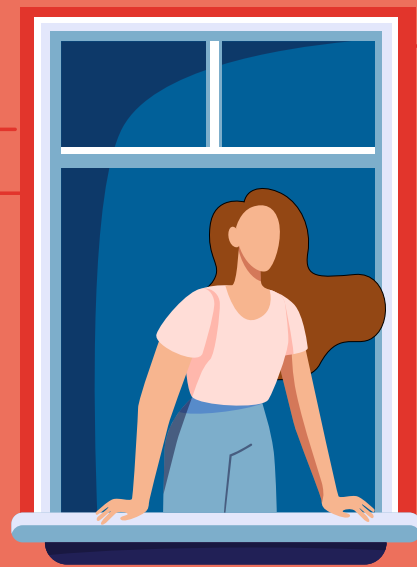


THE RIGHT TO
HOUSING AS A HUMAN RIGHT

A Guide for Civil Society



Dr Jessie Hohmann

AUGUST 2023

THE HUMAN RIGHT TO **HOUSING** IS THE RIGHT...



...FOR EACH PERSON TO A PLACE TO LIVE IN PEACE, DIGNITY AND SECURITY

1 What is the Right to Housing?

- A human right to a place to live in peace, dignity and security
- A right to adequate housing – not mere shelter
- Adequate housing is made up of seven elements:
 - 1 Legal Security of Tenure
 - 2 Availability of Services, Materials, Facilities and infrastructure
 - 3 Affordability
 - 4 Habitability – meets basic standards of quality and safety
 - 5 Accessibility – for specific groups such as women and older persons
 - 6 Location – that housing is seen in relation to other opportunities such as work and school, and embedded in community
 - 7 Cultural Adequacy
- Part of a broader right to an adequate standard of living¹

¹ The Right to Housing is included in Art 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

UNGA Res 2200A (XXI) (adopted 16 Dec 1966, entered into force 3 Jan 1976). For the content of the right to housing specifically see UN Committee on Economic, Social and Cultural Rights, General Comment no 4 (1991) E/1992/23.

2 What does the right require from the government?

The Australian Government (Federal, State and Local) has obligations to respect, protect and fulfil the right.²

There are immediate and progressive obligations

Immediate Obligations: what must the government do right now?

- Ensure the minimum core of each element of the right for every person
- Remove all discriminatory laws and policies
- Take all steps that don't have major budgetary implications – like regulating the construction and real estate industries
- This includes fulfilling 'negative obligations' and some 'positive obligations'

Progressive Obligations: what steps toward fulfilling the right to housing should the government be taking?

- Take any further steps to fulfil the right that the state could not afford immediately
- Not take any backward steps – we should be moving toward full realisation of the right for everyone
- Backward steps are only justified in extreme circumstances (civil war, severe economic crisis)

The UN has created guidelines for implementing the right to housing:³ these practical steps and underlying principles can be used by governments – and those who want to hold them to account – to implement and comply with the right.

Immediate Obligations for the Right to Housing and Ending Homelessness

Homelessness represents a violation of the core of the right to housing. Those who are homeless do not have any of the 7 elements of adequate housing, at even a minimum level. This means that the government has an immediate obligation to end homelessness. A rich country like Australia does not have a justification for delaying measures to end homelessness: those excuses are only available when states lack the financial or technical means to fulfil the right in the short term. Australia's failure to end homelessness is based on policy choices, not necessity.

What are negative and positive obligations?

All human rights impose a mix of negative and positive obligations on governments. Negative obligations are any obligations that require the government not to prevent people from fulfilling their own rights. Making laws that prevent people from realising their rights is a violation of negative obligations. For example, laws and policies that allow landlords to discriminate against people because they have a history of homelessness would breach negative obligations. Positive obligations require the state to act when a person cannot fulfil a human right on their own. An example is creating adequate housing subsidies for those who cannot afford safe and dignified housing.

² Australia ratified the Convention in 1975. Doing so means it has accepted the obligations imposed by the Convention.

³ UN HRC 'Guidelines for Implementation of the Right to Adequate Housing' (2019) A/HRC/43/43.

See also <https://www.ohchr.org/en/special-procedures/sr-housing/guidelines-implementation-right-adequate-housing>



3 Why is the right to housing a good option in housing advocacy and activism?

- It points to the ultimate responsibility of government for housing people. The government cannot shift the blame to landlords or real estate agents, or the ‘state of the economy’ because ultimately the responsibility for helping people realise the right lies with the government.
- It focuses on people’s need for housing as a safe, secure place to live, not as an investment or for wealth generation.
- It helps move away from frames of ‘passive recipient’ toward active or empowered ‘right holder.’
- A lack of adequate, safe and secure housing impacts on other rights – rights to education, to health, to family life, privacy and more. Fulfilling a right to housing fulfils other human rights and needs.

