

The human right to adequate housing in *Law 12/2023, of May 24, for the right to housing in Spain.*

Comparison between the text finally approved and the recommendations made by the United Nations.¹

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I. INTRODUCTION

A few months ago, we shared a brief analysis on the Housing Rights Watch website of the Communication that the *Special Rapporteurs of the United Nations (UN) for adequate housing and on extreme poverty and human rights* made to the Spanish Government in reference to its right to housing bill.² The main conclusion drawn was that a long-awaited regulation (the first in Spanish democracy at state level) has been achieved, which does not reflect what should have been essential in the application of international human rights law ratified by Spain: organising and proposing public housing policies with a human rights approach (HRBA).

We want to emphasise that the HRBA³ is a conceptual framework for the human development process that is normatively based on international human rights standards and operationally aimed at promoting and protecting them. It aims to analyse the inequalities that lie at the heart of development problems, and to redress discriminatory practices and unfair distributions of power that impede development and often result in groups of people being left behind. Under the HRBA, development plans, policies, and processes are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political, and social rights, and the right to development. HRBA requires human rights principles (universality, indivisibility, equality and non-discrimination, participation, accountability) with a focus on developing the capacities of 'duty-bearers' to fulfil their obligations and 'rights-holders' to claim their human rights.⁴

After intense and exhaustive parliamentary negotiations, and within the amendments approved by the Spanish Parliament, the majority of recommendations made by the United Nations have not been included, and therefore what was an initial conclusion before the text was approved is now a final assertion: *Spain, a law on the right to housing without a human rights approach*.

In the following section, we provide a recommendation-by-recommendation comparison of the articles of the draft and the text that was finally adopted. We have divided the areas of

¹ In January 2023, the mandates of the United Nations Special Rapporteurs for Adequate Housing and on Extreme Poverty and Human Rights made a communication to the Spanish State with concrete recommendations to the bill for the right to housing. Ref: OL ESP 1/2023

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27820>

² Spain: A draft law on the right to housing without a human rights approach:

<https://www.housingrightswatch.org/content/spain-draft-law-right-housing-without-human-rights-approach>

³ Definition of the United Nations: <https://unsdg.un.org/es/2030-agenda/universal-values/human-rights-based-approach>

⁴ Note of the Author: for further elaboration regarding the Right to Housing with HRBO: Mazzucatto, M. y Farha L. (2023) "**The right to housing. A mission-oriented and human rights-based approach**"

https://www.ucl.ac.uk/bartlett/publicpurpose/sites/bartlett_public_purpose/files/right_to_housing_missions_final_76.pdf

recommendations made by the UN into seven tables to facilitate understanding and speed up the visualisation of this review.

II. COMPARISON OF THE RAPORTEURS' PROPOSALS AND THEIR REFLECTION IN THE FINAL TEXT APPROVED BY THE SPANISH PARLIAMENT

Table 1: Protection of the right to housing as a human right

Article	Recommendation UN	Legislative text	Result
1	The purpose of the law is to regulate... constitutional and international human rights obligations related to housing	The purpose of this law is to regulate, ... in the fulfilment of constitutional duties relating to housing and, in particular, the right to access and enjoyment of decent and adequate housing	Not included
8	<p>8 (4) No person shall be evicted, leaving him or her homeless or vulnerable to violation of other human rights</p> <p>8 (5) No person shall live in emergency or temporary accommodation longer than is strictly necessary until he or she can have access to decent and suitable housing for permanent residential use. The competent authorities may not rely on the provision of temporary or emergency accommodation where they have vacant dwellings for residential use or can easily make it available to them.</p>	<p>a) The enjoyment of decent and adequate housing, under the conditions established by this Act, whether under ownership, lease, transfer of use or any other legal tenure.</p> <p>b) To have access to the information available to public administrations on public housing programmes and the conditions of access to them, in formats accessible to persons with disabilities, as well as on the benefits, aids and public resources available to guarantee access to housing for persons and families in vulnerable situations.</p> <p>c) Apply for registration in the registers of applicants for protected housing, established for this purpose by the public administrations competent in the matter, and in the different programmes, benefits, aids, and public resources for access to housing, depending on their social and economic situation, as well as their personal and family circumstances.</p> <p>d) Participation in public housing programmes and access to benefits, aid, and public resources for housing, under the terms and conditions established by their regulatory provisions.</p>	<p>Not included</p> <p>Not included</p>
	1. The public authorities shall protect, respect and fulfil the right of all persons to housing in	1. With the objective of promoting the effective exercise of the right of all citizens to the enjoyment of decent and adequate housing, and	Not included

