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Housing, homelessness and human rights: Advocating a rights-based response to a systemic problem

Author: Méabh Temple
Supervisor: Viljam Engström

ABSTRACT

Homelessness is one of the most visible human rights deprivations of our time. Yet, it does not provoke the same horror and outrage of other crises of similar magnitude. The complacency surrounding homelessness is alarming, and has allowed for the problem to worsen as states continually are not held to account for their role in enabling the structures which create homelessness. With a view to strengthening state accountability, this thesis will examine the twin phenomena of commodification and financialisation. It will explore the influence these processes may have on approaches to housing, arguing that they are largely responsible for state policies which are incompatible with the demands of economic, social and cultural rights. It will do this through a case study of the situations of Ireland and Finland, two states which in recent years have taken opposing approaches to addressing homelessness. This thesis will argue that a human rights approach to homelessness necessitates stronger identification of points at which a state is not in accordance with its obligations under human rights law. It will make the case that homelessness is a human rights violation, and that state culpability for the creation and perpetuation of homelessness can, and must, be identified.

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1. INTRODUCTION

1.1 CONTEXT AND JUSTIFICATION OF THE TOPIC

A home has long been valued as an essential component of a life lived in dignity. Alongside food and clothing, housing is a basic human necessity. For this reason, the right to housing is well established among international human rights laws and treaties, as well as national laws and constitutions. Housing rights are given clarity through jurisprudence, and a growing corpus of law which explores the nature and extent of a person's right to adequate housing and shelter. It is this background that makes the continued absence of human rights attention being directed towards the prevalence of homelessness within wealthy countries all the more striking.

There are hundreds of definitions for what constitutes homelessness, which has led to significant difficulties in understanding the scope of the problem. Indeed, homelessness takes many forms. It can range from 'couch-surfing', to sleeping in a car, to having to live exposed on the streets. Homelessness exposes a person to threats to their life, safety and security. The violation of human rights norms posed by homelessness is on par with some of the most egregious conditions arising from conflict and the most extreme forms of poverty. Yet it is one of the only violations of such a magnitude that we see and often choose to ignore on a daily basis. It does not provoke the same horror and outrage that would be customary for any violation of human rights on a similar scale. For some reason, homelessness is the one serious rights violation that we have come to accept, and to readily live alongside. It is estimated that there are a total of 1.8 billion living in either homelessness or inadequate shelter.¹ In another context, this figure would signify a global human rights crisis. Throughout this thesis, I will underpin some of the contributing factors to why, and how, the global community has turned a blind eye to what I will argue is one of the most visible large-scale violations of our time.

Central to approaching homelessness through human rights is holding states accountable not only for failing to provide for those without a home, but also for actions they have taken that may have contributed to the creation of homelessness. Throughout this paper, examples of such actions will be identified and explored. It will be argued that these should be recognised to be non-compliant with human rights, and in some cases, established as violations of a state's human rights obligations. Recent decades have seen a shift in housing policy, spread around the world through the forces of globalisation and neoliberalism.² This shift is indicative of a society which increasingly views housing not as a social necessity, but as a commodity to be bought and traded. This process has been called the 'commodification of housing', and when coupled with the increased use of housing as an asset for investment in the financial market, has posed serious threats to the enjoyment of the right to housing.³

¹ UNGA 'Guidelines for the Implementation of the Right to Adequate Housing' UNHRC Forty-third session (2019) UN Doc A/HRC/43/43.

² Raquel Rolnik, 'Late Neoliberalism: The Financialization of Homeownership and Housing Rights' (2013) 37

(3) *International Journal of Urban and Regional Research*.

³ *Ibid.*

This growing trend provides a new context for housing rights. The financialised perception of housing boosts housing prices, creates situations of precarity, and decreases housing availability. Ultimately, these factors combine to drive those most vulnerable into homelessness. With states perpetuating this shift through the privatisation of social housing and the marketisation of housing as a commodity, there are clear linkages between state action and the creation of homelessness. This thesis will argue that this should be a call to rethink approaches to homelessness as an issue relating to the right to housing and ensure greater state accountability for deprivations of this right.

Homelessness continues to grow globally - particularly in the most affluent countries. This speaks to a dissonance between the wealth of a state and the lived reality of its people. It is for this reason that this paper will pay particular attention to the situations within Europe. Here, many wealthy countries continue to disrespect a number of the fundamental rights of those who are forced into homelessness. They do this in spite of being subject to significant obligations to respect these rights under human rights law. A study of European countries should allow a clearer indication of how economic models which benefit the wealthy, can be permitted to fail so profoundly for those who are rendered homeless. This is particularly relevant for states who claim a strong respect and support for the values of human rights. The COVID-19 pandemic has added a new layer of urgency to the issues surrounding housing and homelessness. With the rallying call to stay at home ringing out in the hopes of preventing the spread of the virus, we are seeing the beginnings of a new appreciation for the importance of a safe and secure home. As a consequence, many governments have taken extraordinary measures to find suitable accommodation for those sleeping rough, with a newfound awareness of the health and safety dangers posed by homelessness.⁴ This presents an opportunity for a fundamental shift in how housing is perceived, and what a state's responsibilities are in protecting and ensuring housing rights for all, without distinction.

Traditionally, homelessness has been interpreted as a social issue to be tackled through a welfare response.⁵ Under this conceptualisation, any aid and support given to the homeless is interpreted as a gratuitous act of charity. It is this way of thinking that has allowed the problem to progress, while stripping the dignity from those living without a home. Human rights can serve to return agency to the homeless, in providing legal protection against situations of homelessness. It should do this while also imposing legal obligations on states to work towards the eradication of homelessness. Crucially, human rights obligations provide some degree of accountability for states, and should allow for state violations to be identified.

It is here that the question central to this paper emerges - what is the role of human rights in addressing the systemic causes of homelessness? To do this, one must examine if indeed homelessness can be constituted as a violation of human rights obligations, and what those obligations are. This thesis will also analyse what the systemic causes of homelessness are, who is responsible, and what obligations fall upon the responsible parties. The very existence of homelessness, and its prevalence in states which otherwise would meet many of their human rights obligations to a relatively high standard, is illustrative of a broken system. The failure of governments, and of the international community, to make notable progress in eradicating homelessness calls for renewed global attention. The suffering incurred from homelessness is clearly one which should require

⁴ Ceylan Yeginsu 'Coronavirus Nearly Ended Street Homelessness in U.K. Maybe Not for Long'. *The New York Times* (London, 06 June 2020).

⁵ Philip Lynch, "The Utility of Human Rights to Homeless People and Their Advocates" (2004) 17(1) *Parity* 10-12.

immediate action, yet it maintains an established position as a tolerable, albeit unfortunate, component of a modern-day capitalist society. This has resulted in both domestic and international passivity. As a means to prevent this, it will be argued that renewed energy and attention must be placed on the human rights dimension of homelessness.

I will begin, in chapter two, with an examination of the systemic causes of homelessness. This is done with a view to reframing homelessness as a problem of market-driven housing systems, as opposed to being solely the responsibility of the individual. To do this, I will outline the processes of financialisation and commodification. By outlining how these phenomena came to be, I hope to make clear the role they play in today's society, and the impact they have had on how housing and homelessness are perceived. I will go on to examine the role played by neoliberal economic thinking in creating a market-driven approach to housing, and the responsibility such economic models have on housing rights. This is done with a view to analysing the compatibility of neoliberal economics and international human rights standards. Finally, this chapter will aim to distinguish state responsibility in the commodification process and determine at what point state failure to address systemic causes of homelessness puts them at odds with their obligations under international human rights law.

Chapter three will give an overview of what protections against homelessness are afforded under international law, and what human rights obligations with regards to homelessness fall on states. This is done in order to emphasise the role of human rights in addressing homelessness. Throughout this thesis I will make the case that until widely accepted as a human rights violation, homelessness will not receive adequate attention and support under human rights law. This chapter will illustrate exactly what the legal protections against homelessness are in international law, in order to make clear the relationship between homelessness and human rights.

Chapter four will unpack the extent of state obligation to secure the right to housing, qualifying the nature of the requirements upon states. This is done in the interest of identifying at what point the existence of homelessness constitutes a violation of international human rights law, particularly as relates to the structural causes of homelessness. Two methods used for qualifying the obligations of economic, social and cultural rights will be utilised, namely: the minimum core obligations, and the concept of progressive realisation. I will then elaborate on the tools of accountability available for ensuring violations arising from homelessness are identified, and how state activity can be better monitored.

In chapter five I will analyse the cases of Ireland and Finland, two countries of similar size and with similar economies, which have taken different approaches to homelessness. Through analysing Ireland, whose homelessness problem skyrocketed as its neoliberal state thrived, in contrast with Finland, who through a welfare economy and strong protections for housing rights has managed to drastically curb its homelessness problem, I hope to examine the role of the right to housing in addressing the systemic forces creating homelessness. I will look at the respective economies within each state, and the methods with which they have sought to address homelessness. I will analyse this with particular respect to the legal protections for the right to homelessness within each country. This is in order to examine the interplay between the influences of market-driven economies on housing, and the protections afforded by human rights. I believe this comparison will draw some interesting conclusions as to limits placed by economic structures on the implementation of human rights in general.

1.2 METHODOLOGY

The arguments of this paper will be made by analysing what human rights obligations states have with respect to the rights violated through homelessness, with a particular focus on the right to housing. This thesis will investigate systemic causes of homelessness in Western European states, and how governments may be responsible for enabling and creating these systems.⁶ It will argue that it is possible to pinpoint instances of state culpability in the systemic causes of homelessness, and that this should result in stronger state accountability. This paper will not provide a roadmap as to how homelessness is to be addressed and will not give great detail as to what a state should do to address its homeless population in a human rights-compliant manner. Rather, it will offer an analysis of what human rights obligations fall upon states to protect against homelessness, and how many governments may not be acting in accordance with these obligations. A human rights approach to homelessness should focus on accountability, as will this thesis.

In light of increasing numbers living in homelessness or situations of insecure housing, there have been renewed efforts to promote a human rights approach to homelessness. One significant attempt to do so was undertaken by the Special Rapporteur on adequate housing, who in 2015 submitted a report to the Human Rights Council outlining the need for a human rights approach to homelessness.⁷ She states; “[Homelessness has] been largely insulated from human rights accountability and rarely addressed as a human rights violation requiring positive measures to eliminate and to prevent its recurrence.” This marked a significant step towards international acceptance of homelessness as a violation of human rights. Prior to this many have sought to elaborate on the relationship between homelessness and human rights, and recent years have seen significant expansion as to the nature and extent of housing rights in this context.⁸

Many others have drawn attention to the phenomenon of the financialisation of housing, and the devastating impact this can have on those less well-off. Increasing attention is being placed on the impact global financial investors have had on how housing is conceptualised, and its availability, accessibility and affordability.⁹ These conversations, however, have happened largely within the fields of economics, sociology and urban development. Thus, there remains a gap in analysis of the capacity of human rights to provide effective accountability in addressing these causal factors of homelessness. This study will consider the interplay between these issues, examining the financialisation of housing in the context of human rights, using homelessness as a means to illustrate the profoundly detrimental effects these processes can have on an individual’s fundamental rights.

⁶ While this study will focus on Western Europe, the issues and phenomena discussed are not exclusive to this region. Much of North America, particularly urban centres, currently face similar issues of financialisation and commodification of housing- with growing numbers of homelessness as a result.

⁷ UNHRC ‘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’ (20 December 2015) UN Doc: A/HRC/31/54.

⁸ One prominent example being Scott Leckie ‘Housing as a Human Right’ 1981 1(2) *Environment and Urbanization* 99.

⁹ See, for example Manuel B Aalbers *The Financialization of Housing: A Political Economy Approach* (1st edn, Routledge 2016).

Some have argued that a marketised housing system which fails a society's most vulnerable is, in fact, inherent to economic neoliberalism.¹⁰ This will be explored throughout this study, looking at the wider economic structures at play, and if indeed homelessness is indicative of an increasingly popular economic model which is incompatible with the demands of economic, social and cultural rights. It will make this analysis with a view to identifying what the role of human rights is, and should be, in this context.

The primary focus will be on the law surrounding housing and homelessness, and what the legal implications may be for homelessness as a violation of human rights law. However, this study will be interdisciplinary in nature and draw on social science by addressing the stigmatisation of homelessness and the impact it has had on efforts to address the problem. Furthermore, it will look at the historical political and social forces which have led to the situation we find ourselves in today.

¹⁰ Ibid 3.

2.

STRUCTURAL CAUSES OF HOMELESSNESS

2.1 INTRODUCTION: HOW CAN HOMELESSNESS BE THE RESULT OF SYSTEMIC INFLUENCES?

A fatal flaw with how homelessness has traditionally been addressed arises through it being often perceived as a result of the victim's personal circumstances or decisions. Such factors can often play a role, yet it is essential to recognise the structural forces at work. These issues highlight the role played by the state in creating situations of homelessness and allow opportunities for states to be held accountable for violating their human rights obligations. This chapter will examine what these structural causes may be, looking at both domestic policies and larger macroeconomic contributors. It will point to instances in which states prioritise profit over human rights obligations, which are especially apparent upon examination of state regulation of the housing market and allocation of land and property.¹¹

Examples of structural causes of homelessness which will be discussed include the deregulation of financial actors, which has often been evidenced to lead to creating homelessness.¹² Adding to this is the failure of many states to adequately respond to the needs of the most disadvantaged, which can force them into situations of homelessness.¹³ A further key contributor in creating situations in which rising house prices drive people from homes they can no longer afford, is the shift in perception towards housing being viewed as a commodity, and the impact this has on state policy. This change has been happening on a global level but is increasingly present in many of the wealthy countries of Western Europe, which this paper pays particular attention to. This means that many of the richest states are increasingly violating housing rights, something which creates a striking visual with people living in extreme poverty, without a home, on the streets of world-class urban centres. This is merely emblematic of a much wider structural issue; pervasive throughout how many modern societies conceptualise the very notion of housing.

Central to this paper is the examination of these factors which result in conditions creating homelessness. In order to illustrate this, it is necessary to identify what these conditions are, such as informal housing sectors, and economic inequality. It is often noted that inherent to neoliberal capitalism is ever-increasing inequalities.¹⁴ These inequalities have become so intrinsic to modern society that they have come to be largely overlooked, both by the public and by international governing bodies. As policies rooted in such an economic strategy increase, so do its repercussions. These repercussions fall heavily upon those who are driven out of homes and on to the streets.

¹¹ UNHRC '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' (20 December 2015) UN Doc: A/HRC/31/54.

¹² See for example, Raquel Rolnik 'Late Neoliberalism: The Financialization of Homeownership and Housing Rights' (2013) 37 (3) *International Journal of Urban and Regional Research* <<https://onlinelibrary.wiley.com/doi/full/10.1111/1468-2427.12062>> accessed 20 June 2020.

¹³ *Ibid* 7.

¹⁴ Keith Jacobs, *Neoliberal Housing Policy: An International Perspective* (1st edn, Routledge, 2019).

2.2 THE ORIGINS OF FINANCIALISED HOUSING (1945-2008)

The current trend sweeping Europe of housing being seen as a commodity, within a financialised housing market, has its roots in the housing policies of post-war Europe.¹⁵ In the wake of the Second World War, as thousands across Europe were rendered homeless, governments undertook large-scale efforts to provide social housing. As a result, the demand for social housing began to reduce towards the end of the 1970s. As demand reduced, it became seen as too costly to continue to build new social housing, a trend which was echoed across all aspects of welfare states. As Keynesianism came to be replaced with a laissez-faire economic approach centred on supporting ‘free-markets’, deregulation and privatisation, (later termed ‘neoliberalism’), governments across Europe stopped building new social housing. These governments no longer saw themselves as responsible for the direct provision of housing, but as facilitators of the property market. Social housing became seen to create a culture of dependence, for a ‘lower class citizen’.¹⁶ Government policy shifted towards supporting entrepreneurial private development planning. As a result, subsequent decades saw public housing stock physically deteriorate and decrease in availability. What public housing remained became stigmatised, as less housing options became available to the poor. This coincided with an increased emphasis on free-markets in the 1980’s leading to the adoption of legislation that deregulated rental markets and capital flows across borders. In subsequent years, finance became increasingly globalised, and housing became an opportunity for the accumulation of capital. Initiated by US neoliberal politics, housing gained momentum within the hegemony of free market ideology. All of this has led to the creation of global financial markets centred around housing as a financial commodity.¹⁷

Essential to enabling this shift was the manner in which states began to encourage homeownership as a societal goal.¹⁸ Centred on an increasingly individualised capitalist mindset and ideological support for private wealth accumulation, many conservative politicians worldwide came to view the promotion of homeownership as the promotion of the ‘diligent, responsible man’¹⁹. Owning a home was encouraged as a means of making everyone an owner in ‘shareholder capitalism’²⁰. This furthered the idea of the private market as the regulator of society and economy. This belief in homeownership (both due to, and in spite of, its inaccessibility to so many) contributed to an ideology in which the poor came to be blamed for their own poverty, rather than the structural inequalities inherent within such an economic model. The stigmatisation of social housing, and the deregulation of rental markets, allowed for homeownership to become a social symbol and a financial commodity. This has since become central to housing policies, as illustrated through the state’s encouragement of those living in public housing to purchase their home, and the increased usage of subprime mortgages.

