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Rapport de la Rapporteuse spéciale sur le logement convenable en tant qu'élément du droit à un niveau de vie suffisant, et sur le droit à la non-discrimination à cet égard

Note du secrétariat

Le secrétariat a l'honneur de transmettre au Conseil des droits de l'homme le rapport de la Rapporteuse spéciale sur le logement convenable en tant qu'élément du droit à un niveau de vie suffisant, et sur le droit à la non-discrimination à cet égard, Leilani Farha, sur la mission qu'elle a effectuée en Inde du 11 au 22 avril 2016, conformément à la résolution 31/9 du Conseil des droits de l'homme. Le principal objectif de sa visite était d'examiner la situation des groupes vulnérables en matière de logement et de sans-abrisme dans différentes régions du pays, ainsi que les lois, les politiques et les programmes en place et les lacunes dans l'exercice du droit à un logement suffisant aux échelons national et infranational.

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Report 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, on her mission to India*

Contents

			Page
I.	Introduction		3
II.	Institutional and legal framework		4
III.	Right to adequate housing		6
	A.	National housing policies	7
	B.	Homelessness	10
	C.	Informal settlements and evictions	11
	D.	Landlessness and displacement in rural areas	13
	E.	Land speculation and real estate investment	14
	F.	Open defecation	14
	G.	Natural disasters	15
IV.	Discrimination and social exclusion		15
	A.	Women	15
	B.	Scheduled castes and scheduled tribes	16
	C.	Homeless people	17
	D.	Muslims	17
	E.	Manual scavengers	17
V.	Access to justice		18
VI.	Conclusions and recommendations		19

* Circulated in the language of submission only.

I. Introduction

1. 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, Leilani Farha, conducted an official visit to India from 11 to 22 April 2016, at the invitation of the Government.

2. The Special Rapporteur visited New Delhi, Mumbai and Bengaluru, as well as peri-urban and rural areas near those cities. She is grateful to the Government of India and the state governments of Karnataka, Maharashtra and the National Capital Territory of Delhi for their cooperation throughout the visit. She thanks the staff of the office of the United Nations Resident Coordinator for their support for the visit. She is deeply appreciative to those who generously met with her in their homes, on the pavements and settlements, and in shelters, sharing their living conditions and struggles. She extends her gratitude to the civil society and community organizations, academics, lawyers and experts who shared their experiences and insights, many of whom travelled to meet with her.

3. India is proud to be the "largest democracy in the world", based in part on its historic roots and in part in the magnitude of the country's population of 1.31 billion people. Projections for 2022 and 2050 suggest that the population will reach approximately 1.4 billion and 1.7 billion respectively, marking only a handful of years before India becomes the world's most populated country.[1] Additionally, as a federal State, with constitutionally devolved powers in the area of housing, variances occur between states, including with respect to the implementation of national government policies and programmes. The Special Rapporteur recognizes the difficulty in governing such a large and diverse democracy and has tried to consider that in her analysis.

4. Unlike in other emerging economies, the Indian population remains primarily rural, with an estimated 67 per cent of the population living in rural areas.[2] However, trends indicate that urbanization has accelerated in recent years. Between 2010 and 2015, the urban population grew at a steady annual average of 2.38 per cent, while the average rural growth was just 0.7 per cent annually,[3] as a result of increased migration and displacement to urban and peri-urban centres. An estimated 180 million rural residents live next to the 70 largest urban centres in India. According to the 2011 socioeconomic and caste census, there are 7,933 cities and towns of different population sizes, including megacities of over 10 million inhabitants. In some cities, such as Mumbai, half the population lives in informal settlements.[4] The average size of households in India is estimated at 4.8 members, with wide variations between rural and urban settings.[5]

5. There may be no better way to describe in a nutshell the Special Rapporteur's experience of India than to say that it is a country of stark contrasts: extreme poverty and deprivation in the face of extreme wealth, a gap which is steadily growing and overtly visible. In 2011/12, a reported 21.9 per cent of the population was living below the poverty

[1] United Nations, Department of Economic and Social Affairs, Population Division, *World Population Prospects: The 2015 Revision, Key Findings and Advance Tables*, Working Paper No. ESA/P/WP.241, p. 4.

[2] See http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS.

[3] See https://esa.un.org/unpd/wup/CD-ROM/, WUP2014-F06-Urban_Growth_Rate.xls and WUP2014-F07-Rural_Growth_Rate.xls.

[4] The terms "slum" and "slum dweller" are widely used in India. The Special Rapporteur prefers to use "informal settlement" and "resident" or "inhabitant".

[5] See http://censusindia.gov.in/default.aspx.

line.[6] The Gini coefficient for India rose to 51 by 2013, from 45 in 1990,[7] mainly on account of rising inequality between urban and rural areas as well as within rapidly growing urban areas.

6. Against that backdrop, the Special Rapporteur recognizes and salutes the ambitious efforts made by India to address poverty and prioritize housing for vulnerable groups through policies and several schemes. According to the Government, urban poverty levels have declined substantially in the last decade, from 25.7 per cent in 2004/05 to about 13.7 per cent in 2011/12.[8]

7. The Special Rapporteur praises the Government for its ambitious flagship programme, Pradhan Mantri Awas Yojana (Housing for All), a scheme that at least in spirit responds to aspects of the recommendations made to India by the Committee on Economic, Social and Cultural Rights in its most recent review (see E/C.12/IND/CO/5). She was pleased that many of the authorities with whom she met at the national, subnational and local levels were genuine in their acknowledgement of the centrality of housing for millions of people, and in recognizing that any effort to provide adequate housing and essential services, like water, sanitation and electricity, had to reach an ever growing number of people who are currently deprived of those rights. In the face of great challenges, many government authorities were open to engaging and to discussing housing, human rights and specific areas for improvement.

II. Institutional and legal framework

8. India is party to most core international human rights treaties. In 1979, it ratified the International Covenant on Economic, Social and Cultural Rights, article 11 (1) of which contains provisions on the right to adequate housing, article 2 (2) on the right to non-discrimination and article 2 (1) on progressive realization of the rights recognized in the Covenant using the maximum available resources. India ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1968, the Convention on the Rights of the Child in 1992, the Convention on the Elimination of All Forms of Discrimination against Women in 1993, and the Convention on the Rights of Persons with Disabilities in 2007.[9] Accordingly, India has binding international human rights obligations to ensure the enjoyment of the right to adequate housing without discrimination on any ground. The Committee on Economic, Social and Cultural Rights has provided authoritative interpretations on the scope and content of the right to adequate housing, the prohibition of forced evictions and the principle of non-discrimination in the exercise of that right.[10]

9. The Constitution of India was adopted on 26 January 1949 and came into force a year later. India is governed by a parliamentary system, with a strong centre. As a federal State, the powers of the central and state governments are constitutionally determined and

[6] India, Planning Commission, "Report of the Expert Group to review the methodology for measurement of poverty" (2014), p. 18 (table 2.2). Available from http://planningcommission.nic.in/reports/genrep/pov_rep0707.pdf.

