

SPATIAL SEGREGATION AND THE RIGHT TO ADEQUATE HOUSING

AHRC/49/48

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

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SPECIAL RAPPORTEUR'S
RELATED REPORT TO THE
HUMAN RIGHTS COUNCIL
ON DISCRIMINATION**

INTRODUCTION

Most cities and territories today are marked by drastic inequalities, most visibly manifested in the form of spatial segregation that affects historically marginalized groups. Whether de jure or de facto, spatial segregation is a reflection of multiple, compounded and intersectional forms of discrimination and an incursion on the enjoyment of the right to adequate housing.

Spatial segregation can be understood as the imposed or preferred separation of groups of people in a particular territory along the lines of race, caste, ethnicity, language, religion, disability, income or other status. Spatial, including residential, segregation can assume different forms depending on the territorial, cultural or historical context, but these are almost always characterized by economic and social exclusion, and inequality in accessing infrastructure, services and livelihood opportunities.



INTERNATIONAL NORMATIVE FRAMEWORK

In its General Recommendation 19, the Committee on the Elimination of Racial Discrimination clarified that article 3 of the Convention applies to all countries and that the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State. It affirms that while conditions of racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended bi-product of the actions of private persons. The Committee asserted that States should monitor all trends which can give rise to racial segregation and work for the eradication of any negative consequences that ensue.

In its concluding observations, the Committee made on numerous occasions specific recommendations to States concerning segregation in housing.

Recommended measures include:

- the adoption of necessary legislative and policy measures to address problems of ethnically-based social exclusion and segregation,
- to prohibit the construction of walls that separate communities of different ethnicities,
- to ensure that social housing programmes do not result in a situation of de facto racial segregation,
- analyse the reasons behind concentration of certain immigrant groups in distinct areas and address actions of private parties which may result in de facto segregation.

As clarified by the Human Rights Committee in its General Comment No. 27 on freedom of movement, the application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality, such as for example limitations on the freedom of outsiders to settle in areas inhabited by indigenous or minority communities. This means that voluntary clustering - when people from a same group decide to live together in a community - are not per se incompatible with international human rights law, as long as this does not have the purpose or effect of the discriminatory exclusion of all members of other groups or result in unequal and discriminatory living conditions.

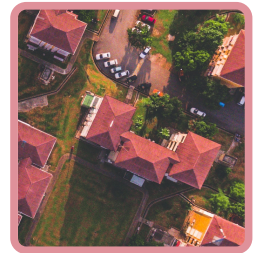
DEFINING AND IDENTIFYING SPATIAL SEGREGATION

Depending on whether spatial segregation is instituted by formal segregationist policies or not, the Special Rapporteur distinguishes between two types of spatial segregation, “direct” and “indirect”, in the same way we distinguish between direct and indirect discrimination. In some cases, spatial segregation is instituted by intentional policies, while in other cases it is the result of poorly-conceived or implemented policies, or the lack thereof.



A major pattern of spatial segregation over the last decades is the proliferation of informal settlements in the peripheries of cities, where low income and racial, casteist, ethnic, migrant, internally displaced, refugee and other minority populations are often concentrated.

The phenomenon of gated communities has proliferated across the globe over the last few decades as a way to provide ‘privacy, protection and prestige’ for wealthy inhabitants. Research has pointed to how gated communities exacerbate residential segregation, particularly through the privatization of space and services, and how the exclusionary restrictions by which they are governed serve to preclude potential buyers or renters based on income, race or ethnic origin.



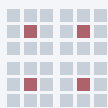
Placing people of particular vulnerable groups in institutions is also a form of spatial segregation that often results in violations of the right to adequate housing. Examples of institutions where people may be isolated or segregated are institutions for persons with disabilities, particularly people with developmental or mental disabilities; child protection institutions for children, care homes for older people or correctional institutions.