¹⁵ Ibid 2.

¹⁶ Rory Hearne, *Housing Shock* (1st edn, Policy Press 2020).

¹⁷ Ibid.

¹⁸ R. Forrest and P. Williams ‘Commodification and Housing: Emerging Issues and Contradictions’ (1984) 16(9) *Environment and Planning A: Economy and Space*.

¹⁹ Ibid 16.

²⁰ Ibid.

Governments liberalised mortgage markets through a range of policies. This period saw credit expanded for mortgaged homeownership. Mortgage lending was opened up to financial investments, and mortgages began to be traded on financial markets. This enabled the creation of real estate, and housing, as a global financial asset. These mortgages, a form of market-based housing finance, increasingly contributed to the creation of a global bubble of real estate prices. This property bubble, at its peak in the years leading to the crash of 2008, resulted in an ever-growing group within society being unable to afford adequate housing. The situation has yet to improve for those who cannot access affordable rental property, let alone purchase a house- as many European governments and economies continue to promote this as the ultimate financial asset. Today, housing is primarily provided through private actors, and intrinsically tied to the whims of the global financial market.

2.3 THE COMMODIFICATION OF HOUSING

As previously noted, an overbearing force in the creation of homelessness within free market economies is the gradual shift in how housing is perceived. Known as the commodification of housing, it is a process by which housing becomes viewed as a liquid financial commodity, as opposed to a social necessity.²¹ Historically, a house has been understood solely within its social function, as an essential component of a life lived with dignity. As the real estate market grows, state perception of housing becomes increasingly removed from this. Housing is financialised and viewed as an asset to be traded with. This is underpinned by the belief that markets are capable of balancing the allocation of housing themselves, and thus must be unregulated and allowed to do so. The process by which housing came to be the commodity that it is today has been described as the transformation of a ‘sleeping beauty’- an asset owned by traditional means- into a ‘fantastic ballet’, whereby it becomes part of the constant movement of global markets.²² The process of financialisation is advanced by property investors, creating hyper-expensive real estate and gentrified neighbourhoods. This can push those who can no longer afford to live into such areas into inadequate housing or homelessness, as well as contributing to growing social exclusion and separation. In addition, many properties which are bought as assets go unused, creating a situation in which urbanisation remains on the rise while many of the most central homes sit empty.

As a result of this commodification process, housing is now valued in accordance with its exchange value, as a source with which to generate wealth and investment returns, rather than its use value, as a home.²³ This results in a dramatic change in the relationship between a person and their home, as housing becomes increasingly unaffordable and precarious. This is, in itself, at odds with the provisions of right to housing, which calls for “a secure place to live in peace and dignity” to be ensured.²⁴ The commodification of housing means that housing becomes increasingly disconnected from its role as a social necessity, and human right.

²¹ The concept of the commodification of housing emerged in the eighties. See for example R Forrest and P Williams ‘Commodification and Housing: Emerging Issues and Contradictions’ (1984) 16(9) *Environment and Planning A: Economy and Space*.

²² Zivkovik, ‘Financiarisation de l’immobilier: la réponse innovante du groupe BNP Paribas’, *Les entretiens de la Maison Dorée*, 2006) [http://compresse.bnpparibas.com/applis/wCorporate/wCorporate.nsf/docsByCode/ADIA-78SDZQ/\\$FILE/CR_FR_financiarisationimmobilier\[1\].pdf](http://compresse.bnpparibas.com/applis/wCorporate/wCorporate.nsf/docsByCode/ADIA-78SDZQ/$FILE/CR_FR_financiarisationimmobilier[1].pdf) (accessed 29/06/2020).

²³ Manuel B Aalbers *The Financialization of Housing: A Political Economy Approach* (1st edn., Routledge 2016).

²⁴ CESCR ‘General Comment No. 4: The Right to Adequate Housing’ (1991) E/1992/23.

The perception of housing as a commodity, coupled with the deregulation of global financial actors, means that housing markets in many states have been incredibly distorted through unregulated global capital. Hundreds of millions of dollars are now being invested into residential property, but the process of commodification has concentrated this investment to an unprecedented degree, driving prices up, and availability of housing down. This is done largely through private equity firms purchasing ‘undervalued properties’ (homes where the tenants are paying average or below-average rents, and upgrade them, then able to charge higher rent). This often means the current occupants can no longer afford to stay. While rent and buying prices skyrocket, the poor are driven out of the market, often through forced eviction. This, for many, has been a direct driver into homelessness. In many Western European countries, evictions from the private rental sector are the leading cause of homelessness.²⁵ As evidenced, these evictions are less the fault of the evicted, and are instead linked to a process by which housing is made increasingly less accessible, affordable and secure. Foreclosures, a form of displacement, have enabled widespread eviction and, in turn, increasingly widespread homelessness.²⁶

2.4 STATE RESPONSIBILITY IN THE COMMODIFICATION PROCESS

The situation we find ourselves in today, where housing is increasingly viewed as a commodity to be bought and traded with, is increasingly enabled by governments. The growth in free-market economies globally has coincided with the tendency of many governments to prioritise economic growth through the facilitation of large corporate investors, over their human rights obligations to ensure the right to housing.²⁷ This issue of prioritisation takes many forms. It can be seen clearly in states where housing and social benefits become privatised and marketised. In such states, governments privatise social housing, allowing investors to take on the role of providing housing to those who cannot afford a home otherwise. It is largely done through the state subsidising rent payments. This means that private actors become key players in the provision of what was previously a social good. In turn, these investors increasingly gain power and control in the making of key state decisions. This, naturally, results in their interests being favoured over the interests of those with precarious housing situations, for example. This has led to instances of:

“labour market deregulation, reduced rates of taxation on wealthier individuals and corporations, displacement by extractive industries, dams and other developments, the privatisation of infrastructure and services, predatory lending and many other factors.”²⁸

Governments of countries such as Portugal and Spain have subsidised these developments through tax breaks and bank bailouts, as it creates huge investment and economic growth for the state. However, it does this at the expense of significant proportions of their populations, who very often simultaneously suffer from social housing programmes being cut or their funding significantly

²⁵ Ibid 16.

²⁶ Anne J Martin, ‘After Foreclosure: The Displacement Crisis and the Social and Spatial Reproduction of Inequality’ (2010) Department of City and Regional Planning, University of California, Berkeley ISSC Working Paper Series 2009-2010, 48 <<https://escholarship.org/content/qt3551q7sd/qt3551q7sd.pdf?t=lns8fs>> accessed 01 August 2020.

²⁷ UNHRC ‘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’ (20 December 2015) UN Doc: A/HRC/31/54.

²⁸ Ibid.

diminished. This is yet another consequence of housing being viewed as a commodity, rather than as a right. In addition, in light of global financial capital and speculative movement, as well as strategic location movement of transnational corporations, many local governments have become involved with efforts to attract speculative investment in central city areas. This corporate takeover of city centres results in instances where “individual owners are competing for locations with multinational companies”²⁹. In turn, this pushes those who can no longer afford to live in such areas into inadequate housing in areas which can have limited access to basic services and are at a distance from their sources of livelihood.

All of these factors can be seen to culminate in unaffordable housing markets, where many are forced into homelessness as a result. Government intervention has made housing available to financial investors. Publicly owned housing or traditional informal settlements are increasingly being taken over by global actors. In these instances, it is evident that states have prioritised the interests of the market forces, over their responsibilities to provide for those who face precarity, and insecurity, in their housing situation.

2.5 LINKING THESE PHENOMENA WITH THE INFLUENCE OF NEOLIBERAL ECONOMICS

Neoliberalism is the emerging dominant economic trend in many of European states, where middle and upper classes living alongside a growing population who are on the cusp of homelessness or are already there. The Special Rapporteur on the right to housing has found that “inequality and the conditions that breed it are the most consistently identified as causes of homelessness”.³⁰ Inequality refers to an ever-growing accumulation of wealth for an ever-shrinking number of people. It is largely the result of economic policy having a disproportionate harmful impact on vulnerable groups.³¹ Neoliberal economics are centred on the belief that the private market can regulate the economy. Yet within such states, inequality often emerges as the result of market-orientated economies striving to create growth for the wealthy, at the expense of those at the bottom. This is very clearly illustrated when one examines the housing and urban policies of these economies, such as market deregulation, welfare cuts, lower taxation and the privatisation of public housing.³²

Privatisation is a key component of a market-driven economy, and the housing market is no exception. Many states have dodged their responsibilities to ensure economic and social rights, deferring welfare payments to private markets and allowing widespread privatisation of the housing market, which has led to housing development being guided by land use and urban development. This is especially obvious and particularly worrisome in urban areas, where new housing supply becomes targeted towards the rich, inflating real estate values and making it difficult for many to find affordable housing, meaning many have to turn to homelessness. An example of this is the city of Madrid, where house prices have increased an estimated 38 percent between 2013 and 2018, while

²⁹ Ibid 12.

³⁰ UNHRC ‘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’ (20 December 2015) UN Doc: A/HRC/31/54.

³¹ Chanu Peiris ‘How Human Rights Law Is Evolving to Address Inequality’ (*Chatham House* 10 Dec 2016) <<https://www.chathamhouse.org/expert/comment/how-human-rights-law-evolving-address-inequality>> accessed 09 May 2020.

³² Ibid 12.

gross wages increased an average of only 0.1 percent.³³ Homelessness in Madrid is continually growing; as of 2019 there are approximately 2,800 homeless people in the city, 35% more than figures from 2017.³⁴ The global trend of growing urbanisation has made rising house prices an ever more prevalent problem, with people in many cities around the world often forced to live in informal settings where development-based forced evictions are commonplace. The eviction of those who are forced into such informal markets in order to develop “high-end tourist attractions, shopping malls or entertainment districts”³⁵ is illustrative of the failure of profit-driven economies to respect the right to housing for everyone.

Market deregulation is another central tenet of neoliberalist thinking and one which has had similarly profound effects on the right to housing. Contrary to what one might expect, the unregulated markets of many of today’s neoliberal economies rely on significant state intervention. It has been argued that the economic crisis of 2008 is illustrative of the limits of neoliberalism, as an economic model over-reliant on the capacity of the market to ensure housing for all, and one which is constantly careening towards the next crisis.³⁶ The crash of 2008 having its roots in the housing market can be seen to illustrate the inability of the market to sustain itself without constant state support, nor provide adequate and affordable housing for all who need it. This constant propping up of market forces while dismantling welfare institutions further implicates states in creating societies in which violations of the right to housing is commonplace. Nowhere is this seen more clearly than the aftermath of the 2008 financial crisis, whereby the financial neoliberalisation of many states across the world resulted in increasingly unaffordable and precarious housing, forcing many into homelessness.

Neoliberalism has emerged globally in many institutional forms, with varied consequences. Its impact has been experienced to a different extent by different social groups, and governments across the world have taken different approaches to how much they allow, or enable, neoliberalist thinking to become a fixture of economic policy. Trends of privatisation and market deregulation are recurring among such states, and as the examples given have sought to illustrate, these trends can have catastrophic impacts on the enjoyment of the right to housing.

2.6 CONCLUSION: THE ROLE OF A HUMAN RIGHTS APPROACH

Market orientated economies bring about an infinite number of interconnected structural barriers to the full realisation of the right to housing. This creates situations wherein it can be incredibly difficult to identify culpability for cases of homelessness. The commodification of housing coupled with growing urbanisation and financialisation can leave many of the most vulnerable without a house. The privatisation of the housing market and social benefits often means that these same people are left with no support upon finding themselves in such a situation. Inequality, the overwhelmingly prevalent consequence of neoliberal societies, plays an instrumental role. It widens the gap between those able to afford housing and those who can’t, while pulling huge swathes of people from the former into the

³³ Surya Deva, Leilani Farha ‘Mandatos del Grupo de Trabajo sobre la cuestión de los derechos humanos y las empresas transnacionales y otras empresas; y la Relatora Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado’ (22 March 2019) Communication No. OL ESP 3/2019.

³⁴ Manuel Muñoz Informe IX Recuento De Personas Sin Hogar En Madrid (2018) Madrid City Council <https://www.madrid.es/UnidadesDescentralizadas/IntegracionyEmergenciaSocial/SAMUR%20Social/ficheros/INFORME%20RECUESTO%202018_FINAL.pdf> accessed 20 March 2020.

³⁵ Ibid 30.

³⁶ Ibid 12.

latter. A human rights approach to homelessness must address these overarching structural issues, for the institutional causes of homelessness cannot be ignored. Because of this, this chapter has made clear what such structural drivers into homelessness are, and how culpability is often found at the hands of the state. Housing has become symbolic of wider issues within our prevailing economic systems, and the degree to which they are incompatible with the human right to housing, among many other economic and social rights. As noted by Angel,

“ . . . there is little merit in a housing policy that solely focuses on the poor, hoping against hope that “the market” will take care of the rest, without paying any attention to whether the market is functioning properly. When the market is not functioning properly, the poor are squeezed as well.”³⁷

The market is clearly not fulfilling this role when individuals are pushed into sleeping on a street. The state should act as a protection against that which threatens housing rights, as opposed to inviting it in.

The right to housing emphasises the importance of housing for survival, instead of as a marketised asset. Whereas global investors view houses as a tool for the extraction of profit and leveraging of capital, the right to housing focuses squarely on its essential social role. In this respect, the right to housing should provide protection against the changing perception of housing. As governments globally continue to court international investors and encourage the commodification of housing, it becomes apparent that many states do not respect enough their obligations to respect the right to housing. Subsequent chapters will explore why human rights have been failing in this area.

3.

HOMELESSNESS AND HUMAN RIGHTS

³⁷ Shlomo Angel *Housing Policy Matters: A Global Analysis* (Oxford University Press, 2000) 74.

3.1 INTRODUCTION

Being homeless can arise from any number of causal factors, and the experience varies significantly from person to person. Regardless, homelessness is an egregious denial of many human rights, with numerous factors contributing to harrowing circumstances faced by those living without a home. With this in mind, some commonalities can be identified which help us highlight which rights are violated and to what extent. Being homeless affects almost every aspect of the life of the victim. People without a home, and particularly those living ‘rough’ on the streets face serious threat to their health and safety. Resulting from long-standing stigma and discrimination, they are often subject to routine violence. This discrimination can contribute to a loss of dignity and have severe mental health repercussions. The stigmatisation of homeless people can further result in them being persistently overlooked by policy makers and governments. Homelessness is an extraordinarily debilitating condition that restricts access to voting, employment and education, among other crucial rights. This lack of access can effectively silence the voice of the homeless and contribute to the cyclical nature of the problem.

Human rights, at their conception, recognised the crippling effects situations of poverty can have on a person’s enjoyment of their fundamental rights. Homelessness, in most instances, results in conditions qualifiable as extreme poverty.³⁸ The foundational treaty of the United Nations, the UN Charter, calls in Articles 55 and 56 for international cooperation to ensure the universal realisation of ESC rights. These commitments are further expanded upon in the non-binding Universal Declaration of Human Rights (UDHR). While the UDHR poses no legal obligations on States party, it is heralded as the foundational basis on which human rights are built, and its provisions are so widely recognised that it is considered by some to be customary international law. The UDHR stipulates in Article 25 that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care, and necessary social services”. Housing rights have since been enshrined in many subsequent legally binding instruments, which will be identified and examined later in this chapter. These rights are now prevalent at a global level, recognised within the EU, Inter-American and African human rights instruments. As will be expanded on below, the Council of Europe affords significant protections to the right to housing and puts further obligations on states. As such, housing rights are clearly defined and recognised as an integral component of economic, social and cultural rights.³⁹ This chapter will first pinpoint what rights are primarily violated through homelessness, and then will identify key sources of obligations upon states to respect the right to housing in particular, paying special attention to obligations for European states.

3.2 RIGHTS VIOLATED THROUGH HOMELESSNESS

³⁸ Kathryn D Talley, D Stanley Eitzen and Doug A Timmer *Paths To Homelessness* (1st edn, Routledge, 2019).

³⁹ Padraic Kenna, ‘International instruments on housing rights’ 2010 2(1) ASCE
<[http://dx.doi.org/10.1061/\(ASCE\)1943-4162\(2010\)2:1\(11\)](http://dx.doi.org/10.1061/(ASCE)1943-4162(2010)2:1(11))> accessed 19 June 2020.