12	<p>accordance with the provisions of (...)</p> <p>3. The State, in the exercise of its powers to ensure the equality of all persons in the exercise of the right to housing (...)</p>	<p>within the scope of its competences (...)</p> <p>3. The action of the State in this matter, within the scope of its competences, must prioritise the attention and application of aid programs to those individuals, families and coexistence units that are in the situations of greatest social and economic vulnerability identified by social services, and in housing emergency.</p>	<p>Partially included</p> <p>In the text of the bill: "equality of all Spaniards"</p>
24	<p>2. (d) measures to promote access to housing under public protection</p>	<p>2. d) The construction and rehabilitation of housing under public protection</p>	<p>Not included</p>

Table 2: Principle of equality and non-discrimination in housing

Article	Recommendation UN	Legislative text	Result
6.1	<p>Everyone has the right to adequate housing without discrimination, regardless of nationality, whether they are minors or adults, or whether they have legal residence. No one may be discriminated against on the basis of birth, racial or ethnic origin, sex, religion, belief or opinion, age, disability, sexual orientation or identity, gender expression, disease or health condition, serological status and/or genetic predisposition to any of the following diseases and disorders, language, socio-economic status or any other personal or social other personal or social condition or circumstance. [Repeats the wording of Article 2 of Law 15/2022.]</p>	<p>According to the principle of equality and non-discrimination in housing, all persons have the right to use and enjoy decent and adequate housing, complying with the legal and contractual requirements established by the laws and regulations in force, without suffering discrimination, exclusion, harassment or violence of any kind.</p>	<p>Not included</p>
6.2	<p>The prohibition of discrimination in housing covers all forms of discrimination in the public and private sectors, including direct and indirect discrimination in relation to access to, supply and subsequent use of housing and related services, as provided for in the Comprehensive Equal Treatment Act and the Non-Discrimination Act. (Based on the wording of Articles 1-3 and 20 of Law 15/2022).</p>		

<p>6.3</p>	<p>Everyone has the right to the use and enjoyment of decent and adequate housing, in accordance with the legal and contractual requirements established by the laws and regulations in force, without being subjected to harassment, housing abuse or violence of any kind.</p> <p>Housing harassment is understood as any act or omission, with abuse of rights, aimed at interfering with a person's peaceful enjoyment of their home and creating a hostile environment, whether material, personal or social, with the ultimate aim of forcing them to make an undesirable decision regarding the right that protects them to the use and enjoyment of housing.</p> <p>b. Abuse of housing is understood as the operation of sale, lease or alienation by any title, total or partial, of precarious, overcrowded housing and any form of illegal housing or property / patrimony over which there is no legitimate right that empowers the effect or representation of it.</p> <p>The competent administrations shall ensure compliance with the provisions of paragraphs 1 to 3 and shall adopt the necessary protective measures to prevent the following specific situations from affecting the use and enjoyment of housing:</p> <p>a. Direct and indirect discrimination in relation to housing, as provided for in the Act on Equal Treatment and Non-Discrimination, b. Harassment in relation to housing, c. Abuse of housing.</p>	<p>2. The competent administrations shall ensure compliance with the provisions of paragraph 1, adopting the necessary protection measures to prevent and deal specifically with the following situations affecting the use and enjoyment of housing:</p> <p>(a) Direct discrimination, which occurs when a person or group of persons is treated, in some respect relating to housing, differently from that received by another person in a similar situation, provided that the difference in treatment does not have a legitimate cause that objectively and reasonably justifies it, and the means used are proportionate; adequate and necessary.</p> <p>(b) Indirect discrimination, which occurs when an apparently neutral normative provision, plan, contractual or contractual clause, individual agreement, unilateral decision, criterion, or practice puts one person or group of persons at a particular disadvantage vis-à-vis others in the exercise of the right to housing.</p> <p>There is no indirect discrimination if the action has a legitimate aim which objectively and reasonably justifies it and the means used to achieve that aim are proportionate, appropriate, and necessary.</p> <p>c) Real estate harassment, understood as any action or omission with abuse of rights with the aim of disturbing any person in the peaceful use of their home and creating a hostile environment, whether</p>	<p>It was already in text 6.2 Different wording was proposed.</p>
<p>6.4</p>			

