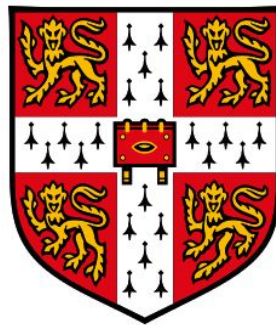


The Right to Housing in the City



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Declaration

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text. It is not substantially the same as any that I have submitted, or, is being concurrently submitted for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my thesis has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. It does not exceed the prescribed word limit for the relevant Degree Committee.

Kaara Tiana Martinez

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Abstract

A global urban housing crisis marked by gross unaffordability, economic, social, cultural, and political displacements, increasing homelessness, and socio-spatial segregation and exclusion has taken hold. Deprivations are occurring in states across the development spectrum, and urban housing tensions are becoming topics of daily conversation if not outright protest. Much of the difficulty can be attributed to the financialization of housing and the global competitive pressures with which cities increasingly contend. An ‘urban turn’ has even become evident in the global discourse and practice, and this is apparent in the adoption of an urban specific UN Sustainable Development Goal in 2015, Goal 11, which commits to make cities inclusive, safe, resilient, and sustainable, with ambitious targets to be achieved by 2030. Local governments have become more assertive with respect to implementing international norms and forming transnational networks of cooperation. In these respects, a few notable scholars have begun to examine the role of cities in international law, and this body of literature is now steadily growing. This PhD thesis aims to make a significant contribution by focusing specifically on the question of housing in cities and by emphasizing the social dimensions of sustainable development. Its central argument is for a human right to housing in the city with a duty to act collectively to ensure this right. Analysis of the scope and content of the right to housing finds its present interpretation narrow and wanting in the face of contemporary urban challenges. There is an urgent need to reorient the right to housing in order to ensure access to urban space and to address the dispossessions taking place in cities.

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This research topic, perhaps as many do, came about by instinct. I am incredibly grateful to my supervisors, Professor Eyal Benvenisti and Dr. Surabhi Ranganathan, for their insights, patience, and encouragement in helping to turn that instinct into a doctoral project.

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CHAPTER ONE

INTRODUCTION

1.1 Argument

The right to housing as currently understood in international law does not serve to fully address what is now a global urban housing crisis. This crisis is marked by crushing unaffordability in many major cities which leads to various forms of displacement and which precludes urban access. Longer term urban challenges such as the prevalence of informal settlements¹ and the brutality of forced evictions² still persist in high numbers globally, and homelessness has become a pressing issue in metropolitan areas of even very wealthy nations such as the United States and the United Kingdom.³ In Greater Manchester, for instance, Mayor Andy Burnham, has characterized homelessness there as a humanitarian crisis and has been aiming to end rough sleeping in the city by 2020. The mayor himself donates 15% of his salary to the cause and has called on the UK government to make housing a human right.

In fact, attention to the global housing crisis has magnified in recent years, and just about everyone is entering the conversation,⁴ keen if not desperate to address a serious problem. Often, the response to the crisis has been outright protest, sometimes of a violent nature, indicating great discontent with urban life and its related political management. In 2019 in Hong Kong, for example, anti-government protests triggered by political disputes around extradition have come to be linked to astronomical housing costs and substandard and cramped living conditions.⁵ In Dublin, protests since 2018 have been around the lack of affordable housing in

¹ UN Habitat, *The State of the World Cities Report 2016*, p. 48. Informal settlements are particular residential areas marked by insecurity of tenure for residents, lack of public services such as electricity, water, and sewage, as well as infrastructure, such as schools, roads, and sidewalks, and are often located in environmentally precarious geographical spaces. Slums are informal settlements where deprivations, poverty, hazards, insecurity, and exclusion are at the extreme. In 2014, 881 million people lived in slums, an increase of 28% over the previous 24 years.

² Forced evictions are the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” United Nations Committee on Economic, Social and Cultural Rights, *The Right to Adequate Housing: Forced Evictions* Article 11(1): Committee on Economic, Social and Cultural Rights General Comment 7 (1997) E/1998/22, para. 3.

³ In 2010, approximately 980 million urban households were without decent housing and it is projected that this will grow by 600 million between 2010 and 2030. UN Habitat, *The State of the World Cities Report 2016*, p. 48.

⁴ See, e.g., Luke O’Neil, *Can Kanye West solve America’s housing crisis? Maybe...*, THE GUARDIAN, Aug. 5, 2019, <https://www.theguardian.com/music/2019/aug/05/kanye-west-housing-development-california> (discussing a low-income housing community proposed by West in California).

⁵ See, e.g., *Property and protest: The turmoil in Hong Kong stems in part from its unaffordable housing*, THE ECONOMIST, Aug. 22, 2019, <https://www.economist.com/china/2019/08/22/the-turmoil-in-hong-kong-stems-in-part-from-its-unaffordable-housing>. In an October 2019 policy address, Chief Executive Carrie Lam stated: “I hereby set a clear objective that every Hong Kong citizen and his family will no longer have to be troubled by or preoccupied with the housing problem, and that they will be able to have their own home in Hong Kong, a city in which we all have a share.” Mike Cheney, et al., *Hong Kong Leader Offers Billions in Handouts in*

the city and the related growth in homelessness and displacement of particularly young people and long-time residents to other cities.⁶ And there are many other examples. These protests broadly spotlight the displacement, gentrification, and socio-spatial segregation characterizing urban space and exacerbated by market forces and the pressures of global competition. They represent the struggle for democratic participation felt lacking in urban governance with respect to the growth and permutation of cities, and as most sharply manifested through housing inadequacy. But what these discontents really summon, perhaps without explicitly stating it, is an articulation of the right to housing tailored to the urbanization context and to the crisis of belonging in cities. They, in essence, demand a right to housing in the city.⁷

As it stands, half of the world's population resides in urban areas. This number is expected to grow to almost five billion by 2030, and to double by 2050.⁸ These demographic shifts raise urgent and complicated questions for housing and are critical dimensions in the global processes which produce international law and in which international law and lawyers must operate and regulate.⁹ These realities have also led to a global sustainable urbanization agenda. In particular, at the 2016 United Nations Conference on Housing and Sustainable Urban Development, Habitat III, a "New Urban Agenda" (NUA) was adopted aimed at underscoring and enhancing the contribution of cities to sustainable development.¹⁰ More specifically, the NUA links with the Transforming our World: The 2030 Agenda for Sustainable Development and Sustainable Development Goal 11, its stand-alone urban specific goal which seeks to make cities and human settlements inclusive, safe, resilient, and sustainable.¹¹ The NUA is a framework to realize the targets of Goal 11 and purports to advance social inclusion in cities. It does not define social inclusion,¹² but it is evident from the elaborations in the text of the NUA that the concept is connected to housing and public space and notions of social cohesion.

Bid to Calm Unrest, THE WALL STREET JOURNAL, Oct. 16, 2019, <https://www.wsj.com/articles/hong-kong-leader-targets-housing-to-calm-social-unrest-11571203624>.

⁶ See Feargus O'Sullivan, *Dublin's Housing Crisis Reaches a Boiling Point*, CITYLAB, Sept. 14, 2018, <https://www.citylab.com/equity/2018/09/dublin-ireland-protests-housing-rents/570157/>.

⁷ The right to housing in the city is advanced in this study as the need to understand and more closely tailor the right to adequate housing in international human rights law to the urban context. Throughout the dissertation, various arguments are put forward which seek to demonstrate why and how the scope of the right to housing might be made more responsive to the specific needs and deprivations around housing in the contemporary city.

⁸ UN Habitat, *The State of the World Cities Report 2016*, p. 51. Urban population growth soared from 2.6 billion in 1995 to 3.9 billion in 2014.

⁹ See, e.g., W. MICHAEL REISMAN, *THE QUEST FOR WORLD ORDER AND HUMAN DIGNITY IN THE TWENTY-FIRST CENTURY: CONSTITUTIVE PROCESS AND INDIVIDUAL COMMITMENT* 41 (2012).

¹⁰ New Urban Agenda, UNGA A/RES/71/256.

¹¹ Transforming our World: The 2030 Agenda for Sustainable Development, UNGA A/Res/70/1.