[7] See Sonali Jain-Chandra and others, "IMF Working Paper: Sharing the growth dividend: analysis of inequality in Asia" (International Monetary Fund, 2016). Available at: www.imf.org/external/pubs/ft/wp/2016/wp1648.pdf.

[8] See India, Ministry of Housing and Urban Poverty Alleviation, "India Habitat III: national report 2016". Available from http://mhupa.gov.in/writereaddata/1560.pdf.

[9] See https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en.

[10] See the Committee's general comments No. 4 (1991) on the right to adequate housing, No. 7 (1997) on forced evictions, and No. 20 (2009) on non-discrimination in economic, social and cultural rights.

are divided into three categories: union, which are central government responsibilities, state and concurrent, which delineate shared responsibilities between both levels of government. Generally speaking, housing and land fall under state jurisdiction, although central Government can introduce national housing programmes. The Seventy-third and the Seventy-fourth Amendment Acts, 1992, to the Constitution also introduced the system of Panchayati Raj, local assemblies of elected officials with decentralized responsibilities in towns and villages in rural areas, and municipalities for financial, functional and political decentralization in urban areas.

10. There is a sophisticated and complex legal system at the national and state levels, with state legislatures and the national parliament sharing various responsibilities in areas of direct relevance to the realization of the rights to housing and non-discrimination. As was often mentioned to the Special Rapporteur, the domestic framework of India is best understood from the perspective of cooperative federalism, an overarching principle that permeates the interactions between the central Government's policies and decisions, and the states' devolved responsibilities, strategies and laws.

11. The Constitution of India is frequently referred to as a foundational instrument. It advocates for justice, liberty and equality. Although it does not explicitly enumerate the right to adequate housing as a justiciable right, article 21 indicates that "no person shall be deprived of his life or personal liberty except according to procedure established by law", and has thus served to anchor and establish a justiciable right to housing. Several Supreme Court rulings have specifically referred to the right to housing in cases raising right to life issues, explicitly stating that "the State has the constitutional duty to provide shelter to make the right to life meaningful".[11]

12. As it stands, there is no national legislation recognizing housing as a human right, although legislation with respect to other human rights, such as the right to food, does exist. The National Food Security Act, which came into force in July 2013, converted pre-existing food security and food distribution programmes, such as subsidized cereals, and new programmes like maternity benefits into legal entitlements. It aims to provide more than 800 million people, over 60 per cent of the country's population, with subsidized monthly household rations each year. The Act shifted from a welfare approach to a rights-based approach. India has also made education a legal entitlement through the Right to Education Act, which came into force in April 2010, guaranteeing every child between 6 and 14 years old the right to education, in line with article 21A of the Constitution, and requiring 25 per cent of places in private schools to be reserved for the poor and other categories of children. Those laws on food and education are considered models that could be used as a reference for the design and adoption of a national housing law, based on human rights.

13. The Right to Information Act, in force since October 2005, is considered crucial in the fight against corruption, bringing some transparency to what would otherwise be opaque processes. It requires a response to citizens' requests for information from all constitutional authorities within 30 days and covers the executive, the legislature, the judiciary, any institution or body established or constituted by an act of Parliament or a

[11] See for example, *Maneka Gandhi v. Union of India*, in which the Supreme Court stated that the right to life must be understood as the right to live with dignity; *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Others*, in which it stated that the right to life includes the right to live with human dignity, including the bare necessities of life such as adequate nutrition, clothing, and shelter; and *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Others*.

state legislature and privatized public utility companies,[12] as well as private institutions and non-governmental organizations that receive substantial funds from the Government. It is considered an important component of access to justice. It is used to redress individual grievances, enable access to entitlements such as ration cards and pensions, investigate policies and decisions, and expose misuse of government resources. For many, the act of filing a "right to information application" has been empowering.[13] However, despite its positive impact, most people living in poverty cannot avail themselves of the Act, as they are unsure as to whom applications should be addressed, where they should be filed, what can be demanded and how to file an application. For human rights defenders, particularly those working on housing and land-related issues, the Act has ensured access to essential information, but it has also resulted in reprisals and on occasion, violence.[14]

III. Right to adequate housing

14. India is a flourishing economy, with estimates of the real gross domestic product (GDP) growth rate at over 7.3 per cent for 2016, and predictions of similar annual growth over forthcoming years.[15] Urbanization is considered central to the economy, contributing approximately 60 per cent of the country's GDP. The construction sector, with housing as a major component, accounts for 8.2 per cent of GDP and close to 11.5 per cent of employment.[16]

15. According to census data, the urban housing stock increased from 52.06 million in 2001 to 78.48 million in 2011. That was accomplished through various policies and programme initiatives undertaken by the Government, such as the Jawaharlal Nehru National Urban Renewal Mission, Rajiv Awas Yojana and the National Urban Livelihoods Mission. As at 2012, there was a shortage of 18.78 million housing units in urban areas, with 96 per cent of that shortage affecting the economically weaker sections and the lower income groups in society.[17] According to the 2011 census, approximately 13.75 million households (about 65-70 million individuals) reside in urban informal settlements. In a number of cities, including Chennai, Hyderabad, Kolkata and Mumbai, more than 50 per cent of all households live in informal settlements. In addition, the 2011 census indicates that 1.8 million people are homeless, although many researchers believe that to be an underestimation and put the figure closer to 3 million.

16. In rural areas, 13 per cent of households live in homes known as "kutcha", one-room makeshift structures built of poor quality materials, without ventilation or sanitation facilities and which do not provide protection from rain, wind or dust. It is estimated that

[12] See, for example, *Shri Sarbajit Roy v. Delhi Electricity Regulatory Commission*. Available from www.rti.india.gov.in/cic_decisions/Decision_30112006_12.pdf.

[13] See The Asia Foundation, "Right to information in India: an effective tool to tackle corruption", 28 September 2011. Available from http://asiafoundation.org/2011/09/28/right-to-information-in-india-an-effective-tool-to-tackle-corruption/.

[14] Housing and Land Rights Network, *Housing and Land Rights in India: status report for Habitat III* (Housing and Land Rights Network, New Delhi, 2016), pp. 29-30.

[15] See The Economist, Intelligence Unit, "Highlights India". Available at http://country.eiu.com/article.aspx?articleid=1804884764&Country=India&topic=Summary&subtopic=Highlights.

[16] India, Ministry of Housing and Urban Poverty Alleviation "India Habitat III: national report 2016", p. 23.

