**Questionnaire on the ‘Right to Adequate Housing’**

1. **Please provide any statistical indicators regarding the health, mortality and morbidity consequences of inadequate housing and homelessness in your country, disaggregated by sex, race, immigration status, age and disability, or other grounds, if and where possible. Please also provide references to any documentation (written, visual, or otherwise) of the lived experiences that lie behind these statistics.**

NHRC, India’s Response:

The Ministry of Housing and Urban Poverty Alleviation, Government of India is the nodal ministry at the national level for formulation of housing policy and programmes, administering implementation of planned schemes, collection and dissemination of data on housing, etc. In addition, it is entrusted with implementation of the specific programmes of urban poverty alleviation and slum improvement. The information on statistical indicators linking the health, mortality, and morbidity consequences of inadequate housing and homelessness are not explicitly available. The indicators on health, mortality and morbidity are compiled independently and not linked as consequences of inadequate housing.

…………….

1. **Please refer to the provisions of your state’s constitution or human rights legislation which guarantee the right to life and explain whether these apply to circumstances where homelessness or inadequate housing place health, security or life at risk and whether positive obligations of governments have been recognised in this context. Please provide references to any relevant cases or other examples, if available.**

NHRC, India’s Response:

Access to adequate housing assists the enjoyment of several human rights, including the rights to work, education, health, social security, privacy, etc. Right to housing is acknowledged in Chapter III and IV of the Constitution of India. In particular, courts have recognized the right to housing through the right to life and personal liberty in Article 21 and the right to reside and settle in any part of the territory of India in Article 19(1)(e) of the Indian Constitution. In the words of the Supreme Court of India, *“Right to life includes the right to live with human dignity and all that goes with it, namely the bare necessaries of life such as adequate nutrition, clothing, and shelter”*. Judicial activism in India too has played a major role in the realization of this right. India is also a signatory to the *Istanbul Declaration on Human Settlement, 1996* that recognizes the need for access to safe and healthy shelter and basic services essential for a person’s physical, psychological, social, and economic well being.

In recognition of the risks that homelessness and/or inadequate housing exposes individuals to, including those related to health, security, and life, the Government of India (GOI) has initiated arrange of socio-economic programmes to provide for ‘housing/shelter for all’, particularly the most vulnerable sections. Some of these programmes include the following:

1. Indira Awas Yojana

The Ministry of Rural Development is implementing Indira Awas Yojana, a flagship scheme throughout the country, under which financial assistance of Rs. 70,000/- in plain areas and Rs. 75,000/- in hilly/difficult areas including IAP districts, is provided to the rural BPL households for construction of a dwelling unit. In addition, the scheme has provision for upgradation of kuchha houses with the assistance of Rs. 15,000/- per unit. The scheme also has a component for purchase of homestead sites for which assistance of Rs.20,000/- per unit is provided and that is shared by Centre and State in the ratio of 50:50. The Ministry of Rural Development is also drawing a proposal for restructuring of the Indira Awas Yojana. The focus of the proposal is not only on construction of houses but also to promote house designs that are environment friendly, disaster resilient and suitable to the geographic requirements of the State.

1. Ministry of Housing and Urban Poverty Alleviation Initiatives

The Ministry of Housing and Urban Poverty Alleviation has been implementing schemes under *Jawaharlal Nehru Urban Renewal Mission* (JNNURM), *Rajiv Awas Yojana* (RAY) and *Pradhan Mantri Awas Yogana* – Housing for All (Urban) {PMAY-HFA(U)} mission for extending central assistance to States/UTs for providing houses and related civic amenities to urban poor including slum dwellers. These Schemes are being implemented by the States/UTs through their implementing agencies like Urban Local Bodies (ULBs), Housing Boards etc. A total of 10,17,423 houses have so far been constructed under JNNURM and RAY by these agencies during the last three years.

The projects considered for central assistance under these schemes include details of arrangements for convergence of inputs of health, education, social security, livelihoods and connectivity to city civic infrastructure from existing schemes and programmes of State/ULB/Centre. Infrastructure components include all basic civic infrastructure and social amenities like water supply, sewerage, drainage, solid waste management, approach and internal road, street lighting etc. and community facilities such as pre-schools, child care centres, health centres/sub-centres, livelihoods centres etc.

Under the schemes of JNNURM and RAY, a total of 1,695 projects with a total project cost of Rs. 40,608.23 crore involving central share of Rs.21,118,88 crore for construction of 13,92,589 houses have been approved. Till now, construction of 10,17,423 houses have been completed of which 7,97,501 houses have been occupied by the beneficiaries. Under PMAY-HFA(U), 5,08,902 houses of EWS category have been considered for construction till date.

