**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, and religionor 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: Single Mothers Association of Kenya (SMAK)

Type of Entity\*

☐ 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.

☐Public administration

☒**Advocacy**

☐Funding

☐Legal Assistance

☐Networking

☐Policy

☐Research

☐Technical Assistance

☐Training

☐N/A

☐Other:

3. City/Town: Nairobi

4. State/Province: Nairobi

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

6. Contact e-mail (will remain confidential) in case we have questions: Click here to enter text.

**HOUSING DISCRIMINATION**

7. What specific forms of de facto or legal 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

On-going Urban Renewal and Housing Regeneration Program (Affordable Housing Program

Development-led evictions exemplified by Ghorofani Estate tenants’ displacement with the up-grading of Quarry Road Market in Nairobi’s Eastlands.

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.

Eastlands Old Council Estates have been neglected for decades. Despite payment of Service Charge (included in the monthly rent) very little is gotten from City Hall in terms of service delivery. Houses are never painted nor repairs done. More often repair works are done by the tenants’ themselves.

Housing extension had been allowed by Joe Aketch, as a Mayor and Councillor of Kariokor/Ziwani Ward, yet he’s currently working with Private Developers, assuring them that those living in these makeshift extensions are not legally recognised thus not to be included in the Housing Renewal program.

In Bondeni and Ghorofani Estates, for more than three decades, second-hand clothes imports merchants have occupied all the open and recreation spaces. These have affected the social lives of a generation of tenants; school drop-outs and lack of social amentities which could keep a many young people from crime or unplanned parenthood.

In Ziwani Estate, culturally significant places have suffered from land-grab that is led by local politicians. Members of Parliament and Councillors of Starehe Constituency are among those privatising public land. Ziwani residents have been able to re-gain half of Kariokor War Cemetery and got it gazetted as an Historic Place. Tom Mboya and Phoebe Asiyo Houses are also at risk of not being preserved as dwellings of independent hero and heroine dwellings respectively. We are vouching to have these be preserved as historic residence. In that note, we are also proposing Kariokor Market be preserved as an Open War Museum, given its World Wars significance, as a pay and registration centre as well as a sanatorium where medical research was done, to help the entire Eastern African combatants.

Roadsides and footpaths have been invaded by motorists and mechanics. Oil-spillage and spraying of vehicles is living residents dangerously intoxicated. The area Councillor is amongst those who have ‘rented’ this public spaces as working spaces for automobile mechanics, grocers, food kiosks and other cottage industries.

Essential services such as adequate water supply, affordable electricity, universal health-care, quality free-education and efficient garbage collection are not available.

Currently, we live in fear of mass eviction due to the housing regeneration program. This favours ‘affordable housing’ yet we call for ‘social housing’ and Community Land Trust CLT) to wad of land speculators and those that lean towards commodification housing. We lack security of tenure in the form of tenancy inheritance. City Hall keeps insisting it only recognise those whose names appear in the Tenancy Card, and not their dependents. The real fact is that current tenants are 2nd, if not 3rd and 4th generation tenants.

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?

A housing policy was recently passed. It is not clear and it fails to differentiate house and land ownership, since a flat/high-rise housing, units can obtain ownership deed.

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?

Though I don’t seem to know of any, but pre-independent Kenya had segregated housing. Informally that has been adopted. Asians in Parklands have exclusive residencies, such as Oshwal Park Apartments (though an Affordable Housing Asian Community Scheme). Somalis too have started such indirect discrimination by pushing others from Eastleigh and South C neighbourhoods (housing courts or apartments). This also doubles as religious segregation for it’s also based on discriminating against kaffir.

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?

I personally find that fair-housing principle of affordable housing is a positive discrimination. This ensures those in low-income bracket access housing too. But not specified to an income bracket (not more than 30% of income spent on housing), higher income earners and speculating cronies of the political elite, often benefit from this scheme.

**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?

Slum-dwellers are often the unemployed and the underemployed. These are also least educated.

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).