¹² Social inclusion can be understood as "the process of improving the ability, opportunity, and dignity of people, disadvantaged on the basis of their identity, to take part in society." WORLD BANK REPORT, *INCLUSION MATTERS: THE FOUNDATION FOR SHARED PROSPERITY* 4 (2013). The World Bank report highlights the three

This dissertation examines the right to housing in international law in light of contemporary urban realities. The central research question interrogates whether the human right to adequate housing is sufficient to address the pressing problems and tensions associated with housing in the context of urbanization and globalization, or whether there is a need to reorient the right. The project seeks to understand housing in a full sense, and to illuminate the importance of urban location beyond its connection to economic opportunities and interests. Economic development strategies locally and supported by international law processes and institutions have created competitive cities focused on predominantly private, individualistic gain. Yet the risks of exclusion from cities brought on by the housing crisis and the pressures of competition stand in firm contrast to the significance of the city as a place of encounter, diversity, and difference, and as an important space of intercultural experience and socialization.¹³ Accordingly, this study treats the notion of the city, too, in a full sense, understood both in the context of jurisdiction and local government and also as a matter of social space.¹⁴ Understood as social space, the city is connected to ideas of community,¹⁵ and, relatedly, to spatial history, geography, culture, and imagination.¹⁶ The right to housing as interpreted by courts and elucidated by the Committee on Economic, Social and Cultural Rights (CESCR) is too individualistic and procedural to account for the socio-relational and community aspects and importance of urban space and life, and this dissertation demonstrates the need to advance the right in the urban context.

The tragedy at Grenfell Tower in London is emblematic of the tensions.¹⁷ On June 14, 2017, a massive fire at the council-owned high rise claimed more than 70 lives. The specific

domains of markets, services, and spaces as interrelated frontiers of barriers to and opportunities for inclusion. The spatial domain consists of political, physical, cultural, and social spaces.

¹³ On these notions, see HENRI LEFEBVRE, WRITINGS ON CITIES 117 (Eleonore Kofman & Elizabeth Lebas, eds. 1996).

¹⁴ For this dissertation therefore, the focus is not only on viewing cities as “local authorities” which are typically the lowest level of public administration within a state, but also on expanding the conceptualization of cities so as to take into account wider “non-legal” concerns which ultimately impact upon the protection of the right to housing in the urban context.

¹⁵ Community can be thought of as the connection of individuals in social groups in a sense of mutual dependence, membership, and belonging. It is seen as constitutive of the self because of its significance to identity. This is the way in which community is understood in this study. The right to housing is closely connected to community identity and community building as argued throughout this dissertation, and promoting the right to housing in the contemporary urban context requires an appreciation of community. At the same time, this study seeks to unveil some of the complications of the idea of community. Chapters three and four in particular reveal the ways various notions of community can overlap and at times contradict thereby creating tensions for the right to housing. For instance, a state can be thought of as a community and a city can also be thought of as a community. Within each there are further communities sharing and fostering bonds along various lines such as ethnicity, religion, or heritage. The kinds of confrontations which can arise with respect to housing and community are drawn out more precisely through the discussion of various examples: Singapore (chapters two and three), *Bank of America Corp. v City of Miami* (chapter three), Antigua and Barbuda (chapter three), public space (chapter three), NoMa (chapter four), and gentrification (chapter four).

¹⁶ On these points, see especially the discussion in chapter four.

¹⁷ See Appendix 1.

cause of the fire has been attributed to the use of a particular type of cladding for purposes of insulating the building.¹⁸ The use of this cladding, cheaper than better alternatives and which contributed to the speed of the fire, is at the surface, a marker of systemic discrimination against lower-income communities with respect to housing, and particularly against migrants. But on a deeper level, the Grenfell fire has come to be a wider symbol of more complex, contemporary issues related to housing and cities. Located in the extremely wealthy Royal Borough of Kensington and Chelsea, Grenfell is in proximity to some of London's most expensive properties. Many of these properties are held as investment assets and sit unoccupied.¹⁹ Critics argue that the fire has served to reveal the disastrous ways neoliberal policies and austerity have weakened the welfare state and has underscored a level of indifference from elites for those in public housing, given that warnings about Grenfell's safety were there and were ignored.²⁰ In short, the catastrophe encapsulates that the urban tensions of today are about exclusion and inequality. A right to housing in the city is urgently needed to ensure not only housing but also community and urban belonging.

1.2 Methodology

The research project was advanced first by taking a broadly phenomenological approach to the topic.²¹ Housing and urbanization is extremely topical in global discourse, and the literature has been burgeoning in many fields,²² save law, for some time. Given this rich context of evolving debate and interconnected disciplines, it was useful to grasp the issues related to housing and cities in broad perspective in order to identify the legal gap in the discourse and scholarship.

¹⁸ See, e.g., *Grenfell Tower: Government to pay 200m for safer cladding*, BBC NEWS, May 9, 2019.

¹⁹ See *Rich or rotten borough?; Kensington and Chelsea*, THE ECONOMIST, June 24, 2017.

²⁰ Iain Ferguson & Michael Lavalette, *After Grenfell Tower*, Editorial, 5 CRITICAL & RADICAL SOCIAL WORK 265-67 (2017).

²¹ See generally Richard A. Falk, *New Approaches to the Study of International Law*, 61 AMER. J. INT'L L. 467, 488, 494-95 (1967).

²² In particular, much is written from a geographical, urban planning, and sociological perspective but there are also less obvious areas and intersections which are relevant to interrogating urban housing questions. See, e.g., Lawrence J. Vale, *The Temptations of Nationalism in Modern Capital Cities*, in CITIES & SOVEREIGNTY: IDENTITY POLITICS IN URBAN SPACES (Diane E. Davis and Nora Libertun de Duren eds., 2011) (discussing the links between city building and nation building particularly for capital city design and noting: "In other words, nationalist movements begin as struggles *against* the state but, if they succeed, they suddenly have to *become* the state, themselves. Because the hold on power is uncertain, the leaders of a nation-state are tempted to take nationalistic positions that endeavor to suppress or supersede pre-independence subnational identities that are not useful to the dominant group in power. The temptation of nationalism is the promise of unity and legitimacy, the dream of a consolidated nation-state unchallenged by those who would unravel it or secede." Vale concludes: "The challenge now—for designers, politicians, and citizens alike—is to overcome the temptations of nationalism. We should recognize the power of design to signal and instigate attachments to particular places, but must nurture new ways to harness this power to support more inclusive forms of pluralist governance.") *Id.* at 198 and 207.

On paper, the study combines doctrinal and theoretical analysis, with an analytic approach and normative interrogation. It examines the right to housing in international instruments and national and regional case law, as well as from the perspective of the CESCR. Further, the dissertation draws upon property law theory to deepen the understanding of housing and to navigate the inherent housing/property tensions which frequently animate both the case law and real-life experiences with housing. In examining urban space, Henri Lefebvre's theory of the "right to the city" is analyzed. There is a commonsense view about what Lefebvre's theory entails and the dissertation seeks to complicate this understanding by situating it in the contemporary urban context and with reference to current deprivations. The dissertation engages with the municipal political economy seeking to understand how growth strategies and inter-city competition lead to constraints and possibilities around urban housing. In the process, a normative project is developed questioning whether the right to housing fulfills its aims, and pushing for a reoriented right more closely aligned to human needs.

While fieldwork was not conducted for this project,²³ three global conferences were attended for research purposes – Habitat III in Quito, October 2016, the World Bank Conference on Land and Poverty in Washington, DC, March 2017, and the Ninth Session of the World Urban Forum in Kuala Lumpur, February 2018. Additionally, a visit was undertaken to the Vidigal *favela* in Rio de Janeiro in January 2017. The aim was not to conduct an ethnographic investigation of these sites and constituencies, but rather to gain a better understanding of the political economy of these environments and the related players, and to monitor ongoing debate pertaining to the sustainable (urban) development agenda. Scholars have observed that the shaping of cities and urban citizens is frequently based on the international normative commitments made by governments at global conferences such as those around sustainability or security.²⁴ Further, cities are thought to mimic states at international level organizations and conferences and to be socialized as global actors through instances and processes of recognition and respect from the global community.²⁵ With respect to the right to housing, many different actors now collaborate globally on advancing the right and this coordination is visible through these kinds of international summits and conferences. Observations, learnings, and interactions

²³ While ethnographic case studies were considered and tempting, the time constraints of the PhD did not allow sufficient opportunity to conduct the kind of in-depth study of the topic of housing and inclusion in cities particularly in a way that would also comport with the appropriate level of research ethics for such a sensitive, human study. See, e.g., Sarah Nouwen, 'As You Set out for Ithaka': *Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict*, 27 LEIDEN J. INT'L L. 227 (2014).

²⁴ Helmut Philipp Aust, *The Good Urban Citizen*, in INTERNATIONAL LAW'S OBJECTS (Jessie Hohmann & Daniel Joyce, eds. 2018).

²⁵ See generally Janne Nijman, *Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors*, in THE TRANSFORMATION OF FOREIGN POLICY: DRAWING AND MANAGING BOUNDARIES FROM ANTIQUITY TO THE PRESENT (A. Fahrmeir et al. eds., 2016).

at these events shaped the analysis of the issues under study and the ability to interrogate and critique the literature on the topic. The arguments are appropriately informed by insights gained from both extensive literature reviews and critical observations over the course of study.

