

Mandate 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

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **persons living in homelessness in India**.

According to the information received:

According to the 2011 national census, 1.77 million persons live in homelessness in India. However, independent sources indicate that the total number is likely to be significantly higher. For example, the national census only counted 46,724 persons in homelessness in Delhi, while NGOs and the Delhi Development Authority calculate numbers twice or four times higher, between 88,410 and 200,000.¹ Commissioners appointed by the Supreme Court to monitor the implementation of the Court's orders in the case *PUCL v. Union of India and Others* [W.P. (C) 196/2001] estimated that at least one per cent of the urban population in the country is in homelessness,² which would amount to nearly 4 million people.

Independent estimates of civil society calculates the following number of persons in homelessness in major cities: Delhi: 150,000 – 200,000; Chennai: 40,000 – 50,000; Mumbai: 200,000 (including Navi Mumbai); Indore: 10,000 – 12,000; Visakhapatnam: 18,000; Bangalore: 40,000 – 50,000; Hyderabad: 60,000; Ahmedabad: 100,000; Patna: 25,000; Kolkata: 150,000; Lucknow: 19,000.³

¹ Sanjay Kumar, "Changing Electoral Politics in Delhi: From Caste to Class", SAGE Publications India, 2013, p.103 and Kalpana Goel and Richa Chowdhary, "Living homeless in Urban India: state and societal responses", in Carole Zufferey and Nilan Yu (ed.), "Faces Homelessness in the Asia Pacific", Routledge, 2019, p. 47-64.

² http://www.righttofoodindia.org/data/homelessness_data/March_2012_tenth_report_scomm_7_january_2012.pdf

³ Housing and Land Rights Network, India, Questionnaire submitted to Special Rapporteur on the Right to Adequate Housing, available at: https://www.ohchr.org/Documents/Issues/Housing/Homelessness/CSOs/HLRN_India.doc

According to the 2011 census, the number of persons living in inadequate housing is larger: over 17% of the urban population lives in inadequate settlements, severely affecting not only their rights to health, water and sanitation, but also their security of tenure, putting them at risk of forced evictions and demolitions.

Instead of prioritizing the *in situ* upgrading of existing informal settlements, the Government has adopted an approach based on evictions and demolitions (“slum-free city”), often without ensuring alternative accommodation for their inhabitants. Forced evictions and demolitions are a key cause of homelessness in India: in 2017, an average of 147 housing units were demolished every day by public authorities, affecting over 258,000 persons in a single year.⁴ The majority of evicted families are not provided with alternative accommodation by the Government, thus forcing them into conditions of homelessness.

The Government calculated a national urban housing deficit of 18.78 million housing units in 2012, mostly affecting the lower income population. According to projections made in 2016, this deficit will grow up to 30 million in 2022.⁵

Even though the National Urban Livelihoods Mission – Scheme of Shelters for the Urban Homeless, set standards for shelters in urban areas in 2014 and called on states to address homelessness, sources, including reports of the Supreme Court of India,⁶ indicate that it is not being adequately implemented.

In 2015, the Government launched the ambitious “Housing for All by 2022” initiative. However, due to the lack of a clear focus on the population groups with the lowest income, or on the currently homeless population, and a continuation of evictions and demolitions, much of the initiative’s progress has benefited the middle class and left behind the most marginalized. Often, poor persons have been forcibly moved to inadequate and cramped tenements, including high-rise buildings, with deplorable living conditions, in order to make land available to private initiatives.

In my 2017 report on my official visit to India (A/HRC/34/51/Add.1), I expressed concern on the indigent conditions that persons in homelessness have to endure, facing extreme weather and exposure to stigmatization and violence, serious and recurrent health conditions, life threatening situations and hazards, and discrimination. Women and children who are homeless experience particular forms of violence or are more vulnerable to them, including rape, other forms of sexual violence, sexual exploitation and human trafficking. The lack of access to medical services for homeless women, owing to their status, has a disproportionate impact, particularly during pregnancy and childbirth. Many homeless children and women suffer from severe malnutrition. I also pointed at

⁴ https://www.hlmn.org.in/documents/Forced_Evictions_2017.pdf

⁵ Deloitte, “Mainstreaming Affordable Housing in India. Moving towards Housing for All by 2022”, p.4

⁶ <https://indianexpress.com/article/india/supreme-court-concerned-over-non-utilisation-of-funds-for-urban-shelter-4900995/>

the largely insufficient capacity of shelters to meet urgent requirements, and their inadequacy to host children, women, families, persons with disabilities or persons who need treatment for addictions or chronic illnesses. Homelessness also disproportionately affects specific ethnic groups and castes, as well as religious minorities.