Homelessness is most obviously a violation of the right to housing, found in international law under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, the right to an adequate standard of living. General Comment No. 4 of 1991 clarifies the right to housing as a freestanding right.⁴⁰ In addition, the right to housing is enshrined in Article 28 of the Convention on the Rights of Persons with Disabilities.⁴¹ However, homelessness will always result in the violation of more than solely the right to housing. It can be characterised as the most extreme form of poverty,⁴² which results in threats being imposed upon the life of the homeless, a violation of the right to life, liberty and security, and freedom from inhuman and degrading treatment.⁴³ These rights are interlinked and inter-connected. The deprivation of each of these rights contributes to the perpetuation of homelessness, and thus it is through ensuring that the minimum standards of these rights required by international law are met, that homelessness can be eradicated. This illustrates a strong correlation between how a state respects human rights, and homelessness within that state.⁴⁴ In order to pursue a human rights-based approach to homelessness, these rights must be identified and fought for. The most prevalent rights violated through homelessness, and thus the most useful when advocating for a rights-based approach to homelessness are the right to housing, the right to life, and the right to freedom from discrimination. This section will highlight the relationship between these rights, the obligations they impose, and homelessness. It will also touch on the interplay between homelessness and property rights, as this is something which has been seen to bear significant impact upon efforts to advocate for the right to housing.

a) RIGHT TO AN ADEQUATE STANDARD OF LIVING

The most obvious human rights violation experienced by those without a home is Article 11 of 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 cooperation based on free consent.*⁴⁵

This Article imposes obligations on states to ensure an adequate standard of living, meaning that the conditions surrounding homelessness constitute a violation on many counts of this single Article. CESCR have outlined some key factors essential to the realisation of the right to housing as a component of the right to an adequate standard of living. These are; legal security of tenure;

⁴⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1996, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Art 11 (1).

⁴¹ International Covenant on the Rights of Persons with Disabilities, (adopted 21 December 1965, entered into force 04 January 1969) 660 UNTS 195 (ICERD) Art 28.

⁴² National Law Centre on Homelessness and Poverty, “Violations on the Human Rights of Persons Experiencing Homelessness in the United States: A Report to the Special Rapporteur on Extreme Poverty and Human Rights” (2017).

⁴³ *N.H and Others v. France* App nos. 28820/13, 75547/13 and 13114/15 (ECHR, 02 July 2020).

⁴⁴ *Ibid.*

⁴⁵ *Ibid* 40.

availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁴⁶ Those experiencing primary homelessness have none of these. Those experiencing other forms of homelessness may have only one or two.

Food and clothing are also identified as a requirement to an adequate standard of living. Homeless people have inadequate access to food, largely due to having limited resources. This means that those living without a home do not get enough to eat, and can often suffer a number of health consequences, including malnutrition.⁴⁷ Similar barriers regarding financial resources and ability can obstruct access to other fundamentals of an adequate standard of living, such as clothing.

b) RIGHT TO LIFE

Article 6(1) of the International Covenant on Civil and Political Rights maintains “Every human being has the inherent right to life.” The right to life inherently holds an unparalleled value, in that it is the one right which relates to the very being of a human person. The Human Rights Committee noted this when they acknowledged the right to life to be “the supreme right from which no derogation is permitted”.⁴⁸ The right to life, as maintained by the ICCPR, should be interpreted to mean not only the taking of a life, but the imposition of any threats to life.⁴⁹ The value of this right makes the strain it is put under by homelessness all the more relevant to a state’s international human rights obligations.

The unfortunate truth is that, for a number of reasons, the lives of those living on the streets are often at serious risk. Due to their lack of protection, the homeless are often routinely subject to violent attacks. In 2017, London reported 2,784 violent attacks on the homeless.⁵⁰ A reported 37 deaths resulting from attacks on homeless people occurred in the US in 2016.⁵¹ While these numbers are striking, they also may give a very inaccurate estimation as to the prevalence of such violence, with most victims of such attacks not reporting these instances due to factors such as stigmatisation and discrimination.

Attacks on the homeless are largely based on gender or racially discriminatory grounds. This means that women, children, and minority groups are much more vulnerable to attack. In addition, homeless people are often subject to random acts of violence with no traceable motivation. This is to say, by virtue of being homeless, any person is at risk of attack or homicide.

The threat to the life of a homeless person of course comes not only through violent attacks, but also arises as a result of the physical conditions faced while living without a home. The health and welfare of a person is severely impacted through inadequate access to basic sanitation and resources. In 2018, 726 homeless deaths were reported in England and Wales,⁵² most of these being attributed to ‘sleeping rough’ (again, the actual figures are estimated to be much higher). As it has been accepted

⁴⁶ CESCR ‘General Comment No. 4: The Right to Adequate Housing’ (1991) E/1992/23.

⁴⁷ Department of Human Services, Victoria ‘Primary and Acute Health Responses to People Who Are Homeless or at Risk of Homelessness: Information Paper’ (2000).

⁴⁸ CCPR ‘General Comment no. 6: Article 6 (Right to Life)’ (1982).

⁴⁹ CCPR ‘General comment no. 36 on Article 6 (Right to life)’ (2016) CCPR/C/R.36/Rev.4.

⁵⁰ Amy Walker ‘Beaten, harassed, set alright: rough sleepers tell of the horrific rise in violence’ *The Guardian* (London, 15 December 2018).

⁵¹ National Coalition for the Homeless *Vulnerable to Hate: A survey of Bias-Motivated Violence against People Experiencing Homelessness in 2016-2017* (2018).

⁵² Office for National Statistics ‘Deaths of homeless people in England and Wales: 2018’ (2019).

that the right to life also requires positive measures be taken by states,⁵³ the threat to life and the loss of life resulting from these physical conditions too must constitute a violation of the right to life under international law.

c) RIGHT TO FREEDOM FROM DISCRIMINATION

Discrimination is a key issue as regards the treatment of those experiencing homelessness, and the perpetuation of their struggles. A significant component of international human rights law, the right to freedom from discrimination is entrenched in both the ICCPR and ICESCR.

The homeless face widespread discrimination. As noted by the Special Rapporteur in her 2015 report, they are one of the only groups to be categorised and discriminated against based on their lack of access to their human rights.⁵⁴ The cycle of discrimination faced by the homeless leads to a lack of social attention, lack of demand for recourse, psychological damage for those experiencing homelessness, and an endless torrent of mistreatment from the public and the authorities. In turn, the discrimination faced by those experiencing homelessness leads to their social exclusion and marginalisation.⁵⁵ In many countries, discrimination against homeless people remains lawful. This contributes to people without a home being unable to get a job, access social security or welfare assistance, or even find a home. It is in this way that the discrimination faced by the homeless can be their biggest barrier in sourcing their own means of escape.

HOUSING RIGHTS V. PROPERTY RIGHTS

It bears noting here, that while homelessness has been recognised internationally as a violation of human rights, the protection of these rights often comes in conflict with issues of rights to private property. Indeed, law itself has historically been primarily focused on the protection of private property and market systems.⁵⁶ This is especially evident with regards to housing rights within real estate, where the right to housing and the right to private property often come into conflict. In these instances, advocates for housing rights will often point to cases where property owners have pushed people into situations in which their housing needs are not met. In response, the investment trusts who are buying available properties can argue that they are within their property rights to do so. This is where the role of the state, and its human rights obligations, come in. CESCR have maintained that property rights and housing rights can, and must, work alongside each other.⁵⁷ They posit that, while under a number of international binding covenants, everyone has the right to own property, it is possible for this to be respected without infringing the right of everyone to safe and secure housing. In one complaint, they made the case that when using the principles of reasonableness and

⁵³ Ibid 40, para. 5.

⁵⁴ UNHRC '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' (20 December 2015) UN Doc: A/HRC/31/54.

⁵⁵ Philip Lynch, "Homelessness, Human Rights and Social Inclusion" (2005) 30(3) *Alternative Law Journal* <<https://journals.sagepub.com/doi/pdf/10.1177/1037969X0503000304>> accessed 08 March 2020.

⁵⁶ Padraic Kenna, 'International instruments on housing rights' 2010 2(1) *ASCE* <[http://dx.doi.org/10.1061/\(ASCE\)1943-4162\(2010\)2:1\(11\)](http://dx.doi.org/10.1061/(ASCE)1943-4162(2010)2:1(11))> accessed 19 June 2020.

⁵⁷ OHCHR 'Fact Sheet No. 21, The Human Right to Adequate Housing' (November 2009) Fact Sheet No. 21/Rev 1.

proportionality with regards to evictions, a distinction must be drawn between properties belonging to individuals who need them as a home, and those which belong to financial institutions.⁵⁸ Tensions between these rights remain, yet the legal framework supporting the right to housing is now strong enough to offer real protection for those most vulnerable to violations. Housing, when viewed through the lens of housing rights, as opposed to property rights, is seen not as a commercial commodity but as an essential feature of a dignified human life. It is because of this that housing has come to be an integral part of economic and social rights.⁵⁹

3.3 HOMELESSNESS AND HUMAN RIGHTS INSTRUMENTS

3.3.1 UN TREATIES

The rights infringed upon through homelessness primarily fall under the category of economic, social and cultural rights. As a result, the treaty most responsible for protection against homelessness is the International Covenant of Economic, Social and Cultural Rights.⁶⁰ The right to housing first appeared in an international treaty under Article 11 of ICESCR, the right to an adequate standard of living. It is now noted to be a freestanding right. This was made clear in General Comment No. 4, which outlines the full nature of state's obligations under the right to housing. These obligations require states to ensure available and affordable housing and highlight what should constitute adequate protection of the right to housing. Other rights provided for in ICESCR that relate to homelessness are;

- Article 2 (2), the freedom from discrimination,
- Article 9, the right to social security, and
- Article 12, the right to the enjoyment of the highest attainable standard of physical and mental health.

These rights are to be realised progressively, but with some minimum core obligations which must take immediate effect. These concepts will be expanded on in the following chapter, but it bears noting here that this means provisions of ICESCR place immediate obligations on states.

The international framework surrounding the right to housing extends beyond the provisions of ICESCR. The ICCPR outlines a range of civil and political rights necessary to live a life in dignity, and requires its 74 signatories to take “administrative, judicial and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”⁶¹ They must do so in order to give immediate effect to all civil and political rights. While homelessness often has knock-on effects to the realisation of a number of the rights laid out within the Covenant, some of the most prevalent are Article 6, the right to life; Article 7, the right to be free from cruel, inhuman or degrading treatment or punishment and Article 9, the liberty and security of person. States party to the Covenant must commit at federal, state and local levels to ensuring the realisation of these rights for

⁵⁸ CESCR Communication No. 52/2018, Rosario Gómez-Limón Pardo v. Spain UN Doc E/C.12/67/D/52/2018.

⁵⁹ Padraic Kenna, ‘International instruments on housing rights’ 2010 2(1) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* <[http://dx.doi.org/10.1061/\(ASCE\)1943-4162\(2010\)2:1\(11\)](http://dx.doi.org/10.1061/(ASCE)1943-4162(2010)2:1(11))> accessed 19 June 2020.

⁶⁰ *Ibid* 40.

⁶¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

all. They must do this in line with the three dimensions of obligation- to respect, protect and fulfil. As outlined in the Maastricht treaty, they may be required to take some positive action in order to do so.

Other legally binding treaties with provisions relating to homelessness are The International Convention of the Elimination of All forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child each are legally binding treaties with provisions relating to homelessness. CERD Article 2 stipulates “State Parties shall when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups”⁶². Similarly, CEDAW Article 3 mandates “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women”⁶³, and CRC Article 3(3) which requires

“States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”⁶⁴

Additional UN clarification of state responsibility as regards homelessness takes the form of resolutions of the General Assembly and resolutions of the Commission on Human Rights, which serve to provide authoritative international standard-setting as regards how states should address extreme poverty, a category under which homelessness falls.

3.3.2 CUSTOMARY INTERNATIONAL LAW

Customary international law is a further source of binding obligations on states. Established through continued state practise, such standards and regulations have come to be known as *opinio juris*. All states are subject to customary international law, which means it holds obligations for states who may not be signatory to other sources of human rights law. Many of the provisions of the ICCPR and ICESCR are also considered customary law. Rights relating to homeless which have attained the status of customary law include the right to life; the right to liberty and security; the right to freedom from discrimination and the right to be free from cruel, inhumane or degrading treatment or punishment.⁶⁵

3.3.3 HOUSING RIGHTS AND THE ECHR

⁶² Convention on the Elimination of Racial Discrimination (adopted 21 December 1965, entry into force 04 January 1969 UNGA Res 2106) (CERD) art 2.

⁶³ Convention on the Elimination of Discrimination against Women (adopted 04 January 1966, entry into force 04 January 1969) (CEDAW) art 3.

⁶⁴ Convention Relating to Children (adopted 20 November 1989, entry into force 02 September 1990) (CRC) art 3(3).

⁶⁵ Philip Lynch, “Homelessness, Human Rights and Social Inclusion” (2005) 30(3) *Alternative Law Journal* <<https://journals.sagepub.com/doi/pdf/10.1177/1037969X0503000304>> accessed 08 March 2020

With a view to understanding the extent of the human rights standards within the wealthy states of Western Europe (most of whom maintain unduly high homeless populations), this section will examine the additional obligations placed on states parties to the European Convention on Human Rights (ECHR). It will do so with a particular focus on the right to housing. This is done so as to maintain a focus on the right perhaps most immediately relevant to homelessness, and to examine the extent of the protections this right has offered.

The Council of Europe (CoE) has set many regulatory standards for the implementation of housing rights. The standards of the CoE are not in direct correspondence with those of the UN, in that they do not follow the model of minimum core obligations and progressive realisation.⁶⁶ The ECHR includes rights which guarantee the right to housing, such as Article 8, the right to family and private life and protection of the home, and Article 6, the right to due process in the case of eviction. The European Social Charter and Revised Charter (RESC) contain rights to social assistance for those without sufficient resources, and specific protections for migrant workers with regards to housing rights and discrimination. Article 30 protects against poverty and social exclusion. The right to housing is laid out in Article 31, in three elements,

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. To promote access to housing of an adequate standard. 2. To prevent and reduce homelessness with a view to its gradual elimination. 3. To make the price of housing accessible to those without adequate resources.”⁶⁷

These standards from both the RESC and ECHR have been subsequently expanded on through jurisprudence. In response to complaints taken under Article 31, the European Committee on Social Rights have interpreted states obligations under the Charter to include ensuring effectiveness of construction policy and social housing, and ensuring emergency housing for homeless people.⁶⁸ With regards to issues of commodification and rising house prices, the third element of State obligations under Article 31 was clarified in *FEANTSA v. Slovenia*, in 2008.⁶⁹ Here, it was determined that the State has obligations not only to ensure that the average cost of housing corresponds to average income, but that “the affordability ratio of the poorest applicants for housing is compatible with their level of income”. This was an important decision at a time of post-crash market deregulation. By asserting that there must be available housing for a State’s poorest members, ESCR provided an additional layer of protection for those who may fall victim to an increasingly financialised housing market.

A landmark housing rights case was the 2006 collective complaint of *FEANTSA v. France*, wherein the organisation alleged numerous violations of Article 31 by the French government.⁷⁰ It argued that housing quality had decreased for the majority of the population, and that the housing needs of the most vulnerable were not being met. This case evaluated all aspects of the social provision of housing and the French housing market system, and ESCR found the French State to be in violation of the Charter on a number of grounds. It was established that France had unsatisfactorily implemented legislation on the prevention of evictions and were lacking in measures to provide

⁶⁶ Padraic Kenna *Contemporary Housing Issues in a Globalized World* (1st edn, Routledge 2014).

⁶⁷ Revised European Social Charter 1996, article 31.

⁶⁸ Council of Europe, 'Housing Rights: The Duty To Ensure Housing For All' (2008) <<https://rm.coe.int/16806da793>> accessed 1 July 2020.

⁶⁹ *FEANTSA v Slovenia* [2008] European Committee of Social Rights, 53.

⁷⁰ *FEANTSA V. France* [2006] European Committee of Social Rights, 39.

rehousing solutions for evicted families. France was also found to have insufficient measures in place to reduce the number of homeless, and an insufficient supply of social housing available to low-income groups. This case is of particular importance in that it recognised the interconnectedness of the structures of the housing market, and its immediate consequences on members of vulnerable groups within the State.

Housing rights provided for in the ECHR have been subject to a number of cases at the European Court of Human Rights (ECtHR), where there have been some positive obligations established, and the minimum core of state protection of housing rights elaborated. The case of *Winterstein and Others v. France* created the principle of proportionality with regards to eviction, wherein attention must be paid to the risk of the persons affected becoming homeless following their eviction.⁷¹ With evictions being a leading driver of homelessness in most European states, this ruling is of great significance.⁷² In the more recent case of *N.H v. France*, the Court found France to be in violation of Article 3, the prohibition of inhuman or degrading treatment, of the ECHR, in respect to three asylum-seekers who were living on the street.⁷³ The Court found the French government responsible for “the conditions in which the applicants had been living for several months: sleeping rough, without access to sanitary facilities, having no means of subsistence and constantly in fear of being attacked or robbed,” and that the applicants had been “victims of degrading treatment, showing a lack of respect for their dignity.” These factors are common to all instances of homeless wherein the victim is forced to sleep on the street, and so it is of great significance that the ECtHR has determined this to be a violation of Article 3. While this decision was made in light of the French authority’s refusal to come to the aid of these men upon their applications for assistance, it opens up potential for other cases to be made in regard to state responsibility in terms of homelessness as a violation of human rights. Particularly, as this thesis has drawn attention to, those of a more systemic nature.