		material, personal or social, with the ultimate purpose of forcing them to adopt an unwanted decision on the right that protects them to use and enjoy housing. d) The operations of sale, lease, or assignment by any title, complete or partial, for the residence of a substandard dwelling, an overcrowded dwelling, and any form of illegal accommodation, or with respect to goods over which there is no legitimate right that empowers the effect or the representation thereof.	It was already in text 6.2 Different wording was proposed.
2. (n)	Include the reform of Article 20 of the Land and Urban Rehabilitation Law the percentage of land dedicated to protected housing in urbanised areas from 10 per cent to 30 per cent, or at levels similar to those of any new agricultural land to be subject to urban development, so that social or protected housing is increased in all areas and geographically distributed in cities and human settlements of the most equitable.	Adopt measures to identify and prevent speculative retention, residential segregation, processes of overoccupancy, serious residential exclusion such as shanty towns or homelessness and the degradation of the conditions of the existing housing stock and its surroundings, to allow the development of its residential function and the improvement of the quality of life.	Included in part Fourth final provision. Modification of the consolidated text of the Land Law and Urban Rehabilitation, approved by Royal Legislative Decree 7/2015, of October 30.40% rural land 20 % urbanised land (Possibility of reduction and exemption)

Table 3: **People in situations of special vulnerability and homelessness**

Article	Recommendation UN	Legislative text	Result
	Housing policies shall take particular account of people living in highly vulnerable and segregated settlements and neighbourhoods, whether in urban or rural areas, individuals and families who are homeless, homeless,	Housing policies shall take particular account of individuals, families and cohabitation units living in highly vulnerable and segregated settlements and	

14.1	inadequately or insecurely housed or at risk of homelessness, refugees, asylum seekers, migrants and persons in need of international protection, women and children exposed to family or gender-based violence, victims of human trafficking, persons with physical or mental disabilities, persons with substance addiction and persons released from prisons or detention centres, hospitals, reception institutions, childcare institutions or foster care.	neighbourhoods, whether in urban and rural settings, homeless people, persons with disabilities, children at risk of poverty or social exclusion, to minors in care who cease to be wards and to any other vulnerable persons defined at the time of the action.	Not included
14.4	Persons at risk of homelessness or homelessness who do not have sufficient economic means or capacities to secure housing for themselves and their dependants, regardless of their regular administrative status, have the right to access, upon request, housing that meets minimum standards of adequacy, habitability and privacy.		Not included
14.5	The competent authority to which an application for housing has been submitted under Article 4 is obliged to respond to such applications as soon as possible and at least within two months, by providing (a) social housing, or (b) housing managed by public, social or health services or social welfare organisations on behalf of the State, or (c) the provision of housing allowances enabling the person concerned and his or her dependents to access housing on the private market within or in the vicinity of the local community where the application has been submitted.		Not included
14.6	If the competent authority fails to provide housing or housing allowances as specified in subparagraphs 4 and 5, the competent administrative court may, at the request of the applicant, order the competent authority to provide access to such housing. Where such housing is not available, it shall determine the level of housing allowance to be paid by the competent authority to the applicant as specified in Article 14(5)(c) until the applicant and her dependents have had access to housing as specified in Article 14(5)(a) or (b) or are no longer eligible for support because they are in possession of sufficient means to provide housing themselves.		Not included

14.7	Public interest organisations and social welfare organisations may submit housing applications on behalf of homeless or homeless persons and initiate, if necessary, proceedings on their behalf before administrative courts.		Not included
14.8	The State may make additional regulations as appropriate.		Not included

Table 4: **Justiciability of the human right to adequate housing**

Article	Recommendation UN	Legislative text	Result
14.7	Public interest organisations and social welfare organisations may submit housing applications on behalf of homeless or homeless persons and initiate, if necessary, proceedings on their behalf before administrative courts.		Not included
14.8	The State may make additional regulations as appropriate.		Not included

