

**Submission: Call for input on homelessness
as a cause and a consequence of contemporary forms of slavery**

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This submission addresses questions 2, 3, and 7. It draws on my expertise and previous research in this area,¹ and concentrates on the experience and prevalence of modern forms of slavery in Australia.

I submit that homelessness is an inherent characteristic of many experiences of modern forms of slavery. I substantiate this argument below. Because modern forms of slavery amount to homelessness, States should renew efforts to fulfil the right to adequate housing as a human right.² Realisation of the right to housing offers a practical response to homelessness experienced in modern forms of slavery, both within States and globally.

Contemporary manifestations of slavery are inherently forms of homelessness:

It is well known that escape from abusive and unsafe housing may push people into slavery, and those in homelessness are vulnerable to exploitation through slavery and slave like practices.³ However, I submit that in many cases of forced or bonded labour or trafficking, where access to housing is controlled by others, and victims do not have access to a safe, secure or private space of their own,⁴ this amounts to *an inherent condition of homelessness and a violation of the right to housing* as a human right. I illustrate this argument with reference to domestic servitude, though it can also apply in other forms of slavery where the victim/survivor's housing is controlled or coerced.

In domestic servitude, the house is a place of labour, in which the victim/survivor is under the control and subjection of another. Those in domestic servitude are *housed*, as domestic work is defined by the home as the space in which it takes place,⁵ but they have no rights to or in that home or house and thus experience homelessness. This homelessness is based on a denial of the crucial complementarity of the public and private. Housing sits at a crucial juncture between the public and the private spheres,⁶ and is meaningful precisely because it sits at this crux, offering a respite from the world⁷ but also a base from which to take part in community and society beyond.⁸ The house and

¹ See Hohmann (2022), [‘Conceptualising domestic servitude as a violation of the human right to housing and reframing Australian policy responses’ 31\(1\) Griffith Law Review 98-122](#); Hohmann (2013) *The Right to Housing: Law, Concepts, Possibilities* (Hart).

² Article 11(1), International Covenant on Economic Social and Cultural Rights (1966), in force 3 Jan 1976.

³ UNANIMA International (2021) ‘The Intersections of Family, Homelessness and Human Trafficking’ <https://brigidine.org.au/wp-content/uploads/2021/05/Intersections-of-Family-Homelessness-and-Human-Trafficking.pdf>, 28.

⁴ Davy (2016) ‘Human Trafficking and Slavery in Australia: Pathways, Tactics, and Subtle Elements of Enslavement’ 26(3) *Women and Criminal Justice* 1.

⁵ *ILO Convention – Decent Work for Domestic Workers* 2011, Article 1; UN Doc A/HRC/39/52 (20 July 2018), para 20.

⁶ Hohmann (2013) ch 6.

⁷ Hohmann (2022) 108.

⁸ See *Chameli Singh v State of Uttar Pradesh* (1996) 2 SCC 549 (Indian Supreme Court) 555-556.

home are the paradigmatic private space, a fact also reflected in human rights law more broadly.⁹ Porteous and Smith identified home as a crucial private space across two axes. First outward looking: 'home as centre – a place of refuge, freedom, shelter and security.' Second inward looking: 'home as identity – with themes of family, friends and community, attachment, rootedness, memory, and nostalgia'.¹⁰ However, to have value a private sphere must be complemented by a public sphere. The private sphere as a space of retreat, sanctuary or empowerment ceases to have value if the privacy is an enforced one as it in domestic servitude. In such cases, housing can become a denial of autonomy, freedom and privacy.

The right to housing protects this important complementarity between the private and public.¹¹ It is premised on the need for the freedom, security and safety of a private space, in which to exist and to ground our social subjectivity and legal personhood. It also demonstrates the need for rights to and in that space in order to enjoy that freedom and security, rather than to suffer privation and deprivation in it. For those in domestic servitude, the home often operates to provide neither of these crucial protections. Domestic servitude is a condition that devalues the private sphere, at the same time it denies access to the public, and as such it cuts out any meaningful enjoyment of the right to housing, which rests on the need for both. This is a form of homelessness in which there is no retreat from the pressures of work and public into the safety and relaxation of home, nor is there the unconstrained ability to move beyond this sphere to enjoy the rights and privileges of social, economic and political citizenship.