3.3.4 DOMESTIC PROTECTIONS FOR HOUSING RIGHTS

States who are subject to international requirements to protect the right to housing are still obligated to ensure the right is protected in domestic law. States thus can choose whether to protect the right to housing in their constitution, or in regular legislation. Such protections add an important additional layer to how the right to housing can be ensured and made judiciable within domestic courts.

i) CONSTITUTIONALISATION

Over 40% of countries include housing rights in their constitutions. This provides a strong level of recognition and support for housing rights within a state. An example of the constitutionalisation of the right to housing providing a strong basis on which citizens can claim their housing rights is the case of South Africa. The South African constitution provides protection for a number of economic and social rights, with a guarantee of the right to housing for all, and a wealth of court orders expands the scope of this obligation. The case of *Government of the Republic of South Africa & Others v Grootboom & Others* was a landmark housing rights case, in which the Court outlined the

⁷¹ *Winterstein and Others v. France* (2013) 27013/07.

⁷² FEANTSA, Abbé Pierre Foundation, 'Third Overview Of Housing Exclusion In Europe' (2018) <<https://www.feantsa.org/download/full-report-en1029873431323901915.pdf>> accessed 1 July 2020.

⁷³ *N.H and Others v. France* App nos. 28820/13, 75547/13 and 13114/15 (ECHR, 02 July 2020).

justiciability of the obligation to realise progressively all ESC rights.⁷⁴ The court required stronger protections for those most at risk from displacement arising through housing development. It resulted in a major change in housing policy in the state, where most municipalities began to include a “Grootboom allocation” in their budgets to assist those most desperately in need. The influence of this case is illustrative of the value of a constitutionalised right to housing. However, it must be noted that the South African case also represents the limits of the protections afforded by the constitutionalisation of the right to housing. South Africa currently has an estimated 200,000 people living on the streets.⁷⁵ This figure would undoubtedly be much higher if it were to encompass those who are homeless in other situations. This serves to illustrate that it is not enough to solely include a right to housing in a constitution, it must be followed by both state action, and attention from the international community. Yet, while there are varying levels of protection for the right to housing afforded in different constitutions globally, and while including the right to housing in a constitution does not invariably guarantee a strong respect for any right, it does offer some increased degree of recognition and legal remedy for those who face violations of their right to housing.⁷⁶

ii) DOMESTIC LEGISLATION

While the inclusion of the right to housing in constitutions provides a strong basis upon which to build domestic housing rights legislation, all countries have domestic laws which relate to housing rights to some degree. International human rights emphasize the importance of the role of taking legislative measures in pursuance of the right to housing. General Comment No. 4 draws attention to this, saying “the role of legislative and administrative measures should not be underestimated”. As a minimum core obligation, State Parties to ICESCR are obliged to adopt domestic legislation which is in pursuance of the full realisation of the right to housing.⁷⁷ Similarly, States Parties to the European Social Charter are required to take all legal measures necessary to guarantee the right to housing.⁷⁸ While all states have adopted housing rights in their legislation, the formulation of these laws rarely give “discernible substance to certain elements of housing rights”.⁷⁹ It has been noted that there are many cases wherein legislation exists, but is insufficient for addressing the barriers facing full realisation of this right.⁸⁰ An example of this is France, who in 2007 introduced a major progressive national law to protect the right to housing. Known as DALO (*Droit au Logement Opposable*/ enforceable right to housing), this law provides that those who do not have adequate housing, and who fall within the categories outlined in the law, can take legal action. This law has led to significant advancements in housing policy in France and legal respect for housing rights, yet significant

⁷⁴ Government of South Africa and others v. Grootboom and others [2001] (1) SA 46 (CC).

⁷⁵ Catherine Cross, John Seager, Johan Erasmus, Cathy Ward, Michael O’Donovan ‘Skeletons at the feast: A review of street homelessness in South Africa and other world regions’ (2010) 27(1) Development Southern Africa 5, 20.

⁷⁶ United Nations Housing Rights Programme *Housing rights legislation: Review of International and national legal instruments* (Report No. 1, 2002) <<https://www.ohchr.org/Documents/Publications/HousingRightsen.pdf>> accessed 03 August 2020.

⁷⁷ Ibid.

⁷⁸ *European Roma Rights Centre v. Bulgaria* [2007] European Committee on Social Rights 46/2007.

⁷⁹ Government of South Africa and others v. Grootboom and others [2001] (1) SA 46 (CC).

⁸⁰ UNCHR, Sixty-First Session ‘Report of the High Commissioner for Human Rights and mass exoduses’ (31 January 2005) UN Doc. E/CN.4/2005/80/Add.1.

problems with housing and homelessness in France remain.⁸¹ The French case illustrates the importance of equipping such domestic legislation with adequate resources in order to be effective, and that the sole existence of legislation to protect the right to housing is not sufficient to ensure it will not be infringed upon. Thus, while domestic legislation plays a key role in the protection of the right to housing, it has proven to be largely inadequate to address the large-scale and systemic violations of the right to housing occurring on a global scale.

3.3.5 BUSINESS AND HUMAN RIGHTS

The interplay between business and human rights is gaining increasing attention in the international community. Thus, new state obligations have been created, in the form of the soft-law ‘United Nations Guiding Principles on Business and Human Rights’. As has been expanded on in previous chapters, the role of financial actors is increasingly important in discussions of housing rights. The movements of private equity firms and global financial corporations regarding foreclosures and access to credit directly impact affordable housing, displacement and homelessness.⁸² This means that these Principles play an important role in state obligations as regards homelessness, and the right to housing. The business and human rights framework is led by the Guiding Principles “Protect, Respect, Remedy”. This encompasses

- (a) States obligations to protect human rights,
- (b) The role of business enterprises to comply with all applicable laws and to respect human rights, and
- (c) The requirement for breaching of rights and obligations to be matched with appropriate remedy.⁸³

This creates a global standard for business activity, placing obligations on both states and business actors. The situation of business impact on human rights is monitored by a special representative of the Secretary-General. Yet, in spite of this increase in importance placed on business and human rights (and with housing being the largest business sector in the world), there remains to be insufficient attention placed on the repercussions of the housing market on human rights.

3.4 CONCLUSIONS

As evidenced, there is a robust framework in place for addressing homelessness. By virtue of the number of rights which can be violated by conditions of homelessness, there are many legal protections in place against such conditions. Both domestically and internationally, this framework and jurisprudence continues to develop, reflecting changes in societies and standards. Furthermore, as will be expanded on in the following chapter, the minimum core obligations and the principle of

⁸¹ Julie Caluzer ‘The DALO law: A step towards making housing rights a reality’ (*Housing Rights Watch*, 6 July 2017) <<http://www.housingrightswatch.org/content/dalo-law-step-towards-making-right-housing-reality>> accessed 03 August 2020.

⁸² UNHRC ‘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’ (20 December 2015) UN Doc: A/HRC/31/54.

⁸³ UN Human Rights Council, *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 7 April 2008, A/HRC/8/5, available at: <https://www.refworld.org/docid/484d2d5f2.html> [accessed 2 August 2020].

progressive realisation continue to influence new law-making in the area of housing.⁸⁴ Yet, homelessness prevails in many of the world's wealthiest countries and strongest democracies. For this reason, this chapter included a specific analysis of the protections for housing rights Europe, for states parties to the ECHR. In such states, the housing market, and the regulatory framework of housing systems, remain largely untouched by the requirements of housing rights. It is these systems that bear the greatest responsibility for systemic causes of homelessness. What legal obligations these governments are failing to meet, and how they avoid facing accountability will be analysed in subsequent chapters.

⁸⁴ Padraic Kenna, 'Can international housing rights based on public international law really impact on contemporary housing systems?' in L. Fox O'Mahony & J. Sweeney (eds), *The idea of home in law: displacement and dispossession* (Farnham: Ashgate 2010).

4.1 INTRODUCTION

Homelessness is a condition which affects one's ability to access a range of human rights, yet they are largely centred within economic, social and cultural rights. The justiciability of this group of rights is the subject of long-standing debate but is becoming increasingly evident in international and domestic courts that they do in fact hold more justiciable potential than had been previously considered. The apprehension surrounding the enforcement of ESC rights has largely stemmed from difficulties in assessing the nature and scope surrounding the legal obligations entailed within these rights, and as will be evidenced throughout this study, has resulted in a weak standard of protection for the right to housing. Economic, social and cultural rights have long suffered under pre-conceptions of being difficult to enforce, difficult to monitor, and politically unpopular. This has led to their taking second place in the international agenda to their counterpart, civil and political rights.⁸⁵ This has had severe repercussions on the capacity and willingness of the international human rights community to take meaningful steps in addressing homelessness.

Soon after the drafting of the UDHR, came its division into two 'generations' of rights. These took their form in two legally binding treaties, to which most UN member states are party. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), each with provisions which relate to poverty and homelessness. The division of these groups of rights created a long-standing imbalance in how they are perceived and respected. The provisions of the ICCPR pose immediate and absolute obligations on states party to the Covenant, meaning States are legally required to ensure the rights of the Covenant are ensured upon ratification. In contrast, Article 2 of the ICESCR calls for the 'progressive realisation' of the articles therein. As a result of this, the obligations imposed by ICESCR were seen as limited and relative, in light of the wider margin of appreciation left for states. In turn, ESC rights took on the role of societal goals to be attained, with few to no legal requirements.

Various developments have brought about a change in the perception of ESC rights, with an emerging acceptance of their urgency and legal significance. This comes particularly following General Comment No. 3 of The Committee on Economic, Social and Cultural Rights adopted in 1990.⁸⁶ This established the existence of "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights".⁸⁷ This meant that ICESCR now posed immediate obligations to secure this "minimum core", along with the obligation to achieve progressively the full realisation of the rights provided with "deliberate, concrete and targeted steps".⁸⁸ With regards to homelessness and housing, this posed a measurable and immediate obligation upon states to address homelessness in their own countries. Yet, there remains to be difficulties surrounding the precise elaboration of the normative content of housing rights. While the

⁸⁵ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (2nd edn, Bloomsbury 2016).

⁸⁶ CESCR 'General Comment No. 3: The Nature of States Parties' Obligations' (1990) E/1991/23.

⁸⁷ *Ibid*, para. 10.

⁸⁸ *Ibid*, para. 2.

‘minimum core obligations’ and the concept of progressive realisation pose immediate positive obligations on states parties to the ICESCR, which allow for the identification of instances where a state is not in compliance with its obligations, these have yet to provide full accountability for state responsibility in violating ESC rights, and face their own difficulties in terms of content and scope.⁸⁹ As noted by Leckie “there remains some confusion as to whether widespread violations of economic, social and cultural rights can be automatically declared when, for instance, a portion of society is ill-fed, ill-clothed, or ill-housed.”⁹⁰ The Limburg Principles of the ICESCR go some way towards providing preliminary answers for such issues, elaborating on the nature and scope of violations of the ICESCR, yet there remains widespread ambiguity as to the identification of state violation.

As illustrated earlier, in recent years the conditions of homelessness have been largely accepted to violate a number of rights. However, there remains significant reluctance to qualify these instances as violations. This is due to a combination of factors. It is connected in part to a prevailing conception of economic, social and cultural rights, whereby violations are more often attributed to the untameable forces of economics and society, than they are to state action.⁹¹ This is further compounded by a tendency for societies to characterise those whose ESC rights are not being met as responsible for their own situation, as is overwhelmingly evident with instances of homelessness. These societal misconceptions have created both a sense of complacency in addressing violations of the right to housing, and an unwillingness to identify potential responsible parties.

It is often said that the monitoring of ESC rights provides a wealth of difficulties which are not faced in the monitoring of civil and political rights, and that in light of this, it is much more difficult to adjudicate on such rights. This is made clear when one looks at homelessness, and the range of disparity in how it is defined across the globe. However, it has been noted that if a similar amount of time and resources were given to the monitoring ESC rights as is given to their civil and political counterparts, these difficulties can indeed be overcome.⁹² This chapter will expand on the concepts of progressive realisation, and minimum core obligations, which have emerged as the principle modes of enforcement for ESC rights. It will examine their usefulness with regards to the right to housing, examining how they can be applied to instances of homelessness and culpability. It will further look at how accountability is currently sought by CESCR and the wider international community through enforcement and monitoring procedures, and how effective these are in achieving accountability for violations of housing rights through homelessness, particularly those of a systemic nature. To do this, it will analyse two of the main tools used in the monitoring of ESC rights, benchmarks and indicators. This is done in the hope of clarifying how state responsibility can be identified, and what remain to be the biggest barriers standing in the way of this happening. As the structural causes of homeless remain largely unquestioned by the public and unaddressed by the international community, it is imperative that the tools provided by human rights are expanded on and utilised to ensure such cycles of hardship are broken.

⁸⁹ See For example, Katherine Young ‘A Minimum Core of Economic and Social Rights: A Concept in Search of Content’ (2008) 113(33) Yale Journal of International Law
<<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1337&context=yjil>> accessed 06/04/2020.

⁹⁰ Ibid.

⁹¹ Scott Leckie, ‘Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights’ (1998) 20(1) Human Rights Quarterly, 81.

⁹² Philip Alston and Gerard Quinn ‘The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’(1987) 9 (2) Human Rights Quarterly 172.

4.2 QUALIFYING THE OBLIGATION

4.2.1 PROGRESSIVE REALISATION

Progressive realisation was the original solution to the problems facing the enforcement of economic, social and cultural rights. In order to circumvent arguments that the provisions of ICESCR places an impossible burden on states to finance the realisation of such obligations, the concept of progressive realisation allows for states to “realise progressively” the convention, using “the maximum of its available resources”, but with an immediate obligation “to take steps” towards the furtherance of the objectives of the Covenant.⁹³ This means the Covenant doesn’t allow a state to indefinitely defer its obligations to fully realise the right to housing until resources allow, requiring some degree of action be taken immediately. The enforceability of this requirement is debated. The Committee on Economic Social and Cultural Rights (CESCR) have defended the requirement as having created an immediate obligation, directly upon ratification of the Covenant.⁹⁴ They have maintained that although full realisation of pertinent rights can be achieved progressively, a state is required to begin the process immediately, moving as effectively and rapidly as possible. With regards to homelessness, states are required to immediately develop a national housing strategy which defines “objectives for the development of shelter conditions”. Certain clauses, such as the non-discrimination clause, also bear significant impact on the realisation of the right to housing and are immediately binding.

Under the principles of progressive realisation, policies which are detrimental to the enjoyment of ESC rights are acts of omission, and are contrary to a state's obligations under ICESCR, are a violation of the Covenant. These acts of omission include any “failures to act in accordance with prescribed legal obligations”.⁹⁵ When applied to homelessness, such instances could include the privatisation of social housing, which creates affordability issues and rising eviction levels- a leading cause of homelessness in Europe.⁹⁶ In accordance with the principles of progressive realisation, such state violations must be examined to see if they have resulted from inability to comply due to insufficient resources, or if the state has been consciously unwilling to meet the requirements of the Covenant. Kunnemann suggested that violations can be identified when the state is in a position to avoid breaching its obligations.⁹⁷ By this reasoning, many more states are responsible for violations of the right to housing who have not been identified as having done so. It has been noted that CESCR “only infrequently, and then often softly”⁹⁸ declare violations of ICESCR as violations. There are many factors which may play a role in this, such as hopes of creating an atmosphere for constructive dialogue, fears of alienating state parties, and difficulties in assessing the size and scope of violations. However, while such gross violations of housing rights persist, it is plainly evident that a harder line

⁹³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1996, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Art. 2(1).

⁹⁴ CESCR ‘General Comment No. 4: The Right to Adequate Housing’ (1991) E/1992/23.

⁹⁵ Ibid.

⁹⁶ Isabel Baptista and Eric Marlier *Fighting homelessness and housing exclusion in Europe* (ESPN- 2019).

⁹⁷ Rolf Kinnemann, ‘Comments’, in Fons Coomans & Fried van Hoof *The Right to Complain about Economic, Social and Cultural Rights*, (en Informatiecentrum Mensenrechten, 1995).

⁹⁸ Ibid 91.

taken by the body foremost responsible for the monitoring or such rights would be of significant impact.