Further, the substantial fieldwork undertaken by the Office of the Special Rapporteur on Adequate Housing and the contribution to international law produced through the agency of the Special Rapporteur is drawn upon, and these views are critiqued when called for.²⁶ The work of the Special Rapporteur is interconnected with the global fora and international institutions in which the right to housing is discussed and debated, and the Office engages with various actors such as states, local governments, and corporations. These actors are currently influencing and interacting with the right to housing and the research considers these developments.²⁷

Additionally, the dissertation draws on a range of examples to demonstrate how tensions around housing and cities are in fact playing out. This subject matter is current and often hotly debated. Throughout the dissertation, therefore, recent examples of housing contestations are drawn upon to illuminate the theoretical issues and give them practical application and resonance. In particular, a core thematic case study of mega-sporting events (MSEs)²⁸ and housing is presented in the final substantive chapter. Focusing on examples in Rio de Janeiro, London, and San Francisco, the housing human rights issues raised by global sport, and by global governance and economic development more broadly, are highlighted alongside the global competitive pressures which stretch city governments and test the right to housing in the city.

1.3 Contribution to Scholarship

This project is primarily an attempt to advance the agenda and progress of socio-economic rights through further understanding, persuasion, and rhetoric, as endorsed by scholars such as Philip Alston.²⁹ Since 1991, the Committee on Economic, Social and Cultural

²⁶ The work of the UN Special Rapporteurs has come to be seen as an important source for the development of human rights law. See generally Christine Chinkin, *Sources, in* INTERNATIONAL HUMAN RIGHTS LAW 89 (Daniel Moeckli, Sangeeta Shah, & Sandesh Sivakumaran eds., 2018).

²⁷ See, e.g., MARKO MILANOVIC, EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES: LAW, PRINCIPLES, AND POLICY 5 (2011) (“We live in an age of rights, and the rhetoric of rights is no longer solely the province of increasingly aggressive lawyers and human rights activists, but is employed by policy-makers and actors of all stripes.”).

²⁸ These are large-scale sporting events of limited duration designed to achieve local, regional, or national development objectives particularly around attracting economic investment, tourism, and international image promotion through media attention. See *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights*, Centre on Housing Rights and Evictions (2007), <http://www.ruig-gian.org/ressources/Report%20Fair%20Play%20FINAL%20FINAL%20070531.pdf>.

²⁹ See Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRAC. 1 (2017).

Rights has elaborated on the core elements of the right to housing in terms of “adequacy”.³⁰ The seven factors of legal security of tenure, availability of services, physical materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy have not been sufficiently specified over the years, particularly when recalling the profound significance of housing as a matter of human dignity and human development, and considering the contemporary pressures of urbanization on housing. This dissertation aims to offer greater precision regarding the locational aspect of adequacy within the specific context of the city.³¹ In this endeavor, it is also in many ways a contribution to the law and the everyday discourse, in that it considers the ways international institutions and processes impact the internal living conditions of states on the ground in urban contexts.³²

This study also makes a contribution to the now steadily growing but still nascent field of cities and international law.³³ International commitments, such as the SDGs and New Urban Agenda, aimed at cities and local governance represent an urban turn once novel at the beginning of the twenty-first century but now growing more mainstream. Local governance is a part of sustainable development broadly speaking, and sustainable *urban* development is a particular concern of international institutions such as the World Bank and UN-Habitat, key players in setting the global urbanization agenda.³⁴ The focus on decentralization and local autonomy coming from these institutions is now further layered with notions of sustainable urban development and good urban governance.³⁵ The interactions between cities and international organizations can be seen to represent the broader relationship between international law and the internal living conditions of states, yet these living conditions and their implications are insufficiently highlighted in the expanding cities and international law scholarship. This research project aims to add to the scholarly discourse on sustainable development, specifically Sustainable Development Goal 11. Housing is central to building inclusive cities and the dissertation emphasizes this crucial aspect of urban life. The project

³⁰ United Nations, Committee on Economic, Social and Cultural Rights, General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant), U.N. Doc. E/1992/23(1991).

³¹ Various textbooks on international human rights law and those dealing with economic, social, and cultural rights specifically, address housing to varying extent. A comprehensive work on the right to housing is JESSIE HOHMANN, *THE RIGHT TO HOUSING: LAW, CONCEPTS, POSSIBILITIES* (2013). Hohmann’s study is not narrowed to the topic of location or to the urban context, but rather looks at the right more broadly canvassing substantial case law and specific concepts.

³² See Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 *MOD. L. REV.* 377 (2002).

³³ Gerald Frug & David Barron, *International Local Government Law*, 38 *THE URBAN LAWYER* 1 (2006); Yishai Blank, *The City and the World*, 44 *COLUM. J. TRANSNAT’L L.* 875 (2006); Janne Nijman, *The Future of the City and the International Law of the Future*, in *THE LAW OF THE FUTURE AND THE FUTURE OF LAW* 217 (Sam Muller et al. eds., 2011); Nijman, *supra* note 25.

³⁴ Ileana Porras, *The City and International Law: In Pursuit of Sustainable Development*, 36 *FORDHAM URB. L. J.* 537 (2009).

³⁵ See *id.*

thus focuses beyond the environmental aspects of sustainable development, which are already well canvassed in the literature,³⁶ and looks more closely at the social aspects and the related economic tensions which are greatly underexplored in legal scholarship.

Finally, the dissertation aims to make a contribution to the literature by urging international lawyers and scholars to pay more attention to the growing importance of cities, to the living conditions therein, and to the complex dynamics of urbanization. The global discourse on sustainable development is still evolving, but it is clear that cities are highly relevant to these conversations and are holding a pivotal role. International legal scholarship is joining the urbanization conversation late, and the literature remains meager in the area of cities. The global nature of the issues exacerbated in cities and grappled by their governments and people – housing, migration, climate change, conflict, exclusion, and inequality - means that cities are particularly concerning for international law as a discipline and practice. There is a lack of international legal scholarship on the right to housing. The scholarship that exists tends to focus on the housing challenge as connected to widespread poverty in states such as India and South Africa, which deal with huge numbers of informal and squatter settlements. These jurisdictions have been foremost in adjudicating the right to housing, and the case law is relied upon in this study as well. The research here aims to go beyond this focus, however, and to highlight the affordability crisis of urban housing and how this has both global reach and a number of interconnected dimensions – economic certainly, but also social, cultural, political, and legal.

1.4 Dissertation Overview

The human right to housing as a component of the right to an adequate standard of living in international law is the starting point for this research. Chapter two provides the scope and content of the right. To do so, it discusses the sources of the right in international law and also draws on regional case law and constitutional jurisprudence, as well as the work of the CESCR which have all served to normatively develop the right. Drawing also on the Special Rapporteurs' observations and interpretations, this chapter discusses the critical connections between housing, life, and dignity – intersections that have also been underscored by courts in interpreting the rights to housing and to life. Through the analysis undertaken in this chapter, the procedural articulations and interpretations of the right to housing by courts is exposed which is often limited to due process concerns in the context of forced evictions and which adds

³⁶ See, e.g., Helmut Philipp Aust, *Shining Cities on the Hill? The Global City, Climate Change, and International Law*, 26 EUR. J. INT'L L. 255 (2015); JOLENE LIN, GOVERNING CLIMATE CHANGE: GLOBAL CITIES AND TRANSNATIONAL LAWMAKING 61 (2018).

insufficient substantive content to the right to housing. In the evolving urban context, the right to adequate housing in its current understanding is too individualistic and its adjudication is too procedural. There are important socio-relational needs which escape the right's interpretation and there is therefore a need to reorient the right.

The next chapter thus emphasizes the links between housing and community. It argues that the right to housing must also entail the right to have housing in one's community, advancing this position with examples to show the ways housing is integral to community building as well as to maintaining community identity. This discussion is situated in a broader examination of what has come to be known as the financialization of housing. Through financialization, the connections between housing and global markets have led to a commodification of housing (and land), and to the deterioration of housing as a social priority. This has serious individual and community ramifications, and the process of financialization implicates narrow and unambitious understandings of private property rights. The chapter aims to underscore more plural understandings of property drawing on property law scholarship which emphasizes property's community value.

