



Housing & Land Rights Network
Habitat International Coalition



Stakeholder Submission to the Universal Periodic Review of the Kingdom of Spain

Transmitted by Habitat International Coalition, NGO in Consultative Status with United Nations ECOSOC (Special Status, 1993), in cooperation with Observatori Drets Econòmics Socials i Culturals

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1. This report is submitted jointly by Habitat International Coalition (HIC) and Observatori Drets Econòmics Socials i Culturals (Observatori DESC) in contribution to the second Universal Period Review (UPR) of Spain's fulfilment of its human rights obligations.
2. This report presents facts and human rights analysis arising from the Spanish government's commitment under human rights treaty obligations. This report focuses on Spain's respect, protection and fulfilment of rights enshrined in the International Covenant of Economic, Social and Cultural Rights (ICESCR), particularly Article 11 enshrining "the right of everyone to an adequate standard of living...including adequate housing...and to the continuous improvement of living conditions."¹ The human right to adequate housing in Spain was largely ignored in the previous UPR round.

Legal Framework for Housing Rights

3. Spain ratified International Covenant on Economic, Social and Cultural Rights ICESCR on 27 April 1977, which guarantees the right of everyone to adequate housing as a component of the human right to the continuous improvement of living conditions (Article 11). This right also is enshrined in other instruments such as the Universal Declaration of Human Rights (Article 25), as well as the Convention on the Elimination of Racial Discrimination (Article 5(e)(iii)), the Convention on the Elimination of the Discrimination of Women (Article 14(2)(h)) and the Convention on the Rights of the Child (Article 27.3), treaties that Spain ratified on 13 September 1968, 05 January 1984 and 06 December 1990, respectively.
4. Additionally, Spain is party to the European Social Charter, which guarantees the right to housing for the family (Article 16) and, which is to "promote the economic, legal and social protection of family", and should be considered to also protect the right to freedom from forced evictions.²
5. The right to decent and adequate housing is recognized in Article 47 of the Spanish Constitution and, specifically for older people, in Article 50.³ However, the regulation of this law in Chapter III "Principles Governing Economic and Social Policy" states

that social rights, such as the right to housing, “shall guide legislation, judicial practice and actions by the public authorities” (53.3), as opposed to the treatment of “Rights and Liberties” (or civic rights) in Chapter II, which are justiciable in the Constitutional Courts. In this framework, the right to housing is placed as a right that should be worked toward rather than as an essential toward a dignified life and, thus, makes it difficult to obtain legal redress in case of violation of the right to housing.

Debt and Inability to Make Payments

6. In this sense, access to financing, or rather, debt, was promoted as the main means for Spanish citizens to access housing, especially during the years of the housing bubble (1997–2007). During these years, citizen debt increased from 55% to 130% of households’ disposable income.⁴ Moreover, a significant part of the appropriations contained clauses of dubious legality that involve significant economic losses to the mortgagors.
7. With the outbreak of the economic crisis and the loss of income by households, many found it difficult to pay their mortgages. According to the General Council of the Judiciary, from 2008 to 2013 have a total of 497,797 foreclosure proceedings were initiated; in 2013, 82,680 procedures were finalized.⁵ The Bank of Spain reports that, in 2013, an 11% increase was seen housing surrender as payment of mortgage debt. Even more serious is that 33.8% of the homes surrendered to banks in 2013 were families’ “*residencia habitual*” (i.e., families lost their, the only shelter they had).
8. The court data reveal that 309,460 evictions took place from 2008 to 2013. The data for evictions in 2013 reveal a growing problem, with a significant increase in eviction due to rent arrears and lack of mortgage payment, Of the 67,189 evictions in 2013, 38,141 (57%) were linked to inability to pay rent.⁶
9. Affordability is an indispensable element of the human right to adequate housing. Increased evictions in Spain show how housing rights violations, in particular gross violations,⁷ rose from increasing unaffordability.
10. With the rate of evictions increasing for lack of payment and limited affordable options available, Spain must ensure that the persons facing evictions have alternatives and solutions.⁸
11. During Spain’s review in 2012, the Committee on Economic Social and Cultural Rights (CESCR) expressed concern that “forced evictions continue to take place without due legal safeguards and without the persons affected being consulted in advance or being offered alternative accommodation or any compensation.”⁹ The state’s failure to provide alternative solutions has exacerbated the situation and increased homelessness.

