

Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Questionnaire

Informal settlements and human rights

The Special Rapporteur on the right to adequate housing has decided to devote her forthcoming report to the General Assembly to the issue of informal settlements and human rights.

A. Background

It is estimated that one quarter of the world's urban population lives in informal settlements.¹ Informal settlements exist in nearly all regions and countries, including in highly developed countries.

Informal settlements can be defined as residential areas where inhabitants have no formal ownership or lease agreement vis-à-vis the land and/or dwellings they inhabit. Modalities include homeless encampments, squatting in abandoned buildings, living in informal rental housing or in long established communities without formal title. Shelter is frequently constructed by hand out of any available materials, but may take many other forms, such as cars, boats, containers or other shelter. Some informal settlements have been built over many years in brick and mortar, but the actual neighbourhood is not fully legalised. Informal communities usually lack basic services such as water and sanitation, and infrastructure and the housing may not comply with current planning and building regulations.

Informal settlements often expose individuals to the most extreme and degrading living conditions and are often located in the most hazardous areas. At the same time, they often represent significant accomplishments in community empowerment and self-governance, fostering vibrant centres of culture, community and economies. This duality creates a space where survival and resilience dominate the daily experience.

Residents of informal settlements often belong to marginalized groups, having faced exclusion and discrimination compounded by their housing status. The failure of States

¹ See UN Habitat III Issue Papers – 22 - Informal Settlements, New York, 31 May 2015, p. 3

to address living conditions in informal settlements creates multiple threats to life, dignity and security. Residents of informal settlements often live under a persistent threat of forced eviction.

States have committed under Goal 11 of Agenda 2030 for Sustainable Development to upgrade all informal settlements and ensure adequate housing for all by 2030. A human rights framework will be essential to meeting this commitment so as to both address the structural factors that force people into informality while recognizing and building on the accomplishments and capacities of informal settlement communities. A human rights framework prevents forced evictions and ensures that where relocation to alternative land and housing is unavoidable or is the preferred option of residents, it is planned and implemented with genuine consultation and participation, ensuring the dignity and rights of those affected.

The report on the right to adequate housing and informal settlements will be the first of its kind by a Special Rapporteur of the United Nations. In her report the Special Rapporteur on the right to adequate housing will provide clear guidelines to States and other actors on the challenges that lead to informality, including migration, colonization, urbanization, financialization and social exclusion. It will explain how a human rights-based approach is fundamental to meeting the commitments made in the 2030 Agenda for Sustainable Development and the New Urban Agenda.

In her report, the Special Rapporteur will highlight creative uses of legal mechanisms, new approaches to ownership, tenure and planning as well as innovative legislative and programmatic initiatives. It will identify good practices in diverse settings.

B. Questions

For the elaboration of her report the Special Rapporteur would be grateful to receive responses to the following questions.

1. Please provide statistical data on the numbers of people living in informal settlements, clarifying the definitions used and including disaggregated data by relevant characteristics (gender, disability, age, etc.) where available. Provide estimates of the number of households renting within informal settlements.

The statistical data retrieved from Kenya National Bureau of Statistics (KNBS), the only official state statistical recognized agency, provides cumulative statistics in relation to Country population distribution by sex, number of households, area and density. Evident that no steps that have been undertaken to obtain the above requested quantitative information. However, the Housing Gap in Kenya with access to basic services is estimated at 2 million units. Every year there are 0.5 million new city dwellers. Cumulatively, 61% of urban households live in informal settlements.² Kenya's annual

²<http://documents.worldbank.org/curated/en/682301523540952273/pdf/125183-PSDS-P165034-PUBLIC.pdf>

informal settlements growth rate of 5%, is the highest in the world and it is likely to double in the next 30 years if positive intervention measures are not put in place.³ For instance, Kibera has an estimated population of 950,000 people, Mathare slums houses more than 500,000 people, Korogocho has an estimated population of 150,000 people and Mukuru Kwa Njenga has an estimated population of 100,000 people.⁴

Informal settlements- these are residential areas where inhabitants are confronted and exposed to:

- a) Have no security of tenure vis-à-vis the land or dwellings they inhabit, with modalities ranging from squatting to informal rental housing
- b) The neighbourhoods usually lack, or are cut off from, basic services and city infrastructure and;
- c) The housing may not comply with current planning and building regulations, and is often situated in geographically and environmentally hazardous areas.⁵

Slum- The settlement where the inhabitants are characterized as having inadequate housing and basic services. They range from high-density, squalid central city tenements to spontaneous squatter settlements without legal recognition or rights, sprawling at the edge of cities.