MEASURING SPATIAL AND RESIDENTIAL SEGREGATION

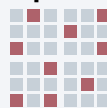


A long-established measure to compare levels of residential segregation of racial and ethnic groups within urban areas is the **index of dissimilarity**, which compares the evenness of distribution of groups across neighbourhoods in the same city or metropolitan area linking relative separation to dissimilarity and low separation to integration. One of the most influential studies in this line conceived five distinct dimensions for assessing segregation:

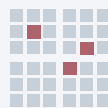
evenness



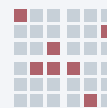
exposure



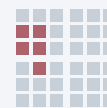
concentration



centralization



clustering



There has also been an attempt to measure the level of segregation and ghettoization through a ‘**segregation index**’, relying on the index of dissimilarity, in the context of spatial segregation of Muslims in Indian cities.



Spatial mapping and data visualization tools have also greatly added to methods for identifying and measuring segregation, particularly in the fields of urban geography and urban planning.

States, local and regional governments should ensure robust and adequate data collection, disaggregated by grounds of discrimination recognized in international human rights law such as ethnicity, race, sex, age, gender identity, disability, income, religion and civil status. Moreover, this data should be analysed at ward and district levels to identify and measure inequalities at neighbourhood and city-wide scales.

DRIVERS OF SEGREGATION

Contrary to misleading presumptions and generalizations that pin the causes of residential segregation to the de facto prejudices or the “natural” preferences of private actors, research shows that residential segregation is very much the outcome of past and present State policies and measures (or the lack thereof). Discriminatory practices and prejudiced behaviours by private actors certainly play a role in exacerbating segregation but ultimately such practices should be monitored and regulated by States, as guided by international human rights standards.

Land use planning and discriminatory zoning

A prominent form of discriminatory practice in land use planning is exclusionary zoning, or zoning practices that effectively bar low- and moderate- income households from finding affordable housing due to the imposition of density restrictions. It can include practices such as single-family zoning, ordained minimum-lot sizes, restrictions on the number of units in multi-family buildings and building height caps. Differential, discriminatory treatment in land use planning can also include regulations such as growth caps and restrictions on building permits, which can compound conditions of spatial segregation in a particular neighbourhood and community.

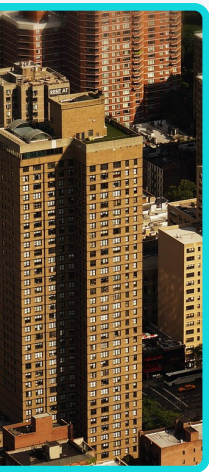


Physical barriers

The erection of physical barriers or separation walls between communities constitutes a particularly egregious form of spatial segregation, often observed in contexts where forms of ethnic, religious or other social conflict and intolerance are present. In many regional contexts, physical walls have been put up to separate impoverished informal settlements from surrounding neighbourhoods and to limit the growth of these communities. In addition to walls and fences it should be recognized that other physical barriers and markers of division such as railways and roadways, segregate communities and neighbourhoods.

Forced evictions and displacement

By displacing entire communities, often to new locations lacking in infrastructure and detached from education and livelihood sources, forced evictions often result in spatial segregation and lead to impoverishment or worse living conditions. As many segregated communities do not enjoy security of tenure, they are also more vulnerable to be subjected to repeated forced evictions. Areas where minority communities live are also subject to higher risks of evictions and forced displacement due to gentrification, speculation and higher land and housing prices.

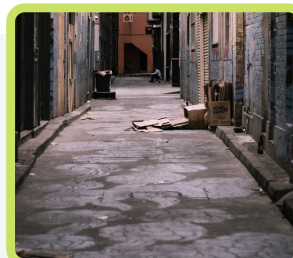


Social and public housing policies

Too often social housing is located in peripheral and under resourced parts of cities, perpetuating segregation. Eligibility requirements such as minimum incomes, credit scores, formal employment and residency permits are examples of the type of possible discriminatory barriers. Such systematic denial or lack of access to affordable housing options contributes to the disproportionate number of households from vulnerable groups concentrating in high poverty neighbourhoods and, in many countries, in informal settlements.