Social Housing

12. The inability to make housing payments is accentuated by the lack of affordable rent options and social housing. According to the European Federation of Public, Cooperative & Social housing (CECODHAS), “social housing” should signify “the set of dwellings and services, actions and instruments addressed to those who are unable to meet their housing needs on the open market for economic reasons or due to a lack of appropriate options on the supply side.”¹⁰ This definition aligns clearly

with the goal of any social housing program, which should be for all persons to have dignified social and living conditions and generally achieve a better standard and quality of life, which aligns with Article 11 of ICESCR.

13. Housing policies in Spain tend to promote private ownership over renting. Social housing in Spain is obtainable primarily through the *Vivienda de Protección Pública* (publicly protected housing). This approach is rooted in making home financing more affordable for buyers through subsidized construction and renovation.¹¹ In Spain, home ownership represents 85% of the total housing stock, while rentals are the smallest in Europe at 11%, primarily concentrated in bigger cities such as Barcelona and Madrid. Less than 2% of the housing stock is allocated as social housing, compared to other European countries in which social housing is approximately 18%.¹² Of the available social housing, very little is available for rental.

Empty Homes

14. In addition to the insufficient social housing, accessing housing rights is affected also by the lack of controls in the private rental market, as well as policies aimed at mobilizing toward renting the vacant homes.

15. The media outlet *The Guardian* recently collected statistics for empty and vacant homes across Europe.¹³ It found that, of the some 11 million empty homes across Europe, 3.4 million were found in Spain alone. This represents some 14% of all properties in Spain.

16. It is the treaty obligation of Spain, as a ratifying state party to ICESCR to “take steps, individually and through international assistance and cooperation, especially economic and technical, to *the maximum of its available resources*, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”¹⁴ Vacant homes should be viewed as a key “available resource” to working toward real solutions for issues of affordable housing and homelessness. CESCR General Comment No. 3 also states that states must “demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those... obligations.”¹⁵

Homelessness

17. While many of the evictions in Spain occur within the scope of the law, often due to inability to make rent or mortgage payments, the government has an obligation to pursue solutions and protect the right to an adequate standard of living. However, human rights standards require that evictions not result in homelessness or render individuals vulnerable to violations of other human rights. “Where those affected are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”¹⁶

18. In 2005, Spain’s National Institute of Statistics (INE) estimated 21,900 people were homeless in Spain, and the INE’s 2012 survey estimated 22,938.¹⁷ According to Human Rights Watch, this figure reflects only the number of people who went to

shelters and soup kitchens for the homeless,” and that 12% of those surveyed are homeless as a result of an eviction.¹⁸

19. Although official statistics do not reveal a vast increase in homelessness in Spain, NGOs are critical of how the government collects official data. CESCR was also troubled by this issue in its 2012 review of Spain, stating that “the Committee is concerned that no official definition of “homeless person” has as yet been adopted to serve as a basis for compiling disaggregated data on the number of homeless persons so that trends in homelessness can be assessed and appropriate measures developed to address the problem.”¹⁹

Inadequate protections

20. The organization of the people affected by mortgages has promoted various institutional responses such as, Royal Decree-Law 6/2012²⁰ on urgent measures to protect mortgagors with limited resources. Better known as Code of Practice, this decree-law was designed to promote the enactment of housing debt payments, and Law 1/2013²¹ on measures to protect mortgagees, debt restructuring and social rents. Although these mark movements forward, in both cases the rules establish requirements that are difficult to fulfil by the affected families to qualify for a moratorium on eviction, or payment in kind. For example, a limit on the value of a home purchase of €200,000 in big cities excludes the bulk of affected persons, as they bought during the housing bubble at much higher prices.²²