[17] India, Ministry of Housing and Urban Poverty Alleviation, National Buildings Organisation "State of housing in India: a statistical compendium 2013", para. 2.2. Available from www.nbo.nic.in/Images/PDF/Housing_in_India_Compendium_English_Version.pdf.

there is a shortage of 40 million rural housing units and that 90 per cent of rural households requiring housing are living below the poverty line.[18]

17. India faces sizeable gaps in infrastructure and essential services required for the enjoyment of the right to adequate housing: one third of households do not have access to electricity and close to 70 per cent lack clean, safe and affordable energy for cooking. In 2015, the estimated total of piped water in urban areas was 54 per cent, while in rural areas it was only 16 per cent. The figures on sanitation also deserve attention: in 2015, in urban areas, 63 per cent of sanitation facilities improved, with 10 per cent open defecation remaining; in rural areas, 28 per cent of sanitation facilities improved, with a striking 61 per cent open defecation rate.[19]

18. The size and scale of India, coupled with its diverse population and complex federalism, impose particular challenges with respect to the implementation of the right to housing. For example, policymakers working to implement the right to housing must grapple with stark contrasts and tensions between economic development and public investment in affordable housing, addressing urban and rural needs, the growth of megacities in parallel with tier-2 and tier-3 urban centres, and high-end serviced neighbourhoods and new developments in the face of dire living conditions in new and old settlements. Policymakers have to navigate those differences and tensions while determining how best to address the rights of those who are most disadvantaged in terms of housing: homeless people, pavement dwellers, informal settlement residents and increasing numbers of persons displaced from rural areas.

A. National housing policies

19. There have been several attempts to establish national housing policies across all states in India. In 1988, the first National Housing Policy was announced together with the creation of the National Housing Bank to expand housing finance. In 1998, a National Housing and Habitat Policy based on a vision of "shelter for all" was unveiled, and in 2007, the goal of the National Urban Housing and Habitat Policy was refined to provide affordable housing for all, with emphasis on vulnerable sections of society. Several programmes were set in motion at the time, including "slum development programmes" provision of basic services and urban renewal.

20. Since 2014, the Minister of Housing and Urban Poverty Alleviation has launched several flagship schemes including Housing for All, Smart City Mission, Atal Mission for Rejuvenation and Urban Transformation and the Swacch Baharat Mission (Clean India Mission). Together they are "expected to significantly improve infrastructure, livability and economic productivity in urban areas" and aim to achieve "incremental and qualitative improvements in the living conditions of all urban Indians".[20]

21. Under the Ministry of Housing and Urban Poverty Alleviation, the Pradhan Mantri Awas Yojana scheme is an ambitious programme, the aim of which is to build

[18] H.R. Khan, "Enabling affordable housing for all — issues and challenges", inaugural address by the Deputy Governor of the Reserve Bank of India at the international conference on growth with stability in affordable housing markets, organized by the National Housing Bank and the Asia Pacific Union for Housing Finance, New Delhi, 30 January 2012. Available from www.bis.org/review/r120417f.pdf.

[19] World Health Organization (WHO) and United Nations Children's Fund (UNICEF), "Joint Monitoring Programme for Water Supply and Sanitation: estimates on the use of water sources and sanitation facilities, India" (updated June 2015).

[20] India, Ministry of Housing and Urban Poverty Alleviation "India Habitat III", p. 16 (foreword by N. Chatterjee).

approximately 20 million houses in urban areas, potentially housing 100 million people. The goal is to address the housing needs of many of the urban poor, including those living in listed informal settlements. That is being implemented through a number of strategies: (a) eradicating the gap between supply and demand, and improving the living conditions of the urban poor; (b) increasing self-ownership of all-weather, sustainable and disaster-resilient dwelling units; (c) gradual elimination of obsolete housing, and improvement and rehabilitation of occupied units; and (d) empowerment and equity for the marginalized sectors of society.[21] In order to achieve those objectives, the scheme includes four development options: in-situ redevelopment, credit subsidies, affordable housing in partnership (private or public sector), and subsidies for beneficiary-led individual house construction or enhancement. Houses constructed under the scheme would be registered in the name of the female head of the household or in the joint names of the wife and husband.

22. One of the most progressive elements of the programme is that it is based on the recognition that, as far as possible, "slum rehabilitation" should occur in situ. Under the urban rehabilitation and redevelopment portion of the scheme, eligible residents of informal settlements are provided with temporary accommodation in transit camps. Once new houses are constructed, households are provided with a unit equipped with basic services and amenities, requiring the payment of a one-time fee. Maintenance costs are covered for 10 years by the developer, after which time residents become responsible for those expenses, and become full owners of their units.

23. Under a similar scheme, known as Pradhan Mantri Awas Yojana — Grameen (village), the Ministry of Rural Development aims to facilitate the construction of 10 million houses in rural areas by 2022. It replaced the Indira Awas Yojana scheme. It is a subcomponent of Bharat Nirman, a business plan for building and strengthening rural infrastructure. One of the key features of the scheme is the provision of assistance for the construction of the 10 million houses in rural areas over the period from 2016 to 2019.[22]

24. Stakeholders expressed concern with the single emphasis on homeownership in both the Pradhan Mantri Awas Yojana and Pradhan Mantri Awas Yojana — Grameen schemes to the exclusion of other tenure options, such as rental housing or usufruct rights over land. The Special Rapporteur looks forward to the adoption of the draft rental housing policy and the draft model tenancy act, which were under preparation at the time of her visit, and hopes that those tenure options will be included in the Pradhan Mantri Awas Yojana scheme in urban areas.

25. Moreover, while the ambitious Pradhan Mantri Awas Yojana scheme signals national-level interest in addressing the enormous housing shortage and the needs of the poorest, the affordability of the programme for those residing in informal settlements is a concern. If they cannot access some of the credit-based subsidies, which even if provided at lower interest rates than the market rate (6.5 per cent as opposed to 10 per cent average at market level), the scheme may at times prove financially inaccessible. That would result in residents having to stay in transition camps longer than originally expected. The conditions in the camps are not much better than in informal settlements, as they are meant to be temporary at best.

26. Although units vary in size depending on the project, many new builds offer units that are not more than 30 square metres, regardless of family size. Concerns were raised with the Special Rapporteur, including by some developers themselves, that the units are far too small for families with five to eight members, the average size of many informal

[21] India, Ministry of Housing and Urban Poverty Alleviation "India Habitat III", p. 86.

[22] India, Press Information Bureau, "Implementation of the rural housing scheme of Pradhan Mantri Awaas Yojana — Gramin to achieve Housing for All by 2022", 23 March 2016. Available from www.pib.gov.in/newsite/erelease.aspx?relid=138213.

settlers' households. Overcrowding, it is feared, will quickly lead to deterioration in the rehabilitation sites.

27. Barriers to accessing the scheme and similar state-sponsored in situ rehabilitation programmes were also brought to the Special Rapporteur's attention. The scheme is open only to those who can prove they have resided in the listed informal settlement since before the cut-off date,[23] essentially disqualifying new arrivals. Moreover, even for those who have resided there for some time, the requirements for proof of residency can be difficult to meet, given the barriers to acquiring adequate and necessary documentation, such as voter identification card, identity cards or ration cards for social benefits to support residency claims. The Special Rapporteur was told by developers that the barriers coupled with affordability issues has resulted in approximately 20 per cent of informal settlement residents being unable to access the scheme.

