

# NON-DISCRIMINATION AND EQUALITY: AT THE CORE OF THE RIGHT TO HOUSING

“[D]iscrimination, exclusion, and inequality are at the heart of almost all violations of the right to housing.”

- Special Rapporteur on the Right to Adequate Housing [1]

## The Right to Adequate Housing

- The Universal Declaration of Human Rights (UDHR), the foundational document of the international human rights system, affirms the right to adequate housing. [2]
- Under the International Covenant on Social, Economic and Cultural Rights (ICESCR), states have the duty to “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.”[3]
- The UN Special Rapporteur on Adequate housing describes this as “**the right to live in a home in peace, security, and dignity.**”[4]
- The UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors compliance with ICESCR, sets out seven essential components of adequate housing: **legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.**[5]

## A Human Rights Approach to Housing Equality

- CESCR has stated there is a need to **prioritize “disadvantaged groups,”** such as refugees, persons with disabilities, the elderly, and undocumented immigrants, and **take their “special housing needs” into account.**[6]
- Under the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the U.S. is obligated** “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone to . . . equality before the law” particularly within “**[t]he right to housing.**”[7] This requires addressing **disparate impacts, not just intentional discrimination.**[8]
- Immigrants and refugees must be able to access housing on an equal basis. The UN Economic and Social Council recommends that states “adopt positive measures aimed at **alleviating the situation of refugees and displaced persons living in inadequate housing.**”[9] The International Convention on the Protection of All Migrant Workers specifically states that migrant workers have the right to enjoy equal “access to housing, including social housing schemes, and protection against exploitation in respect of rents.”[10]
- Housing must be **culturally adequate.** States should ensure that the design of the home, the materials used to build it, the location of the home, the way housing policies are implemented, and modernization of housing all **enable the expression of cultural identity** and ensures that needs of all residents are reflected.[11]
- States must address discrimination against women in housing. The Special Rapporteur on Adequate Housing’s states that countries must “ensure **gender equality in housing and land.**”[12]
- To be adequate, housing must be **accessible.** The Convention on the Rights of Persons with Disabilities (CRPD) calls on states to “recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate . . . housing, and to the continuous improvement of living conditions” and to take “take appropriate measures to ensure persons with disabilities access [housing], on an equal basis with others.”[13]

# Good Practices For Housing Equality

## Race

- Germany's "Rent Fairly- Live Fairly" program monitors potential discrimination in housing and provides residents with assistance in finding housing.[14]
- In Barcelona, Spain a new office of non-discrimination monitors housing discrimination at the local level.[15]

## Culture

- The government of Scotland has committed to providing culturally adequate accommodations to Travelers, including transit accommodations. [19]

## Immigration

- Croatia's Act on International and Temporary Protection provides refugees with a "right of accommodation" for up to two years which not only includes a housing unit but also "the process of finding, adapting, furnishing, maintaining, and the settlement of utility costs and leasing costs for the housing unit provided." [16]
- The Ministry of Housing in Colombia provides temporary housing subsidies for migrant families living in cities with a large migrant population.[17]
- In the Austrian city of Styria, Austrian citizens, EEA citizens, refugees, and/or others with special resident permits can access social aid, which includes some form of housing subsidies.[18]

## Physical Accessibility

- In Styria, Austria the Styrian Disability Act not only provides rent subsidies for those with disabilities, but also helps with living costs for those who assist people with disabilities who live in their own apartment.[20]

## United States Recommendations

- **Country Wide**
  - **Use a human rights framework to regularly monitor housing availability, addressing inequalities.**
  - **Support and connect residents with local independent organizations that monitor and take action against potential discrimination in housing.**
  - **Strengthen the Fair Housing Act to include additional protected classes against discrimination, including source of income, sexual orientation, and eviction history.[21]**
  - **Recommend that states that rely heavily on migrant workers implement specific housing subsidies for them and create additional programs that assist them in finding and securing adequate housing.**
  - **Enact protections against discrimination by housing providers based on immigration status and prior arrests or interactions with the criminal justice system.**
  - **Prohibit housing providers from disclosing the immigration status of tenants to law enforcement or local authorities.**
- **States and Municipalities**
  - **Recognize the human right to housing through legislation.**
  - **Take advantage of mechanisms, such as the Affirmatively Furthering Fair Housing provisions of the Fair Housing Act, to adopt race-conscious measures to remedy historically-based and continuing discrimination.**
  - **Provide housing subsidies to individuals with disabilities so they can afford units that are appropriately accessible and increase access to social housing overall.**