This principle is increasingly relevant in light of the unfolding developments surrounding the COVID-19 pandemic. As a means to slow the spread of the virus, many states and municipalities undertook significant efforts to house rough sleepers in emergency accommodation, often using hotel rooms and Airbnb's.⁹⁹ This has managed to dramatically curb street homelessness in many urban centres, with beds found for large numbers of homeless people in previously-unthinkable timeframes. Fears have since arisen regarding the fate of these people once tourism returns to pre-pandemic levels, and hotels require their rooms for commercial use. However, under the principle of progressive realisation, governments cannot take any retrogressive action towards fulfilling their obligations, and to do so would be classified as a violation under international human rights law.¹⁰⁰ Thus, unless adequate alternative housing is found for these people, the state in question can be clearly identified to be in direct violation of its obligations as a result of the principle of progressive realisation.

It has been argued by the Special Rapporteur on Adequate Housing that the requirement that states use "the maximum of its available resources" requires that states parties strive for "an equitable and effective use of (and access to) the resources available".¹⁰¹ Yet, there are many who counter this by arguing that this provision leaves great discretion to states, as they have the capacity to determine how they interpret having used the maximum of their available resources, as well as their own meaning of "full realisation".¹⁰² The framers of the Covenant have insisted that they did not intend to let states parties "arbitrarily and artificially" determine these for themselves, referencing their ability to scrutinize states on the matter.¹⁰³ Yet, as illustrated by the very existence of homelessness, widespread deprivations of ESC rights persist in many wealthier states, who are clearly capable of avoiding such extreme denials of basic rights. This is particularly telling in light of it having been repeatedly proven that it is in fact more costly in the long run to keep people homeless, than it is to house them.¹⁰⁴ As a means to circumvent any loopholes that may be provided to such states by the principle of progressive realisation, the 'minimum core' was introduced.

4.2.2 THE MINIMUM CORE

A human rights approach to homeless must be focused on culpability - addressing how a state is failing to combat homelessness, and most importantly, the role the state may play in creating homelessness. The minimum core content of the obligations of states as regards the right to housing,

⁹⁹ Ceylan Yeginsu 'Coronavirus Nearly Ended Street Homelessness in U.K. Maybe Not for Long'. *The New York Times* (London, 06 June 2020).

¹⁰⁰ Council of Europe, *Housing Rights: The Duty to Ensure Housing for All* (CommDH/IssuePaper - 2008) 7.

¹⁰¹ Scott Leckie and Anne Gallagher, *Economic, Social, and Cultural Rights: A Legal Resource Guide* (1st edn, University of Pennsylvania Press 2006).

¹⁰² Katherine Young 'A Minimum Core of Economic and Social Rights: A Concept in Search of Content' (2008) 113(33) *Yale Journal of International Law*

<<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1337&context=yjil>> accessed 06/04/2020.

¹⁰³ Philip Alston and Gerard Quinn 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 (2) *Human Rights Quarterly* 172.

¹⁰⁴ Eric A. Latimer et. al, 'Cost-effectiveness of Housing First Intervention With Intensive Case Management Compared With Treatment as Usual for Homeless Adults With Mental Illness' (2019) 2(8) *JAMA Network Open* <<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2748596>> accessed 19 June 2020.

and all economic, social and cultural rights, were created as a means of achieving this.¹⁰⁵ Many governments perceived ESC rights to be too imprecise and contingent on available resources to create immediate obligations and standards. Thus, many states failed to significantly improve upon some of their obligations under ICESCR. To combat this, in 1991 the Committee issued General Comment No. 3, which introduced “minimum essential levels” of the rights enshrined in the Covenant which are to be immediately ensured. In doing this they noted “[if] the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*”.¹⁰⁶ This gave greater weight to the Covenant, providing states with an immediate legal obligation to ensure a certain base level of compliance, from which they can continue to progressively realise the full realisation of the rights enshrined therein. The minimum core removes the ability of governments to use the ‘get-out clause’ inscribed within the concept of progressive realisation, evading accountability for widespread violation of the right to housing and all other such rights through pleading insufficient resources.¹⁰⁷ It allows for identification of any retrogressive laws or policies, allowing the courts to hear complaints about socio-economic rights, where the state would have to justify its actions.¹⁰⁸ As noted by Alston “[e]ach right must therefore give rise to an absolute minimum entitlement, in the absence of which a State party is to be in violation of its obligations.”¹⁰⁹ This minimum obligation thus should serve to identify where a state has committed a violation, and these violations be identified and addressed by the international community.

Important to note, however, is that minimum core obligations, and the social protection floors implied therein, remain subject to intense debate. There are many who argue that such social protection floors cannot be universal and unconditional, and that they should not be seen as a matter of human rights.¹¹⁰ As a result, the minimum core for many rights are loosely defined. The minimum core obligations for the fulfilment of the right to housing have been outlined by the Committee, and while many argue they are still lacking in content and scope,¹¹¹ they do provide some instruction as to the very minimum of what a state must do, and must refrain from with regards to their obligations to uphold the right to housing as signatories of the Covenant. In doing so, they go some way towards establishing state accountability for homelessness, directing attention towards what states must refrain from doing which exacerbates and creates homelessness, as opposed to a sole focus on what states should provide for those already homeless. This is an important shift in strengthening accountability and drawing attention to the causal factors of homelessness. For example, as part of a state’s minimum core obligations, “Any existing legislation or policy which clearly detracts from the legal entitlement to adequate housing would require repeal or amendment. Policies and legislation should

¹⁰⁵ John Tasioulas, ‘Minimum Core Obligations: Human Rights in the Here and Now’ (World Bank Group 2017).

¹⁰⁶ CESCR ‘General Comment No. 3: The Nature of States Parties’ Obligations’ (1990) E/1991/23.

¹⁰⁷ Padraic Kenna, ‘International instruments on housing rights’ (2010) 2(1) ASCE
<[http://dx.doi.org/10.1061/\(ASCE\)1943-4162\(2010\)2:1\(11\)](http://dx.doi.org/10.1061/(ASCE)1943-4162(2010)2:1(11))> accessed 19 June 2020.

¹⁰⁸ Douglas Maxwell ‘A Human Right to Housing?’ (*Housing After Grenfell*, 25 February 2019)
<<https://www.law.ox.ac.uk/housing-after-grenfell/blog/2019/02/human-right-housing>> accessed 28 February 2020.

¹⁰⁹ Philip Alston ‘Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights.’ (1987) 9(3) Human Rights Quarterly 332.

¹¹⁰ Special Rapporteur on extreme poverty and human rights, Report on the implementation of the right to social protection through the adoption by all States of social protection floors, UN Doc A/69/297, 11 August 2014, para. 23.

¹¹¹ David Marcus, ‘The normative development of socioeconomic rights through supranational adjudication’ (2006) *Stanford Journal of International Law*, 64, 55.

not be designed to benefit already advantaged social groups at the expense of those in greater need.”¹¹²

This, for many wealthy states, calls for an overhaul of existing policies which serve to exacerbate inequalities. Economic inequality, and state policies which may worsen it, is a central factor in failings to protect the right to housing for many wealthy states. It also often allows for connection to be made between state economic policy and homelessness. However, this is not always an easy connection to make, and often governments can escape accountability for this reason. As a further minimum obligation, CESCR stress that the “Housing rights issues should be incorporated into the overall development objectives of States”.¹¹³ This calls for the mainstreaming of housing rights, including them alongside a system of policies and legislation serving those in need as more of a priority of already advantaged groups.

Governments also must protect the right to housing from third party actors, ensuring that,

“any possible violations of these rights by "third parties" such as landlords or property developers are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies of redress for any infringement caused.”

This obligation means that instances of commodification and marketisation of housing at the hands of the state are in violation of their responsibilities under the right to housing, due to the nature of these phenomena to infringe on housing rights. Yet, most states responsible for such action have largely escaped accountability. As was noted by the Special Rapporteur on Adequate Housing, state obligations are often too narrowly interpreted.¹¹⁴ She argues that the tendency of many states to allow the market to function unregulated so long as these private actors do not actively violate the rights of others is not in accordance with the obligation to fulfil the right to housing by all appropriate means. This acknowledges that the unbridled markets intrinsic to neoliberal economies have tendencies to infringe on housing rights and must be monitored and prohibited from doing so. This can be done through ensuring that private investors act not only in the interest of profit but respond to the needs of society for secure and affordable housing.

The minimum core further provides obligations that are both positive and interventionary on states, and in doing so, illustrate that these obligations are also not fully in line with some of the core tenets of neoliberal, market-driven economies. They do this through emphasising the role of “public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income and other positive obligations”¹¹⁵ in addressing the right to housing. The minimum core obligation means that any state party to the Covenant, in which any significant number of individuals is homeless is, *prima facie*, in violation of the Covenant.¹¹⁶ The minimum core restricts a government's ability to make a number of harmful actions

¹¹² OHCHR ‘Fact Sheet No. 21, The Human Right to Adequate Housing’ (November 2009) Fact Sheet No. 21/Rev 1.

¹¹³ *Ibid* 106.

¹¹⁴ UNHRC ‘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’ (20 December 2015) UN Doc: A/HRC/31/54.

¹¹⁵ Padraic Kenna, ‘Can international housing rights based on public international law really impact on contemporary housing systems?’ in L. Fox O'Mahony & J. Sweeney (eds), *The idea of home in law: displacement and dispossession* (Farnham: Ashgate 2010).

¹¹⁶ *Ibid* (FS 21)

which may create and exacerbate homelessness. As outlined by the Special Rapporteur in her 2015 report, “States have an immediate obligation to ensure that every decision or policy is consistent with the goal of the elimination of homelessness. Any decision or policy that results in homelessness must be regarded as unacceptable and contrary to human rights.”¹¹⁷

Also, of great significance is the manner in which this minimum core shifts the burden of proof from the victim to the state. The low standard set by the minimum core obligations prevents courts from unnecessarily interfering with the work of democratic institutions, but if a state fails to fulfil the minimum core of the right to housing, it would be required to provide justification. This means the courts have the ability to hear complaints on the right to housing and provide effective remedy. Unfortunately, many states with dualist systems have yet to incorporate this into their domestic law, and those with monist systems have not had many instances of homelessness being challenged in court as a violation of a state’s international obligations. This is a direct result of there being a lack of accountability for state actions impacting homelessness, and thus a lack of common perception of homelessness as being a violation of human rights.

4.3 ENSURING ACCOUNTABILITY

4.3.1 MEANS OF ENFORCEMENT

The monitoring and accountability process for ICESCR is carried out by the Committee on Economic, Social and Cultural Rights (CESCR). CESCR, like all other treaty bodies, operates on a reporting system. This system consists of government reports submitted every five years, which the Committee then examines and responds to in the form of “concluding observations”. These observations will include analyses of a state’s compliance, and their recommendations for what the state should do in order to increase compliance with the Convention. However, these recommendations are not binding, and the Committee has no abilities to take any further action on violations of the Convention. Still, they do bear significant weight. A poor performance complying with housing rights opens a government up to “public criticism, international embarrassment, complaints from other states, moves by opposition politicians, criticisms in national and international media, foreign governments demanding that housing rights are met as a condition for aid or some other good or service”¹¹⁸.

In 2013, the Committee introduced an Optional Protocol for an individual complaints mechanism. Here, individuals or groups who feel they have been unable to secure justice for violations of economic, social or cultural rights can make complaints. Due to its relative novelty, and lack of ratifications, this protocol has not amassed a wide range of jurisprudence. It has dealt almost exclusively with issues regarding the right to housing, and particularly cases relating to evictions. This means that the Committee have expanded significantly on states’ obligations to fulfil the right to housing under the Covenant, in particular relating to evictions. For instance, they have ruled evictions without available alternative housing and where there is insufficient insurance against homelessness available to be a violation of the right to housing under Article 11 of the Covenant, read in

¹¹⁷ UNHRC ‘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’ (20 December 2015) UN Doc: A/HRC/31/54.

¹¹⁸ Scott Leckie ‘Housing as a Human Right’ 1981 1(2) Environment and Urbanization 99.

conjunction with Article 2 (1).¹¹⁹ This ruling may have profound repercussions for the thousands evicted into homeless globally each year. Unfortunately, due to the low level of ratifications of this Optional Protocol, many of these victims are unable to make claims of their own. Through the complaints mechanism, CESCR have also made calls on states to put in place a comprehensive housing strategy to guarantee the right to adequate housing for people with low incomes.¹²⁰

Similarly, in both regional and domestic courts, cases concerning the right to housing are largely centred around evictions. While evictions are a main driver into homelessness, and a consequence of the process of commodification, such cases rarely provide opportunity to challenge the state's role in systemic housing rights violations. This is due to these cases being largely made against the landlord or developer. The responsibility of the state in encouraging the actions of these developers can go unquestioned. Due to a lack of common understanding of homelessness in itself being a violation of the right to housing, cases regarding systemic drivers into homelessness are rarely made. It is often the case that advocates fighting against homelessness will not tackle the issue with the tools afforded by it being a human rights violation, opting instead for a social welfare approach. This means that states' compliance with the right to housing can go under-scrutinised and under-reported, in comparison with other treaties and other rights.

4.3.2 MONITORING

Approaching homelessness through housing rights necessitates rigorous monitoring of how states are working towards the fulfilment of this right, as well as of any retrogressive actions they may have taken. An important area of attention are the obligations of the real estate and housing sector in respecting the right to housing, and the detrimental impacts they have had.¹²¹ How the monitoring of both business and state action can be made effective has been subject to lengthy debate, and is intrinsically linked with state interaction with business enterprises and financial corporations. It is yet to be proven what is the best approach for the monitoring of housing rights, and how this can be implemented. This section will discuss the most prominent and promising propositions, these being the use of benchmarks and the analysis of output or input indicators.

a) BENCHMARKS

Benchmarks are a widely accepted necessity for effectively monitoring the compliance of a state with any economic, social or cultural right. The exact nature of what these benchmarks could be will vary significantly depending on the right in question but are essential for providing something against which the fulfilment of the right, and government action, can be compared. If social and political realities in a state are not in accordance with the pre-set benchmarks, it is likely that this right has been violated under the terms of the Covenant. The Committee on Economic, Social and Cultural

¹¹⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 03 January 1976) 993 UNTS 3 (ICESCR) art 11 and art 2(1)

¹²⁰ Lucy McKernan 'International accountability for economic social and cultural rights: recent developments in the complaints procedure on Economic, Social and Cultural Rights' (*The Global Initiative*, 2 April 2019) <https://www.gi-escr.org/latest-news/2019/4/4/international-accountability-for-economic-social-and-cultural-rights-recent-developments-in-the-complaints-procedure-of-the-committee-on-economic-social-and-cultural-rights> accessed 08 June 2020.

¹²¹ Ibid 117.

Rights have persistently put emphasis on the need for benchmarks, which with regard to the right to housing must consider the immediate, minimum core obligations of a state, as well as long term duties and objectives¹²².

Fundamental to a human rights approach to homelessness is a focus on accountability for avoidable deprivations. While there are any number of factors that can lead to a person being homeless, and these cannot always be the direct responsibility of anyone in particular, it is very often the case that such culpability with regards to widespread deprivations is identifiable. They can be either created or exacerbated through state action or inaction. In asserting the right to housing, we are claiming that this is something to which the state must protect for all. Therefore, if someone avoidably lacks access to it, there must be culpability somewhere in the social system.¹²³ A human rights approach puts the focus on accountability of relevant institutions for failing to prevent or rectify avoidable deprivations. Through using benchmarks to identify arbitrary cutbacks in social services or discriminatory practises, cases of significant homelessness resulting from government action can be exposed. The establishment of “intentionalist frames” within which to address structural problems is key to ensuring a human rights approach can effectively monitor and thus, combat homelessness.¹²⁴

b) INDICATORS

In addition to benchmarks, the UN human rights machinery has called for the creation and use of indicators for the measurement of economic, social and cultural rights. These allow for the monitoring of what the International Law Commission has labelled “obligations of result” and “obligations of conduct”, each intrinsic to how we conceptualise and maintain ESC rights, and discern violations.¹²⁵ Due to the many uses for indicators and methodological differences in how they can be developed, subsequent efforts to incorporate indicators have come in many forms. While the UN have made efforts to outline a conceptual framework for the use of indicators, and elaborate on what form such indicators could take, they have still yet to make progress in integrating such indicators into its various monitoring mechanisms. This has particular consequences for the enforcement of a right proven to be so difficult to track, such as the right to housing.

Developing monitoring tools has been a persistent challenge for human rights NGOs working on economic and social rights. Indicators are a crucial tool in measuring the enjoyment of any human right, and recent years has seen growing recognition for the importance of using indicators for human rights monitoring.¹²⁶ Measuring both what a state inputs into the protection of the right to housing, and what results these efforts have (known as outcome indicators) each serve to illustrate to some degree the broad situation of compliance in any state. With regards to the right to housing, and homelessness in particular, there are many difficulties involved with data collection, such as people not presenting as homeless and governments under-reporting figures. This makes outcome indicators particularly hard to gather. These issues are compounded with the difficulty to establish a precise minimum threshold of enjoyment, below which a country would be deemed to be violating its

¹²² CESCR ‘General Comment No. 1: Reporting by States parties’ (1981) E/1989/22.