28. The Special Rapporteur visited several residents currently living in rehabilitated units in Bengaluru and Mumbai. In terms of basic adequacy, the units were all far superior to the informal settlements previously occupied by the residents. Those interviewed by the Special Rapporteur recognized the positive impact of their new homes, as for the first time they were experiencing security of tenure. Some expressed a new sense of self, having been transformed from an "encroacher" to a rightful resident. Many felt that they were no longer looked down on within their broader community. That is a significant improvement for those who have successfully accessed the scheme.

29. An overarching and commendable principle in some rehabilitation and redevelopment schemes undertaken by states is the shift away from treating residents as "encroachers", "squatters" or otherwise illegal occupants, towards the notion that some residents of informal settlements deserve property rights and a decent — and formalized — place to live. The schemes recognize that most often it will be in the best interest of residents of informal settlements to remain on the lands where they have lived for several years, close to where they are employed, attend school and access health services.

30. The Special Rapporteur was concerned to learn of cases in which residents have been left in transit camps for over three years awaiting rehabilitation and, worse yet, cases in which developers, despite having received the tender from the respective government department, have failed to build the rehabilitation units. There does not appear to be an established time limit within which the rehabilitation must take place. Since there are numerous agencies involved in the scheme, effective coordination is not always the norm and without clear accountability mechanisms, residents can be left in limbo for years. As a nationally driven scheme with state level implementation, there is also some concern that there are inconsistencies in terms of quality and efficiency of implementation between states.

31. Under the Ministry of Urban Development, the Smart Cities Mission is intended to provide core infrastructure and enhanced quality of life in 109 cities in the country by 2020, with an allocation from the central Government of Rs 48,000 crore (around US$ 7.3 billion) over five years. The stated objectives, many of which are in keeping with the right to adequate housing, are to combine economic and population growth with the concept of clean and sustainable development. Core infrastructure includes affordable housing, especially for the poor, water, electricity and sanitation supply, solid waste management, public transport, connectivity, e-governance and citizen participation, and safety and security of citizens. The Government has emphasized the importance of "citizen ownership" of the scheme, as well as the central role of municipalities, in order to promote innovative approaches in the implementation of the programme.

[23] Cut-off dates are established at state or city level and vary accordingly.

32. In order for city plans to be selected and consequently funded, they must include land that has already been identified for that purpose, with a development plan. Urban local bodies are expected to match the amount they receive, including by raising their own funds from public-private partnerships, international capital, real estate conglomerates or other financial arrangements.[24]

33. The Special Rapporteur was made aware of a number of concerns about the scheme. For instance, some local authorities suggested that the guidelines for the scheme reduce their decision-making powers, including by creating a body to establish and implement the scheme. Some cities with high poverty rates and few resources would have no competitive advantage, and there are fears that the scheme would broaden the gap between wealthier cities and cities with the most need for housing and infrastructure. Concern was also expressed that modernizing only parts of cities, or that a particular focus on technological responses, would result in the construction of unaffordable housing or infrastructure that is not targeted at the poorest. Substantive resources would thus be spent on assisting only a small proportion of the population, while residents of informal settlements would be evicted from their homes to make way for new developments.[25]

34. Some groups argued that the consultations to select the first 33 city proposals had been largely limited to people with access to the Internet, thus leaving out the poorer segments of the population, and that, by not requiring smart city plans to address the root causes of poverty and discrimination, the initiative was unlikely to create more inclusive and human rights-based urbanization. An analysis of shortlisted Smart City proposals further revealed a predominant focus on technological solutions and a lack of priority for the affordable housing aspects of the scheme.[26]

B. Homelessness

35. Homelessness, a gross violation of the right to adequate housing, demands urgent attention in India. Mostly identified as "pavement dwellers", all homeless people live in indigent conditions, enduring extreme weather and exposure to violence, serious and recurrent health conditions, life threatening situations and hazards, and discrimination. The Special Rapporteur heard testimonies that the most difficult aspect of homelessness was the stigmatization, hostility and indifference homeless people perceive from everyone in society: passers-by, police officers, the media and the authorities. Women and children who are homeless experience particular forms of violence or are more vulnerable to them. 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.

36. The neglect of homelessness has been well-documented by the commissioners of the Supreme Court appointed to track the implementation of one of the court decisions and subsequent orders on the right to food nationally.[27] Generally speaking, governments at the central and state levels appear to treat that very visible population as relatively invisible, showing insufficient interest in addressing their immediate needs, or reflecting on the causes of homelessness and adequate policy responses. Most homeless people are the "city makers", providing the informal labour and services that sustain urban activity, but

[24] See http://smartcities.gov.in/writereaddata/Strategy.pdf.

[25] See http://smartcities.gov.in/writereaddata/SmartCityGuidelines.pdf.

[26] Housing and Land Rights Network, "The human rights to adequate housing and land in India: report to the United Nations Human Rights Council for India's third universal periodic review" (New Delhi, 2016), para. 13.

[27] See Supreme Court of India, *People's Union for Civil Liberties v. Union of India and Others*.

governments appear reluctant to provide housing, land and basic services to that population. As a result, there are not enough shelters to meet requirements, or they rarely cater to specific populations such as children, women, persons with disabilities or persons who need treatment for addictions. Homeless people are never considered candidates for long-term housing options, such as through the Pradhan Mantri Awas Yojana scheme.

37. That said, through a series of orders, the Supreme Court has provided detailed guidelines for states about the number of shelters that must be constructed and the services that must be provided. The Ministry of Housing and Urban Poverty Alleviation has also established the National Urban Livelihoods Mission, with the aim of providing shelter for the urban homeless. The Special Rapporteur was informed that Rajasthan has adopted a progressive policy whereby emergency shelters are the first step towards rehabilitation, offering skills training to shelter residents and assisting them in the transition to employment and long-term housing options, a model that other city authorities are taking on board, for example in Delhi.

C. Informal settlements and evictions

38. An estimated 13.75 million households[28] (between 60 and 70 million people) in urban areas are compelled to live in extremely inadequate housing conditions in informal settlements.[29] Invariably, it is the most vulnerable groups who make up the population of informal settlements. Uniquely, as compared to other jurisdictions, the Indian census collects data on that household type. According to the data, between 2001 and 2011, the number of households in informal settlements increased by over 37 per cent. That trend is likely to continue with the urbanization of the country. The census also showed that over one third of informal settlements lack electricity, piped water and sanitation.

39. The Special Rapporteur learned that informal settlements are referred to as "slums" in official discourse. She was surprised that many government officials and members of the judiciary consider residents of informal settlements to be living there illegally, and often stigmatize them as "encroachers" or "occupiers", without always recognizing the important services they provide to other urban dwellers or the decades they have lived in the same locations, frequently on public lands.