21. In addition, the requirements set by Law 1/2013 to qualify for the moratorium on evictions has led to the submission of a constitutional complaint with the Constitutional Court, recourse No. 4985–2013. Among other issues, the complaint denounces the discrimination against families with older children, as only those with children under 3 years of age are eligible. In short, the changes are unaware of the recommendations of international bodies such as the Committee on Economic, Social and Cultural Rights, aimed at promoting payment in kind and in general protection against arbitrary evictions.²³

22. For its part, the regulation of the rental market has undergone significant changes in practice, involving the failure to protect rights of tenants. The latest reform introduced by Law 4/2013, of 4 June 2013, “*de medidas de flexibilización y fomento del mercado del alquiler de viviendas,*” expected changes by decreasing the minimum lease period from five years to three years, decreasing automatic renewal of the lease to one year and the possibility of indiscriminate rental price increases every 3 years.²⁴

Recommendations to the Kingdom of Spain:

23. In order to meet the obligations outlined in Article 11 of ICESCR and other international instruments, HIC and Observatori DESC propose the following recommendations to fulfil the right to adequate housing:

24. Implement measures to eliminate evictions for economic reasons, and ensure suitable alternatives and relocations are available for affected households in line with international norms;²⁵

25. Implement legislative reform to recognize retroactive, nonrecourse debt, social renting for affected people, and alternatives or second chances for over-indebted people;
26. Cease unjustified or discriminatory setbacks in housing policies such as the privatization of public housing, decreased protection for lease agreements or elimination of housing subsidies targeting low-income groups;
27. Develop policy to prevent or penalize antisocial exercise of property such as abandonment of property for speculative purposes, indiscriminate rent increases and breach of the duty of preservation;
28. Prioritize secure tenure and affordability through increased rental options for social housing and cooperative ownership;
29. Force financial institutions and management companies of real estate assets, starting with those that have been rescued with public funds, to meet its public service obligations and to allocate their empty properties to social rental housing;
30. In line with CESCR recommendations,²⁶ Spain should establish an official definition of “homeless person” that is in accordance with the recommendations of the Special Rapporteur on adequate housing and the policy recommendations of the European Consensus Conference on Homelessness, held in Brussels in 2010. We further propose that Spain compile disaggregated data on the number of homeless persons and the impact of the economic and financial crisis on such persons, with a view to formulating and implementing effective rehabilitation measures.

Endnotes:

¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, at: <http://www.refworld.org/docid/3ae6b36c0.html>.

² See *The European Social Charter 1961*, at: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>. See also Art.31 §2 and E of the Revised Charter, which Spain has yet to sign, but relates to international legal obligations under Article 11 of the ICESCR. The European Committee on Social Rights (CSR) has interpreted Article 31, defining fundamental notions, such as adequate housing, homeless persons, forced eviction and housing affordability. Conclusions of CSR in *ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24; Conclusions 2005, Lithuania, Norway, Slovenia and Sweden. See European Committee of Social Rights: Conclusions XIX–4 (2011): Denmark., at: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/DenmarkXIX4_en.pdf.

³ Constitución Española de 1978, at: <http://www.boe.es/buscar/act.php?id=BOE-A-1978-31229>.

⁴ Albert Puig Gómez, “El Modelo Productivo Español en el Período Expansivo de 1997–2007: Insostenibilidad y Ausencia de Políticas de Cambio,” *Revista de Economía Crítica* 12, March 2011, Pp. 64–81, at: http://revistaeconomiacritica.org/sites/default/files/revistas/n12/REC12_Articulo_4_albert_puig.pdf.

⁵ “Medio Millón de Ejecuciones Hipotecarias desde el Estallido de la Crisis en 2008,” *InfoLibre*, 15 June 2014, at: http://www.infolibre.es/noticias/politica/2014/03/28/medio_millon_desahucios_desde_estallido_crisis_15075_1_012.html.