Upgrading- An effort to improve living conditions in particular urban areas characterized by poor-quality housing and inadequate infrastructure and service delivery.

Slum Upgrading: A process of intervention for economic, organizational and environmental improvement to an existing human settlement which is undertaken collectively among citizens, community groups, governments- national and local levels and any other development partners.

2. **Please provide information on access to water, sanitation, electricity and other services, including availability and costs. Also refer to any relevant qualitative studies or documentation of the lived experiences of residents.**

Access to clean water, improved sanitation, good housing, solid waste management, proper health care, security and electricity are some of the most fundamental challenges faced by slums residents.

Access to clean water.

The main concerns with water supply resonates around access, cost and quality. There is evident limited access to common water points, which are often located far from individuals "houses", there are instances where some structure owners ration water such that is only available on specific days and times.

Complains on high cost are also evident among slum residents compared with income levels. Alternative sources also come in handy to include borehole, rainwater, and sometimes draw water from broken pipes which mostly is highly contaminated and filthy especially when plastic pipes burst and can potentially cause contagious diseases.⁶

³ UNDP, 2007

⁴ Umande Trust, 2007

⁵Habitat III Issue Papers 22 – informal settlements New York, 31 May 2015

⁶ Water Sanitation Program, 2007.

The rapid urbanization and population growth in urban areas, access to safe drinking water is likely to worsen unless there is a proper policy change to provide for the needs of the urban slums⁷. For instance, most slum residents spend between 2 ~ 5 hours per day at water kiosks to fetch water.⁸

To mitigate the issue, several stakeholders to include non-governmental organizations and development partners such as the World Bank have funded some water projects in the slums but still several households lack access to sufficient and clean water.

Access to sanitation.

The lack of improved sanitation facilities, including toilets, showers, and sewage disposal are well evident across informal settlements in Kenya. Most residents share pit latrines, the available common and payable toilets/ or showers facilities are not conveniently located to serve large portion of slum dwellers. The far they are located the security of persons being compromised especially accessing the same at night. Most toilets, pit latrines and showers are owned and managed by community groups and individual businessmen who charge between Ksh. 5 and Ksh 10 per person per every visit, therefore making the services inaccessible to most residents.

Access to electricity

In Kenya, most informal settlements lack electricity as provision of the same service is controlled by government owned firms. Most settlements are classified as illegal, making it difficult for the companies to set power transmission points in the settlements. The cost of electricity in Kenya seem to drifting upwards affecting the entire population to include those in informal setting. Those that have managed to be connected with electricity, cases of illegal connections are common and perpetuated cartels in informal settlements. For instance to address electricity and lighting issue in Kibera informal settlement, Adopt-A-Light was set in 2002 in collaboration with the Nairobi's city council and erected lighting masts in Kibera slums. The UN-Habitat's Slum Lighting Project was commissioned in 2005 for lighting the city and parts of informal settlements.

Uninsulated electricity cables that are not part of the national power grid and might never have a legal connection hang in people's structures as they are aware of the dangers these poses but they have little choice.

- 3. Please provide information and data on environmental, health or security concerns and experiences, including violence against women, affecting residents in informal settlements. Please include disaggregated health statistics, including life expectancy, mortality and any data on injuries or**

⁷ World Economic and Social Survey (2008). "Underdevelopment, urban squatting, and the state bureaucracy: a case study of Tanzania." Canadian Journal of African Studies, 16, (1): 67-91.

⁸ Citizen Report Card Survey 2007.

fatalities of residents of informal settlements as compared to the general population.