40. Many residents of informal settlements lack security of tenure, one of the cornerstones of the right to adequate housing.[30] Forced evictions are common, sometimes with extreme use of violence, and often without ensuring due process or alternative accommodation and compensation.[31]

41. Forced evictions, displacement and demolitions are not uncommon practices, used by the central Government in some states to advance the economic development agenda of

[28] Housing and Land Rights Network, *Housing and Land Rights in India*, p. 4.

[29] Census definition of slum: "residential areas where dwellings are unfit for human habitation by reasons of dilapidation, overcrowding, faulty arrangements and design of such buildings, narrowness or faulty arrangement of street, lack of ventilation, light, or sanitation facilities or any combination of these factors which are detrimental to the safety and health". There are three classifications: notified, recognized and identified slums. See Housing Stock, Amenities, Assets in Slums, 2011 census.

[30] See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 8. See also the following reports of the former Special Rapporteur on adequate housing: A/HRC/22/46 and A/HRC/25/54. The latter includes the Guiding Principles on Security of Tenure for the Urban Poor.

[31] For international human rights standards on forced evictions, see Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on forced evictions and the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

the country. National data on the number of households evicted each year is not collected by either level of government. Information collected by civil society suggests, however, that recourse to eviction is extensive, showing that between 2010 and 2015, close to 250,000 people in urban areas were forcibly evicted from their homes.[32]

42. The mandate on adequate housing has received information about evictions in the past,[33] and the Special Rapporteur was informed during her visit that evictions are commonly carried out of the most vulnerable populations, those without security of tenure, for example those who are living below the poverty line, on pavements and in unrecognized settlements. Forced evictions are often implemented without any consultation with residents, without sufficient notice and commonly result in homelessness.

43. Genuine consultation with those affected, including about rehabilitation and relocation plans prior to eviction, is seldom carried out. While that may vary from state to state, when rehabilitation occurs, it is often on the peripheries of cities. By way of illustration, a study conducted in Baprola, on the outskirts of Delhi, found that the housing provided to evictees was essentially uninhabitable, unaffordable and possibly structurally unsound. The site was found to have limited transportation and residents had been located over 15 kilometres from their places of employment or livelihood. The site lacked essential services such as a local dispensary and Anganwadi centres (integrated child development services). Many children faced difficulties when transferring to government schools in the area, and as a result dropped out of school. Residents' primary documents had not been updated to ensure that they had access to public benefits. In addition, buildings lacked ramps or elevators, rendering them inaccessible to persons with limited mobility.

44. Access to legal remedies for forced evictions appears to be scant in India. In most cases, forced evictions occur without a hearing and with impunity. In other cases, the community may have only a few hours to secure a stay of the eviction.

45. All of that is contrary to international human rights law and standards, under which forced evictions are considered a gross violation of human rights and must be avoided except in the most exceptional of circumstances and, when implemented, must be carried out in strict compliance with international norms.[34]

46. The Special Rapporteur learned that, while a few judicial decisions at the High Court level have delineated how evictions must be carried out, and the Delhi government has issued a moratorium on forced evictions, no relevant legislation or orders exist at the national level. In addition, the Special Rapporteur was recently made aware of evictions in Delhi, carried out by the central Government, which were not in line with the Delhi moratorium and guidance.[35]

[32] Housing and Land Rights Network, Housing and Land Rights in India, p. 7.

[33] See, for example, A/HRC/13/20/Add.1, pp. 20-22.

[34] See Committee on Economic, Social and Cultural Rights, general comment No. 7 and the basic principles and guidelines on development-based evictions and displacement.

[35] Information on the relevant communication is to be made public in the joint communications report for the thirty-fourth session of the Human Rights Council.

D. Landlessness and displacement in rural areas

47. According to the 2011 census, about 56 per cent of households living in rural areas do not own land.[36] The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 recognizes forest-dwellers' rights to land title and its use as a collective right, and prohibits evictions without adequate rehabilitation and compensation. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 requires social and environmental impact assessments prior to acquisitions and that rehabilitation and resettlement of affected households are ensured in case of eviction.

48. The Special Rapporteur was told that despite those laws, displacement caused by infrastructure projects, such as dams, and by the work of extractive industries was a frequent occurrence.[37] Indeed, while accounting for only 8 per cent of the population of India, a disproportionate number of displacements appear to involve persons belonging to scheduled tribes.

49. The construction of large-scale dams and megaprojects has resulted in millions of displaced and landless people, many of whom remain in rural areas. One such project that has been of concern to the Special Rapporteur is the Mapithel Dam in Manipur.[38] In 2009, the Special Rapporteur on the rights of indigenous peoples urged the Government to seek free, prior and informed consent of indigenous peoples, followed by a call to ensure that the rehabilitation and resettlement of the villagers concerned be pursued only insofar as a strict and detailed human rights impact assessment was undertaken.

50. The hardship caused by large dam construction across India cannot be underestimated, especially for scheduled tribes, for whom their land is a home, a way of living and relating as a community, and of preserving culture, language and livelihood. Flooding entire villages and forest areas has a severe impact on their rights to life and to housing, and given the persistence with which it seems to happen on scheduled tribes' lands, it may also be indicative of discriminatory policies and practices.

51. The majority of people forced out of rural areas or ancestral lands have little choice but to go to urban centres where, as newcomers, they find themselves living in dire conditions and inadequately housed. Unsurprisingly, in 2012, the Parliamentary Standing Committee on Rural Development reported that only a third of persons displaced owing to planned development had been resettled.[39]

52. According to the 2014 report of the High-level Committee on the socioeconomic, health and educational status of tribal communities in India, the exercise of "eminent domain" and the definition of "public purpose", which are used by the Government to legitimize land alienation for development and public infrastructure projects, should be severely limited in tribal areas.[40] That would play a key role in addressing displacement,

[36] See http://censusindia.gov.in/default.aspx.

[37] Norwegian Refugee Council and Internal Displacement Monitoring Centre, "Pushed Aside: displaced for 'development' in India" (July 2016). Available from www.internal-displacement.org/assets/publications/2016/201607-ap-india-pushed-aside-en.pdf.

[38] A/HRC/30/27, p. 18. See also A/HRC/12/34/Add.1, paras. 161-172.

[39] See India, Ministry of Rural Development, Department of Land Resources, "The Land Acquisition, Rehabilitation and Resettlement Bill, 2011: thirty-first report", para. 3.10. Available from http://dolr.nic.in/dolr/downloads/pdfs/Land Acquisition, Rehabilitation and Resettlement Bill 2011 - SC(RD)'s 31st Report.pdf.

[40] See www.kractivist.org/wp-content/uploads/2014/12/Tribal-Committee-Report-May-June-2014.pdf.

forced evictions and enforced migration, safeguarding land and community resources in scheduled areas and addressing land acquisition, including by private companies.[41]

53. As it stands, there is no national policy for rural areas beyond policies pertaining to construction incentives and grants. Considering that the majority of the over 780 million rural inhabitants are landless, there is an urgent need to address their housing situation in a more comprehensive way, acknowledging that a plot of land, even one as small as 0.1 acres, can play a crucial role in ensuring both access to adequate housing and to a livelihood.

