

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

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.

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.

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: International Campaign for Tibet

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: Washington, D.C., Brussels, Amsterdam, Berlin

4. State/Province: USA, Belgium, The Netherlands, Germany

5. Country (please indicate your region or "international" if focus the work of your organization covers multiple countries); Tibet, China

6. Contact e-mail (will remain confidential) in case we have questions: Ms. Palmo Tenzin, palmo.tenzin@savetibet.de

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):

Tibetans inside Tibet² and China are systematically discriminated for their distinct ethnic, indigenous, cultural and religious identity, as well as official government label as a minority group. We would like to highlight at least four specific ways in which Tibetans experience discrimination in maintaining or accessing adequate housing.

Four examples of discrimination

1. Discrimination against nomadic or semi-nomadic lifestyles and the subsequent housing facilities that are used to maintain such livelihoods.
2. Discrimination in accessing housing for religious practices
3. Legal barriers to adequate housing due to a complex system of land rights, corruption, and a lack of political rights to claim land rights.
4. Participation in reconstruction projects, such as following the Yushu earthquake.

1. Discrimination against nomadic or semi-nomadic lifestyles

Tibetans who live nomadic or semi-nomadic lifestyles across rural areas of Tibet and China are discriminated for their nomadic lifestyle. Their lifestyle, and their semi-permanent homes are declared 'backward', inappropriate and treated as culturally inadequate dwellings. When seeking adequate housing, they are discriminated in the areas of accessibility, hospitality, location, availability of services, and cultural adequacy.

Since the 1980s, the Chinese central government has worked to settle Tibetan nomads into sedentary houses and impose an external model of housing. Under the guise of socio-economic development and grassland conservation, at least 1.8 million nomads (about one third of the Tibetan population) have been resettled into sedentary houses.³ Given the significant gaps in the data, this is an extremely conservative figure; the real figure could be significantly higher.

² Tibet was traditionally comprised of three main areas: Amdo (north-eastern Tibet), Kham (eastern Tibet) and U-Tsang (central and western Tibet). The Tibet Autonomous Region was set up by the Chinese government in 1965 and covers the area of Tibet west of the Dri-chu (Yangtse river), including part of Kham. The rest of Amdo and Kham have been incorporated into Chinese provinces, and where Tibetan communities were said to have 'compact inhabitancy' in these provinces, they were designated Tibetan autonomous prefectures and counties. As a result, most of Qinghai and parts of Gansu, Sichuan and Yunnan provinces are acknowledged by the Chinese government to be 'Tibetan.' This submission uses the term 'Tibet' to refer to all Tibetan areas currently under the jurisdiction of the People's Republic of China.

³ China Daily, 6 July 2012: 'Over 1 million Tibetan nomads choose settlement', http://www.chinadaily.com.cn/china/2012-07/06/content_15555645.htm; Xinhua, 1 December 2012: 'Massive nomad settlement to protect "mother river"', <http://en.people.cn/90882/8041990.html>; China Daily, 6 July 2012: 'Over 1 million Tibetan nomads choose settlement', http://www.chinadaily.com.cn/china/2012-07/06/content_15555645.htm; and Central People's Government of the People's Republic of

Tibetan nomadic or semi-nomadic families move seasonally with their livestock (such as yaks and sheep) across the grasslands and usually live in a house in the winter months. Their nomadic lifestyle allows them to access water, grasslands and raise their livestock, which produce meat, dairy products and fuel.

When Tibetans are moved into fixed homes, which are located in set concrete blocks, they are required to give up their animals and forfeit their grazing rights. Many families are coerced into new housing in assigned blocks with promises of a new comfortable home, new job opportunities, and access to education and health services. However, they find that their new homes are uninhabitable. Not only can residents not keep a few animals as a source of dairy or eggs, houses are often too small to house families which include three generations. The houses are also poorly designed for the Tibetan climate and require lots of energy to heat and cool. The promise of job opportunities are unfounded and families are left indebted with a mortgage and insufficient funds to pay for new costs such as food, water, electricity, education and health bills. Some new dwellings also have unreliable water sources.⁴

Tibetan nomads also experience housing discrimination through their limited access to public services, such as education and health services. In 2003, the Chinese government introduced the school consolidation policy, which consolidated primary schools into cities and towns, as a strategy to draw families off their grasslands and out of villages.⁵

2. Discrimination in accessing housing for religious practices

Tibetans have also experienced discrimination in accessing housing for religious practice. This form of discrimination is justified by ideas of what are culturally appropriate ways of living and believing.