Mismanagement of wastes typically results in pollution of environment and mostly poses considerable danger to public health and wellbeing of informal settlement residents. The government and development partners have set up functional health centres in different settlements, considering the health complications, such health facilities are inadequate to meet the demand given the high number of people living in informal settlements.⁹

The poor infrastructure, overcrowding, few resources and poor sanitation facilities is exacerbated further by a high disease and morbidity burden, characterized by high levels of malnutrition among children and the aged and high rate of communicable diseases like typhoid, malaria, dysentery and tuberculosis, with most families being unable to afford medical care. The available limited health facilities are also unequipped.

Security concerns are evident in all the informal settlements across the country. This has been catalysed by lack of good governance, proper leadership, unemployment, empowerment and social capital in these settlements.¹⁰

- 4. What goals and timelines have been adopted to ensure that all informal settlements will be upgraded to meet the standard of adequate housing by 2030? Please provide information on plans, upgrading/resettlement policies and whether these plans include human rights standards. Please also explain how responsibilities have been allocated to different levels of government.**

Kenya acknowledged the existence of slums and informal settlements, and is committed to addressing the conditions through several initiatives among them being progressive legislation and settlements upgrading.

It is in the interest of the Government that slum improvement has been embraced as a principle policy of housing and urban development. The country's strategic framework in the Poverty Reduction Strategy Paper, the National Housing Policy and the National Housing Development Programmes, have all recognized slum upgrading as an integral part of shelter development.¹¹

The government of Kenya also initiated the Kenya Slum Upgrading Programme and Kenya Informal Settlement Improvement Project in 2004 and 2011 respectively. These

⁹Kumar S., Shigeo K, Harada, H. (2003) Living Environment and Health of Urban Poor: A Study in Mumbai. Economic and Political Weekly.

¹⁰ Amnesty International, 2009

¹¹ Kenya Slum Upgrading Programs 2005.

are geared towards improving the livelihood of people working and living in the informal settlements in the urban areas.

The right to adequate housing, and to reasonable standards of sanitation are also anchored in Chapter 4 and Article 43 (1b) of the Kenyan Constitution.

The Poverty Reduction Strategy Paper, 2005.

The implementation of slum upgrading has been identified as one of the program to address poverty by targeting the poor communities. This is geared towards improving the living conditions of urban poor population that live in urban slums.

The program aspire to develop slum upgrading and relocation plans that include land adjudication and registration, expansion of water network and sanitation facilities, provision of electricity distribution points, upgrading of slum roads, and enactment of housing legislation to facilitate private sector expansion of low cost housing and housing financing.

National Housing Policy, 2004.

According to the National Housing Policy (2004), upgrading of slum areas and informal settlements shall be given high priority. It shall be undertaken with minimal displacement to cater for proper planning and provision of necessary infrastructure and related services.

The policy outlines how appropriate upgrading measures shall be instituted for existing slum areas taking into account key upgrading components that cover security of land tenure, provision of basic infrastructural facilities and services, improvement of housing structure and the socioeconomic status of the target community. Further, the policy bestow responsibility to the state to streamline acquisition of land for housing the poor, adopt appropriate tenure systems, planning standards to suit given slum settlements and prevent unwarranted destruction of existing housing stock and displacement of the residents. It also states that, slums upgrading shall be integrated to take into account socio-economic activities that improve livelihoods of target communities while employment and income-generating activities that address poverty alleviation shall be enhanced.

It also sees the Government to facilitate slum upgrading through integrated institutional framework that accommodates participatory approaches involving relevant stakeholders, particularly the benefiting communities while enhancing co-ordination at national level. It also recognises factors of ownership of land and structures, age of settlement, and affordability during upgrading stages.

It thus provides for compensation measures shall be instituted for displaced persons where necessary. In order to improve the living conditions of a large proportion of the

populations in urban areas, appropriate slum upgrading measures shall be instituted for each slum/informal settlement, taking into account the above main components and factors. To further address proliferation of slums and informal settlements, the Government shall ensure supply of minimally developed but incrementally upgradable low cost housing.

