

**Speaking Points Special Rapporteur on the right to adequate housing,
Mr. Rajagopal**

**Webinar on access of individuals and groups in situation of
vulnerability to social housing**

Kyiv, 8 October 2021

15:30 Kyiv time

Hon'ble Ombudsperson Ms Luidmyla Denisova;

Hon'ble Government Commissioner on the rights of persons with disabilities Ms Tetiana Barantsova

Hon'ble representatives from the Ministry of Social Policy, Ministry for Communities and Territories Development and Ministry for Reintegration of Temporary Occupied Territories

Dear representatives from State agencies, regional and local Governments

Dear Mr Sergiy Kondrachuk Head of the Rivne Regional Council

Dear Ms. Bogner, Head of the UN Human Rights Monitoring Mission in the Ukraine

Dear civil society representatives,

Many thanks for inviting me as the UN Special Rapporteur on the right to adequate housing to this webinar and to the UN Human Rights Monitoring Mission in Ukraine for organizing this very timely and important event. I am very sorry that due to COVID-19 I cannot be in person with you, but I hope that this would be possible in the near future.

First, let me thank you all for your excellent presentations, which allows me to get even from afar, insights into the challenges national authorities and local Governments face in Ukraine to ensure that everyone has access to housing and to realize the right to adequate housing for all without any discrimination.

Many of the issues you have raised are not only concerns in Ukraine, but also in many European and Eastern European Countries, while some issues are unique and more particular for Ukraine.

As most of you probably well know, Ukraine has signed and ratified several binding international human rights treaties in which the right to adequate housing is enshrined. Foremost is the International Covenant on Economic, Social and Cultural Rights. This right is also protected in the Convention on the Rights of Children, CEDAW, the Convention against Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities, which also includes a right of Persons with Disabilities to live independently within the community.

Most importantly, the right to adequate housing, like any other economic and social right, must be enjoyed without any discrimination, as specified in Article 2 of the ICESCR. Social housing is one

important element to ensure that the right to adequate housing can be enjoyed by all individuals and groups present in the territory of a particular State without any discrimination.

Under international human rights law there is no defined list of **protected groups or persons** to which this non-discrimination provision applies: The prohibition of discrimination applies to all possible groups, including those explicitly mentioned in Article 2 of the Covenant, but others identified by the Committee on Social, Economic and Cultural Rights as well. So international human rights law does not only prohibit discrimination in accessing housing based on to race, colour, sex, language, religion, political or other opinion, national or social origin, property and birth, but as well on other status. Other status covers among others, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social status, which includes for example discrimination against persons living in poverty, homelessness, informal settlements.

In addition, I would like to emphasize something very important in discussing social housing: Not only **formal discrimination** is prohibited under international human rights law. Meaning laws, regulations or policies that directly or indirectly discriminate against particular individuals or groups through purpose or effect. States are also obliged to eliminate **substantive discrimination**, which means that States have to ensure a certain level of de facto equality, and ensure at a minimum that all persons can live in a habitable home in peace and security. And by security we mean both legal security, in terms of security of tenure, but physical security as well, an issue, for example, that applies in the case of domestic violence against women and children.

A third but very important point: States are also obliged to take **special or positive measures** to overcome long-standing social exclusion and discrimination. This means for social housing, that particular efforts should be made that social housing is targeted towards those who are most vulnerable, marginalized and excluded from housing, such as persons living in homelessness, Roma, internally displaced persons, one parent households and their children. It is necessary and legitimate to ensure that groups facing most severe housing exclusion, deprivation and discrimination can access, as a matter of priority, social housing.

International human rights law is binding on **States**, starting with national authorities, like national ministries, but it is also binding on all entities exercising public authority or implementing public policies. Often **local and regional Governments** are for example not aware that they have to respect, protect and fulfil international human rights norms as national Government agencies must. This is essential as well for Ukraine, where the responsibility to manage social housing is largely or will be increasingly exercised at sub-national level.

From this follows another very important point: regional and local Governments must be equipped with **adequate resources** to ensure that social housing can be accessed without discrimination, irrespective of where you live in Ukraine. Nor should there be in one municipality a law that makes accessing social housing for a protected group legally or de-facto impossible, while in another municipality this may not be an issue.

I am saying this as I understand that following the 2020 State Policy on Housing and the Action Plan for its implementation, a new Housing Code has been drafted by the Ministry of Communities and Territorial Development, which has not yet been adopted. What I have learned so far is that there are concerns that the draft law, does not provide a clear indication of the percentage of the State budget to be allocated to be used as social housing. A further concern that I share is that there should be clear eligibility criteria developed at the national level, to ensure that it is not left entirely to the discretion to local authorities to define who is eligible for social housing and who is not, or even a definition of what is considered an inadequate housing or living space. In order to ensure reasonable equal living

conditions within a country, it should not be that municipalities that lack adequate tax or other income and often have a much larger percentage of vulnerable persons to care for, are left alone. There must be some form of a re-distributive mechanism between rich and poor regions and adequate central state support for social housing in particular to those municipalities that face the largest challenges. Several countries, like for example Germany, have such a redistributive mechanism which works reasonably well to ensure that disparities between States remain within limits.