Chapter four turns to the urban context and holds that there is a right to housing in the city. This call is centered on the importance of urban space in social and cultural terms. Right to housing jurisprudence has focused on connecting the right to economic opportunity and livelihood in the city but the need for social belonging is critical and overlooked. This chapter explores the concept of the "right to the city" and the problem of gentrification, while examining the intersections with the SDG 11 targets and the New Urban Agenda. It offers an interpretation of the right to housing that is about access to *the* city, grounded in deeper connections to identity and community people hold with cities. With this argument for the right to housing in the city established, chapter five analyzes the duties to implement this right. This analysis is framed in the context of the global competitive pressures which cities face, such as mega-sporting events and tourism, and which threaten the right to housing in the city. The discussion is linked to the emerging cities and international law discourse. This posturing produces both a need for caution and a call for optimism. Increasing connections between local and international levels of governance and efforts to increase city governments' standing in international institutions must be contemplated alongside the economic, social, cultural, and political displacements and marginalization occurring in cities. But progressive stances by cities on matters such as immigration and climate change, and, crucially, growing inter-city networks of cooperation offer firm promise for collaboration on working collectively to mitigate the negative effects of competition and to implement the right to housing in the city. Chapter six concludes, reiterating the study's findings and urging further research.

CHAPTER TWO

HOUSING

2.1 Introduction

On April 6, 2019, tens of thousands of residents took to the streets of Berlin marching through the city center under a giant model shark. They were protesting against surging city rents. They were blaming big private landlords. They were demanding the expropriation of some 200,000 apartments.¹

These Berlin protests were against the changing character of a city once bohemian and affordably attractive for newcomer students, artists, musicians, and young professionals, but now increasingly out of reach. Rent prices on vacant apartments have doubled in the past decade, and rose by 20 percent in 2017 alone. In response, the protesters were calling on the local government to re-nationalize council flats previously sold off to property firms. The campaign seeks to limit the amount of housing a landlord can own in the city; specifically, property holdings of more than 3,000 apartments would be converted to public housing.² As one campaigner put it: “There needs to be some rules here for the game – it’s a city, not just open land for people to do what they want...It is not something that can be completely determined by the market.”³

This is but one example of the way housing has grown in debate and significance in recent years, particularly for urban dwellers. In fact, a vast network of NGOs working on housing issues exists across the globe.⁴ Academics from a range of disciplines have, for decades, articulated notions of home and shelter underscoring the nuances of dwelling space, and this literature is becoming more mainstream.⁵ The masses, too, have increasingly taken to the streets as in Berlin to protest housing needs and policy, and there is a steady stream of media attention around housing questions and controversies.⁶ But in legal terms, the right to housing

¹ Caroline Copley, *Berlin activists march to demand city seize housing from landlords*, REUTERS (Apr. 6, 2019), https://www.reuters.com/article/us-germany-housing/berlin-activists-march-to-demand-city-seize-housing-from-landlords-idUSKCN1RI0EG_ Banners at the march read “against rent sharks and speculators”.

² Such action is proposed pursuant to Article 15 of the German constitution, which provides that land, natural resources, and means of production may, for the purposes of socialization, be converted into public ownership.

³ *Protesters rally against ‘rental insanity’ in large German cities*, DEUTSCHE WELLE (Apr. 6, 2019), <https://www.dw.com/en/protesters-rally-against-rental-insanity-in-large-german-cities/a-48235915?maca=en-rss-en-all-1573-rdf>.

⁴ *See, e.g.*, Habitat for Humanity, <https://www.habitat.org/> (last visited Jan. 25, 2020); Slum Dwellers International, <http://skoll.org/organization/slum-dwellers-international/> (last visited Jan. 25, 2020).

⁵ *See, e.g.*, MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016) (a sociological account of mass evictions in the United States which won the Pulitzer Prize in 2017).

⁶ *See, e.g.*, Special Report, *A decade on from the housing crash, new risks are emerging*, THE ECONOMIST (Jan. 16, 2020), <https://www.economist.com/china/2019/08/22/the-turmoil-in-hong-kong-stems-in-part-from-its-unaffordable-housing?cid1=cust/dailypicks1/n/bl/n/20190826n/owned/n/n/dailypicks1/n/n/na/298466/n>.

still seems to lack substance and teeth. This is notwithstanding notable attention from the international human rights system.

In particular, since 2000 there has been a dedicated Special Rapporteur on Adequate Housing,⁷ appointed by the Commission on Human Rights at its fifty-sixth session.⁸ The scope of the current mandate of the Special Rapporteur involves promoting the full realization of the right to housing, and identifying best practices, challenges, and obstacles to realization. Leilani Farha, the current Special Rapporteur, is tasked with identifying gaps in protection and emphasizing practical solutions, as well as with applying a gender perspective in relation to vulnerabilities in housing and land. The Special Rapporteur's role requires her to cooperate with UN and regional human rights bodies,⁹ an aspect of her work she emphasizes.¹⁰ Further, the Committee on Economic, Social, and Cultural Rights (CESCR) has delivered two General Comments on housing – one seeking to elucidate the right to housing broadly,¹¹ and the other narrowed to the subject of forced evictions¹² – and, since 2015, its individual complaints procedure has come into effect and has begun receiving communications. Finally, since 1978, UN-Habitat has been mandated by the UN General Assembly to work with human settlements throughout the world and to address issues of urban growth. The organization frames its mission as “to promote socially and environmentally sustainable human settlements development and the achievement of adequate shelter for all.”¹³

But the prevalence of homelessness and housing insecurity on a global scale in even some of the richest countries such as the US and the UK,¹⁴ as well as the persistence of brutal forced evictions, give pause to the human rights agenda in the realm of housing. Unchecked processes of gentrification, spatial segregation, and displacement in the context of a global affordability housing crisis paint a damning picture of an under-realized right across many cityscapes.

⁷ The formal title is Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

⁸ Commission on Human Rights Res. 2000/9, at 3 (Apr. 17, 2000).

⁹ Human Rights Council Res. 6/27, at 5 (Dec. 14, 2007).

¹⁰ “Ms. Farha has taken this aspect of her mandate to heart, and has been directly contributing to various processes initiated by treaty bodies. In her view, synergy between human rights mechanisms and greater interaction are key to enhancing protection and ensuring implementation of human rights norms and standards as related to the rights to adequate housing and to non-discrimination in this context.” <https://www.ohchr.org/EN/Issues/Housing/Pages/WorkingWithTB.aspx> (last visited Jan. 25, 2020).

¹¹ United Nations, Committee on Economic, Social and Cultural Rights, General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant), U.N. Doc. E/1992/23(1991).

¹² United Nations, Committee on Economic, Social and Cultural Rights, General Comment No 7: The Right to Adequate Housing (Art.11.1): Forced Evictions, U.N. Doc. E/1998/22 (1997).

¹³ <http://unhabitat.org/un-habitat-at-a-glance/> (last visited Jan. 25, 2020).

¹⁴ In Britain, the number homeless was estimated at 320,000 in 2018. Press Release, Shelter England, 320,000 people in Britain are now homeless, as numbers keep rising (Nov. 22, 2018), https://england.shelter.org.uk/media/press_releases/articles/320,000_people_in_britain_are_now_homeless,_as_numbers_keep_rising.

This chapter examines the right to housing in international law and introduces some of the main themes of the research which will be elaborated more fully in the subsequent chapters. It discusses the connections between housing, life, and dignity drawing upon important case law which has underscored these connections and has served to develop the content and scope of the right. Through the analysis, overly procedural articulations and interpretations of the right to housing by courts is also exposed, which often stop at due process concerns in the context of forced evictions and which add insufficient substantive content to the right to housing.

This critique is specific to the context of modern urban life and increasing urbanization. The right to housing as interpreted and understood in much of the case law from regional bodies and domestic courts and by the CESCR has managed to connect the right to life, family, privacy, land, and property rights, and especially to economic opportunities. Less apparent but urgently needed is an understanding of the right to housing that recognizes the importance of housing to space and to the specific need to relate to others in community and to be a part of the urban fabric itself. The housing cases which address physical space in the city are linked to proximity to employment and livelihood, and this connection is similarly emphasized by the CESCR. But there is also a compelling and specific need to belong in the city which has been overlooked in interpretations of the right to housing. The right to housing as interpreted by courts does not imbue the right with this necessary dimension and, as a result, does not properly situate the right to respond to the complex, contemporary urban environment. The chapter concludes that in the evolving urban environment – an economic, social, political, and cultural center marked by increasing urbanization and growing housing unaffordability – the right to adequate housing in its current understanding is too individualistic and its adjudication too procedural to adequately respond to the changed societal context, and calls for an urgent need to reorient the right.

2.2 The Right to Housing

The protection offered by the right to housing varies across countries and regions. The South African constitution and the Revised European Social Charter, for instance, both protect housing as an express right. In India, the right to housing has been protected by courts as a part of the constitutional right to life. In the regional human rights systems of the Americas and Africa, housing is connected to rights to property, family, and health. Protection can also vary within countries, with some cities legally enabled and politically willing to advance a right to housing for their local populations and to guard against housing deprivations more than others.¹⁵ This latter point is returned to in chapter five.