Kenya Slum Upgrading Programme (KENSUP).

This is a collaborative initiative that draws on the expertise of a wide variety of partners in order to redress the issue of slums. The Government of Kenya executes and manages the programme while the Ministry of Housing and the relevant local authorities are tasked with implementation cycle.

The civil society partners, participating local communities and the private sector complement and support their efforts. The primary goals of KENSUP is to improve the livelihood of people working and living in the informal settlements in the urban areas of Kenya, to reduce poverty and fulfil the Millennium Development Goal 7 Target 11 – to improve the lives of 100 million slum dwellers by the year 2020. The vision of the programme is to facilitate improved and sustainable urban living environments in Kenya while the mission is to develop and implement policies, programmes and strategies to facilitate reduction and prevention of slums in Kenya (GoK: 2004).

The main objectives of KENSUP include development of a national wide slum upgrading and management framework, institute good urban governance, provide social and physical infrastructure, provide security of tenure and improved housing; enhance opportunities for income generation and employment creation; attract private sector finance and encourage investment in slum upgrading; promote a culture for environmental conservation and management; enhance the capacity for research, planning, implementation, monitoring and evaluation; and to address and mitigate the prevalence of HIV/AIDS (GoK:2004).

Kenya Informal Settlement Improvement Project (KISIP).

This is Government of Kenya in collaboration with the World Bank, SIDA and French Agency for Development (AFD) in June, 2011. It focuses on improving living conditions in existing informal settlements by investing in infrastructure and strengthening tenure security. It also support the Government of Kenya (government counterpart funding is 10%) in planning for future urban growth in a manner that prevents the emergence of new slums. The project comprises four components namely:-

- i. Institutional strengthening and programme management of the Ministry of Housing, Ministry of Lands and the participating Local Authorities;
- ii. Enhancing tenure security: This involves planning, surveying and issuance of titles. Several activities that will be undertaken under this component include preparation of guidelines for informal settlements, establishing databases on

land tenure, community organisation and mobilisation, preparation of development plans including determination of settlement boundaries, detailed mapping and provision of secure tenure, identification and verification of beneficiaries based on agreed eligibility criteria, preparation of local physical development plans, issuance of letters of allotment to households/groups, surveying of individual plots and preparation of registry index maps, registration and issuance of titles to households or groups. The government would like to have a model/guideline for informal settlements whereby the identification will be mostly done by the community.

- iii. Investing in infrastructure and service delivery: The Government will invest in roads, bicycle paths, pedestrian walkways, street and security lights, waste management, water drainage, sanitation, green spaces, platforms etc. in the informal settlement spaces and,
- iv. Planning for urban growth. Lack of adequate planning is a challenge. Through this component, the Government will provide technical assistance to the municipalities. The goal of this initiative is to take measures that will reduce or prevent slums.¹²

National Slum Upgrading and Prevention Policy, 2012

The policy aims to transform slums and informal settlements into more liveable environments. For the successful formulation of the policy, the Government recognizes and undertakes to collaborate with all actors and stakeholders in an endeavour to ensure that the process is participative, all-inclusive and compliant with the Kenya Constitution (2010).

The policy is in line with the fulfilment of the Millennium Development Goal No. 7 target 11. It is also informed by the Kenya Vision 2030 aspirations for a free nation and recognition of housing as a basic human right by the Constitution. In addition, with the anticipated acceleration of urbanization as counties seek to establish respective capitals, the slum agenda has gained prominence with a renewed urgency to arrest the situation from escalating beyond manageable proportions; hence the focus on slum prevention where there are still no slums.

Kenya Vision 2030.

Vision 2030 aims to provide the country's population with adequate and decent housing in a sustainable environment as overcrowding, lack of adequate sanitation and pollution in urban slums poses serious health risks to residents. Unplanned informal settlements on the other hand, pose a serious challenge to the socio-economic development of the country. Kenya's urban areas have over the years suffered from poor planning, which has resulted in the proliferation of informal settlements with poor housing and little or no infrastructure services. One of the Vision 2030 flagship project amongst others that

¹² Muraguri in IFRA: pg 121

is the principle vehicle for achieving housing and urbanization is installing physical and social infrastructure in slums in 20 urban areas to formalize slums, permit construction of permanent houses and attract private investment.