¹²³ OECD ‘Measuring Economic and Social Rights to Hold Governments Accountable’ (2008) 9(2) OECD Journal of Development.

¹²⁴ Ibid.

¹²⁵ Ibid 118.

¹²⁶ Ibid 123.

minimum core obligations. An example being what exactly constitutes “any significant number of individuals deprived of basic shelter and housing” which the Committee consider a violation.¹²⁷ Further clarity through the managed use of indicators and benchmarks is essential for ensuring compliance with the right to housing.

It has thus been generally concluded that indicators which would best serve the right to housing should be focused on inputs.¹²⁸ Monitoring what states are contributing to the fulfilment of the right should clearly indicate to what extent states, as the primary duty bearer, are fulfilling their obligations under the Covenant. Indeed, monitoring guidelines established by CESCR largely focus on inputs, such as access to housing.¹²⁹ Input indicators allow the focus to be placed firmly on the actions of the state in securing the right. This is, after all, the primary objective of human rights monitoring. Outcome indicators should serve as the first step in the monitoring process, identifying situations where there appear to be a significant number of people suffering from deprivation of the right. Yet these are avoidable deprivations, and an input indicator should ensure that cases of noncompliance are identified before the situation escalates. Input indicators help create the culture of accountability, largely absent from the pursuit of housing rights. Recent efforts to incorporate indicators into human rights monitoring has led to multiple variations of indicators being used. This causes complications and confusions in international monitoring. While the UN has made some efforts to establish indicators, no significant progress has been made to integrate these indicators into the monitoring work of its mechanisms.

4.4 CONCLUSIONS

Widespread homelessness is not inevitable, and there is often a great deal of culpability to be found in the actions of the state. The right to housing affords all people legal entitlement to a home. Therefore, if housing is avoidably inaccessible to a large number of people, the state must be at odds with the provisions of human rights law.¹³⁰ A human rights approach should ensure accountability for those who have failed to rectify or prevent such deprivations. As noted by Alston,

“[O]ur level of tolerance in response to breaches of economic, social and cultural rights remains far too high. As a result, we accept with resignation or muted expressions of regret, violations of these rights. . . We must cease treating massive denials of economic, social and cultural rights as if they were in some way "natural" or inevitable.”¹³¹

This chapter has sought to shine some light on the nature of states obligations with regards to homelessness, and the tools which are available to make evident violations. As illustrated, the current system for holding violators to account for these violations leaves much to be desired. Strengthening government accountability is essential. The appropriate tools and effort need to be invested into tracing homelessness back to government actions or omissions and identifying where there is a violation of the state’s human rights obligations. To do so, indicators and benchmarks must be

¹²⁷ Ibid 112.

¹²⁸ Ibid.

¹²⁹ Ibid 86, describes minimum core obligations in terms of inputs.

¹³⁰ Ibid, 10.

¹³¹ Philip Alston, ‘Excerpts from a speech to the plenary of the World Conference on Human Rights’, (reprinted in Terra Viva, 22 June 1993).

established, along with comprehensive analytical tools to combine and analyse these indicators. It is a matter of urgency that the fulfilment of a government's minimum core obligations is made a political priority, and that government is held to account for how they address these obligations. Without such accountability, the right to housing will continue to be conceptualised in a narrow manner which avoids addressing systemic violations. Homelessness will continue to grow as states are permitted to ignore their obligations.

5.

COMPARATIVE STUDY OF IRELAND AND FINLAND

5.1 INTRODUCTION

This chapter will use a comparative study as a means to examine the influence of market forces, and the protections afforded by the right to housing, in different contexts. It will do this through examining homelessness in Ireland and Finland. This will be done with a view to comprehending the nature and scope of the right to housing, and the various obstacles it may be up against. The global shift in how housing is perceived and provided may affect different countries and cities in innumerable ways. The repercussions of the commodification of housing are many, and are often not immediately obvious. This is why it is critical to examine different financialised housing markets, to see the true scope and overwhelmingly intrusive nature of this process. With housing being the biggest market in the world, it has repercussions across all sectors of society. It is in this regard that it may be useful to examine the effects of the financialisation of the global housing market in the context of these two countries, as a means to see how far the effects of this process can reach.

The comparison between Ireland and Finland was chosen as they each bear similarities in terms of population and city size, and up until a number of years ago, similar rates of homelessness. Today, however, Ireland is in the throes of a housing crisis. Finland, on the other hand, is the first EU country to come close to the eradication of homelessness, and is heralded globally for its innovative approaches to housing. The role played by the right to housing will be examined in both contexts. This comparative study is intended not only to explore what lessons Ireland could take from the Finnish experience as a model of good practise, but also to what extent the Irish state can be viewed to be acting in direct contradiction to their obligations under ICESCR. The problems faced by Ireland are experienced globally, as growing financialisation leads to the increasing commodification of housing, and the role of housing as a basic social need is abandoned. The Finnish comparative here is key to illustrating not only ways in which the Irish government could progress, but also the role played by the right to housing being protected under domestic law. The Finnish and Irish experiences differ in many ways, with Finland having public confidence in a welfare state, and Ireland having loose welfare supports and an increasing reliance on neoliberal economics. Yet, the similarities borne by these countries and their experiences should serve to identify at what point state action bears responsibility for people living without a home. This comparative will recount two parallel responses to economic crisis and homelessness as a means to illustrate the capacity of the right to housing, and the forces of financialisation.

5.2 IRELAND

Ireland is in the midst of a housing crisis, where affordable housing is scarce, and homelessness is a looming reality for many. It is also a country which has experienced austerity and welfare cuts in recent years, while state incentives led to an influx of foreign investors. The housing crisis in Ireland is in its thirteenth year, by most estimates. While the nature of the crisis has changed over the years, one factor has remained a constant - the effects are continuously felt the most by those at the bottom. People living in precarious housing situations, or those who suffered financially under austerity and welfare cuts, have been pushed into homelessness by the thousands.¹³² This widespread homelessness is surely in direct violation of the right to housing, where a violation constitutes “any significant number” being homeless. Yet, the Irish government maintains that they are not to be held responsible.¹³³ The right to housing in Irish law is contested. There is no protection for the right to housing in the Irish constitution, however there are some laws which cover aspects of housing rights. Most relevant is the Housing Act of 1988, which establishes how Local Authorities can meet housing needs, but does not put duty on Local Authorities to house those who are homeless.¹³⁴ This means there is no possibility for an individual to take a case against the state under this Act. Although possible to make a complaint to both CESCR and the ECtHR for violations of housing rights, this has never been done by Irish citizens. This analysis of homelessness in Ireland will illustrate how it has come to be such a big problem in the Irish state, as well as why Ireland has such weak protection for the human right to adequate housing.

HOMELESSNESS IN IRELAND

Current homelessness figures indicate that, as of March 2020, there are 9,907 people in private emergency accommodation, (e.g. hotels and B&Bs), supported temporary accommodation, (e.g. hostels), or temporary emergency accommodation.¹³⁵ This figure is a 216% increase on what was reported five years ago, in March 2015.¹³⁶ It also excludes those who are sleeping rough, couch surfing or in hospitals or prisons, which means the total number of homeless people is likely much higher.¹³⁷ In addition, many are staying in emergency refugee accommodation for longer periods, due to inability to find a house.¹³⁸ This has the knock-on effect of many being turned away from emergency accommodation as the refuges are constantly full.¹³⁹ These figures also fail to include the estimated 5,500 homeless Irish Travellers, an ethnic minority in Ireland. This constitutes 18.6% of the

¹³² ‘Latest figures on homelessness in Ireland’ (*Focus Ireland*, 2019) <<https://www.focusireland.ie/resource-hub/latest-figures-homelessness-ireland/>> accessed 19 May 2020.

¹³³ The Permanent Mission of Ireland to the United Nations Office at Geneva, *Response of Ireland to Communication No. OL IRL 2/2019*, TPN 032/2019, 23 May 2019.

¹³⁴ Housing Act, 1988.

¹³⁵ Department of Housing, Planning and Local Government *Homelessness Report March 2020*, Government of Ireland.

¹³⁶ *Ibid* 132.

¹³⁷ Sorcha Pollak and Vivienne Clarke ‘Total number of homeless closer to 15,000, says Fr McVerry’ *The Irish Times* (Dublin, 28 March 2019).

¹³⁸ Rory Hearne ‘A home or a wealth generator? Inequality, financialisation and the Irish housing crisis’ (TASC - 2017).

¹³⁹ Safe Ireland, ‘No place to call home’ (2016) <<https://www.safeireland.ie/wp-content/uploads/Final-Homeless-Report-.pdf>> accessed 09 July 2020.

Traveller population.¹⁴⁰ Family homelessness is becoming an increasingly evident issue in the Irish housing crisis. The figures collected in March 2020 showed 1,488 families accessing emergency accommodation. This includes 3,355 children.¹⁴¹ A majority of these families are one parent, and report rising rents, low incomes, and inadequate social housing support as leaving them without a home.¹⁴² Again, this statistic is likely to grossly underestimate the true scale of family homelessness in Ireland, not taking into account those who have not applied for emergency accommodation.

This grim state of affairs is traceable to a succession of actions taken by the state in recent years, which have financialised and commodified housing at the expense of those most vulnerable. The Irish government can be seen to have created a neoliberal economic system through many years of incremental policy change. Neoliberalism, a term subject to many interpretations in different contexts, in the Irish experience has meant state promotion of a market rationality, and curtailing of the welfare state. As the state turned to financial markets to finance expenditure, it commodified and privatised all public goods and infrastructure. This creates market opportunities for the private sector within public infrastructure. In essence, it amounts to the accumulation of public goods and services for private wealth and investment, hoarding wealth for a few, while exacerbating inequality. The next section will outline how this came to be.

RISING HOUSE PRICES

The immediate knock-on effect of state policies, and a primary driver of homelessness, are continuously rising house prices in the state, focused within urban areas. House prices in Ireland continue to rapidly increase,¹⁴³ and the UN have repeatedly asserted that, in general “housing in Ireland is moderately unaffordable.”¹⁴⁴ There are a multitude of catalysts for this happening, but most are a result of philosophies of neoliberal capitalism which pervade Irish policymaking. One such force driving up house prices is the aforementioned commodification of housing. Perpetuating this is the prioritisation of housing as an investment in the Irish state. This drives up buying prices, as it becomes possible to charge more for those willing to use property as a means to invest their wealth. In turn, this means that many of those who wish to buy a home and leave the rental market are unable to due to unaffordable buying prices. Coupled with an absence of credit within the domestic financial system, it becomes impossible for low or median income earners to enter the buying market. This serves to decrease availability of rental properties, drive up prices of all properties, and strengthen class inequality within the state. A further consequence for house prices of commodification is that the state has financialised land and housing according to its ‘exchange’ value, rather than prioritising its value as a social asset with which to provide affordable housing. This can have a significant impact

¹⁴⁰ Pavee Point, ‘Presentation to the Oireachtas Committee on Housing and Homelessness’ (Dublin, 19th May 2016) <<https://www.paveepoint.ie/wp-content/uploads/2015/04/Ronnie-Fays-Opening-Statement-Oireachtas-Committee-on-Housing-and-Homelessness-19th-May-2016.pdf>> accessed 14 May 2020.

¹⁴¹ Ibid 132.

¹⁴² Rory Hearne, *Housing Shock* (1st edn, Policy Press 2020).

¹⁴³ Eoin Corrigan et al., ‘Policy Paper: Exploring Affordability in the Irish Housing Market’ (2019) 50(1) *The Economic and Social Review* 119-157 <file:///C:/Users/M%C3%A9abh/Downloads/1121-Article%20Text_-3018-1-10-20190401%20(1).pdf> accessed 01 August 2020.

¹⁴⁴ OHCHR, Letter from 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 to the Irish Government (22 March 2019) UN Doc OL IRL 2/2019.

on the prices of land in places where investors are willing to pay large sums, such as urban areas. These areas are also where housing is in highest demand, and homelessness is centred.

Another prominent factor in soaring house prices is facilitated land hoarding. This practice, where investors buy land and wait for house prices to rise before building, is evident nationwide, where thousands of sites often in prime locations lie empty. This became a prevalent issue following the 2008 crash, when the Irish government sold a significant amount of state-owned property to foreign investors, who could pay large amounts for sites that the state couldn't afford to build on. Yet, in the following years in which the economy recovered, this practise has not changed.¹⁴⁵ Attention was drawn to this in the letter from the Working Group and Special Rapporteur, who accused investors of “sit[ting] on vacant land to restrict supply and thus increase demand and value.” The same letter outlined that rent prices in Dublin have risen by 42% in the last six years, and a person on an average salary living in accommodation of an average price now allocates 86.4% of their earnings on rent.¹⁴⁶

SOCIAL HOUSING

Recent years of social housing policy have been marked by the facilitation of social housing being overtaken by subsidised private rental accommodation, through rent supplement replacing the direct provision of social housing. Rent supplement was first introduced in 1977, at the time being more popular than anticipated. Thus, it became a long-term support, and a form of ‘quasi-social housing’, one which is embedded in the housing market. Over time this became normalised in the Irish state and replaced other, fully state-funded measures of social housing. In 2014, the housing assistance payment (HAP) was brought in to allow those in full employment to still access rent supplement. As a result of this, two thirds of all new social housing provided now comes from the private rental sector, and the state has paid a total of six hundred and twelve million euros to private landlords.¹⁴⁷

Social housing in Ireland became reliant on the private rental sector in line with emerging global neoliberalism trends in the 1980s. Prior to this social housing was centralised and de-privatised. When the state failed to provide enough social housing, large numbers turned to subsidised private rental accommodation. Social housing policy itself is now focused on the subsidisation of private rental housing, as opposed to the provision of housing itself. This was enabled through the Housing (Miscellaneous Provisions) Act 2009 (as amended), under which the provision of rental subsidies is deemed legally akin to the direct provision of social housing.¹⁴⁸ This means that these households are embedded within the cycles of the financial market. This became evident when the 2008 financial crash resulted in devastation for the private rental market. In response, the government slashed its social housing budget from €1.46bn in 2008 to €167m in 2014, a cut disproportionate to those made to any other public sector.¹⁴⁹ As a result, newly built social housing stock plummeted, as waiting lists increased dramatically. Those on waiting lists eventually are forced to turn to the private sector.

¹⁴⁵ A vacant site levy was introduced in January 2018, which allows councils to impose fines on anyone sitting on prime development land, but it has not been widely enforced.

¹⁴⁶ Ibid 114.

¹⁴⁷ Olivia Kelly ‘State has paid landlords €612m under HAP tenant scheme’ *The Irish Times* (Dublin, 08 October 2019).

¹⁴⁸ Housing (Miscellaneous Provisions) Act 2009 (as amended)

¹⁴⁹ Ibid 114.

The growing number of households brought into the market and tied to financial market cycles has been labelled the ‘neoliberalisation of social housing policy’¹⁵⁰ and is credited with enabling the financialisation of the housing market. As large swathes of the population who would otherwise seek social housing turn to the private sector, prices continue to be driven up. With an ever-increasing number of Irish families unable to leave the rental market and become first-time buyers, this process has meant assistance through social housing is unavailable.

Demand for social housing in Ireland is currently at 30,000 to 50,000 units,¹⁵¹ and is continuously increasing. Meanwhile, the Irish state has been significantly reducing direct builds while shifting reliance to the private sector. In 2005, local authority builds made up 60% of social housing output. In 2015, ten years later, this had gone down to 1%. ‘Rebuilding Ireland’ is the government strategy promising to increase the delivery of homes across the country, and while they have come close to meeting their own targets, the strategy has been proven to be wholly ineffective.¹⁵² Many have noted its targets to be significantly lower than what is needed to make an impact, with the 2019 target being 6,545 new builds (of which 5,771 were provided)¹⁵³, while waiting lists were 71,858 households long.¹⁵⁴ Of these new social houses, almost 40% were built by NGOs.¹⁵⁵ ‘Rebuilding Ireland’ has also maintained an over-reliance on the private sector, with 68% of all social housing provided in 2019 being private sector housing. This heavy use of a private market, which already is lacking in supply, means that it will unlikely be able to ever provide social housing on the scale required. It also puts power into the hands of private actors who will seek to maintain the shortage in a bid for increased profits.¹⁵⁶ This approach means that house prices and rents will rise as housing supply is increasingly limited through the use of private properties as social housing, driving more people into precarious situations of unaffordable housing, and for many, into homelessness.