1. Pradhan Mantri Awas Yojana (PMAY) – Housing for all (HFA) (Urban) Mission

In pursuance of the Government’s vision of facilitating housing to all by 2022, the Government launched the “Pradhan Mantri Awas Yojana (PMAY) – Housing for all (HFA) (Urban)” Mission on 25.6.2015 with the aim to provide assistance to States/UTs in addressing the housing requirement of the slum dwellers and urban poor {Economically Weaker Sections (EWS)/Low Income Group (LIG) Categories} through following four verticals:

1. “In situ” Slum Redevelopment through private participation using land as resource;
2. Credit Linked Subsidy Scheme (CLSS);
3. Affordable Housing in Partnership; and
4. Subsidy for beneficiary - led individual house construction or enhancement.
5. Shelter for Urban Homeless

As per the directions of Hon’ble Supreme Court in W.P. (C) No. 55 of 2003 with W.P. (C) 572 of 2003 in the matter of E.R. Kumar & ANR Vs. Union of India & Ors. regarding shelter for urban homeless, the Ministry of Housing & Urban Poverty Alleviation has advised all States/UTs for effective implementation of the scheme namely ‘Shelter for Urban Homeless (SUH)’, a component of the Deendayal Antyodaya Yojana – National Urban Livelihoods Mission. As per the information received from the States/UTs, as on 29.02.2016, a total of 770 shelters have been sanctioned by 20 States/UTs. Out of this, 270 shelters have become operational and rest are under different stages of construction.

…………..

1. **Please explain whether and in what ways courts or human rights bodies in your state have recognised the disproportionate effect of homelessness and inadequate housing on particular groups (such as persons with disabilities, indigenous peoples, women experiencing violence, etc.) as an issue of discrimination. Please provide references to any relevant cases or other examples, is available.**

NHRC, India’s Response:

The following are some key pronouncements/decisions of the Supreme Court of India on the ‘Right to adequate housing’:

* In Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545, the Court held that the right to life included the right to livelihood. The petitioners contended that since they would be deprived of their livelihood if they were evicted from their slum and pavement dwellings, their eviction would be tantamount to deprivation of their life and hence be unconstitutional. The Court, however, was not prepared to go that far. It denied that contention, saying:

“No one has the right to make use of a public property for a private purpose without requisite authorization and, therefore, it is erroneous to contend that pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon . . . If a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his use of the pavement would become unauthorized”.

* Later benches of the Supreme Court have followed the Olga Tellis dictum with approval. In Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101, the Court held that the Municipal Corporation of Delhi had no legal obligation to provide pavement squatters alternative shops for rehabilitation as the squatters had no legal enforceable right.
* In Sodan Singh case (1989) 4 SCC 155 a constitution bench of the Supreme Court reiterated that the question whether there can at all be a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trade must be answered in the negative.
* The above cases fail to account for socioeconomic compulsions that give rise to pavement dwelling and restrict their examination of the problem from a purely statutory point of view rather than the human rights perspective. Fortunately, a different note has been struck in a recent decision of the Court. In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123 in the context of eviction of encroachers in a busy locality of Ahmadabad city, the Court said:

“Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimize inequalities in income and in opportunities and status.

It positively charges the State to distribute its largesse to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make life worth living with dignity of person and equality of status and to constantly improve. Though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful”.

However, Articles 38, 39 and 46 relate to Directive Principles of State Policy which are not enforceable in a court of law. They are distinct from Fundamental Rights. Directive Principles of State Policy show the direction that the State should endeavour to proceed on.

Initiatives of the National Human Rights Commission, India

The National Human Rights Commission has been working on overall issues relating to human rights of vulnerable sections of society since its inception. The issue of housing is being reviewed under the “Human Rights Awareness Programme in Selected 28 Districts of India”. The said programme was undertaken by the Commission in 2007-08, wherein it selected 28 Districts, one from each State, from the list of identified Districts availing the Backward Regions Grant Fund of the Ministry of Panchayati Raj, Government of India (GOI) and endorsed by the then Planning Commission of India. Further, to extend its reach to the remotest parts of the country, the Commission has taken numerous initiatives so as to spread human rights awareness as well as monitor the implementation of social welfare programmes, including the flagship programmes of GOI like Indira Awas Yojana, Sarva Shiksha Abhiyan, Mid-day Meal, Integrated Child Development Services (ICDS) Scheme, National Rural Employment Guarantee Scheme, etc.

Homes for sections of society

The National Human Rights Commission is also looking at the issues relating to shelter and housing of the disadvantaged sections of society. Its important mandate involves “visiting any jail or other institution under the control of the Government, where persons are detained or lodged for purposes of treatment, reformation or protection for the study of living conditions of the inmates thereof and make recommendations thereon to the Government”. As part of this mandate, the Commission has been undertaking the following activities:

1. It has been visiting Mental Health Institutions and making recommendations for improving the living conditions and physical infrastructure in these institutions, so that the inmates can lead a life of dignity.
2. It has been visiting the Juvenile Homes as well as Women Homes and making recommendations for improving the living conditions and physical infrastructure in these institutions, so that the inmates can lead a life of dignity.
3. It has also been regularly visiting the prisons and making recommendations for improving the living conditions and physical infrastructure in these institutions, so that the inmates can lead a life of dignity.

In 2011, a publication entitled “Right to Adequate Shelter” was brought out by the NHRC.

The Commission has also been dealing with the issue of housing on the basis of complaints as well as suo motu on the basis of media reports. A few of the cases dealt with by the Commission are placed at Annexure I.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_