The Government's "Big Four Pillars".

The government's main focus for the next five years is on the big four pillars to include food security, affordable housing, manufacturing and affordable healthcare both geared towards economic growth to improve the lives of Kenyans among them those living at informal settlements.

The Government is set to launch construction of 30,000 low cost houses in Nairobi's Eastlands area, as the '*Big Four*' agenda takes shape. The low cost project targets to putting up 5,000 houses in Shauri Moyo, 20,000 houses in Makongeni, 3,000 houses in Starehe and 2,000 units in Park Road estates.¹³

- 5. What are the primary reasons for people living in informal settlements? (eg. rapid urbanization, gap between housing costs and income; loss of ancestral land; internal displacement; immigration; lack of titled land; etc). Please refer to relevant research or reports:**

Poverty and social ostracism: These are the primary causes of informal settlements in most nations. Governments around the world grapple with fiscal deficits and therefore promote and subsidize industrial sectors that can revitalize the economy. Public budgets for the rehabilitation of urban areas ratchet downward, thus impairing the ability of governments to effectively address the problem of informal settlements. In low-income nations riddled with high unemployment, people struggle to put a roof over their heads.¹⁴ The other factors include unemployment, urbanizations, ineffective housing policies, socially constructed constraints to opportunities (class, gender) and macroeconomic policies.¹⁵

- 6. What laws are in place to protect and ensure the rights of residents of informal settlements, before, during and after any upgrading, if it takes place? Have these laws been effective? Please provide references to any important court decisions.**

The Constitution of Kenya provides that every citizen has the right to property¹⁶ and that the people can hold such land as communities¹⁷. The provision ensures that an individual or group of people that acquire land have the right to own this property, if it is acquired

¹³ <https://www.standardmedia.co.ke/business/article/2001277072/uhuru-identifies-estates-to-benefit-from-30-000-low-cost-houses>

¹⁴ United Nations Economic Commission for Europe (UNECE)

¹⁵ Masika, Haan and Baden, 1997.

¹⁶ Article 40 (1) of the Constitution of Kenya 2010.

¹⁷ Article 63(1) Constitution of Kenya, 2010.

lawfully. Individuals living in informal settlements then have a right to have property when acquired through the proper means.

The UN-Habitat has categorized the informal settlements into two categories:

Squatter settlements-these are settlements where land and, or buildings have been occupied without the permission of the owner.

Illegal land developments-these are settlements where initial occupation is legal but where unauthorized land developments have occurred¹⁸.

In order to access land rights, the inhabitants of the informal settlements use such methods as invasion, inheritance and illegal purchase. In Mukuru slums, for example, there exist cartels that deal in land and in order to operate, such groups must receive the blessing of the local administration in the area such as the Chiefs who also receive a cut out of the proceeds of these transactions¹⁹. These groups are also the ones who authorize construction activities to be carried out within the slums and when one fails to seek their authorization before putting up a structure in the area, their structures are usually forcefully demolished.

Village elders in the slums also play a critical role in regulating transactions in land and they are usually tasked with informing the chief on any developments taking place in the area. A person who wants to acquire land can thus either approach the chief or the youth groups in the area and after this, a sale agreement is prepared where the chief or the group officials give consent to the sale.²⁰ Once the rights over land have been granted to a person in a place such as Mukuru slums, the right holder is guaranteed protection of their land rights and this is notwithstanding the fact that they lack full ownership of the land.

7. **Please provide, if applicable, information on international development assistance received for projects and programmes related to informal settlements. To what extent are these projects implemented within a human rights framework and linked to the achievement of the 2030 Agenda targets?**
 - a. The World Bank: Affordable Housing Finance Project (P165034).
 - b. **Kenya Informal Settlement Improvement Project:** This is Government of Kenya in collaboration with the World Bank, Swedish International Development Cooperation Agency (SIDA) and French Agency for Development (AFD) in June, 2011.
8. **Please provide information about successful upgrading or resettlement projects or experiences that could provide good practices elsewhere.**

¹⁸ UN-Habitat (2003). "Designing power: forms and purposes of colonial model neighbourhoods in British Africa." *Habitat International*, 27: 193-2004.