# Endnotes

- [1] Hum. Rts. Council, Report 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, ¶ 43, U.N. Doc. A/HRC/43/43 (2019).
- [2] Universal Declaration of Human Rights art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR] (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including... housing.”).
- [3] International Covenant on Economic, Social, and Cultural Rights art. 11, signed Oct. 05, 1977, 993 U.N.T.S. 3 [hereinafter ICESCR].
- [4] Hum. Rts. Council, Report 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, ¶ 16(b), U.N. Doc. A/HRC/43/43 (2019); See also Comm. on Econ., Soc., and Cultural Rts., General Comment No. 4: The Right to Adequate Housing, ¶ 8, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4] (“Rather [the right to housing] should be seen as the right to live somewhere in security, peace and dignity.”)
- [5] CESCR General Comment No. 4 ¶ 8, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4].
- [6] *Id.* at ¶ 8(e); Hum. Rts. Council, Report 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, ¶ 44, U.N. Doc. A/HRC/43/43 (2019).
- [7] International Convention on the Elimination of All Forms of Racial Discrimination art. 5(d)(iii), ratified Oct. 21, 1994, 660 UNTS 195, 212 [hereinafter ICERD]. (The U.S. has ratified ICERD and has signed but not yet ratified ICESCR, CEDAW, and the CRPD. While signature does not hold the same weight as ratification, it does require that the U.S. avoid any actions that directly go against the basic purpose of these treaties.) See Vienna Convention on the Law of Treaties art. 18(a), 1155 U.N.T.S. 331 (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty.”).
- [8] Committee on the Elimination of Racial Discrimination (CERD), General Recommendation 14, Definition of Racial Discrimination (Forty-second session, 1993), U.N. Doc. A/48/18 at 114 (1994); CERD, General Recommendation 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination, ¶ 11, CERD/C/GC/32(2009).
- [9] Economic and Social Council, Principles on Housing and Property Restitution for Refugees and Displaced Persons, ¶ 8, U.N. Doc. E/CN.4/Sub.2/2005/17 (2005).
- [10] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, art. 43, 2220 U.N.T.S. 93 [hereinafter Protection of the Rights of All Migrant Workers].
- [11] Hum. Rts. Council, Report 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, ¶ 8(g), 24(c), U.N. Doc. A/HRC/43/43 (2019); Hum. Rts. Council, Report of the Special Rapporteur on adequate housing as a component of the Right to an Adequate Standard of Living (Advance Unedited Version), ¶ 34 U.N. Doc. A/76/408 (2021); CESCR General Comment No. 4 ¶ 8(g), U.N. Doc. E/1992/23 (Dec. 13, 1991) (Cultural Adequacy is one of the seven categories critical to adequate housing identified by CESCR.).
- [12] Hum. Rts. Council, Report 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, ¶ Guideline No. 9 U.N. Doc. A/HRC/43/43 (2019); Convention on the Elimination of All Forms of Discrimination Against Women art. 2, 14 (2)(h) signed July 17, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW] (CEDAW requires states to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,” and to take actions, such as creating appropriate legislation and establishing legal protections of rights, to do so. CEDAW further sets out a specific duty to protect women living in rural areas, and ensure they enjoy “adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.”)
- [13] Convention on the Rights of Persons with Disabilities art. 9, 28, A/RES/61/106 signed Jul. 30, 2009 [hereinafter CRPD].
- [14] Hum. Rts. Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (Advance Unedited Version), ¶ 57 U.N. Doc. A/76/408 (2021).
- [15] *Id.* at ¶ 63.
- [16] Croatia: Act on International and Temporary Protection, art. 67, 68 (2018) <https://www.refworld.org/docid/4e8044fd2.html>.
- [17] Hum. Rts. Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (Advance Unedited Version), ¶ 62 U.N. Doc. A/76/408 (2021).
- [18] IIBW, Wohnbauförderung in Österreich 2017 (2017) 21; Residence and Settlement Act (Niederlassungs- und Aufenthaltsgesetz) (AUT).
- [19] Shelter Scotland, Housing is a Human Right, 34 (2018).
- [20] Styrian Disability Act (Steiermärkisches Behindertengesetz) (AUT).
- [21] See A National Homes Guarantee, Peoples Action (Sept. 5, 2019) [https://homesguarantee.com/wp-content/uploads/Homes-Guarantee\\_-\\_Briefing-Book.pdf](https://homesguarantee.com/wp-content/uploads/Homes-Guarantee_-_Briefing-Book.pdf).