THE ROLE OF FOREIGN INVESTMENT AND FINANCE

Major players in the financialisation and commodification of housing in Ireland, raising prices and decreasing availability, have been vulture funds and international financial institutions. Real Estate Investment Trusts (REITs) became a fixture in Irish society in the aftermath of the 2008 economic crash, as the government sold land and homes to international buyers.¹⁵⁷ Government policy at this time prioritised re-inflating the property market, using the financialisation of housing as a strategy for economic recovery. They encouraged foreign investment in Ireland in many ways, an example being the establishment of the National Asset Management Agency (NAMA) who sell assets to global investors, as well as the introduction of tax breaks for REITs. This meant investors benefited from the

¹⁵⁰ Michael Byrne, Michelle Norris ‘Housing market financialization, neoliberalism and everyday retrenchment of social housing’ (2019) 0(0) *Environment and Planning A: Economy and Space*.

¹⁵¹ *Ibid* 114.

¹⁵² Department of Housing, Planning and Local Government *Rebuilding Ireland Social Housing Report 2018*, (2019, Government of Ireland) <www.housing.gov.ie> accessed 20 May 2020.

¹⁵³ Department of Housing, Planning and Local Government, *Details of social housing delivery on a local authority basis for 2019* (Government of Ireland, 14 May 2020) <<https://www.housing.gov.ie/housing/social-housing/details-social-housing-delivery-local-authority-basis-2019>> accessed 13 June 2020.

¹⁵⁴ The Housing Agency and Rebuilding Ireland, *Summary of Social Housing Assessments 2019* (HA, 2019) 5.

¹⁵⁵ Colin Gleeson, ‘Almost 40% of social housing was built by NGOs last year’ *The Irish Times* (Dublin, 15 May 2019).

¹⁵⁶ *Ibid*, 138

¹⁵⁷ *Ibid* 142.

establishment of REITs. They further encouraged the shift away from housing as a social good by encouraging REITs to invest in land and sites as commercial property, rather than housing. REITs have solidified housing as an investment asset for global capital, and the financialisation of housing in Ireland.

Aside from the marketisation of land and property, the Irish state also promoted the expedited sale of distressed loans by the state controlled Irish banks to international investors and vulture funds. This makes evident the financialisation of the housing system. Mortgage loans and assets are sold at discounts of up to 60 and 70 per cent,¹⁵⁸ while the mortgage payer is still required to pay back the full amount to the bank or the new owners of debt. As a result of deregulation of foreign investors and changes in legislation made to encourage these investors, the sale of distressed loans to foreign investors has seen a huge increase. This furthers the involvement of REITS, international investors, and vulture funds in Irish state affairs, while also serving to further the commodification of housing.

The role played by these foreign investors and vulture funds in Irish housing policies in recent years has grown beyond what could have been anticipated. Social policy expert Mick Byrne comments that “In the rental sector, financial firms have become big-time landlords for the first time in the history of the state”.¹⁵⁹ One real-estate investment trust, the Irish Residential Properties Real Estate Investment Trust (IRES), is now the largest landlord in the country. In 2019 IRES collected rent of €62 million from tenants in its 3,666 apartments in Ireland.¹⁶⁰ Over 50% of beds available in concentrated areas are REITs.¹⁶¹ In addition, the commercial real estate sector has been almost entirely taken over by vulture funds.¹⁶² This all makes real estate investors the holders of significant power over housing and economic policy, and 2015 and 2016 saw these private equity investors able to shoot down proposed rent regulation and tax changes. This increased role being played in state affairs by investors speaks to a wider trend in neoliberal economics, whereby state power is eroded by private actors. This, while bearing its own problems for the values of democratic societies, also diminishes a government's chances to meet its obligations under human rights law. Where the government may have intentions of achieving its minimum core obligations, or working towards the progressive realisation of ESCRs, they have eroded their autonomy to make such decisions through handing the responsibility of providing sufficient housing over to REITs, foreign investors and vulture funds.

THE PROCESS OF COMMODIFICATION IN IRELAND

Prior to the 1980s, the Irish state largely viewed housing as a right and as a social need.¹⁶³ In the time before the Second World War, the government was responsible for the large scale construction of affordable and good quality social housing, facilitating low cost mortgage lending. This philosophy of housing as a right and a state responsibility was prevalent in many countries across the globe at this

¹⁵⁸ Ibid 138.

¹⁵⁹ Mick Byrne ‘How Finance is Shaping Dublin’s Ongoing Housing Crisis’ *The Dublin Inquirer* (Dublin, 17 February 2016) <<https://www.dublininquirer.com/2016/02/17/mick-how-finance-is-shaping-dublin-s-ongoing-housing-crisis>> accessed 20 May 2020.

¹⁶⁰ Barry O’Halloran ‘Ires Reit to build 600 apartments despite political uncertainty’ *The Irish Times* (Dublin, 20 February 2020).

¹⁶¹ Ibid 142.

¹⁶² Ibid 159.

¹⁶³ Padraic Kenna, *Housing Law, Rights & Policy* (1st ed, Clarus Press 2011) 57.

time. Tax increases, welfare cuts, and policy reforms in the 1980s were introduced to manage an economic crisis. The financialisation of housing was introduced as a further means to manage the crisis. In many states, and certainly in Ireland, the state began to privatise and marketise social housing. In doing so, they reconceptualised housing as a good. The private housing market was significantly deregulated, which allowed housing to become a liquid financial commodity.¹⁶⁴ Commercial banks overtook the state in financing the most private housing in the state.¹⁶⁵ Many neoliberal policies were brought in over this period which heavily contributed to this financialisation process, such as the withdrawal of the ability of local authorities to borrow money to build social housing, and reducing their role in issuing mortgages in 1987.¹⁶⁶

Overtime, housing policy in Ireland has shifted to rely on, and in turn, support, the private housing market. As noted by Byrne, “it does so in ways that contribute to the financialization of housing by embedding housing in volatile financial market cycles”.¹⁶⁷ Social housing came to subsidize the private rental sector, as opposed to being primarily responsible for the provision of housing for those in need.

THE FINANCIALISATION OF IRISH HOUSING

Financialisation of housing is described by Aalbers as “the increasing dominance of financial actors, markets, practices, measurements and narratives, at various scales, resulting in a structural transformation of economies, firms ... states and households” it is a process which “interacts with, works through, and reshapes existing institutional structures and policy regimes”.¹⁶⁸ Financialization has two main elements in the Irish context, the increased role played by financial actors and financialised housing providers, and the state, who through neoliberalising social housing policy, embed the housing system into the financial market. The financialisation of Irish housing has further commodified it, as the state deregulates mortgage and financial markets, housing has become a liquid financial asset. As outlined by Madden and Marcuse, housing financialisation is the process by which “Managers, bankers and rentiers produce profits from real estate through buying, financing, selling, owning and speculating”.¹⁶⁹

There are strong linkages between financialisation in the housing sector and increasing inequalities in the Irish state. As housing is financialised, property is bought as an asset and often never used. This is evidenced by figures from Dublin in 2017, where 35,293 vacant units were reported, while there were 3,247 people homeless in the city.¹⁷⁰ Many of Ireland’s most wealthy now in the areas of construction, property and building, as housing and real estate becomes a key sector for wealth accumulation. This continues to add significantly to the wealth of the ‘1%’, at the expense of

¹⁶⁴ Dáithí D. Downey ‘The Financialisation of Irish Homeownership and the Impact of the Global Financial Crisis’ in MacLaran A., Kelly S. (eds) *Neoliberal Urban Policy and the Transformation of the City* (Palgrave Macmillan, 2014).

¹⁶⁵ *ibid* 150

¹⁶⁶ Housing Finance Agency (Amendment) Act 1988.

¹⁶⁷ *Ibid* 150.

¹⁶⁸ Manuel B Aalbers *The Financialization of Housing: A Political Economy Approach* (1st edn, Routledge 2016).

¹⁶⁹ D. Madden, P. Marcuse, *In defense of housing: The Politics of Crisis* (1st edn, Verso, 2016).

¹⁷⁰ James Wickham, *Cherishing All Equally 2017 Economic Inequality in Ireland* (TASC: 2017).

the society. It also results in a form of ‘accumulation through dispossession’, whereby both public and private entities are dispossessed of their wealth or land, and it is centralised in the hands of a few.¹⁷¹

THE RIGHT TO HOUSING IN IRELAND

The right to housing mandates that everyone has access to adequate housing, and that the state implement national housing strategies with a view to the eradication of homelessness. This analysis has aimed to provide some overview as to how the economic policies and actions of the Irish government have instead exacerbated homelessness in the state. In light of this, it is evident that the right to housing is weakly protected in Ireland.¹⁷² The Irish government has denied any assertion that Ireland’s housing policies are ‘contrary to international human rights obligations’¹⁷³, in large parts due to the Housing Act of 1988 which puts responsibility on local authorities to provide for the accommodation needs of people who are homeless. However, it remains the case that nothing in Irish legislation protects the rights of a person to housing, and those factors which commonly lead to a person becoming homeless. The Irish state has declined to put the right to housing in the Irish Constitution, largely on the grounds that the constitution is not an appropriate vehicle to impose such an obligation of the state.¹⁷⁴ This has left a gap in protection for the right to housing in Ireland, allowing the state to adopt laws and policies which add to the commodification of housing in Ireland, and in turn, exacerbate homelessness.

Indeed, the very existence of homelessness in large numbers is, in itself, contrary to the requirements of ICESCR. Thus, the Irish government is in breach of both its minimum core obligations with regards to the right to housing, and the principles of progressive realisation for a number of ESC rights. While there remains significant opposition to labelling state economic policy as direct violations of international law, these policies have created a situation in which many are having their rights to housing, freedom from discrimination, and life, violated on a daily basis.

Essential to ensuring accountability is creating a stronger sense of state responsibility for the role it has played in making so many homeless. As this process of financialisation came to be the norm in Ireland, many policies began to enable and encourage it. It is these policies which show government responsibility for enabling the process which led to heightened inequality, housing precarity for so many, and increased homelessness in the state. Identification of these policies introduced by the government, along with other moves which supported the financialization and commodification of housing, allow us to go one step further to hold states to account for their own responsibility in creating a system in which so many are forced to live without a home. Annex 1 highlights a number of identifiable points at which the Irish government impacted the enjoyment of the right to housing and created situations of homelessness.

¹⁷¹ David Harvey, ‘The ‘new’ imperialism: accumulation by dispossession’ in Leo Panitch and Colin Leys (eds), *The Socialist Register* (2009).

¹⁷² When interviewed for this thesis, Irish politician the housing spokesperson for political party, Sinn Féin, Eoin Ó Broin, said that within the Irish government there was “no formal acknowledgement at all”, of homelessness as a human rights issue. He also noted that, in spite of a government-sponsored constitutional convention concluding that the Irish constitution should include a right to housing, there remains “substantial resistance” to the idea.

¹⁷³ Ibid 144

¹⁷⁴ Ibid 132.

5.3 FINLAND

Finland is recognised globally as having taken ground-breaking steps to address homelessness, and the only country in Europe in which homelessness is declining. Homeless remains in the state, with about 5,500 people still officially classified as homeless.¹⁷⁵ However, over 70% of these people are living temporarily with friends or relatives. This is a monumental improvement compared to the 18,000 homeless in 1987. This is largely attributable to the Finnish National Programme to reduce long term homelessness, launched in 2008 and centred around the principle of Housing First. Housing First involves giving the homeless their own homes as a first step to solving other problems in their lives. The principle has garnered Finland vast international acclaim. More than just a well-oiled social policy, the right to housing is grounded in both Finnish law and Finnish society. Finland is one of a number of European countries in which the right to housing is protected in the constitution. This both ensures protection for the right to housing through a pluralistic structure of monitoring mechanisms, and also recognises having a home to be a valued and a basic human requirement within Finnish society. Scandinavian legal tradition does not place significant importance on individual rights as a higher category of norms, instead there is a societal trust that the state and democratically elected legislature protect the interests of society.¹⁷⁶ In this respect, the right to participation is held in highest regard. This is to say that whereas the right to housing may not be the prime reasoning behind the eradication of homelessness, it is considered an important component of the society which the legislature is elected to maintain. As a result, Finland is said to have a “rights-based variant of the Welfare State”¹⁷⁷. Critical to Finnish success is their broad recognition of what constitutes homelessness, the necessity for homelessness policies to go deep into the structural causes, and the understanding that homelessness cannot be solved within just one sector. The Finnish case illustrates that the right to housing, when held in high regard, can play a pivotal role in creating the conditions necessary to end homelessness. It was indeed the combination of the right to housing, coupled with the principles of Housing First, that has resulted in Finland having such strong protections against homelessness.

A CONSTITUTIONAL RIGHT TO HOUSING

The current Constitution of Finland entered into force in 2000, with protections for a range of ESC rights, including the right to education and the right to work. Crucially, it maintains that the public authorities are responsible for ensuring the right to housing is met. Section 19.4 of the Finnish Constitution upholds that “The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing”¹⁷⁸. While this is primarily implemented through the enactment of legislation, responsibility for upholding the right to housing is shared between the democratically elected legislature and an independent Judiciary. The legislature ensures that the

¹⁷⁵ Jon Henley, “‘It’s a miracle’: Helsinki’s radical solution to homelessness” *The Guardian* (Helsinki, 03 June 2019).

¹⁷⁶ Martin Scheinin ‘Protection of the Right to Housing in Finland’ in Scott Leckie (ed), *National Perspectives on Housing Rights* (Martinus Nijhoff, 2003).

¹⁷⁷ *Ibid*

¹⁷⁸ Constitution of Finland, Chapter 2 Section 19.

provisions of a law do not impede upon constitutionally protected rights. There have been many examples of ESCRs which were enshrined in the Finnish constitution being used as a starting point for better implementation through ordinary legislation.¹⁷⁹ After laws have been passed, the courts are entrusted with a limited judicial review to ensure that the application of the law will not result in possibilities for the law to be skirted on technicalities. Further justiciability of the right to housing can come through individual damage claims, or judicial appeal against administrative decisions. The Constitution further ensures the right to “receive indispensable subsistence and care” to those in need. This provides a layer of explicit positive obligations intrinsic to Finnish law, which offers some protection against homelessness. Additional support for the right to housing can be found in Section 22 of the constitution which obliges all public authorities to respect both constitutionally protected rights, and international human rights. This gives a “quasi-constitutional status” to international human rights treaties¹⁸⁰, granting them special status in Finnish law.

Finland is distinctive in its implementation of constitutional rights through its use of a Constitutional Law Committee. This Committee ensures new legislation is assessed for compliance on constitutional and human rights provisions, and if any measures are found to have a retrogressive impact on the right to housing, they can only be passed after the government has considered the necessary amendments. The Committee, made up of Members of Parliament, examines government bills before they are enacted for any constitutional or human rights contention. It is assisted by constitutional and human rights experts. It makes decisions which are considered binding, and also can give further definition to ESC rights in the Constitution. It has on a number of occasions provided opinions on issues relating to the right to housing. This ensures that the Constitution is continuously interpreted in line with the values and requirements of human rights.

The constitutionalisation of the right to housing in Finland has meant that this right has become rooted in Finnish culture. In turn, this has led to stronger implementation of the right to housing than can be seen in many other countries. Eighty-one countries have constitutionally protected the right to housing, and all have seen increased protection and appreciation for the obligations intrinsic to this right¹⁸¹. However, the right to housing was introduced to the Finnish constitution in 2000, and it was only in 2015 that radical steps were taken to address homelessness. In 2003, large numbers of homeless in the broader Helsinki area prompted observers to comment that “a rights-based approach is clearly insufficient in addressing the situation of those who are most likely to be homeless”. While homelessness has been almost eradicated in Finland today, this makes evident that having a constitutionally enshrined right to housing didn’t give way to immediate remedy. Perhaps, this illustrates that in the Finnish context the right to housing went hand-in-hand with a societal appreciation for the importance of welfare and the ethical demand for dignity. As one enabled the other, the system of Housing First could be brought into a society in which it would flourish.

HOUSING FIRST

The Finnish policy of Housing First was first developed in 2007 as *Nimi Ovessa* (Your Name on the Door). It was a way of addressing homelessness which was, at the time, a revolutionary approach. Now, the idea is a leading principle in global discussions of homelessness. The state-appointed

¹⁷⁹ Ibid 176.

¹⁸⁰ Ibid 176, p. 243.

¹⁸¹ Simon Community, *Making the Case for a Right to Housing in Ireland* (2018) 6.

working group who developed the idea justified the Finnish Housing First principle, saying, “Solving social and health problems is not a prerequisite for arranging housing, but instead housing is a prerequisite that will also enable solving a homeless person’s other problems”.¹⁸² It is the idea that having a permanent home will make solving health and social problems easier. It is on this, that the Finnish efforts to eradicate homelessness have been based since. Prior to Housing First, Finnish approaches to homelessness had been based on the traditional staircase model - moving through different stages of temporary accommodation until you have the ability and means to access your own permanent accommodation. This is the model followed in most countries globally and is proven to be ineffective.¹⁸³ Housing First has seen extraordinary success in Finland, unlike many homelessness policies around the world have experienced. Importantly, it required deep systemic changes to housing and homelessness policies. The system had to be rebuilt around Housing First. This was made possible through firm guidance from the state, and a societal desire to ensure dignity for the homeless.

