an indispensable element in the information system of a democratic society, serving the Government, the economy and the public. The National Department of Human Settlements- Office of the Disclosure which promotes equity and fairness in lending and disclosure by financial institutions by addressing unfair practices and encourages banks and financial institutions to grant home loans to all its clients and this is monitored through its periodical statistical reports and hard data.

29. Can you kindly share any studies or surveys by local, regional or national Governments or by other institutions to understand better housing disparities, housing discrimination and spatial segregation and how it can be addressed (e.g. title and link, or kindly submit document).

Statistics South Africa

[. www.statssa.gov.za](http://. www.statssa.gov.za )

30. Can you provide information and statistics related to complaints related to housing discrimination, how they have been investigated and settled, and information on cases in which private or public actors have been compelled successfully to end such discrimination or been fined or sanctioned for non-compliance?

Office of the Public Protector: Website [www.pprotect.org](http://www.pprotect.org)

1. See article 2.1 of International Covenant on Economic, Social and Cultural Rights and the related General Comment No. 20 of the Committee on Economic, Social and Cultural Rights. [↑](#footnote-ref-1)