Table 5: **Protection against forced evictions**

Article	Recommendation UN	Legislative text	Result
441.6 LEC ⁵	Require competent administrations to provide adequate alternative housing to the person concerned, including in situations where the vulnerability of the tenant concerned has been demonstrated.		Not included
	Include a prohibition on evicting a person who will become homeless.		Not included
	Provide for courts to order competent authorities to provide financial assistance to affected persons to cover all or part of outstanding mortgage, rent or utility costs, with the aim of keeping vulnerable tenants in the dwelling they occupy.		Not included
	Include an obligation for the courts to ensure that an eviction order does not create serious difficulties or risks to the rights of the person or persons concerned.		Not included
	1. Before issuing any eviction order, the judge shall ascertain that the person(s) concerned:		Not included

⁵ Ley de Emjuiciamiento Civil. Civil Procedures Act

<p>General articles of the LEC</p>	<p>(a) have the financial means and also the ability to access alternative suitable housing in reasonable proximity; b) are not in a situation of economic, social or other vulnerability; (c) they will not be homeless as a result of an eviction; (d) shall not be exposed to any risk to their life or serious risk to their mental or physical health as a result of the eviction; (e) shall not be at risk of family separation, in particular separation of children and adolescents from their parents or guardians.</p> <p>2. In making its decision, the Court shall take into account the particular circumstances of the person and persons concerned, including their age, mental and physical health, any possible disability, child and family protection concerns or any other relevant protection concerns.</p> <p>3. Where a household is in a situation of economic, social or other vulnerability, the Court should establish that the affected household has been offered alternative housing or accommodation that is adequate, affordable, accessible, suitable and in a reasonable location by the owner of the dwelling, the relevant public administration, or any other housing provision. The court must also allow sufficient time for the household concerned to relocate to the offered alternative housing unit before an eviction order can be enforced.</p> <p>4. The court may suspend an eviction for a period of more than 2 or 4 months if it considers that it is obliged to do so under the previous paragraphs of this article. The suspension and its duration shall be sufficient to ensure that the household concerned has access to alternative housing or, as the case may be, sufficient income to remain in the housing unit concerned.</p> <p>5. A suspension of eviction may also be granted for more than two or four months, as the case may be, where the household subject to the eviction procedure is bereaved by the loss of a member of the household, or is in the process of reconstitution following separation or divorce, or is in a similar situation of personal or family emergency.</p> <p>6. The Court shall base its decisions on the principles of reasonableness and proportionality, taking into account the legitimate interests, rights and safeguards of all parties concerned, including the owner of the property, in particular when the latter</p>	<p>It was in the LEC prior to the new Law</p> <p>Not included Not included</p> <p>Not included</p>
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	<p>has requested eviction in order to ensure the recovery of the housing unit for his own use as his principal residence or for the use of a dependent family member as his principal residence.</p> <p>7. If the court decides to suspend an eviction for more than two months, it may order, for each additional month of suspension of the eviction, that the competent local administration pay the tenant a housing allowance to enable him to pay his housing costs or compensation to the owner of the dwelling, provided that the household is in a situation of economic vulnerability and cannot fully cover its housing costs. If the household in question is in receipt of public social transfers, the court may order that the part intended to cover housing costs be paid directly by the State to the owner of the dwelling until the household in question vacates the dwelling or is able to pay its rent and housing costs. Housing subsidies paid directly to the owner of the dwelling shall be limited to compensating the owner for the loss of monthly income up to the average rent of twenty-one dwellings of comparable size and quality in the area of the dwelling in question.</p> <p>8. Any eviction or suspension order shall state the reasons for its execution or suspension. Eviction orders shall specify the date and time of their execution. Evictions may only take place during the day between 8:00 and 18:00. Sufficient time must be allowed between the eviction order and its execution to allow all interested parties to leave the property with their belongings. This period will be at least 14 days, except in cases where immediate eviction is necessary to protect the tenant or owner from serious harm.</p> <p>9. The Ministry of Justice and the Ministry of Transport, Mobility and Urban Agenda shall regularly collect and publish statistics on eviction proceedings initiated, including information on the reason(s) for eviction, the number of households and persons affected, including household composition, and on the demographics and social context of affected households and persons. The statistics shall also include information on the number of evictions that were prevented, suspended, or carried out, the reasons for their suspension or total prevention and what measures have been taken by the relevant public authorities to prevent eviction.</p>	<p>Article 440.5 LEC (new paragraph): "In all cases of eviction and in all decrees or judicial resolutions that have as their object the signaling of the launch, regardless of whether it has been attempted to be carried out previously, the exact day and time on which it will take place must be included."</p>	<p>Included partially</p> <p>Included partially</p> <p>Not included</p>
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Table 6: **Improving housing affordability and accessibility**