What are the limitations of the right to housing?

- Its relatively unknown that Australians have a human right to housing, and that their government has obligations for ensuring it.
- The hard content of the right isn’t very well understood – many people think that it imposes only future obligations.
- The right can’t be claimed in a domestic court, and the government has not made it possible for Australians to make an individual complaint to the UN in the case of violation.⁴

⁴ The ability to approach the UN CESCR if your rights under the Covenant are violated turns on the government ratifying the Optional Protocol to the Covenant. 26 Countries have ratified the Optional Protocol, including Finland, Spain, France, Argentina, Armenia and Honduras.

4 The need to reframe the discussion around housing as a right in Australia:

WHY THE RIGHT TO HOUSING IS A STRATEGY WORTH PURSUING

The most powerful way to hold the government to account for the right to adequate housing is for everyone who is entitled to it to demand and claim it. We need to mobilise around the right.

Despite the fact that the right can't be enforced in an Australian court at present, it can inform the core principles of housing policy and housing laws. These can be structured around the seven elements, and around the commitment to housing as a place for each person to live in peace, dignity and security. We should be asking for, and expecting, that housing policy conforms to these international obligations. For example:

- No grounds evictions in NSW are a violation of the element of legal *security of tenure*.
- Access to affordable energy for cooking, heating, hot water and air conditioning is linked to the requirement for *availability of services, materials, facilities and infrastructure*.
- Those who have to sacrifice other necessities such as food, clothing, transport, or energy to pay the costs of housing are not in *affordable housing*.
- Housing should be *accessible* to specific groups such as women, people with a disability, and older persons. This may require the government to legislate that housing is appropriate for those with additional needs and requiring mobility assistance.

Example: the 'DALO' – an Enforceable Right to Housing in France

In 2010, France introduced an enforceable right to housing: the DALO. The backdrop to the new legislation was sustained activism and media attention around issues of homelessness and substandard housing in France, including fires in Paris' low-cost residential hotels in 2005 which resulted in residents' tragic deaths; and tent cities on the banks of the Seine. A coalition of over 50 civil society organizations pushed for an enforceable right. The French Constitution includes a right to housing, but this right could not be enforced – similar to Australia's international obligations under ICESCR. It only required 'best efforts' by the authorities, and effectively allowed them to avoid responsibility for housing. The DALO created an enforceable right to social housing for those in priority categories, later extended to all applicants who had been waiting for social housing for a substantial period. The law also aimed to drive construction of suitable, affordable housing. Civil society working together with activists, the homeless, and with sympathetic figures in government and opposition were key to the success of the reform (references Loison, 2007; Clauzier, 2017).

4 The need to reframe the discussion around housing as a right in Australia:



WHY THE RIGHT TO HOUSING IS A STRATEGY WORTH PURSUING

Further examples where housing policy should comply with international obligations:

- Housing that is mouldy, damp, unsafe or overcrowded, or where people are experiencing violence in the home, does not meet the basic standards of *habitability* which ensure quality and safety.
- Houses should be *located* away from pollution and health risks (which include toxic sites, sites prone to flooding or fire) and must not be isolated from communities, work, and schools.
- Houses should be *culturally adequate* so they are safe and suitable for different forms of families including extended family or kin groups.

Mortgage Crisis, Eviction and Social Mobilisation for the Right to Housing in Spain

In 2008, when the 'global financial crisis' hit, Spain was struck by a housing crisis. Between 2009 and 2020, there were over 1 million evictions across the country, as banks foreclosed on unsustainable mortgages. The backdrop to the crisis was a history of government favouring homeownership at the expense other housing options, and more recently rapid gentrification and the takeover of housing in popular tourist destinations as Airbnb's, a background Spain shares with Australia.

For those evicted through foreclosure, there was nowhere to go. The organisation PAH (Platform for People Affected by Mortgages) has been successful in putting the right to housing in Spain on the agenda from the local, to the international level. PAH organises at the grassroots to contest foreclosure and rent increases. It combined direct action and protests with negotiations with banks and politicians, and with petitions and legal action.

At the same time, PAH sought to educate people and change the debate around housing in Spain from one dominated by the power and dubious practices of banks and lending institutions and their right to profit from housing, to one where housing is considered a right for all.

Key to the organisation's success was its multiple modes of action, and its ability to appeal to a broad range of Spanish people impacted by high mortgages, shrinking wages, privatization and insecurity.

PAH has not achieved all its demands, however it has prevented thousands of evictions and it has placed the right to housing at the core of the political agenda.