¹⁹ R.J.M. Swynnerton, *A Plan to Intensify the Development of African Agriculture in Kenya*, 1955

²⁰ H.W.O Okoth-Ogendo, *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya* (ACTS Press, African Centre for Technology Studies 1991).

Please also share lessons learned from unsuccessful projects or approaches.

The engagement of the Kenya National Commission on Human Rights on allocation of housing units in Kibera Soweto East Zone ‘A’.

The involvement of the Commission in respect to the process of overseeing allocation of the housing units to the residents of Kibera Soweto East Zone ‘A’ arose pursuant to a High Court order²¹ in respect to Petition No. 304 of 2015 (Nairobi) dated 5th of January 2016. Justice George V. Odunga directed that,

“...the process of the allocation of the units be overseen by the representative of the Kenya National Commission on Human Rights in order to ensure that only those who are genuinely entitled to the benefit of the project reap therefrom”.

The High Court’s decision was brought to the attention of the KNCHR by both the Ministry of Land, Housing and Urban Development (hereinafter referred to as “The Ministry”) requesting for a meeting to deliberate on the implementation of the court directive.

The Kenya National Commission on Human Rights (KNCHR) assumed coordination responsibility, adopted the values and principles of Human Rights Based Approach (HRBA) to develop the court order implementation framework. Guidance was further provided by various relevant principles espoused in the Constitution including the national values and principles of governance in Article 10 (2) where all state organs and persons are obligated to respect the rule of law, participation of the people, human dignity, human rights, equity, social justice, non-discrimination, integrity, transparency and accountability; Article 23 (3) which bestows upon all state organs and public officers the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized, and members of particular ethnic, religious or cultural communities; Article 28 which recognizing the inherent dignity of every person; Article 43(1) which guarantees every person the right to “accessible and adequate housing and to reasonable standards of sanitation”; and Article 47 which protects the right to fair

²¹ David Ngige Tharau (Suing on his own behalf and on behalf of the 128 residents Kibera Soweto East Zone ‘A’ Housing project) vs Principle Secretary Ministry of Lands, Housing and urban Development, The Hon, Attorney General (Respondents) and Soweto East ‘A’ Housing Cooperative (Interested)

administrative action which should be expeditious, efficient, lawful, reasonable and procedurally fair. The KNCHR also relied on the other Constitutional provisions of Articles 53 (children), 54 (persons with disabilities), 56 (youth) and 57(elderly), the Children Act²² and the Persons with Disabilities Act²³. The three months exercise aimed at implementing the High Court order No.304 of 2015 was finally drawing to a close with the ballot and allocation finally done. The KNCHR finally oversaw the allocation of 690 housing units. Of the 690 units, 144 were three roomed units, 546 were two roomed units.²⁴

C. Timelines and submissions

The report will be presented to the 73rd session of the General Assembly in October 2018. The Special Rapporteur on the right to adequate housing welcomes responses and submissions of relevant reports or studies by **15 May 2018**. Submissions can be sent to srhousing@ohchr.org (cc: registry@ohchr.org).

In order to facilitate processing of the information, submissions in English, French or Spanish are appreciated. If not requested otherwise, responses and submissions received will be published on the website of the Special Rapporteur.

Please do not hesitate to contact Gunnar Theissen (gtheissen@ohchr.org)

W2Tel: +41-22-917 9321 at the Office of the United Nations High Commissioner for Human Rights, should you have any further questions.

²² No 8 of 2001 Laws of Kenya

²³ No 14 of 2003 Laws of Kenya

²⁴A report submitted to the high court of Kenya (Nairobi) by the Kenya national commission on human rights on the implementation of petition no. 304 of 2015.- Allocation of housing units in Kibera Soweto East Zone "A" redevelopment project under the Kenya Slum Upgrading Programme.