Evidence of homelessness as a consequence of contemporary forms of slavery in Australia:

Lyneham, Dowling and Bricknell have demonstrated the difficulty in measuring the prevalence of contemporary slavery victimisation in Australia, due to its clandestine nature.¹² However, cases in Australia are reflective of the international literature on migrant domestic servitude: they 'align with the fact patterns known through publically reported cases of exploitation in domestic work and/or labour trafficking'.¹³ Moore found a data gap on domestic servitude,¹⁴ that there are insufficient pathways out of domestic servitude, and inadequate remedies, leading to 'a culture of impunity'.¹⁵ Lyneham, Dowling and Bricknell estimated only 1 in 4 victims of modern slavery in Australia are detected¹⁶ and that figure may be even lower for those held in domestic servitude. The overall context is also relevant. Australia is a country with a high prevalence of migrant workers, within which is a high

⁹ See, eg, Article 17 ICCPR; Article 8 ECHR.

¹⁰ Porteous and Smith (2003) 'Domicide: The Global Destruction of Home' 18(2) *Housing Studies* 269.

¹¹ Hohmann (2013), 165. To say that housing is the 'key' mediation between the public and the private, and in arguing for rights to and in both spheres risks re-inscribing this distinction in ways that are problematically classed, gendered and racialized. For this reason, we should be attuned to the possibilities of meaningful lives, and meaningful rights, beyond a world structured on the public private distinction.

¹² Lyneham et al (2019) 'Estimating the dark figure of human trafficking and slavery victimisation in Australia', Australian Institute of Criminology https://www.aic.gov.au/sites/default/files/2020-05/sb_human_trafficking_050219.pdf, 192. Larsen and Lauren Renshaw (2012) 'People trafficking in Australia' (No 441), Australian Institute of Criminology <https://apo.org.au/sites/default/files/resource-files/2012-06/apo-nid30100.pdf>; Moore (2019) 'Service or Servitude: A Study of Trafficking for Domestic Work in Australia', Mercy Foundation <https://www.mercyfoundation.com.au/wp-content/uploads/2019/08/Service-or-Servitude-Domestic-Servitude-in-Australia-Report.pdf>, 11.

¹³ Moore (2019), 54.

¹⁴ Ibid 8.

¹⁵ Ibid.

¹⁶ Lyneham et al (2019) 195.

proportion of domestic workers.¹⁷ It is clear that domestic servitude takes place in Australia.¹⁸ In cases where modern forms of slavery take place, and where coerced housing conditions are present, people are experiencing homelessness as a consequence of contemporary forms of slavery.

Practical Recommendations - more robust protection of the right to adequate housing is a response to contemporary forms of slavery:

The right to housing is a practical response to contemporary forms of slavery, because the vast majority of States already bear international legal obligations for the right to housing. It therefore relies on existing legal obligations and can harness existing monitoring and enforcement mechanisms. Moreover, I submit that a response focused on the right to housing is essential in supporting those moving out of slavery, is centred on the needs of victims – rather than perpetrators, and can help to address the underlying causes of modern forms of slavery.

The right to housing moves beyond a criminal justice focus and is centred on the needs of victim/survivors

The response to modern slavery in Australia is heavily criminal justice focussed,¹⁹ and while the law is 'relatively robust'²⁰ it should be complemented with a human rights approach, with due attention to economic and social rights including the right to housing. The weaknesses in a criminal justice approach are first, that criminal sanctions normally apply only after the harm has occurred, and focus on the perpetrator, rather than the victim. Second, criminalisation on its own offers little to support victim/survivors who are often vulnerable and who may have been traumatised by the experience of servitude, as it is not coupled with redress or compensation for victim/survivors.²¹

Housing will be a first requirement for survivors of slavery. A safe, adequate and secure place to live is crucial, ensuring physical safety and helping protect against destitution or re-victimisation.²² It is also fundamental to recovery from the trauma of domestic servitude and other forms of contemporary slavery, and a path forward to a life where the person can enjoy human rights, freedom, and ability to participate in social life. When survivors are able to access stable housing, the sense of safety and belonging is powerful. Many victim/survivors of domestic servitude may never have had privacy or a private space for themselves, they may never have been able to be at leisure in the home.²³

Responding to the Underlying Causes of Slavery

There are four predominant, intertwined, push factors into domestic servitude, all of which increased compliance with the right to adequate housing would help respond to:

¹⁷ ILO 'Global Estimates on Migrant Workers' https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf, 78.