E. Land speculation and real estate investment

54. Land acquisition for large-scale development projects, particularly in rural areas, has resulted in widespread displacement leading to inadequate housing conditions and homelessness. Real estate development, cranes and skyscrapers dotting the horizon, and billboards for new and luxurious accommodation are very much part of urban life in India.

55. The Special Rapporteur learned that housing values have significantly increased in some regions,[42] while in other regions the market has been stagnant. Moreover, according to the 2011 census, in many cities new housing remains unsold and vacant, with 8 per cent of houses in urban India (approximately 11.09 million) lying vacant.[43] Some suggest that is because the number of new units at the high end of the market has exceeded the number of people that can afford them.

56. To help stimulate the real estate market, protect home buyers and provide greater transparency and stability within the housing market, India passed the Real Estate (Regulation and Development) Act, 2016. Overall, the Act is perceived as well-intentioned and timely. It establishes a regulatory body and a tribunal to hear disputes, and appears to protect home buyers in a number of ways, including by ensuring that written agreements are part of every transaction and that buyers can withdraw from projects without pecuniary penalties if they are unable to take possession of the unit by the specified date. The Act also limits the amount of cash that can be used to purchase property, requiring cheques for the bulk of payments, allegedly to prevent black market purchases and unregistered foreign investment.

F. Open defecation

57. According to the Committee on Economic, Social and Cultural Rights, one of the characteristics that is central to the concept of adequacy with respect to the right to housing is the availability of services, facilities and infrastructure.[44] Hence, an adequate house must contain, inter alia, sanitation and washing facilities. India has made significant progress in terms of sanitation coverage in the past 25 years,[45] but challenges remain, particularly considering the number of people who are still without access to even shared facilities in

[41] The International Work Group for Indigenous Affairs, *The Indigenous World, 2015* (Copenhagen, The International Work Group for Indigenous Affairs, 2015), pp. 331-332.

[42] The National Housing Bank Index (Residex) indicates that between 2007 and 2015, housing prices more than doubled in Ahmedabad, Bhopal, Faridabad, Kolkata, Mumbai and Pune; in Chennai, prices more than tripled during that period.

[43] See http://censusindia.gov.in/default.aspx.

[44] See the Committee's general comment No. 4 (1991) on the right to adequate housing, para. 8 (b).

[45] UNICEF and WHO, "Progress on sanitation and drinking water: 2015 update and MDG assessment", June 2015. Available from http://files.unicef.org/publications/files/Progress_on_Sanitation_and_Drinking_Water_2015_Update_.pdf.

their homes and communities. Approximately 130 million individuals (10 per cent of the country's population) in cities continue to practise open defecation, despite decreases in the past 15 years. In rural areas, open defecation is at 61 per cent, down from 91 per cent in 1990.[46]

58. In 2014, the Government set an ambitious target to end open defecation by 2019 under the Swachh Bharat Mission. That is to be achieved by building new toilets, ensuring reconstruction of dysfunctional toilets and changing behaviours, and is to be funded through cost-sharing between the central and state governments. Four states were put at the centre of the initiative, in view of their high open defecation levels in the 2011 census: Bihar, Madhya Pradesh, Odisha and Rajasthan.

59. Open defecation has dramatic consequences for public health and is regularly linked with extreme poverty, malnutrition and stunting, and with perpetuating cycles of disease, as well as social exclusion. It is associated with many preventable diseases and conditions, such as diarrhoea, that result in death, particularly of children. It also places girls and women at higher risk of sexual harassment and violence.

G. Natural disasters

60. Millions of people in rural and urban India have been displaced as a result of natural disasters, including earthquakes, floods and cyclones. According to the Internal Displacement Monitoring Centre, between 2008 and 2014, India had the third highest number in the world of people displaced owing to natural disasters, nearly 30 million people. Vulnerability to natural disasters is particularly acute because large segments of the population live in inadequate housing.

61. In 2005, the Government created a National Disaster Management Authority and passed the National Disaster Management Act (2005). Neither the Act nor the Authority has ensured that people affected by disaster are provided with adequate post-disaster housing. Generally speaking, alternative housing is rarely provided to persons affected by disaster. When compensation is provided, it is insufficient to rebuild homes, which results in families becoming indebted, or it is only available to those living in "notified slums".[47]

IV. Discrimination and social exclusion

62. Discrimination and inequality in terms of access to and the availability of adequate housing and land were repeatedly raised with the Special Rapporteur as issues of concern. Discrimination includes not only actions or omissions by all government authorities, but also the lack of effective mechanisms to ensure protection from an array of private entities, such as private landlords, developers, megaproject construction companies and extractive industries.

A. Women

63. Women, especially widows, single women, women from scheduled castes and scheduled tribes and elderly women face multiple discrimination in access, control, ownership and inheritance of housing, land and property, an observation also made in 2014

[46] UNICEF and WHO, "Joint Monitoring Programme for Water Supply and Sanitation".

[47] The term refers to all areas in a town or city notified as "slums" by the State or subnational governments under any Act.

by the Committee on the Elimination of Discrimination against Women (see CEDAW/C/IND/CO/4-5, paras. 32 and 33 (a)). Certain inheritance practices continue to be used to deny women title to housing, land and property despite the fact that, under the Hindu Succession (Amendment) Act, 2005, daughters and sons have equal rights. That said, some schemes, including tax incentives and joint ownership of housing, have been set in place to ensure that women can become property owners and are registered in the title deeds.

64. In rural areas, without land title, female heads of households and women farmers have no access to credit, subsidies, seed programmes, irrigation or fertilizers. Moreover, without land they and their families are at greater risk of poverty, displacement, eviction and violence.

65. The Special Rapporteur met women who had fled violent households and, with few housing options, had been left destitute, living on the roadside. Violence against women is fundamentally linked to the right to adequate housing, as indicated by the Committee on Economic, Social and Cultural Rights. In its general comment No. 4, the Committee states that the right to housing "should be seen as the right to live somewhere in security, peace and dignity" and that it is "integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised" (para. 7). Given the international commitments India has undertaken to combat domestic violence, one essential measure would be to mainstream the links between domestic violence and the right to adequate housing at all levels of government.

66. Although implementation has been a problem, the Protection of Women from Domestic Violence Act, 2005 is human rights-oriented, providing women in a domestic violence situation with security of tenure through the right to reside in their home and barring the violent household member from remaining on the premises.