¹⁵ For example, New York City has a right to shelter mandate. See NYC Department of Homeless Services, Shelter, <https://www1.nyc.gov/site/dhs/shelter/shelter.page> (last visited Jan. 25, 2020).

But let us start at the beginning and in broad terms. Under international law, housing is protected principally through the right to an adequate standard of living as established in the International Bill of Rights.¹⁶ It was first recognized in the Universal Declaration of Human Rights of 1948 (UDHR) as one of the fundamental rights to be universally protected through that landmark document. Specifically, Article 25(1) of the UDHR holds:

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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control.

In 1966, the right to adequate housing became legally codified through the adoption of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11(1) of that instrument states:

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, housing and clothing, 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 co-operation based on free consent.

Housing is also recognized in national constitutions beyond South Africa, such as those of Russia, Ecuador, and Guyana,¹⁷ in regional treaties,¹⁸ and in specialized human rights instruments, particularly those dealing with marginalized groups at heightened risk of

¹⁶ Universal Declaration of Human Rights (1948) G.A. Res. 217 A (III) (Dec. 10, 1948) Art. 25(1); International Covenant on Economic, Social and Cultural Rights, UNGA Res 2200A (XXI) (adopted Dec. 16, 1966, entered into force Jan. 3, 1976) Article 11(1); *See also*, International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (Dec. 16, 1966, entered into force Mar. 23, 1976) Art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation.”).

¹⁷ In domestic contexts, over 50 states hold the right or associated governmental obligations in their constitutions, and many other states offer housing rights protection through legislative and policy mechanisms. *See* BEN SAUL ET AL., *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMMENTARY, CASES, AND MATERIALS* 938 (2014); *See also*, Robert Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 HARV. J. L. & PUB. POL’Y 17 (1992) (for arguments against a constitutional right to shelter in the United States).

¹⁸ *See, e.g.*, European Social Charter (Revised), (1999) CETS no 163 (opened for signature May 3, 1996, entered into force July 1, 1999) Art. 16 (“With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”) and Art. 31. *See also* Convention for the Protection of Human Rights and Fundamental Freedoms CETS no 005, Art. 8 (opened for signature Nov. 5, 1950, entered into force Sept. 3, 1953); African Charter on the Rights and Welfare of the Child (1990).

discrimination.¹⁹ For instance, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination holds:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(iii) The right to housing²⁰

And the 2006 Convention on the Rights of Persons with Disabilities provides the following protections:

Article 9 – Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

Article 28 – Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

¹⁹ See, e.g., Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (adopted Dec. 18, 1979, entered into force Sept. 3, 1981); Convention on the Rights of the Child, G.A. Res. 44/25 (adopted Nov. 20, 1989, entered into force Sept. 2, 1990); Convention relating to the Status of Refugees, Art. 21 (adopted July 28, 1951, entered into force Apr. 22, 1954).

²⁰ International Covenant on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A(XX) (adopted Dec. 21, 1965, entered into force Jan. 4, 1969).

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
 - d) To ensure access by persons with disabilities to public housing programmes²¹

These specialized protections are crucial.²² They reinforce the reality that in many countries, such as in the United States as will be shown through a case example later in this chapter, housing issues are closely linked to discrimination, especially racial discrimination and the instantiation of segregated housing policies.

The language of the UDHR and ICESCR articulates the right to housing not as an isolated asset, but, rather, as a component of the right to an adequate standard of living.²³ This parsing emphasizes housing's inherent and indelible connection to an appropriate quality of life. Situating the right as such allows it to be seen as a necessary component to the achievement of an adequate standard of living.²⁴ In the words of the former UN Special Rapporteur on Adequate Housing, "the right to adequate housing has to be understood as a *gateway to other rights*, it is a condition that has to be fulfilled in order to ensure the exercise of belonging in all its aspects."²⁵ Put another way, housing must open up and protect the prospects for life which flow through both the object and concept of dwelling space, as determined by factors such as its location and its recognition in and by society. The right to housing is not, therefore, simply about a physical object or structure, or "merely having a roof over one's head"; it is, instead, a right to "adequate housing".²⁶

Yet discussions of political priorities frequently overshadow any talk of "right" when it comes to housing. A socio-economic right subject to progressive realization and available resources,²⁷ the actual implementation of this category of rights remains a continuous hurdle to

²¹ Convention on the Rights of Persons with Disabilities, A/Res./61/106 (adopted Dec. 13, 2006, entered into force May 3, 2008).

²² And for a discussion of the potential intersection of race and disability, see Kimani Paul-Emile, *Blackness as Disability?*, 106 GEO. L. J. 293 (2018).

²³ At the same time, it can be argued that the failure to articulate and include housing as a standalone right in human rights instruments may have contributed to the diluted perception and neglect of this right and its significance. But this critique misses the mark emphasized in recent work by the UN Special Rapporteur which ties implementation gaps to overly narrow interpretations of the right to life. These points will be discussed later in this chapter.

²⁴ JESSIE HOHMANN, *THE RIGHT TO HOUSING: LAW, CONCEPTS, POSSIBILITIES* 179 (2013).

²⁵ Raquel Rolnik, *Place, inhabitation and citizenship: the right to housing and the right to the city in the contemporary urban world*, 14 INT'L J. HOUSING POL'Y 293, 295 (2014).

²⁶ CESCR, General Comment No. 4, para. 7.

²⁷ ICESCR, Article 2(1).

both realization and, arguably more broadly, general acceptance and recognition.²⁸ This point is particularly resonant in the context of housing. Socio-economic rights are not only about protecting against individual grievances, but are also heavily intertwined with complex social justice matters as well as the deep structural underpinnings of harms and deprivations. They conjure up the big and broad questions and processes of systemic reforms. These are difficult affairs to manage, and the ability, willingness, and appropriateness of courts to address such matters have long been debated. While civil and political rights are widely thought to encompass compensatory remedies, which are backwards looking and which typically involve individualized damages suitable to domestic courts, socio-economic rights are seen as more demanding of positive governmental action obtained through remedies such as declarations and injunctions and as therefore complicated and limited by political enforcement processes and mechanisms.²⁹ Difficult tensions emerge between individual corrective justice for litigants appearing in court today, and distributive justice for the larger groups similarly affected but not yet in front of the judge.³⁰

Accordingly, the deliberation of a right to housing has been deemed an issue of political consideration for domestic legislatures, rather than one of legal right to be enforced and dictated by courts. The European Court of Human Rights (ECtHR) puts it starkly:

While it is clearly desirable that every human being has a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the contracting states many persons who have no home. Whether the state provides funds to enable everyone to have a home is a matter for political not judicial decision.³¹

This stance suggests that any attempt to overcome the presumption in favor of political contestation regarding claims to and distribution of material resources would require quite compelling normative justification.³² At the same time, one of the most poignant points of the Special Rapporteur's 2016 report is the following:

²⁸ This reality has long stemmed from the perceived justiciability, or lack thereof, of social, economic, and cultural rights and the ability to devise meaningful remedies. For a debate of whether or not social rights should be subject to judicial enforcement, see CONOR GEARTY & VIRGINIA MANTOUVALOU, *DEBATING SOCIAL RIGHTS* (2011).

²⁹ Kent Roach, *The Challenges of Crafting Remedies for Violations of Socio-economic Rights*, in *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* 46 (Malcolm Langford ed., 2008) (“The complex and uncertain enforcement process that is posited for socio-economic rights seems to be a better fit for the more political enforcement processes of international than domestic law. International law relies on persuasion and dialogue while domestic law employs a monological and coercive process to enforce rights, especially with negative civil and political rights.”).

³⁰ *Id.*

³¹ *Chapman v. United Kingdom*, Eur. Ct. H.R., Application no. 27238/95, at 99 (2001).

³² Suzanne Fitzpatrick et al., *Rights to Housing: Reviewing the Terrain and Exploring a Way Forward*, 31 *HOUSING THEORY & SOC'Y* 447, 458 (2014).