¹⁸ Moore (2019) Part 1 & 18.

¹⁹ Discussed in Hohmann (2022) 112-16.

²⁰ Vijayarasa (2019) 'A Missed Opportunity: How Australia Failed to Make Its Modern Slavery Act a Global Example of Good Practice' 40(3) *Adelaide Law Review* 857, 861.

²¹ Simmons and Burn (2013) 'Without Consent: Forced Marriage in Australia' 36(3) *Melbourne University Law Review* 970, 993; Burns and Simmons (2006) 'Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies' 15(4) *Asia Pacific Migration Journal* 553, 553; Moore (2019) 8;

²² Moore (2019) 52-53.

²³ Salvos Safe House Staff (Personal communication), quoted in Hohmann (2022), 112.

- poverty and its material manifestations (lack of safe, adequate housing; hunger; lack of access to education and basic services).
- discrimination and marginalisation (including feminisation of poverty and gender discrimination; discrimination based on ethnicity, race, skin tone or caste; and lack of state protection).
- presence of civil strife or armed conflict; weak rule of law; and impunity for perpetrators.
- occurrence of natural disasters.²⁴

These factors are, as the UN Special Rapporteur on Slavery has already noted, tied in to an exploitative global order in which migration into domestic servitude occurs. This is a global political economy where markets and macroeconomic factors have exacerbated social hierarchies and inequalities both within and among states. The global political economy has seen first, the integration of women into the global labour market, an integration which leaves a gap with regard to domestic and care work.²⁵ Second, demographic shifts, such as an ageing population and a reduction in the traditional role of the extended family which further change patterns of care and caring.²⁶ Finally, increasing reliance on domestic workers reflects and is related to the insufficiency of public sector care provision.²⁷

The right to housing in international law seeks to ensure that each person has a place to live in peace, dignity and security.²⁸ Realisation of the right would protect against the material conditions of poverty and help empower those in disaster situations, and responds to structural injustices.²⁹ As a human right, it is also linked to overcoming and preventing discrimination, a norm of customary international law.³⁰

A response to domestic servitude informed by the right to housing of victim/survivors would be tailored specifically to the harms that those in domestic servitude experience, and respond to their practical and psychological needs. 171 States already bear obligations to respect, protect and fulfil the right to housing under ICESCR. Making the right to housing meaningful would be practical way to respond to victim/survivors of domestic servitude. This step could be immensely important in framing a social rights response to modern forms of slavery.

In addition, the global scope of the right to housing under ICESCR is relevant. Meaningful responses to forms of contemporary slavery must be attuned to global phenomena. Ultimately, preventing and redressing forms of slavery will require attention to structural factors in the global political economy, which make people vulnerable to servitude. These structural factors include lack of access to safe, adequate and secure housing across the globe. As international human rights aim toward a truly global response, recognising that all people everywhere have rights, the right to housing provides an appropriately international normative structure and framework of obligations.

²⁴ UN Doc A/HRC/15/20 (18 June 2010) paras 62-82.

²⁵ UN Doc A/HRC/39/52 (20 July 2018) para 25; UNANIMA (2021) 22.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ UN Doc E/1992/23 (13 December 1991) para 7-8.

²⁹ See the work of the UN Special Rapporteurs on Housing, discussed in Hohmann (2017) 'Principle, Politics & Practice: The Role of UN Special Rapporteurs in the Development of the Right to Housing in International Law' in Nolan, Freedman & Murphy (eds) *The UN Special Procedures* (Brill) 271.

³⁰ UN Doc E/C.12/GC/20 (2 July 2009).