B. Scheduled castes and scheduled tribes

67. In India, the legacy of scheduled castes and so-called "backward classes" remains. Scheduled castes and scheduled tribes comprise 22 per cent of the population of India, but are overrepresented among the poor. Despite affirmative action programmes and "reservations", those groups continue to be subject to stigmatization and discrimination, including in relation to housing. According to the 2011 census, scheduled castes and scheduled tribes have, on average, lower quality housing, made with inadequate materials, with only 22 per cent of households of scheduled tribes made with brick or concrete walls. Figures concerning the lack of access to latrines were more alarming than for the general population, with 66 per cent of members of scheduled castes lacking access to latrines, and 77 per cent of scheduled tribes.[48]

68. In 2007, the Committee on the Elimination of Racial Discrimination urged India to intensify its efforts to effectively punish acts of "untouchability", to take effective measures against residential segregation and to ensure equal access for Dalits to places of worship, water sources and any other places or services intended for use by the general public (see CERD/C/IND/CO/19, para. 13).

69. Although specific provisions to protect scheduled tribes are included in the Constitution and in numerous policies, the reality is less than satisfactory. Entire tribal communities remain excluded from benefits essential to them, like the tea plantation workers in Assam, who were forcibly brought from central India, but have not been given

[48] See http://censusindia.gov.in/default.aspx.

the status of scheduled tribe. Furthermore, their housing and living conditions, and the insecurity of tenure that they endure, are cause for concern.[49]

70. The Special Rapporteur heard testimonies about the impact of displacement on scheduled tribes. They underscored her concerns about the construction of the Mapithel Dam as part of the Thoubal Multipurpose Project in the state of Manipur and the evictions resulting from the dam, which threaten the right to an adequate standard of living, including food and housing, and the way of living and livelihood of members of several tribal communities.[50]

C. Homeless people

71. Often referred to as "encroachers", or people illegally occupying lands, homeless people living on the pavements are commonly regarded as outsiders, given that many of them are rural migrants from other states. As such, they are often not welcomed by local governments or other residents. Those discriminatory attitudes are not just part of common parlance in policy circles, but have also found their way into legal judgments, making it increasingly difficult for people who are homeless to win injunctions against forced eviction. As a result, homeless people are denied access to long-term housing solutions. Moreover, the interests of developers and development always seem to prevail over those of people who are homeless.

D. Muslims

72. Muslims represent 14 per cent of the overall population. Discrimination against Muslims in housing manifests itself in different ways in different parts of the country. For example, studies on access to private rental accommodation in the capital show that discrimination against Muslims (as well as Dalits) can at times be a barrier to access to housing.[51] Private landlords, real estate brokers and property dealers will often refuse to rent to someone who is Muslim, or impose unfair conditions on them. The Special Rapporteur was informed that in some parts of the country, Muslims have felt compelled to leave their neighbourhoods and move to places where other Muslims are living, often in informal settlements. The Special Rapporteur visited one such settlement where the conditions were extreme owing to overcrowding, the absence of sanitation facilities and electricity and the lack of garbage collection.

E. Manual scavengers

73. Efforts to end manual scavenging in India are decades old, with various options having had limited success. Most recently, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was followed by a Supreme Court decision requiring state intervention to end manual scavenging and "rehabilitate" all people engaged in the practice, in line with the Constitution. Nonetheless, deeply-rooted caste and gender-based discrimination means that there are still women and men from scheduled castes cleaning public and private toilets, collecting excrement in pits, latrines and open drains

[49] See FIAN International and others, " A life without dignity — the price of your cup of tea: abuses and violations of human rights in tea plantations in India" (Heidelberg, Global Network for the Right to Food and Nutrition, 2016).

[50] A/HRC/30/27, p. 18 (case No. IND 4/2015).

[51] Sukhadeo Thorat and others, "Urban rental housing market: caste and religion matters in access", *Economic and Political Weekly*, vol. L, nos. 26 and 27 (June 2015), p. 47.

who, as a result of their activities, suffer from deplorable housing and living conditions. While the practice has complex roots, people practising manual scavenging are bound by insurmountable social pressure to continue their family's degrading tasks and are assigned that role, at the lowest rank of a hierarchical society, especially in small villages. In part, the failure to effectively eradicate the practice is the result of the difficulty encountered in enforcing central government legislation at the state and local levels.[52]

V. Access to justice

74. Most people who are inadequately housed or homeless have relatively little legal knowledge or information, particularly about human rights relating to housing. Despite the Constitutional reference to equal justice and free legal aid (article 39A), the legal aid system for those living in poverty is only marginally effective, limiting access to courts to the availability of public interest representation by civil society. In addition, a substantial backlog of pending cases within the judicial system has rendered access to justice for the poor a continuing challenge.

75. According to information received by the Special Rapporteur, there are very few avenues to challenge government decision-making with respect to housing matters. For example, residents of informal settlements who are deemed ineligible for the Housing for All scheme have no complaint mechanism, even when they meet the criteria for the scheme, making it difficult to hold governments accountable for their decisions.

76. In the context of evictions, access to justice also appears to be limited. There is no clear national policy or legislation on due process requirements prior to eviction, which are required under international human rights law. Persons who have been evicted have no avenue of redress if they are denied rehabilitation or compensation. While it is possible to submit written appeals and complaints at state level, they are often delayed, and there is a general lack of transparency regarding inadequate rehabilitation.

77. The Special Rapporteur commends several Supreme Court decisions that have affirmed the right to housing through the Constitutional provision of the right to life. While the courts have taken divergent decisions about the right to housing and have recently sanctioned numerous demolitions, the Supreme Court and several High Courts have issued progressive judgments in keeping with the right to adequate housing under international human rights law.

78. For example, in 2010 the Delhi Court released two judgments affirming Constitutional protections for the right to housing, noting that adequate housing serves as the crucible for human well-being and development and affirming that prior to an eviction, rehabilitation sites with access to infrastructure, services and amenities and a decent living must be found.[53]

79. The Supreme Court has also issued several important judgments affirming the right to housing. In the "right to food case",[54] as it is commonly known, the Supreme Court took urgent notice of the denial of the right to housing for persons living in the streets in Delhi, recognizing the threat that poses to the right to life. In order to monitor compliance with its decision, and interim orders emanating from it, the Supreme Court appointed

[52] Human Rights Watch, "Cleaning human waste: manual scavenging: caste and discrimination in India", 25 August 2014. Available from www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india.

[53] See High Court of Delhi, *Sudama Singh and Others v. Government of Delhi and Another*, and *P.K. Koul v. Estate Officer and Another*.

[54] See Supreme Court of India, *People's Union for Civil Liberties v. Union of India and Others*.

commissioners empowered to demand redress, report on implementation and conduct inquiries into government action. That is impressive, and a welcome way of ensuring that rights-based decisions are carried forward and of ensuring a dialogue with the court that remains seized with the matter. The Supreme Court has established detailed guidelines for states to establish shelters with adequate and appropriate facilities, and to remain accountable to the court with respect to progress on that front.