Housing rules are used to evict and forcibly move Tibetans and other Tibetan Buddhist students outside of Buddhist institutions and towns. Two distinct examples of this are the large-scale evictions of Tibetan Buddhist practitioners from Larung Gar and Yachen Gar Buddhist institutes. From 2016 to September 2017, Chinese authorities forcefully halved the 10,000 resident population of Larung Gar.⁶ Later in May 2019, over 7,000 residents were expelled from

China, 5 December 2009, '青海3万多牧民迁新居：“小政”托起“大民生”[Ch. 'More than 30,000 farmers and herdsmen in Qinghai moved to their new homes: microfinance support the people's livelihood], http://www.gov.cn/jrzq/2009-12/05/content_1481036.htm; Human Rights Watch, 'They Say We Should Be Grateful', 2013, https://www.hrw.org/sites/default/files/reports/tibet0613webwcover_0.pdf, page 4; China Daily, 7 August 2015, 'Families moving into the modern era', http://www.chinadaily.com.cn/china/tibet50years/2015-08/07/content_21525294.htm.

⁴ Gongbo Tashi and Marc Foggin, 2012, 'Resettlement as Development and Progress? Eight years on', *Nomadic Peoples*, Vol.16, No.1, page 141.

⁵ Yang Bai, 2018, 'Hybridity and Tibetan language education policies in Sichuan', *Australian and International Journal of Rural Education*, Vol. 28. No. 2. page 6.

⁶ Radio Free Asia, 15 August 2017, 'Demolition of Tibetan residences underway at Sichuan's Yachen Gar Buddhist Center', <https://www.rfa.org/english/news/tibet/demolition-08152017145510.html>.

Yachen Gar.⁷ Individuals were evicted based on new housing safety and permit rules. Evictees were returned to their places of birth. Many who returned to areas inside the Tibet Autonomous Region were sent to re-education courses and restricted from accessing religious education.⁸ Housing rules are therefore used as one of many instruments to control the movement and private lives of Tibetans.

3. Legal barriers to adequate housing due to corruption, a complex system of land rights, and challenging permit application system.

Legal rights to land in Tibet are area-specific, unclear and poorly understood. When they are known, there is a gap between legal property rights and the ability of individuals to exercise their rights. The power of individuals to exercise legally defined rights is constrained by the politics of fear, and the securitisation of economic grievances by Tibetans as political protests and threats. Han citizens generally have more opportunities to claim their rights through open protest and rightful resistance, such as through petitions and lawsuits.

The 'household responsibility system', which decollectivized and privatised land in the 1980s in Tibet set no specified number of years for land tenure. It simply stated land tenure was 'for the long term'.⁹ Individuals are also uncertain as to whether they have ownership rights or merely land use rights.¹⁰ The unspecified nature of the period of land tenure and also uncertainty about the nature of the rights, limits citizens' ability to claim and protect their rights. As noted by the scholar Emily Yeh, the lack of clarity allows the state to more easily limit avenues for rightful resistance: the act of skilfully promoting the enforcement of already existing laws, policies and officially promoted values.¹¹

In the situation when individuals know their rights, there remains a significant gap between legally protected rights and the application of those rights. For Tibetans, this is primarily due to their ethnic identity and the securitisation of Tibetan grievances as political threats. In April 2019, Chinese authorities sentenced nine Tibetans to prison terms of three to seven years for starting an informal organisation to reclaim expropriated community land.¹²

In cases where Tibetan nomads have sought to claim compensation for nomad relocation, some have been sentenced. For example, Anya Sengdra is an anti-corruption campaigner who criticised local officials for misusing public funds

⁷ Radio Free Asia, 11 June 2019, 'Thousands of Monks, Nuns evicted from Sichuan's Yachen Gar', <https://www.rfa.org/english/news/tibet/EVICTED-06112019163506.html>.

⁸ Radio Free Asia, 27 July 2019, 'Large-scale demolition begins at Yachen Gar Tibetan Buddhist Center', <https://www.rfa.org/english/news/tibet/demolition-07272019091153.html>.

⁹ Emily T. Yeh, January-June 2004, 'Property Relations in Tibet Since Decollectivisation and the Question of 'Fuzziness', *Conservation and Society*, Vol. 2, No.1, pages 169-170.

¹⁰ '西藏农村宅基地有哪些规定? 宅基地能买卖吗? (附西藏自治区农村村民住宅用地管理规定)', ('What are the regulations for rural homesteads in Tibet? Can the homestead be bought and sold?'), 17 February 2017, Tuluu, <https://www.tuluu.com/read-51463.html>

¹¹ Opt., Cit., Yeh, 2004, 172.

¹² Tibetan Centre for Human Rights and Democracy, 19 April 2019, 'Nine Tibetans sentenced up to 7 years in prison under China's organized crime crackdown', <http://tchrd.org/nine-tibetans-sentenced-up-to-7-years-in-prison-under-chinas-organised-crime-crackdown/>.

designated for relocated nomads, and organised campaigns against illegal mining and hunting.¹³

4. Participation in reconstruction of houses

Following the 6.9 magnitude earthquake that hit Yushu in April 2010, government authorities undertook a reconstruction project which illustrates the way local Tibetans experience discrimination in accessibility to land, and living a culturally Tibetan lifestyle. However in April 2011, hundreds of Tibetans gathered to protest the government's new plans for land distribution. Tibetans called for greater inclusion after discovering new government plans redistributed land and assigned all strategic and desirable locations for government tourism infrastructure.¹⁴ The new houses that were constructed also resembled concrete blocks built for relocated nomads, which were too small to house Tibetan families which include several generations.¹⁵

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:

See question 7.