When systemic homelessness and grossly inadequate housing are not considered human rights violations by courts and are not given equal attention by international human rights funders, the media, non-governmental organizations and human rights institutions, it is difficult to prompt rights-based responses at the political or societal levels. On the other hand, when courts and human rights bodies truly engage with the lived experience of those who are without homes or decent housing, this can create a mobilizing effect for rights-based advocacy in the political realm.³³

Courts and human rights bodies thus have a strong role in structuring the political and public perception and response to inadequate housing and it is crucial, therefore, that they engage with the right. When they have, it is often in the realm of evictions. Such a focus reflects the housing/property tensions inherent in the issue of home and the dominance of tenure security – largely understood as protection against forced evictions – in interpretations of housing as a right. The courts can be seen to take a primarily and overly procedural approach to the complex, competing interests involved in these cases, focusing on thin procedural duties at the expense of substantive rights content and, ultimately, closing off rather than opening up deeper and needed engagement with the wider societal context.³⁴

In some cases, however, the complication of political priorities has not served as a total deterrent for courts which have on occasion issued purportedly far-reaching remedies. In the landmark *Government of the Republic of South Africa and others v. Grootboom and others* decision of the South African Constitutional Court, for instance, the significance of the unique situation of socio-economic rights with respect to the prevalence of both individual violations and the broader need for systemic reform led the Court to offer a form of combined relief.³⁵ This case involved some 900 illegal squatters (both adults and children) taking shelter on private land and in an informal housing settlement under deplorable conditions. They were evicted and rendered homeless. *Grootboom* has been widely interpreted as demonstrating that socio-economic rights are indeed justiciable,³⁶ and in the judgment the South African Court articulated

³³ Report of the Special Rapporteur on the right to adequate housing and to nondiscrimination in this context: Adequate housing as a component of the right to an adequate standard of living, A/71/310, Aug. 8. 2016 (by Leilani Farha) para. 42 [hereinafter Farha, *UN SR Report*] The Special Rapporteur was cautioning that the narrow negative rights framework which has marked the approach to the right to life as understood by courts and the Human Rights Committee serves to structure the political and public response to inadequate housing.

³⁴ See, e.g., *Ahmedabad Municipal Corporation v. Nawab Khan Bulab Khan* (1997) 11 SCC 121 (Indian Supreme Court). See also Hohmann, *supra* note 24.

³⁵ *Government of the Republic of South Africa and others v. Grootboom and others* (CCT11/00) (2000) ZACC 1 (Sept. 21, 2000).

³⁶ *Id.* at para. 94 (Yacoob J: “I am conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country. This is recognized by the Constitution which expressly provides that the state is not obliged to go beyond available resources or to realize these rights

its famous “reasonableness” standard. Pursuant to the constitutional Article 26 right to access to adequate housing, the Court held:

...the question will be whether the legislative and other measures taken by the state are reasonable. A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable.³⁷

On the facts of the case, the Court ruled the state’s housing program was unreasonable given it had failed to provide for those in desperate need. The case also shows that courts can emphasize the need for systemic relief over individual relief, in this case stressing the need for a state housing policy rather than individual court orders to obtain housing.³⁸ Still, complications here persist as such an approach by the courts may serve to encourage governments to establish comprehensive housing policies and programs, but may also preclude harmed individuals from obtaining much needed remedy, particularly in a timely fashion.³⁹ This latter obstacle is especially resonant for marginalized individuals and communities for whom the courts are often the major source of protection and vindication rather than the political process.⁴⁰ Further, the *Grootboom* decision under closer scrutiny unveils that the right to housing as an individual right is problematic because courts may preclude relief for fear of unfairness to the vast number of

immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the state to give effect to them. This is an obligation that courts can, and in appropriate circumstances, must enforce.”).

³⁷ *Id.* at para. 41.

³⁸ See Roach, *supra* note 29, at 56; Cf. Hohmann, *supra* note 24, at 97-99 (discussing the “reasonableness” requirement of the Court in *Grootboom* and noting that the case “has also been viewed as a great disappointment and a wasted opportunity in the quest for social justice.”) *Id.* at 97.

³⁹ Roach, *supra* note 29, at 56.

⁴⁰ On the need to consider power imbalances between individuals in the context of socio-economic rights, see Malcolm Langford, *The Justiciability of Social Rights: From Practice to Theory*, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW 28 (Malcolm Langford ed., 2008) (Langford notes principles articulated by the dissenting justice in *N.D. Jayal v. Union of India* that may be helpful when there is power or wealth imbalance: “When such social conflicts arise between the poor and more needy on one side and rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less-advantaged group is expected to be given prior attention by a welfare state like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the preamble, fundamental rights, fundamental duties and directive principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood.”). See also, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, 276/03, African Commission on Human and Peoples’ Rights (Nov. 25, 2009)(discussing the “unequal bargaining position” of the Endorois community representatives relative to the state with respect to consultations, given that the Endorois representatives were “both illiterate and having a far different understanding of property use and ownership than that of the Kenyan Authorities”, and finding the consultations “inadequate” and not constituting “effective participation”) *Id.* at para. 282.

similarly situated individuals not actually appearing before the court in the particular instance. Indeed, this concern has been borne out in subsequent housing cases.⁴¹

Grootboom does succeed in stating if not fully illuminating important aspects of the scope of the right to housing, emphasizing that in addition to a dwelling, services and land are also required.⁴² It is a widely cited judgment. The case, as with many others in the South African jurisprudence, also shows how housing and property are interconnected but separate rights both of which must be protected. For instance, in *President of the Republic of South Africa and Another v Modderklip Boerdery*, the South African Constitutional Court dealt with a huge and growing informal settlement on private land, and high eviction and rehousing costs for the informal settlers.⁴³ In this case, the Court required that the government compensate the landowner while the informal residents were able to stay, thus recognizing not only the essential housing rights of the residents but also the property rights of the owner and the importance of owners being able to look to the state for protection against land invasions. These interconnections between the propertied and property-less with respect to housing are taken up more fully in the next chapters.

Beyond the South African perspective, a case from the European Committee of Social Rights further helps to elucidate the right to housing's content. *FEANTSA v France*⁴⁴ involved Article 31 of the Revised European Social Charter and addressed discrimination against marginalized and vulnerable communities, particularly the homeless, who numbered 86,000.⁴⁵ Article 31 states:

Article 31 – The right to housing

Part I: Everyone has the right to housing.

Part II: 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.

⁴¹ On this “pervasive theme” in the South African Constitutional Court context, see SANDRA FREDMAN, *COMPARATIVE HUMAN RIGHTS LAW* 276 (2018).

⁴² *Grootboom*, *supra* note 35, at para. 35.

⁴³ *President of the Republic of South Africa and Another v. Modderklip Boerdery (Pty) Ltd CCT 20/04* (South African Constitutional Court) (2005).

⁴⁴ *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, (ESCR Case no 39/2006) (Dec. 5 2007).

⁴⁵ *Id.* at para. 106. The figure today is estimated at over 140,000.

FEANTSA argued that France failed in its obligations with respect to housing for the most vulnerable. It alleged that France did not ensure an effective right to housing in that the measures in place to reduce the number of homeless were insufficient, the construction of social housing was similarly insufficient, and that a significant number of households lived in poor housing conditions, especially in terms of sanitation and overcrowding. FEANTSA further argued that the state implementation of legislation on the prevention of evictions was dysfunctional.⁴⁶ Additionally, FEANTSA alleged that there was discrimination in access to housing with respect to immigrants, and that the French system for allocating social housing did not function properly.⁴⁷

For the Government's part, it maintained that there was no breach of Article 31. Specifically, France argued that Article 31 "only requires States to 'take measures', not to achieve 'results', and that the numerous laws, policies and plans on housing adopted by the authorities prove that France respects this provision."⁴⁸

This case is a critical caveat to the *Chapman* language from the ECtHR. The right to adequate housing does not require that a house be handed to every single member of the population as the common misunderstanding goes and, as *Chapman* noted, is indeed a political question. The right to housing does require, however, that states go beyond distant plans and vague policy rhetoric. In some cases, as in this one with respect to vulnerable groups, the state must provide direct assistance to ensure housing. Thus, in clarifying the scope of Article 31, the Committee held that the Charter's actual wording could not be interpreted so as to impose an obligation of "results" on states but that the rights of the RESC "must take a practical and effective, rather than purely theoretical, form."⁴⁹ It emphasized that the exceptionally complex and expensive implementation of rights such as housing means "states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources."⁵⁰ The Committee held that compatibility with Article 31 requires states parties to do the following:

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b. maintain meaningful statistics on needs, resources and results;
- c. undertake regular reviews of the impact of the strategies adopted;
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

⁴⁶ *Id.* at para. 17.

⁴⁷ *Id.* at para. 17.

⁴⁸ *Id.* at para. 18.

⁴⁹ *Id.* at para. 55.

⁵⁰ *Id.* at para. 58.