Article	Recommendation UN	Legislative text	Result
16.3 and 17.5	<p>Across the country, the stock of social housing that compromises protected and incentivised affordable housing will progressively expand to around 15% of the total housing stock by 2040. To achieve this objective, the competent authorities will conduct a comprehensive assessment of the needs for such social housing at state, regional and local levels that will be repeated every 5 years, establishing specific goals where social housing should be increased. If the assessment indicates a shortage of social housing in a particular autonomous community or municipality, the competent authorities shall submit a plan on how the social housing stock will be expanded through the acquisition or rental of land and housing on the private market or the construction of new social housing or by other methods, including how social housing and its maintenance will be financed through local, regional or national programmes and resources.</p>	<p>Second transitional provision: Objectives in relation to the housing stock for social policies.</p> <p>1. In relation to the establishment of the objectives referred to in Article 27, one year after the entry into force of this law without the competent territorial administrations having established specific time frames and targets, the commitment to achieve, within a period of 20 years, is established as a general reference the commitment to achieve, within a period of 20 years. A minimum housing stock for social policies of 20 % of the total number of households residing in those municipalities in which stressed residential market areas have been declared.</p>	Partially Included

Table 7: **Rent stabilisation measures**

Article	Recommendation UN	Legislative text	Result
Generic	<p>In areas subject to the rent control regime, homeowners must provide, before entering into a new lease, information on the level of the previous rent and the level of future rent applicable to the dwelling subject to the lease.</p> <p>Tenants may also, after signing a lease, request landlords to reduce the monthly rent as specified in the signed leases if the rent does not conform to the rent containment system. Tenants may submit such requests in writing during the first</p>	<p>Art. 31.3. The owner of the rental dwelling must inform before the formalisation of the new rental contract, the amount of the last rent of the lease contract in force the last 5 years or the corresponding reference index of rental prices. There is no reference on the level of future income</p>	<p>Included</p> <p>Not included. Only applies to the moment prior to the signing of new leases.</p>

	<p>six months after they have entered into a new lease.</p> <p>In case the property owner does not agree with the rent reduction, the level of the rental agreement can be challenged before the courts, which will determine whether the rent is excessive or not, including the maximum rent that can be charged for the dwelling in question. In case a rent is considered excessive, landlords are obliged to return the excess rent to the tenant from the beginning of the lease.</p> <p>The competent authorities may also provide in the regulations for fines to be imposed on property owners who enter into tenancy agreements that clearly do not comply with the rent control system.</p>		<p>Not included. As it is an issue that each Autonomous Community / City Council will regulate, it could be the case (Catalan Law)</p> <p>Not included</p>
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III. CONCLUSIONS

It is more than obvious that the existence of a structural state legal framework to support and sustain public housing policies in Spain is more than good news; it was extremely urgent and necessary for the hundreds of thousands of people and families in situations of housing exclusion who did not have access to this human right or to the guarantee of justiciability. Likewise, and without going into a more detailed analysis, we believe that two issues of relevance have been omitted from the normative text:

- Incorporating the international normative standards concerning the human right to adequate housing contained in the General Comments of the United Nations Committee on Economic, Social and Cultural Rights, as well as in the opinions⁶ condemning the Spanish government.
- Considering the human right to adequate housing as a subjective right. At least as a subjective right of an administrative nature, as is currently the case in the Autonomous Communities of Valencia, Navarre, and Euskadi.

⁶ E/C.12/55/D/2/2014, E/C.12/61/D/5/2015, E/C.12/66/D/37/2018, E/C.12/67/D/52/2018, EC/12/69/D/54/2018, EC/12/69/D/85/2018, E/C.12/71/D/127/2019, E/C.12/72/D/26/2018