You may now ask: What about private home-owners or public-private entities that provide residential, social or community housing - is international human rights law also applicable to them? Indeed. Non-discrimination provisions in international human rights law are also *horizontally applicable*: In other words: the State obligation to eliminate discrimination relates as well to *private actors*. For example, actors in the private housing sector (e.g. private landlords, social or community housing providers, real estate companies or agents and credit providers) may directly or indirectly deny access to housing or mortgages on the basis of race, ethnicity, marital status, disability or sexual orientation or other prohibited grounds.

Let me now mention a few other concerns and issues:

Lack of disaggregated data

Starting with social housing: What I understand so far is that there is a lack of data about the number of people in need of social housing. If one wants to ensure that everyone has access to adequate housing without discrimination, official data is essential. The problem has already been brought to the attention of the Committee on Economic, Social, Cultural Rights, which asked Ukraine to address this issue. The Committee rightly argues that if there is no data or indicators available, it will be impossible to develop a housing policy that would allow for a targeted implementation and ensure that those in need actually can receive access to social housing. During the Covid-19 pandemic, the need for disaggregated data is more critical, as I reminded States in my report last year to the UNGA.

Homelessness

The matter of data applies as well to better statistics on people who are homeless in Ukraine. Data collection is, as far as I know, limited to count the number of people who receive services for homeless persons and even this data is not disaggregated on the basis of gender, age, disability, ethnicity or other characteristics. The local Governments are on the forefront of this: The Law on the Basis of Social Protection of Homeless Persons and Homeless Children, establishes that it is the responsibility of local self-governments and bodies to register homeless persons and to ensure the necessary conditions for observation of their rights and freedoms. The local governments need of course to be adequately equipped to do so.

And although there is, as I understand, a lack of shelter capacity, let me warn against policy approaches that focus on provision of shelters only. Experiences from many countries such as Ireland, USA and others show, that in order to eliminate homelessness as all States have committed to do under SDG target 11.1, expanding shelters alone is not the best sustainable solution and may rather perpetuate homelessness, and in the long run more costly than implementing alternative approaches such as housing First. This has been attempted rather successfully in Finland, which has aimed at providing persons in situation of homelessness access to an individual housing unit, accompanied by social, health and other services as required by the particular individual or family as long as necessary.

A shelter is an important emergency response, but a shelter is not an adequate and sustainable solution to realize the right to adequate housing. In an ideal world nobody should stay longer than several days in a shelter before getting access to a housing unit that provides privacy and security of tenure. Housing

First is based on this foundation, and has shown that if properly implemented, it can be less expensive and has a high success rate. The probability that persons in situation of homelessness remain housed even after three years, is above 80 percent and this applies also for persons with multiple social or health needs, addictions etc., Costs for implementing such policies are much lower than building or maintaining an oversized shelter system that is not as successful, does not guarantee the right to adequate housing in all its dimensions, and on top much of that, more expensive. Of course housing first only works if you have affordable housing actually available, along with tools for increasing the supply of land and finance. But acquiring, construction and maintaining decent and affordable housing units is in the long run less expensive than building, maintaining, running and paying for staff that would run an oversized shelter system without actually reducing homelessness.

Lack of access of Roma to safe and adequate housing

In its concluding observations on Ukraine, the Committee on the Elimination of All Forms of Racial Discrimination (CERD)¹ has repeatedly pointed out that the Government had not provided recent, reliable and comprehensive data, either on economic and social indicators or indicators of ethnic origin, that would enable the Committee to better evaluate the enjoyment of economic, social and cultural rights by various groups living in its territory, including minorities (para. 5). CERD also pointed out the lack of access to housing of Roma people who suffer from the effects of poverty (para. 21) and the Committee on Economic Social and Cultural Rights has recommended that Ukraine adopt a coherent approach to addressing access to housing and employment in a coordinated manner, given the importance of housing for gaining and retaining employment, particularly in the case of internally displaced persons and Roma (para. 22).

I want to reiterate here that not only in Ukraine, but in many other European countries, housing exclusion and discrimination against Roma people is one of my most profound concerns. Hardly any other group in Europe compares to the suffering of the Roma. I have received much concerning information on the status of Roma in Europe in response to my call for submissions for my forthcoming thematic report on housing discrimination.