- e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.⁵¹

Additionally, in *FEANTSA* the Committee provided a definition of adequate housing, and specified the parameters of affordable housing:

The Committee recalls that Article 31(1) guarantees adequate housing for everyone, which means a dwelling which is safe from a sanitary and health point of view, that is, possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity; is structurally secure; not overcrowded; and with secure tenure supported by the law.⁵²

The Committee notes that there must be an adequate supply of affordable housing. Housing is deemed to be affordable when the household can pay the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located.⁵³

On the prevention of evictions, the Committee explained that “[l]egal protection for persons threatened by eviction must include, in particular, an obligation to consult the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.”⁵⁴ Further evictions at night or during winter must be prohibited in law and legal remedies and aid must be provided to those in need so that they may seek redress in the courts.⁵⁵ The Committee also expounded that compensation for illegal evictions is necessary and that in the case of justified evictions, measures to re-house or financially assist the persons concerned must be adopted by authorities.⁵⁶

On the specific issue of homelessness, the Committee considered deficiencies with respect to data collection on the sheltering needs and the homelessness phenomenon in France to be a fundamental shortcoming of the French system. These deficiencies prevented the authorities from being able to ascertain the adequacy of the measures taken to reduce homelessness.⁵⁷ The Committee found that in France there was “too much of a fallback on makeshift or transitional forms of accommodation which are inadequate both in quantitative and

⁵¹ *Id.* at para. 56.

⁵² *Id.* at para. 76.

⁵³ *Id.* at para. 124.

⁵⁴ *Id.* at para. 88.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at para. 105.

qualitative terms, and which offer no definite prospect of access to normal housing.”⁵⁸ It also outlined the importance of living with human dignity with respect to the living conditions of sheltering facilities.⁵⁹

The Committee held that the situation in France with respect to social housing constituted a violation of Article 31§3 in that there was insufficient supply of social housing for low-income groups and for giving priority in the provision of housing for the needs of the most deprived members of the community. Only 5-10% of the poorest households were able to obtain social housing and wait times for allocation were over two years.⁶⁰ In this case, the Committee considered an extensive range of legislation and policies in France related to housing. It found the social housing allocation system, particularly the Anti-Exclusion Act of 1998, to be malfunctioning and therefore in violation of Article 31§3. It also found that there was an issue of indirect discrimination against migrants with respect to access to social housing.

In *FEANTSA*, the European Committee dealt with quite a bit and it teased out some important aspects of the right to housing. States cannot simply defer or ignore housing obligations. Vulnerable groups such as the homeless and those of low-income must be prioritized,⁶¹ and the state’s actions must be tailored to specific needs which have to be tracked. Discrimination can undermine access to housing and this must be eliminated. In the realm of evictions, consultation, notice, and access to courts are legally required. Compensation may be necessary and measures to re-house must be adopted.

All of these are necessary procedural tactics in the context of housing need and deprivations. Yet they do not manage to capture the totality of the substantive deprivation of the lack of housing, particularly in the contemporary urban environment. The definition of adequate housing in *FEANTSA* includes many important dimensions, but a statement and direction on the importance of location is absent. Further, the pertinence of human dignity is limited to the conditions of shelters. But human dignity in relation to housing is much broader and more complex. Viewing dignity solely in base terms around health and safety perpetuates an inferiority distinction for those in housing need. They are redefined, by virtue of their housing status, as needing less than the rest of the population.

⁵⁸ *Id.* at para. 109.

⁵⁹ *Id.* at para. 108.

⁶⁰ *Id.* at para 143.

⁶¹ *See also* Grootboom, *supra* note 35, at para. 24: “The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.”

Human dignity as an inherent component of all human rights, and of the normative aims of human rights protection more broadly,⁶² is a significant component of the critical link between housing and life which cannot be overstated. Simply put, proper housing provides an opportunity for a life in dignity. The Indian Supreme Court has made these connections vivid in its interpretations of the constitutional right to life. In *Chameli Singh v. State of U.P.*, the Court stated:

The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.⁶³

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually... The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.⁶⁴

The Indian understanding of the right to life as encapsulating a right to housing has made it a leading jurisprudential source of authority on housing.⁶⁵

The experience of inadequate housing and homelessness are deprivations affronting freedom and equality. This kind of precarity often, but not always, undermines personal choices beyond mere survival and erodes the basic dignity of those so situated. Human needs, basic functions, and social freedoms that are commonly taken for granted or are allowed to be matters of particular preferences – privacy in going to the bathroom or taking a shower, cooking a meal, deciding to develop a new skill, swiping right on a dating app – can often be all equally out of reach for those struggling with housing.⁶⁶ At the same time, the reality of homelessness deeply

⁶² See Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna (June 25, 1993); see also JACK DONNELLY & DANIEL J. WHELAN, INTERNATIONAL HUMAN RIGHTS 23-24 (5th ed. 2018).

⁶³ *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051 (India); see also *Nawab Khan*, *supra* note 34 (“The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence... Suffice it to state that right to life would include right to live with human dignity.”).

⁶⁴ *Chameli Singh*, *supra* note 63.

⁶⁵ For housing, the work of domestic courts is highly regarded with respect to advancing and understanding the right at an international level. See, e.g., *Mohamed Ben Djazia and Naouel Bellili v. Spain*, Committee on Economic, Social and Cultural Rights Communication No. 5/2015 (adopted June 20, 2017) UN Doc E/C.12/61/D/5/2015, Footnote 25 (citing judgments from the Constitutional Court of South Africa – *Occupiers of 51 Olivia Road v. City of Johannesburg*, [2008] ZACC 1, paras. 9-23 – and the Supreme Court of India – *Olga Tellis & Ors v. Bombay Municipal Corporation*, All India Reporter, 1986, 180).

⁶⁶ Some research in California is exploring cell phone and social media usage as vital to maintaining networks for those experiencing homelessness.

demeans wider society and the value of social solidarity.⁶⁷ For those without adequate housing a consuming instability is created on an individual level which seeps into wider society. While human dignity in legal terms in international law has been critiqued as ambiguous, incoherent, aspirational, and even contradictory,⁶⁸ human dignity's foundational relationship with international human rights law illuminates its normative core, that of a human status which includes individual sovereignty and rights holding.⁶⁹ When this is compromised for one individual, or as is more often the case in large cities today for a notable segment of the population, it is a dignity offense against all of society.⁷⁰

The reality of a lived experience with human dignity is more mosaic than the text of human rights instruments would suggest, and societal intolerance of indignities has a tendency to waver. The recognition of the inherent dignity of each person as laid down in the UDHR calls up an immutable, intrinsic even if "murky and multifaceted" characteristic,⁷¹ and this formulation holds for the myriad international treaties and domestic constitutions which also express the notion of dignity in law.⁷² Yet, the journey of life for many frequently entails a struggle to live a life of dignity at one point or another, if not consistently. This has become the case for far too many in the context of urban housing, and the right to housing understood as an individual human (dignity) right holds particular weaknesses in the evolving urban environment. In the modern city, the ability to relate to others and to belong is critical but not necessarily captured in current understandings of the right to housing. Socio-spatial segregation and exclusion serve to undermine senses of belonging and to infringe human dignity, and homelessness is an absolute denial of a dignified life.

⁶⁷ Fredman, *supra* note 41, at 265-66. See also Jeremy Waldron, *Homelessness and Community*, 50 U. TORONTO L. J. 371, 388 (2000) ("Prosperous societies in the West, particularly the United States (but now, increasingly, Canada, the European Union, Australia, and New Zealand as well) have entered into a bargain with the devil. For decades we conjured that poverty for some would lead eventually to a deterioration in the quality of life for everyone, even for the rich and comfortable. And on the basis of that conjecture we sought to mitigate the worst effects of inequality. We did so in our own interest, as well as on the basis of more altruistic and social justice concerns. We believed that if we didn't, inequality would eventually redound to the detriment of us all. Since 1980, however, the United Kingdom first, then the United States, and then other countries following their lead have decided to test that conjecture and, if possible, refute it.").

⁶⁸ See, e.g., Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. INT'L L. 655 (2008).

⁶⁹ STEPHEN RILEY, *HUMAN DIGNITY AND LAW: LEGAL AND PHILOSOPHICAL INVESTIGATIONS* 104 (2018).

⁷⁰ See also, Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala (reparations), Inter-American Court of Human Rights, Separate Opinion of Judge A.A. Cançado Trindade (May 26, 2001), at para. 33 ("Human suffering has a dimension which is both personal and social. Thus, the damage caused to each human being, however humble he might be, affects the community itself as a whole.").

⁷¹ Allen Buchanan, *The Egalitarianism of Human Rights*, 120 ETHICS 679, 690 (2010).

⁷² See, e.g., UDHR Preamble and Art. 1, 23(2), ICCPR & ICESCR Preamble, Preamble UN General Assembly, World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1992, A/CONF 157/23. For a broad overview of various conceptualizations of human dignity, see generally, THE CAMBRIDGE HANDBOOK OF HUMAN DIGNITY (Marcus Duwell et al. eds, 2014).