⁶ Observatorio DESC and la Plataforma de Afectados por la Hipoteca, *Emergencia Habitacional en el Estado Español: La Crisis de las Ejecuciones y Hipotecarias y los Desalojos Desde una Perspectiva de Derechos Humanos*, 2013, at: http://observatoridesc.org/sites/default/files/2013-informe_habitatqge-17dic.pdf.

⁷ UN Commission on Human Rights affirmed that “the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.” “Forced evictions,” resolution 1993/77, 10 March 1993; see also Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 4, *The right to housing*, sixth session, 1991, U.N. Doc. E/1992/23, annex III, para. 8(c), p. 114, at: <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm>.

⁸ Committee on Economic, Social, and Cultural Rights, *General Comment 7, Forced evictions, and the right to adequate housing* (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), paras. 2, 3, 13, 14, 16, at: <http://www1.umn.edu/humanrts/gencomm/escgencom7.htm>.

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- ⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), “Concluding observations of the Committee on Economic, Social and Cultural Rights: Spain,” 6 June 2012, E/C.12/ESP/CO/5, available at: <http://www.refworld.org/docid/5065b70f2.html>.
- ¹⁰ Fondazione Housing Sociale, “A foundation for social housing in Italy,” undated, at: <http://www.fhs.it/eng.pdf>.
- ¹¹ CECODHAS European Social Housing Observatory, *Country Profile: Spain*, 27 March 2010, at: <http://www.housingeurope.eu/resource-124/social-housing-in-europe>.
- ¹² *Ibid.*
- ¹³ Rupert Neate, “Scandal of Europe’s 11m Empty Homes,” *The Guardian* (23 February 2014), at: <http://www.theguardian.com/society/2014/feb/23/europe-11m-empty-properties-enough-house-homeless-continent-twice>.
- ¹⁴ ICESCR, *op. cit.*, Article 2.1.
- ¹⁵ CESCR, “General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, para. 1, of the Covenant),” 14 December 1990, E/1991/23, at: <http://www.refworld.org/docid/4538838e10.html>.
- ¹⁶ CESCR, “General Comment No. 7,” *op. cit.*, para. 17.
- ¹⁷ Instituto Nacional de Estadística, “Encuesta a las personas sin hogar 2012,” press release, 21 December 2012, at: <http://www.ine.es/prensa/np761.pdf>.
- ¹⁸ Human Rights Watch, *Shattered Dreams: Impact of Spain’s Housing Crisis on Vulnerable Groups*, 28 May 2013, at: <http://www.hrw.org/node/125666/section/1>.
- ¹⁹ CESCR, *supra* note 10, para. 23.
- ²⁰ “Real Decreto-ley 6/2012, de 9 de marzo, de medidas urgentes de protección de deudores hipotecarios sin recursos,” *Boletín Oficial del Estado*, 10 March 2012, at: www.boe.es/boe/dias/2012/03/10/pdfs/BOE-A-2012-3394.pdf.
- ²¹ “Ley 1/2013, de 14 de mayo, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social,” *Oficial del Estado*, 15 May 2013, at: <http://www.boe.es/boe/dias/2013/05/15/pdfs/BOE-A-2013-5073.pdf>.
- ²² See “Real Decreto-ley 6/2012”, at *supra* note 18.
- ²³ CESCR, “Concluding Observations,” *op. cit.*, paras. 22–23.
- ²⁴ “Ley 4/2013, de 4 de junio, de medidas de flexibilización y fomento del mercado del alquiler de viviendas,” *Boletín Oficial del Estado*, 5 June 2013, at: <http://www.boe.es/boe/dias/2013/06/05/pdfs/BOE-A-2013-5941.pdf>.
- ²⁵ See for example, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, 21 March 2006, at: <http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>.
- ²⁶ CESCR, “Concluding Observation,” *op. cit.*, para. 23.