(References: Tattersall and Iveson 2022; Martinez 2019).



5 CALL TO ACTION: Using the Right to Housing in your work

- Use the language of housing as a right for everyone – a place to live in peace, dignity and security – in your work on housing.
 - In submissions to Parliamentary Enquiries, Royal Commissions, to local council, and other domestic processes
 - In your media releases and public statements
 - In any political protest you engage in

Hold your local MP / local government to account for the right:

- Ask what is your government doing to respect, protect and fulfil the right to housing?
- Send your local MP a 'report card' on their performance for the right to housing:
- Respond to the government's official statements in international fora – like before the UN – and contest them: is the government really ensuring an adequate standard of living for every person, including safe and dignified housing?
- Participate in the UN monitoring of government action through civil society reporting.
- Ask the UN to come to you: invite a UN Special Rapporteur or independent expert to make a special visit to Australia to see the situation on the ground. Guidelines and a list of mandates are here:
<https://www.ohchr.org/en/special-procedures-human-rights-council#:~:text=They%20are%20non%2Dpaid%20and,Undertake%20country%20visits>

Holding the government to account through the UN Process

In 2022, the Mercy Foundation appeared before the UN Committee on Economic, Social and Cultural Rights in a special meeting for civil society to inform the Committee of the major issues facing the realisation of housing as a human right in Australia. The Mercy Foundation prepared a list of issues that the Committee should ask Australia to respond to when it prepared its report. Based on its engagement with civil society and the Australian Human Rights Commission (as our National human rights

institution) the Committee drafted an official 'list of issues prior to reporting' (LOIPR). When the government reports back to the Committee on its human rights performance, these are the questions it will be required to answer. The Mercy Foundation's input into the process ensured that the list of issues focuses squarely on the impacts of the housing crisis in Australia, with a strong focus on housing inequality, housing affordability, and the rights of women, children, and vulnerable groups.



RESOURCES AND REFERENCES:

United Nations Standards and Guidelines on the Right to Housing:

ICESCR UNGA Res 2200A (XXI) (adopted 16 Dec 1966, entered into force 3 Jan 1976)

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

UN CESCR General Comment No 4: (1991) E/1992/23

UN CESCR General Comment No 7: (1997) E/1998/22 Annex IV.

UN HRC 'Guidelines for Implementation of the Right to Adequate Housing' (2019) A/HRC/43/43. See also

[See also https://www.ohchr.org/en/special-procedures/sr-housing/guidelines-implementation-right-adequate-housing](https://www.ohchr.org/en/special-procedures/sr-housing/guidelines-implementation-right-adequate-housing)

Advocates' Guides to the Right to Housing

Eric Tars, 'Housing as a Human Right – 2022 Advocate's Guide' (National Homelessness Law Center, 2022) at

https://nlihc.org/sites/default/files/2022-03/2022AG_1-07_Housing-Human-Right.pdf

'Implementing the Right to Adequate Housing: A Guide for Local Government and Civil Society'

https://www.uclg-cisdg.org/sites/default/files/GuideSubnationalReport_EN_0.pdf

New Zealand Human Rights Commission, 'Framework Guidelines on the right to a Decent Home in Aotearoa' (2021)

<https://apo.org.au/sites/default/files/resource-files/2021-08/apo-nid313426.pdf>

References and Key Research Sources

Clauzier, J 'the DALO law: a step towards making the right to housing a reality' Housing Rights Watch (July 6 2017) at

<https://www.housingrightswatch.org/content/dalo-law-step-towards-making-right-housing-reality>

Hohmann, J A [Right to Housing for the Victorian Charter of Human Rights and Responsibilities? Assessing Potential Models under the International Covenant on Economic, Social and Cultural Rights; the European Social Charter; and the South African Constitution](#) (2022) 48(2) Monash University Law Review.

Hohmann J *The Right to Housing: Law, Concepts, Possibilities* (2013 Hart/Bloomsbury).

Loison, M 'The Implementation of an Enforceable Right to Housing in France' (2007) 1 European Journal of Homelessness 185.

Martinez, M.A., 'Bitter Wins or a Long-Distance Race? Social and Political Outcomes of the Spanish Housing Movement (2019) 34(10) Housing Studies 15888-1611.

Understanding the UN Simplified Reporting Procedure

<https://www.togetherscotland.org.uk/about-childrens-rights/un-convention-on-the-rights-of-the-child/uncrc-monitoring/> and

https://www.childrensrights.ie/sites/default/files/submissions_reports/files/Members%20Briefing%20Document.pdf

(These are good guides to reporting using the simplified reporting process. Although these guides discuss reporting under the Convention on the Rights of the Child, the process is the same for the ICESCR).