I welcome in this respect that most recently new Roma Strategy until 2030 has been adopted, that envisages facilitation in resolving the issue of housing for Roma people, their participation in programmes, including regional, preferential lending for the purchase and construction of housing, assistance in legalization of irregular or unregistered real estate etc.

Turning to social housing: If access to social housing is extended on the basis of financial need or other criteria on a strictly non-discriminatory basis, there would not be as much difference in terms of the housing situation of low income persons that consider themselves Ukrainian, Russian, European or persons that consider themselves to belong to the Roma community. And of course given that Roma are in Ukraine are a historically disadvantaged group, it is essential that special measures and efforts are made to ensure that Roma enjoy good housing, security of tenure etc comparable to other population groups.

Persons with disabilities

Let me conclude by voicing some concern on the situation of persons with disabilities. Due to the lack of community based services, and accessible social housing for persons with disabilities, they are often

¹ CERD, Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine, CERD/C/UKR/CO/22-23, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/UKR/CO/22-23&Lang=En

placed in long-term care facilities, which contradicts international human rights standards, and this has been criticized by UN treaty bodies.

Although there are norms that oblige developers to construct accessible buildings, in practice these norms are often not observed.² As a result, Persons with Disabilities cannot find accessible housing either on the market for rent or purchase, or such housing is not affordable to them.³ Hence, many Persons with Disabilities are also often forced to live with their parents, even in adulthood, or even in institutions, and cannot fully enjoy their right to privacy and family life, and the right to live independently within the community as enshrined in article 19 of the Convention on the rights to persons with disabilities.

The **Committee on the Rights of Persons with Disabilities (CRPD)**,⁴ has noted since 2015 with concern that the Government continues to practice the institutionalization of persons with disabilities and provides very limited support, especially to persons with intellectual and psychosocial disabilities, to enable them to live independently in their respective communities (para 36).

There is an obvious link to the issue of social housing and homelessness: There is a severe lack of social housing for persons with intellectual and psychosocial disabilities. When such persons are discharged in the course of the ongoing healthcare reform in Ukraine from psychiatric hospitals where they have been living for years or decades, they do not have access to any housing.

Although the national law establishes a state obligation to improve living conditions of people with psychological problems, the implementation of this provision lies within the responsibility of the self-government bodies. At the same time, local authorities can very rarely provide them with housing or social services due to limited budget resources, and as a result, their discharge can result in their homelessness. If deinstitutionalization results in homelessness, the right to adequate housing is violated in a severe manner.

Dear representatives and participants,

Let me end on a rather positive note. The fact that we all sit here together, even if regrettably only in virtual format for me, is a very good sign. I know that I speak here to Government representatives, CSOs and other who want to change things, who I am sure at least share some of my concerns and are most eager to work together to overcome some of these issues. Problems that of course cannot be solved overnight and require a long term effort and commitment.

I sincerely believe as well that working together, whether one represents national, regional or local Government, civil society or any other entity, is essential to overcome such challenges and design human rights based responses and policies, and work together when implementing them. An active and ongoing participation of those who are affected by social exclusion is essential to make change, ensure local ownership and in the end, root out marginalization, poverty and housing discrimination.

² State Construction Norms 2.2-40:2018. Inclusivity of buildings and construction. Available at (Ukr.): https://dbn.co.ua/load/normativy/dbn/dbn_v_2_2_40/1-1-0-1832

³ See Alternative Report on Implementation by Ukraine of the Convention of the Rights of People with Disabilities, Commissioner of Verkhovna Rada of Ukraine on Human Rights, 2015, available at (Rus): <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=5>; Alternative Report on Implementation by Ukraine of the Convention of the Rights of People with Disabilities, Commissioner of Verkhovna Rada of Ukraine on Human Rights, 2015, available at (Ukr): <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=1>; Annual Report of Commissioner of Verkhovna Rada of Ukraine on Human Rights on Human Rights Situation in Ukraine, 2020, par. 1.2.1, available at <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=1>; Draft of the National No-Barrier Strategy approved this year <https://www.minregion.gov.ua/wp-content/uploads/2021/03/nacjonalna-strategiya.docx>

⁴ CRPD, Concluding observations on the initial report of Ukraine, CRPD/C/UKR/CO/1, 2 October 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/226/49/PDF/G1522649.pdf?OpenElement>

If I can contribute in whatever limited form to address the concerns that I and other UN human rights mechanisms have identified, I am most willing to play my part.

Criticizing that something is not ideal is often much easier than actually working out alternatives. However, I see this more as a beginning and not as an end. Therefore, I would like to thank everyone here again for their honest and frank assessments and for their commitment to make sure that the right to adequate housing is not a right on paper, but a right that can be enjoyed in practice by everyone without discrimination.

Only together we can make sure that nobody is left behind. Many thanks for your attention.