Slum-dwellers and squatters are finding it hard to be recognised by the state. World Bank program of Slum-upgrading and UN Habitat Social Housing schemes are being frustrated by a few self-seeking elements in the government. Poor neighbourhoods have dilapidated amenities. Clinics have not enough medical equipment and staff. Water and electricity is not provided, purposely to make these slums inhabitable.

Residents of Dandora and Korogocho slums are choked by toxic Nairobi’s main garbage land-fill.

With blocked drainage, streets over-flood with sewer-waste. Lack of toilet facilities forces residents to ease themselves in paper-bags. Poor disposal of these, coined a noun ‘flying toilets’.

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

City Council (now County Government) has not been recognising Tenancy inheritance, yet it’s clear a house is a home and thus a family abode. They also don’t consider income level before allocation of houses. This, often give the ‘highest bidder’ an upper-hand.

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?

Children of our corrupt independence founding-fathers exasperate land-corruption by their continual ill acquisition of land. Sons and daughters of these politicians are now in power and thus progressively pushing on with land alienation. These are getting into real estate development. They thus determine both the prices of land and housing.

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?

Asian community in Parklands and Somali community in Eastleigh

17. The preservation of cultural identity, the right to self-determination of indigenous peoples and the protection of 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.?

Pumwani Majengo slum is largely Muslim. This has had a positive change in terms of fighting ethnicity. The only problem comes with the discrimination these poorly community faces now with the Al Shabaab terror group menace. Pumwani is now facing state-led gentrification. The poor are being pushed out by having them sell their plots and thus displace both land-lord and renters.

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).

Yes, some refugee community need each other for comfort. So, they find themselves clustering, clinging in a neighbourhood. Not discriminating on others, then this minority ends up having a strong community

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)?

Refugee Status Determination (RSD)Refugees Act of 2006 Ammendment 2014

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

Corruption and impunity, xenophobia and racism

**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?

Kenya’s law provides for state’s responsibility to provide for housing accessibility and adequacy. 2010 Constitution of Kenya Article 43 (1) (b), though it is not mandated to provide for houses or shelter. The Community Land Act No. 27 of 2016 gives effect to Kenya’s Constitution Article 63. It provides for recognition, protection and registration.

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?

With the Affordable Housing Project (AHP) being one of the Four Agendas of the current government, it augurs well with last government’s effort on Urban Renewal and Housing Regeneration. This though discriminates on the poor, because house-offers are determined by one’s economic status – ability to serve mortgage.

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?

All forms of discriminations are prohibited in Kenya but the truth is it’s rampant.

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?

Haki Jamii and Pamoja Trust are in the frontline to champion housing rights. But these Civil Society entities can do only so so! The media is much compromised. The personalities either are corrupt or fear the media houses owners who benefit from the status quo through protection and favours in advertisement tendering.

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?

Public participation, picketing and petitions are some of the legal means to agitate for Housing rights. East African Court as well as African Court can be sorted where municipal laws seem skewed against the public.

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

Corruption of our political elite and impunity enjoyed by land-grabbers are a cancer to our housing sector.

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.

Through capacity building of the grassroots empower the poor fight for the housing rights. Petitioning World Bank and complaining to the UN special Housing rapporteur does support the locals when the state laws contradict international laws. Assessment of the REALIZATION of the Right to Housing in Kenya 2011-2012, a publication by Haki Jamii [www.hakijamii.org/kenya](http://www.hakijamii.org/kenya)

**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?

The Concept and Planning of Public Native Housing Estate in Nairobi [www.tandfonline.com](http://www.tandfonline.com)informs the continual disparities.

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).

The Housing need in Kenya – Habitat for Humanity <https://hfhkenya.org> and [www.habitat.org](http://www.habitat.org) Kenya Needs 2 Million Low-income Homes [www.worldbank.org](http://www.worldbank.org) Housing Poverty in Kenya: Slums and Vulnerable Communities[www.habitatforhumanity.org.uk](http://www.habitatforhumanity.org.uk)

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?

Haki Jamii and Pamoja Trust are some of the non-state actors who have litigated successfully against displacement and eviction by state and non-state actors. Their websites provide this information. Kindly find time to visit; https://pamojatrust.org and www.hakijamii.com

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)