Criminalization and stigmatization of minority groups

Public policies that directly or indirectly stigmatize or criminalize vulnerable groups and the neighbourhoods in which they reside can also contribute to driving and compounding segregation. Historically and to date, sex work has generally been segregated from the rest of society in the form of red-light districts. These zones are often designated in areas that are more desolate and harbour a greater risk of violence against sex workers.



SEGREGATION AND HUMAN RIGHTS

Spatial segregation can lead to the violation of other interrelated human rights such as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the right to food, the right to safe drinking water and sanitation, the right to education, the right to work and the right to safety and security of the person.



Segregated areas in which low income and minority residents are concentrated are often deprived of basic utility services and infrastructure. Such inadequate conditions in spatially segregated neighbourhoods affect the **habitability of housing**.



Segregated communities that are in environmental risk zones, such as flood risk zones, areas vulnerable to landslides or other natural disasters more regularly experience the impacts of **climate change**.



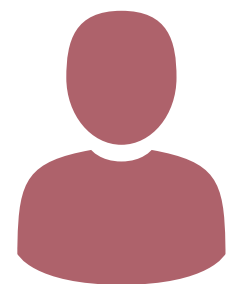
The location of housing also has an impact on the enjoyment of the **human right to a clean, healthy and sustainable environment**, where communities are exposed to toxic waste, air pollution, and the contamination of water.



The factors affecting segregation and the **right to health** can be varied and include exposure to environmental hazards, the lack of access to health care facilities and services and the exposure to uninhabitable or inadequate living conditions, such as overcrowding.



The **right to education** is also affected by spatial segregation, as segregation can affect access to educational facilities, the quality of education and in addition may result in de facto segregation in education as well.



Segregation and policing can affect the **right to safety and security of the person**. Racial profiling and police violence disproportionately affects racial and ethnic minorities living in segregated neighbourhoods.

ADDRESSING SPATIAL SEGREGATION

INTERNATIONAL FRAMEWORKS

The right to the city and social/spatial justice movements provide an important contribution to how equitable development, free of discrimination and spatial segregation can be envisioned and advanced. The New Urban Agenda and the 2030 Agenda for Sustainable Development recognize the need for inclusionary development and to leave no one behind. The New Urban Agenda recognized that social and economic exclusion and spatial segregation is regrettably an irrefutable reality in cities and human settlements.



STRATEGIC LITIGATION

While only few examples could be identified where spatial segregation has been challenged successfully in courts, strategic litigation represents a powerful strategy that residents and others acting in their interest can employ to challenge spatial segregation and the measures that lead to or result from such segregation. Such litigation is not only explored through domestic courts, but is also increasingly possible through international judicial mechanisms, including the International Criminal Court, especially as there is renewed attention to the phenomenon of apartheid, a crime under international law.



HOUSING POLICIES

Allocating public and social housing in well located land, with adequate infrastructure and services, and access to livelihood opportunities is one essential way to prevent spatial segregation. To ensure social integration, authorities can specify that building permits or urban renewal projects may only be approved if a certain percentage of all newly erected or renovated housing units are designated as public or social housing. The erection of separate "social housing blocks" which are in many countries subject to social exclusion or rapid deterioration, can be prevented if regulations specify that buildings with multiple housing units must contain a certain percentage of public or social housing units, including units accessible for older persons and persons with disabilities.



URBAN AND TERRITORIAL PLANNING

Advancing urban and territorial planning that centres on equitable and inclusionary development is critical to addressing spatial segregation and ensuring the right to adequate housing for all. This includes reforms in planning mechanisms to ensure there is non-discrimination and resident participation in the application of zoning, land use and other development measures. Where exclusionary measures are in place that detrimentally impact minority groups, such as arbitrary restrictions on building permits that hinder the construction of affordable housing, these should be prohibited.



NEIGHBOURHOOD UPGRADING PROGRAMS

Integral neighbourhood improvement programs seek to better the living conditions and quality of life in distressed communities through interventions - collaboratively led by local residents, community organizations and local authorities - in the physical, social and economic infrastructure, the environment and governance. This can include strategies to rehabilitate housing, improvement of transportation networks and infrastructure, expanding employment and economic opportunities, improving public space and beyond.