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?

Numerous policies aim to relocate nomads off their grasslands. At least five nomad relocation policies persist under environmental and economic programs across the Tibet Autonomous Region and Tibetan areas of China:

1. "Converting pastures to grasslands" (Tuimu Huancao): a priority program part of the Western Development Strategy (2000)¹⁶ The "Converting pastures to grasslands" policy launched nationally in 2003, and in the TAR in 2004.
2. Ecological Migration (Shengtai yimin): implemented in 2005.
3. The Comfortable Housing project: implemented in the TAR in 2006.¹⁷

13 International Campaign for Tibet (ICT), 19 May 2020, 'UN human rights experts ask China to lift charges against Tibetan anti-corruption activist Anya Sengdra', <https://savetibet.org/un-human-rights-experts-ask-china-to-lift-charges-against-tibetan-anti-corruption-activist-anya-sengdra/>.

14 ICT, 15 April 2011, 'Reconstruction of earthquake-hit area excludes Tibetan participation, ignores local concerns: one year on from earthquake', <https://savetibet.org/reconstruction-of-earthquake-hit-area-excludes-tibetan-participation-ignores-local-concerns-one-year-on-from-earthquake/#1>.

15 Ibid. ICT, 15 April 2011.

16 J. Marc Foggin, 'Depopulating the Tibetan Grasslands', Mountain Research Development, February 2008; 28(1), page 28.

17 http://usa.chinadaily.com.cn/business/2012-01/28/content_14497807.htm

4. Nomadic settlement project: implemented in Qinghai in 2009. The project paralleled the TAR's Comfortable Housing project.
5. Poverty alleviation project: nomad relocation was one of many programs under the economic poverty reduction campaign.

The politicisation and securitisation of Tibetan identity and the grievances they carry is the single most significant government practice that contributes to and exacerbates discrimination in relation to the right to adequate housing. The perception of Tibetan identity (ethnic or cultural in nature) as threatening to the stability of the state limits Tibetan peoples' ability to access their legally defined rights, and therefore seek transparency, accountability and compensation when adequate housing is denied.¹⁸

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?

N/A

SPATIAL AND RESIDENTIAL SEGREGATION

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)?

Nomad resettlement policies coerce Tibetan nomads from their grasslands to fixed concrete blocks that are located in a newly constructed village. See question 7 for more details.

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

N/A

¹⁸ ICT, 19 December 2018, 'The origin of the 'Xinjiang model' in Tibet under Chen Quanguo: Securitizing ethnicity and accelerating assimilation', <https://savetibet.org/the-origin-of-the-xinjiang-model-in-tibet-under-chen-quanguo-securitizing-ethnicity-and-accelerating-assimilation/>.

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?

On 11 June 2020, the government of the Tibet Autonomous Region (led by Han Chinese authorities) passed new ethnic unity regulations to tackle discrimination titled "model areas for national unity and progress".¹⁹ While the regulations seek to cultivate 'ethnic unity', it aims to impose unity by imposing a dominant ethnic culture and erasing other ethnic cultures and identity. It is by definition discriminating all other non-dominant cultures.

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?

N/A

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?

N/A

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 media has a role to play in reducing negative stereotypes individuals have of specific groups that are discriminated or marginalised.

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?

N/A.

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

As mentioned on question 7, the principal barrier to seeking justice in relation to the right to adequate housing is legal rights. Without equal access to the law and the application of the law, Tibetans cannot seek justice for any form of discrimination.

27. Can you specify how individuals and groups subject to structural discrimination or experiencing segregation can submit complaints to

¹⁹ ICT, 12 February, 2020, 'New "ethnic unity" regulations violate Tibetans' human rights: ICT briefing', <https://savetibet.org/new-regulations-on-ethnic-unity-officially-depart-from-preferential-ethnic-policies-threaten-tibetan-culture-and-violate-international-human-rights-norms/>.

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.

Given the exceptionally large number of resettlements, one would expect that a significant number of affected individuals would eventually seek legal remedies to challenge state measures that force them to relocate or settle. While the pursuance of legal remedies would be perceived as normal and highly likely in a political and legal environment that adheres to principles of rule of law, there is no data available about Tibetans seeking such legal remedies against orders to relocate or settle, to seek the repeal of relevant state measures, to advance claims for proper compensation, or to seek legal redress for lost properties.

ENDS

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