Housing First involves a reversal of the staircase model. The homeless are given unconditional, permanent housing on a normal lease. Upon securing a source of income, tenants pay their own rent contingent to what they earn. The rest is covered by local government. Housing First also involves the provision of services and support to those battling mental health problems, addictions or medical conditions. The programme has cost the state an estimated €250 million, in creating new homes and hiring support workers, but it has been evidenced that it is more cost-effective in the long run.¹⁸⁴ Studies have revealed the savings from services needed by one person who would have otherwise been homeless can be up to €15,000 a year, services such as emergency healthcare and social services. A critical component to such a programme is the availability of housing. The implementation of the Finnish Housing First policies involved the construction of new homes, purchasing apartments from the private market and converting all existing homelessness shelters into permanent homes. This required state, municipal and NGO support. In total, this has amounted to the creation of 3,500 new homes.¹⁸⁵

The Housing First principle is responsible for the near- total eradication of homelessness in Finland, with an estimated 12,000 people having received a home since 1987.¹⁸⁶ It has been cited that the reason for the success of Housing First is due to it being “a mainstream national homelessness policy with a common framework”¹⁸⁷, meaning it involves partnership across society, including at government, municipal and societal level. This was made possible through there being a strong political will, with different sectors working in cooperation, following firm guidance from the state. The common goal of humanising the homeless has come to take an important place in Finnish society. This happened to such an extent that the process of homelessness eradication continued despite the 2008 recession, and cuts to many other public services in Finland. This provides a marked contrast to many other European countries, where post-2008 austerity measures resulted in the soaring of homelessness figures. This serves to illustrate the value of having a constitutionally entrenched right

¹⁸² Y-Foundation *A Home of Your Own: Housing First and ending homelessness in Finland* (2017) 19.

¹⁸³ *Ibid*, p. 12.

¹⁸⁴ Michelle White ‘Housing First: Eradicating Homelessness in Helsinki’ (*Borgen Project*, 06 February 2020) . <<https://borgenproject.org/homelessness-in-helsinki/>> accessed 20 March 2020.

¹⁸⁵ *Ibid* 182.

¹⁸⁶ *Ibid* 182, p. 12

¹⁸⁷ Juha Kaakinen, ‘Lessons from Finland: helping homeless people starts with giving them homes’ *The Guardian* (Helsinki, 14 September 2016).

to housing. The Finnish example makes clear the role this can have in creating a society in which the right to housing is deeply rooted in the populace.

5.4 COMPARATIVE ANALYSIS

The cases of Ireland and Finland illustrate a number of interesting points about how strong protection of the right to housing can reverberate through state policies. The value of comparing these two cases offers insight into the role that can be played by government in both creating and exacerbating homelessness, and how with the necessary political will and reorganised priorities, governments can also be responsible for the eradication of homelessness. Assessing the Finnish experience both helps to identify at what point their protection of the right to housing differs from the Irish, along with how it can provide possible guidance to Ireland.

Many of Ireland's problems can be identified as being rooted in the marketisation and commodification of housing in the Irish state. This, in turn, can be linked back to state policies being built in line with profit-driven, neoliberal ideals. With the economic systems at work in Ireland having played such a big role, it is interesting to look to Finland to see the role played by economic systems there. Finland has not fully evaded the neoliberalists trends taking hold of Europe. Markets have come to play an increasing role in Finnish economic and social affairs. Subsequently, there has been in a steady increase in inequality.¹⁸⁸ This, to some degree, mirrors the Irish experience. Yet in spite of these economic trends, Finland continues to nearly eradicate homelessness, while they are a major causal factor in Ireland's homelessness crisis. This may be attributable to Finnish legal recognition of the right to housing stepping in to protect the most vulnerable, whereas no protections exist to the same degree in Ireland. This was evidenced in the response to the crash of 2008. While both Ireland and Finland were forced into austerity measures, Finnish austerity did not impact on their protections of the right to housing, and indeed Finland continued to fund 'Housing First' in the following years. In comparison, the Irish austerity measures hit housing significantly, and resulted in many of those relying on state welfare or living in precarious housing situations being forced into homelessness. In addition, Irish efforts to recover from the crash (largely, the creation of NAMA), contribute meaningfully to the heavily commodified and financialised approach to housing in Ireland today.

A major component of Finland's strong protections for the right to housing is that it is protected in the Finnish Constitution. The constitutionalisation of housing rights in Finland has acted as a strong basis upon which legislation has been enacted to improve the situation of the homeless. Arguably, Housing First became possible in light of there having been such a strong recognition of the importance of the right to housing in Finland, through it being included in the state's constitution, and thus taking a place of special recognition in Finnish culture. There are many arguments as to why housing rights, and indeed all economic, social and cultural rights should be included in national constitutions, and the Finnish case serves as a strong example of the impact it can have on a state's approach to homelessness.

However, as outlined, it is not the constitutionalisation of the right to housing alone that has led to Finnish success. Layers of judicial protection, including ex-ante legislation review from

¹⁸⁸ Päivi Marjanen, Gary Spolander and Timo Aulanko 'Neoliberalism, welfare state and social work practice in Finland' in Masoud Kamali, Jessica H. Jönsson (eds.) *Neoliberalism, Nordic Welfare States and Social Work: Current and Future Challenges* (Routledge, 2018).

Finland's non-partisan Constitutional Parliamentary Committee, is essential to securing respect for this right. In contrast, the Irish government have been ardent opponents of constitutionalising economic, social and cultural rights. Their primary objections to such a move have been cited as doubting "the suitability or otherwise of the Constitution as a vehicle for providing for detailed rights in this area, the possible cost, and the fact that there is already power by legislation to confer rights and determine expenditure"¹⁸⁹. The Finnish example should evidence that the constitution is indeed a suitable place for the right to housing. The Irish constitution already provides for the 'detailed rights' incurring positive obligations, which invalidates arguments that the Constitution is not suitable for such obligations.¹⁹⁰ Objections raised on the grounds of possible cost allude to an unwillingness of the Irish state to meet their 'minimum core' obligations. Arguments that sufficient protections are already in place through legislation are proven untrue by the widespread existence of homelessness in the state. The Finnish case illustrates that the enshrinement of the right to housing in the constitution serves as a strong basis for creating a robust protection for the right to housing.

A final key difference between the Irish and Finnish approach to securing the right to housing is the perception of homelessness itself, and what the protection of the right to housing should entail. The approach taken to homelessness in Ireland is the traditional model of a charity-based approach. Though this model has been proven to be an unsuccessful approach in any situation, when compounded with the commodification of housing pushing thousands into situations of homelessness, it has created a crisis situation which the state does not have the tools to adequately address. Housing First is a comprehensive approach which involves acknowledging and addressing the problems which lead a person to become homeless. It is also a tool rooted in empowerment, affording a level of dignity and respect to the homeless which is absent from traditional approaches. This approach has significant repercussions towards how homelessness is perceived and can work towards addressing the serious issues of discrimination faced by the homeless. In contrast, the Irish approach is a reactionary one.

The Finnish experience when contrasted with the Irish suggests a number of key determinants as to what makes a good approach to homelessness, based on the requirements of the right to housing. Having a legally enforceable right to housing, as seen in Finland, provides a valuable basis upon which further legislation and policies can be built. However, intrinsic to Finnish success was a strong political will to enforce and continue to uphold national respect for the right to housing. The constitutionalisation of the right to housing provides a significant level of protection, but it is ultimately the responsibility of the elected government to take the necessary actions to tackle homelessness in a compassionate and sustainable way. The commodification of housing fuelled by profit-driven state policies, largely responsible for Ireland's homelessness crisis, is happening on a global level. A growing number of states such as Australia, Spain and Greece are facing similar situations whereby state actions have led to systemic homelessness. While the Finnish example provides a roadmap to how a state can reverse some damage done, elsewhere there remains a distinct lack of accountability for state responsibility in what is becoming a global homelessness crisis.¹⁹¹

¹⁸⁹ Ibid 133.

¹⁹⁰ Although subject to criticism on the grounds of gender equality, Article 41.2, as an example, places a positive obligation on the State to 'endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour' outside the home.

¹⁹¹ OHCHR 'Global housing crisis results in mass human rights violations - UN expert' (05 March 2020).

6.

CONCLUSION: LOOKING FORWARD

In this thesis I have attempted to draw attention to the human rights dimension of homelessness. In doing so, I examined the responsibility of human rights in addressing the structural forces which create, and perpetuate, an approach to housing so fundamentally flawed. I have sought to illustrate that the points at which human rights laws and obligations have been violated are readily identifiable. My initial research question was, what is the role of human rights in addressing the systemic causes of homelessness? My answer is that human rights have a real and urgent role to play. The issues surrounding the financialisation of housing stem from a fundamental lack of understanding of housing as a human right. States must be held to account for their culpability in the creation of homelessness through financialised, marketised and unaffordable housing systems. This would increase understanding that homelessness does not arise through some character flaw, but that it is in fact a systemic problem with identifiable responsible parties.

Throughout this thesis I have drawn attention to the forces largely responsible for modern-day homelessness in wealthy countries. Two concepts were introduced to do so- the financialisation and the commodification of housing. I sought to draw attention to state action which encourages and exacerbates these phenomena, with a view to understanding the potential for a stronger culture of accountability surrounding homelessness and human rights. Particular effort was made to highlight the relevance of human rights to homelessness. Not traditionally conceptualised as a human rights issue, an examination of the structural causes of homelessness makes clear that widespread homelessness is indeed a matter of human rights, and warrants treatment as such. This thesis has demonstrated how the condition of homelessness can be seen to violate a number of an individual's fundamental rights and freedoms, paying a particular focus to the right to housing. I then laid out the protections for the right to housing in international human rights law, in order to further emphasise the responsibility and capacity for human rights to address homelessness. As a means to address some of the larger barriers preventing accountability for homelessness as a violation for human rights, I examined the tools available to qualify states' obligations to secure the right to housing. Namely, the principles of minimum core obligations and progressive realisation. This was done to further emphasise state responsibility to protect against homelessness and make clearer how violations are to be identified.

With a further view to identifying at what point a state can be recognised to be in violation of their human rights obligations with regards to homelessness within the state, I then expanded on what means of accountability and enforcement are available to monitoring bodies. At this point, the conclusion can be drawn that through deliberate monitoring of state activity as regards housing and homelessness, the identification of instances at which states act in contradiction to their obligations under human rights law is indeed possible. While this paper recognises the difficulties in labelling many of these instances as violations, it argues here that it would be of significant benefit for stronger action to be taken when such instances are identified.

Finally, I close with a comparative study of the cases of Ireland and Finland. This study was done in order to apply the concepts and phenomena which had previously been identified. The Irish

case illustrates the ways in which the neoliberalisation of housing policy influences the processes of commodification and financialisation, and how these have led to a homelessness crisis in the state. This, in turn, allows for stronger identification of state culpability under human rights law. The Finnish comparison offers a glimpse at an alternative future for countries such as Ireland, of a state with a strong and constitutionally protected right to housing, being near total eradication of homelessness.

It bears noting here, that the home has been the first line of defence against COVID-19. Never before has there been such emphasis on the role of housing for public safety, and the role of the home for the individual. Globally, public health officials are urging all members of society to remain in their houses, in order to flatten the curve of infections. This has made strikingly apparent the dangers faced by the 1.8 billion people who live in homelessness and inadequate shelter. Those living in informal settlements very rarely have adequate access to water and sanitation. Those living in emergency shelters cannot social distance. There is a contradiction here in governments issuing a stay at home policy but failing to ensure that everyone has a home where they can be safe from the virus. Attention has already been drawn in this paper to the speed at which governments housed those sleeping rough, an example being England, where over the span of two days, local councils housed 90% of the country's rough sleepers.¹⁹² As the urgency of the dangers upon the homeless are realised, arbitrary barriers that have previously stood in the way of housing the homeless have been removed. The speed at which those living on the streets were housed is a testament to the power of political will and makes clear that homelessness is an immediately solvable problem. Yet, as this thesis has shown, the causal factors of homelessness often run much deeper. Thus, while it is indeed possible to house those sleeping rough relatively quickly and easily, larger structural changes are essential to ensuring that the causes of homelessness are cut off at the source.

The last comparable economic crisis to that which looms today is the crash of 2008. It was in the years following this crash that much of the financialisation of housing we see today came to be. In their efforts to recover, many governments encouraged the banks to issue foreclosures, and encouraged the sale of distressed assets by hedge funds. These measures, as this thesis has illustrated, only served to increase wealth inequality, and increase the power that lies at the hands of large investors. These investors, through their prioritisation of profit over the provision of safe and secure homes, are largely responsible for the homelessness crisis of today. As we approach economic crisis spurred on by the COVID-19 pandemic, similar prospects are looming. Real estate investment trusts such as Blackstone already have plans in place for buying properties which have depreciated in value, quoted as referring to the fallout from the pandemic as “a once in a lifetime opportunity to buy distressed assets”.¹⁹³ In assessing means of recovery, governments now must look to the lessons of the past. This thesis has sought to make clear that the financialisation of housing that occurred in the wake of the 2008 crisis has had disastrous repercussions on the rights of millions of people, who have been pushed into precarious, unaffordable or informal accommodation. Perhaps most evidently, the impact it has had on those who have been forced into homelessness. Governments now must look for sustainable, rights-based approaches to housing. They must return to the idea of housing as a

¹⁹² Local Government Association, *Plans to support people who were previously homeless into permanent housing after the COVID-19 pandemic* (HL, 2020) 2.

¹⁹³ Konrad Putzier and Peter Grantt ‘Real-Estate Investors Eye Potential Bonanza in Distressed Sales’ *The Wall Street Journal* (New York, 07 April 2020) <<https://www.wsj.com/articles/real-estate-investors-eye-potential-bonanza-in-distressed-sales-11586260801>> Accessed 10 May 2020.

fundamental human need, as opposed to a financial tool. Future housing models must be removed from the current cycle of boom and bust and be able to withstand another pandemic. The housing model of today is evidently failing, and radical change is needed to bring it in line with the requirements of human rights.

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ANNEX I

Identifying instances where the Irish government have acted in contradiction to their obligations to realise progressively the right to housing for all:

1987, Removal of the abilities of local authorities to borrow and build: One of the first shifts towards the privatisation and marketisation of social housing, this bill limited the possibilities for the building of new social housing.

1987, Deregulation of the private housing market: While many shifts towards deregulation had happened in the previous years, the Fianna Fáil government elected in 1987 removed most controls on capital flows, credit availability, and interest rates.¹⁹⁴

2008, Austerity cuts to housing provision: Exchequer funding for social housing fell by 88% between 2008 and 2014, with 7588 houses contracted in 2008 to 642 in 2014.¹⁹⁵

2009, NAMA created: The state creates NAMA, who contributed to the financialisation of the Irish housing market through the facilitation of land hoarding and the expedited sale of distressed loans to international buyers, 93% of assets sold by NAMA have gone to foreign investors.¹⁹⁶

2009, Deregulation of foreign investors: Alongside creating NAMA, the state also made many policy and legislative changes to attract international investors and equity funds.

Rent supplement replacing social housing: Over many years, through ‘policy layering’¹⁹⁷, rent supplement has replaced the direct provision of social housing. As this was curtailed during austerity, and remains underfunded, houses are not being built at the required rate, and many of those with unaffordable rent are not receiving HAP.

Failure to undo the commodification of housing: The change in perception of housing from a social good to a commodity has been largely responsible for Ireland’s housing crisis and growing homelessness. As noted by the UN, failure to rectify these actions “can only be regarded as a retrogressive step, and accordingly puts the State at odds with its obligations under international human rights law”¹⁹⁸.

¹⁹⁴ Julien Mercille, Enda Murphy, *Deepening Neoliberalism, Austerity, and Crisis: Europe’s Treasure Ireland* (1st edn, Palgrave Macmillan, 2015).

¹⁹⁵ Michelle Norris, Michael Byrne ‘A Tale of two Busts (and a Boom): Irish Social Housing before and after the Global Financial Crisis’ (2017) 2(2) *Critical Housing Analysis* 24.

¹⁹⁶ OHCHR, Letter from 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 to the Irish Government (22 March 2019) UN Doc OL IRL 2/2019.

¹⁹⁷ Rob Kirchin, Cian O’Callaghan, Mark Boyle and Justin Gleeson ‘Placing Neoliberalism: The Rise and Fall of Ireland’s Celtic Tiger’ 44(6) (2012) *Environment and Planning A*.

¹⁹⁸ OHCHR, Letter from 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 to the Irish Government (22 March 2019) UN Doc OL IRL 2/2019.