Courts in India have issued several decisions strongly related to the human rights of persons in homelessness. In *Court on its own Motion v. Government of NCT of Delhi*, the High Court of Delhi ordered the establishment of homeless shelters in Delhi. In *Ajay Maken v. Union of India*, the High Court of Delhi monitored living conditions of persons affected by a demolition through interim orders. In *PUCL v. Union of India*, the Supreme Court of India ordered that shelters need to have sufficient capacity to meet the needs of persons in homelessness, in the ratio of at least one shelter per 100,000 persons, in every town or city. The Supreme Court also stated that shelters have to be open all day every day of the year, not only at night hours or during winter months. In 2012, the Supreme Court of India stated that Article 21 of the Constitution protects the right to life also includes the right to shelter, and places an obligation on the State to provide shelter to persons in homelessness. However, the judgements, while addressing living conditions of persons in homelessness, did not lead to a stronger, longer-term protection of the right to adequate housing.

Existing legislation penalizes homelessness as a crime. For example, under the Delhi Police Act 1978, persons found under ‘suspicious circumstances between sunset and sunrise’ can be arrested by the police. Municipal laws in many cities punish public bathing and living in the open. Persons in homelessness are often rounded up by the police under public order-related legislation, such as sections 109 and 151 of the 1973 Criminal Procedure Code. Anti-begging and anti-vagrancy laws and regulations, such as the Bombay Prevention of Begging Act, 1959 and similar laws in several states of India, also affect persons in homelessness. Such laws allow detaining persons for sleeping or loitering on the streets, for lacking ‘ostensible means of livelihood’. Despite having decreased thanks to the efforts of human rights organizations, the harassment and arbitrary detention of persons in homelessness by the police is still a pervasive practice in India.

While I do not wish to prejudge the accuracy of the information made available to me, I wish to express my serious concern about these allegations of multiple violations of human rights, contrary to international human rights law. The number of persons living in homelessness is an indication that the right to adequate housing is not being effectively implemented. In light of the direct relationship between homelessness and otherwise preventable disease and illness and premature mortality, this would indicate that the Government’s obligations with respect to the right to health and the right to life are not being met. Forced evictions without the provision of alternative shelter violate international human rights law and the prohibition of cruel and inhuman treatment. The arrest and removal of persons living in homelessness from public spaces by force,

without providing sufficient short and long-term accommodation, and subjecting them to fines or imprisonment, constitute violations of the prohibition of cruel, inhuman or degrading treatment. The disproportionate impact of the above-mentioned violations on vulnerable groups, including persons in poverty, children, members of lower castes, ethnic and religious minorities, older persons, women and persons with disabilities would also indicate violations of the rights to equality and non-discrimination.

I call on the Government to take immediate life-saving action to address the emergency situation of persons in homelessness. Furthermore, according to international human rights bodies, States have an obligation to immediately implement measures to eliminate homelessness within broader rights-based housing strategies.⁷ Rights-based housing strategies must contain clear goals and timelines as well as set out the responsibilities of all levels of government and of other actors for the implementation of specific, time-bound measures, and must be supported by the necessary resources required for implementation. This process should involve consultation with, and participation by, persons living in homelessness.⁸

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what urgent and/or short-term measures are in place to ensure access to adequate shelter and permanent housing for persons who are currently homeless, especially women and children. Please also indicate what measures you have in place to prevent the causes of homelessness.
3. By what date and through what measures do you anticipate eliminating homelessness as required by international human rights law and SDG Goal 11, Target 11.1?
4. Please provide details of measures to prevent evictions and to ensure that evictions do not lead to homelessness. Please provide data on the number of evictions carried out by the central and state governments in 2018 and 2019.

⁷ Please see my report on rights-based housing strategies: A/HRC/37/53.

⁸ Please see my report on homelessness and related State obligations: A/HRC/31/54.