VI. Conclusions and recommendations

80. **India is at a critical juncture in term of protection of the right to adequate housing, which is currently at a tipping point owing to the country's accelerated urbanization, population growth and resultant growing inequality. Over 58.6 million households do not have access to adequate housing in urban and rural India. Taken in combination with the extensive need for reparation of dilapidated housing stock and the unmet provision of essential services such as ventilation, electricity, water, sanitation and waste management, the challenges are considerable. If the critical situation of those who are landless, homeless, inadequately housed and displaced is to be taken as a serious human rights priority, there must be a vigorous effort without delay on the part of all levels of government to put the right to adequate housing at the centre of the agenda.**

81. **The Special Rapporteur acknowledges the leadership of the central Government in putting in place ambitious schemes aimed at addressing the rising demand for adequate housing. Clearly there is political will to bring the Housing for All and other schemes to fruition in forthcoming years, and to guarantee that positive outcomes are enjoyed by a broad segment of the population. The Special Rapporteur also had the opportunity to assess the impressive plans and programmes put in place by the states of Karnataka, Maharashtra and by the Delhi Authorities, and she became aware of the intricacies and complexity in terms of coordination and cooperation between the states and the centre, and between various departments and institutions. The Special Rapporteur recognizes that every state in India grapples with a vast number of people and issues, comparable with large countries in the world, while still being committed to the essence of federalism.**

82. **However, the Special Rapporteur is concerned that short-term schemes will not be sufficient to address the housing situation of those who are most disenfranchised and discriminated against with respect to housing. As a next step, and in keeping with the political commitments made under the New Urban Agenda,**[55] **India needs an overarching, visionary and coherent piece of legislation based on human rights. A national housing law that aims to address growing inequalities and offers a long-term road map is essential. In addition, the economy of India is and will continue expanding, which suggests that it will continue to have the necessary resources to implement the right to adequate housing across the country.**

83. **In the Special Rapporteur's view, the existing schemes seem to emphasize and focus primarily on homeownership as the key housing model to respond to the current needs of India. However, even when well regulated, that model may be ill-suited to ensuring adequate housing for those most in need, including women, religious minorities, and scheduled castes and scheduled tribes. In the light of the diverse housing needs across the country, the Government must consider investing more in alternative housing policies that better suit those who have scarce or no resources: people who are homeless, living on pavements and informal settlements and those who**

[55] See https://habitat3.org/the-new-urban-agenda/.

face traditional practices of exclusion and discrimination, as well as members of the growing middle-class in urban areas who are not able to access affordable rentals owing to the lack of availability.

84. **Recognizing and implementing housing as a human right in existing programmes and in new legislation would also set India on track for meeting its international commitments to implementing the 2030 Agenda for Sustainable Development (particularly target 11.1 of the Sustainable Development Goals) and the New Urban Agenda.**

85. **In the light of those conclusions, the Special Rapporteur makes the following recommendations to the central and state governments:**

(a) **Adopt national legislation with explicit recognition of the right to adequate housing without discrimination on any ground. The legislation must be based on national and international human rights standards and commitments;**

(b) **Address homelessness as a human rights priority with a view to eliminating it by 2030, in keeping with target 11.1 of the Sustainable Development Goals. In that regard:**

(i) **The structural causes of homelessness in urban and rural India must be identified, including in relation to access to land and housing, affordability and the lack of specific measures in favour of people without an income;**

(ii) **Homeless shelters must be understood in the context of a housing continuum that includes a range of longer-term housing options considered by local and subnational governments for the homeless population;**

(iii) **The National Urban Livelihoods Mission guidelines must be implemented for the construction of shelters, ensuring that shelters for different and particular population groups like families, women leaving violent relationships, street connected children and youth are established;**

(c) **Institute a national moratorium on forced evictions and demolitions of homes. Enact legislation to guide forced evictions that stipulates that forced evictions can only occur in the most exceptional of circumstances, once all other alternatives have been pursued, in strict compliance with international human rights law. Third party actors should also be regulated and monitored in that regard. Where states already have such a moratorium in place, the central government must comply. When evictions are required as a result of valid health and safety risks, governments must ensure that resettlement takes place in a time-bound manner, ensuring meaningful consultation with those who are directly affected, that fair compensation is awarded and that resettlement housing is adequate, as prescribed by international human rights law;**

(d) **Survey and provide legal recognition of all existing informal settlements and prioritize in situ upgrading and rehabilitation, with secure tenure for all inhabitants, based on meaningful participation. Provide existing informal settlements, especially where rehabilitation is not planned, with proper latrines, access to water and sanitation and regular garbage collection;**

(e) **Central and state governments should put in place effective and timely mechanisms to collect and systematically update data on a number of housing-related issues, like evictions, living conditions and homelessness. The data must be disaggregated, notably by age, gender, disability and ethnic and religious origin. That information should be made public and serve as a basis for policy design and monitoring in compliance with human rights law;**

(f) **Ensure timely, adequate compensation or resettlement and/or alternative housing for persons who are affected by natural disasters, with genuine consultation and participation of the individuals and communities affected;**

(g) **Enact legislation to curb all forms and practices of de facto housing discrimination against any individuals or groups, in particular religious and ethnic minorities, women, scheduled castes and scheduled tribes, internal migrants and manual scavengers in relation to their right to housing. Enhance monitoring and protection against discrimination in relation to rental accommodation, access to credit, inheritance and ownership. Specific measures must be found to enforce existing legislation, including in villages and panchayati;**

(h) **Ensure that all residents of informal settlements have access to the Housing for All scheme. Provide assistance with down payments for those unable to afford the scheme;**

(i) **Allocate resources for the Smart Cities Mission in order to provide housing in those cities where there are the greatest housing needs and where the most marginalized and excluded would most benefit;**

(j) **In order to ensure the right to adequate housing and to curb rising prices due to speculation in real estate markets, particularly in metropolitan cities, governments at all levels must ensure that land stocks for constructing social housing, including for the economically weaker sections of society, are used immediately for the purpose for which they were acquired;**

(k) **Enhance effective monitoring and coordination to ensure that budget allocations for housing, sanitation and water provision at all levels of government are executed in a timely and transparent manner;**

(l) **The national right to homestead bill of 2013 should be introduced in Parliament to provide land for the poor, the landless and those without a homestead in urban areas. A committee should be established to ensure its compliance with international human rights law. Schemes and programmes for rural housing should include the provision of plots of land, not only construction grants, in order to ensure that the most deprived and poor landless individuals can adequately ensure their right to housing and to a livelihood;**

(m) **In keeping with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, private entities should be regulated and measures put in place to ensure that they are monitored and held accountable, including with respect to speculation of land and housing, land grabbing, rentals, forced displacement and forced evictions both in urban and rural areas;**

(n) **Courts must interpret the right to life and equality in a manner that gives effect to and is consistent with economic, social and cultural rights provided for in international human rights law. When applicable, commissioners should be appointed, as in the case of the right to food, by the Supreme Court, with a view to ensuring monitoring, redress and implementation of the right to housing over time;**

(o) **Submit the pending report to the Committee on Economic, Social and Cultural Rights and ensure implementation of the recommendations relating to housing, land, living conditions and poverty alleviation from the universal periodic review. Use the forthcoming universal periodic review to commit to implementing the recommendations contained in the present report.**