5. Please provide information on any laws or regulations that allow people to be removed from public spaces against their will, or prohibit persons eating, cooking or sleeping in public spaces. Please clarify under which circumstances such laws or regulations impose fines or detention on persons who stay in a public space and whether such regulations also authorize the confiscation or destruction of personal belongings, including sleeping bags, tents or other materials used for shelter.
6. Please provide information on strategies to prevent stigmatization of persons living in homelessness.
7. Please indicate whether someone living in homelessness can claim the right to housing in court or through other human rights mechanisms.
8. Please indicate in what way the fulfilment of the right to housing plays an explicit role in developing, implementing, monitoring and evaluating housing policies and, specifically, policies and strategies addressing the structural causes of homelessness. Please indicate how the “Housing for All by 2022” initiative specifically targets persons in homelessness, women, children, persons with disabilities, vulnerable populations, families and groups with little or no income, and all of those who are at risk of falling into homelessness.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I intend to publicly express my concern for homelessness as a global human rights crisis in the near future as, in my view, the information available to me is sufficiently reliable to indicate a matter warranting immediate attention. Should I issue a press release, it will mention several countries as an example of the global homelessness crisis, and indicate that I have been in contact with the respective Governments to clarify the issues in question.

Homelessness is a human rights crisis of a global scale; I am also sending similar letters calling the attention of other Governments to the situation of homeless persons in their respective countries.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and without prejudice to the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by India on 10 April 1979, which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]." Pursuant to article 2.2 of the ICESCR, it is the obligation of States Parties to guarantee that the Covenant's rights 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* [emphasis added]." The Committee on Economic, Social and Cultural Rights has stressed in General Comment No. 4 that the right to adequate housing includes affordability, accessibility, and legal security of tenure.

The Committee on Economic, Social and Cultural Rights has previously recognized that a State party to the ICESCR in which a significant number of individuals are deprived of basic shelter and housing is, *prima facie*, failing to discharge its obligations under the Covenant. States parties are required to demonstrate that every effort has been made to use a maximum of available resources in an effort to discharge their obligations. Furthermore, I wish to direct your Excellency's Government to my report on homelessness and the right to adequate housing (A/HRC/31/54), in which I note that homelessness constitutes a serious violation of the right to adequate housing to which must respond to homelessness with the highest level of urgency. National and sub-national governments must immediately repeal any laws or measures that criminalize, impose fines on or restrict persons living in homelessness or behaviour associated with being homeless, such as sleeping or eating in public spaces. Governments also have an obligation to combat and prohibit any law or practice that serves to discriminate, stigmatize and negatively stereotype persons living in homelessness.

I also draw your attention to article 6 of the International Covenant on Civil and Political Rights, acceded to by India on 10 April 1979, which protects the right to life which is understood as "the supreme right from which no derogation is permitted" and, "the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights."⁹ The Human Rights Committee specifically states that "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to

⁹ Human Rights Committee, General Comment No. 36 para. 2.

life with dignity. These general conditions may include ... homelessness.” The Committee also states that the measures called for to address adequate conditions for protecting the right to life include, where necessary, “measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care ...” [emphasis added].¹⁰ Violations of the right to life must be treated with the utmost seriousness and urgency. There is little doubt that homelessness triggers right to life interests.

I also call your attention to article 27.1 of the Convention on the Rights of the Child, acceded to by India on 11 December 1992, which states that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Article 27.3 states that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.” It is widely acknowledged that inadequate housing has an adverse impact on the physical health, well-being and development of children. Any increase in the number of children living in homelessness is incompatible with the Convention.

I recall article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by India on 3 December 1968, which states that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] the right to housing.”

I also recall General Comments No. 4, 7 and 20 of the Committee on Economic, Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy for those that may be affected by eviction orders. According to these General Comments, India must explore all feasible alternatives to forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

I note that through Agenda 2030 for Sustainable Development, the Government of India has committed itself to eliminating homelessness. Target 11.1 requires all States to ensure access for everyone to adequate, safe, and affordable housing by 2030. This necessarily means eliminating homelessness by 2030. To this end, states must adopt rights-based housing strategies with the aim of eliminating homelessness by that date. I refer you to my report on human rights-based housing strategies (A/HRC/37/53) in which I identify ten key principles for the strategies’ effective development and implementation. According to these principles, States must ensure the political participation of persons living in homelessness in the design, implementation, and monitoring of rights-based

¹⁰ Human Rights Committee, General Comment No. 36 para 26.

housing strategies. Strategies should also work to combat stigmatization and discrimination against persons living in homelessness.

The full texts of the human rights instruments and standards recalled above are available at www.ohchr.org or can be provided upon request.