As has been noted earlier, the broader understanding of the right to housing as more than mere shelter is fundamentally based on the realization that housing is intimately related to a plethora of life possibilities which flow through the physical object of housing itself.⁷³ This connection has been recognized by the international community through the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 and through the agency of the UN Special Rapporteur on Adequate Housing.⁷⁴ CESCR General Comment No. 4 lists seven different but interrelated and overlapping factors which represent a minimum for housing adequacy in the view of the Committee. These are: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy.⁷⁵ Importantly, these factors both include and supplement affordability, which, while a critical factor and obvious aspect of the current urban housing crisis, must be complemented with other essential criteria in order to actually produce adequate housing. This understanding becomes especially salient in the urban context where affordable housing may often still amount to inadequate housing, and where the question and implications of spatial location become particularly pronounced.

Leilani Farha's tenure as current Special Rapporteur has appropriately placed the connection between life and housing at the core of that office's work, and her research and reports call for "an integrated understanding of the right to life," and for a reunification of the right to housing with the right to life – separated in the two human rights Covenants – "so that homelessness and grossly inadequate housing are seen and addressed as unacceptable violations of the right to housing and the right to life."⁷⁶ In the Special Rapporteur's understanding of the right, state neglect with respect to life necessities, that is, housing, can and should be seen as right to life violations. She has therefore argued that any real shortcoming in the implementation of the right to housing is due to the persistent failure to properly connect the right to housing to

⁷³ See, e.g., Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, 155/96, African Commission on Human and Peoples' Rights (Oct. 27, 2001), at para. 60 ("Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health... the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected.")

⁷⁴ In *FEANTSA*, the Committee "paid close attention to and greatly benefited from the UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari," indicating the strength and influence of that Office's work for the global interpretation of the right to housing. Further, the European Committee also relied upon the CESCR in that it "attaches great importance to" General Comments No. 4 and 7 dealing with the scope of the right to housing and forced evictions. *FEANTSA*, *supra* note 44, at para. 67.

⁷⁵ CESCR General Comment No. 4, para. 7 (The Committee thus notes that in its view "the right to housing should not be interpreted in a narrow sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.")

⁷⁶ *Farha*, UN SR Report, *supra* note 32, at p. 2. On the right to life in the economic, social, and cultural rights context, see also Eibe Riedel, *The Right to Life and the Right to Health in Particular the Obligation to Reduce Child Mortality*, in *THE RIGHT TO LIFE* 352-357 (Christian Tomuschat ed., 2010).

the right to life, and the continuous tendency to interpret the right to life narrowly, negatively, and unconnected to socio-economic concerns.⁷⁷

Her advocacy has borne small but significant fruit. Specifically, her office engaged with the Human Rights Committee (HRC) in its efforts to draft a new and updated general comment on the International Covenant on Civil and Political Rights Article 6 right to life provision for the first time since 1984. The HRC General Comment No. 36 on the right to life was adopted in October 2018 and replaces earlier general comments No. 6 and 14. Through it, the HRC mandates: “The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”⁷⁸ In line with the Special Rapporteur’s recommendations, GC 36 includes specific mention of homelessness.

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include...deprivation of land territories and resources of indigenous peoples...extensive abuse, widespread hunger and malnutrition and extreme poverty and homelessness.⁷⁹

It goes on to hold:

The measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions such as the bolstering of effective emergency health services, emergency response operations...and social housing programs.⁸⁰

The acknowledgment of economic, social, and cultural rights and housing in particular as closely connected with the right to life is an important statement. It reflects the reality of the persistent global challenges around socio-economic inequality, globalization, and rapid urbanization to which human rights law must respond. It is a recognition by the Human Rights

⁷⁷ *Farha*, UN SR Report, *supra* note 32. Note also that ICCPR Article 17(1) protects against arbitrary or unlawful interference with the home, privacy, family, or correspondence.

⁷⁸ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36 at para. 3.

⁷⁹ *Id.* at para. 26.

⁸⁰ *Id.* at para. 26.

Committee of the marginalization, deprivation, and egregious violations suffered by many who are not free from the most basic want as a violation of the right to life.⁸¹

Still, while General Comment No. 36 directs that the right to life should not face a narrow interpretation, it does not articulate the level of specific positive obligations on the part of states, along with access to justice and domestic remedies, that would link failures to address homelessness with right to life deprivations. This is unfortunate. As domestic and regional cases have shown, where housing is not specifically protected as a legal right, access to justice for housing deprivation requires courts to interpret the right to life broadly.⁸² In this way, courts are able to hold states accountable for failing to address situations such as homelessness as right to life violations and to provide effective remedies. A direct statement to this effect from the Human Rights Committee, an international human rights body, would continue to encourage such an interpretation from courts and potentially go a long way towards addressing the vulnerability and socio-economic deprivations of a great number of people. The tenor of GC 36 is largely about the lethal use of force and curtailing arbitrary deprivations of life. The Committee's recognition that states have a duty to protect life which also implicates taking appropriate measures to address the general conditions in society directly threatening life and negatively impacting a right to life with dignity is not front and center, but it is there and it is an important affirmation.

In reality, the intersections between the right to housing and the right to life should be obvious. In plain terms and as the Special Rapporteur has clarified, homelessness is correlated with significantly increased death rates. This can be four to nine times higher than for those who are not homeless.⁸³ Informal settlements exist in conditions lacking basic sanitation, services, and emergency services leading to unsafe drinking water, disease and death.⁸⁴ Housing insecurity in the context of financial and housing crises has been specifically linked to mental health and increased suicide rates under mounting housing stress.⁸⁵ Natural disasters disproportionately affect those in precarious housing and their survival chances. Housing which is situated on unstable land prone to mudslides, for instance, or which lacks the infrastructure to withstand strong weather elements can lead to increased vulnerability during disasters such as storms and earthquakes. In Port-au-Prince, Haiti, insecure huts on steep hillsides have proven dangerous as seen with the 2010 earthquake which claimed 90,000 lives and displaced over a

⁸¹ See Submission to the Human Rights Committee, Draft General Comment on Article 6 – Right to Life, International Covenant on Civil and Political Rights, Special Rapporteur on the right to adequate housing, Oct. 6, 2017, at para. 3.

⁸² See Olga Tellis, *supra* note 65 (discussed more fully in the next chapter).

⁸³ <https://www.cdc.gov/features/homelessness/index.html> (last visited Jan. 25, 2020).

⁸⁴ Farha, UN SR Report, *supra* note 32, at paras. 12-23.

⁸⁵ *Id.*

million, and with a number of hurricane hits since.⁸⁶ Further, homes are often targeted and destroyed in conflict situations.⁸⁷ During armed conflict in Darfur in 2003 for instance, homes and villages were destroyed and forced evictions were carried out against Darfur civilians by rebel groups. In *COHRE v. Sudan*, the African Commission on Human Rights found these rebel groups were supported by the Sudanese government and that the destruction of homes amounted to violations of Articles 4 (life), 5 (dignity), 14 (property), and 18 (family) of the African Charter on Human and Peoples' Rights.⁸⁸ In short, housing deprivation undermines life and survival, and these specific scenarios highlight the indivisibility of the right to life and the right to housing in base form.

Yet as emphasized earlier, human dignity is also a critical and more complicated aspect of the link between housing and life. Housing is an absolutely crucial means by which people are able to live in or suffer profound deprivations around dignity. Accordingly, the right to housing as currently understood aims to protect individual human dignity rights. But conceptualizing of human dignity as "social dignity" animates an essential but so far absent relational notion of housing.⁸⁹ Expanding the conceptualization of dignity and housing to include a social relational perspective enriches understanding of how better to constitute the right to housing in the context of increasing urbanization.⁹⁰ In this sense, and as Erin Daly has put it, it is therefore not sufficient to hold dignity as a birthright for we must also be able to *live* in dignity, and "[a]s long as people live together in society, dignity requires sustenance of the social structure."⁹¹ Laws and principles of social governance must be understood as limited by the demands of human dignity because human dignity is about individual status and also about community solidarity. It therefore holds compelling constitutive implications for public governance.⁹²

The right to housing in all the modern complexity of the globalization and urbanization context is perhaps better understood as a form of composite right related to collective goods pertaining to the city. It at once inheres in the human person in terms of its distinct connections

⁸⁶ Sam Jones, *Why is Haiti vulnerable to natural hazards and disasters?*, THE GUARDIAN, Oct. 4, 2016, <https://www.theguardian.com/world/2016/oct/04/why-is-haiti-vulnerable-to-natural-hazards-and-disasters>.

⁸⁷ See generally EVELYNE SCHMID, TAKING ECONOMIC, SOCIAL, AND CULTURAL RIGHTS SERIOUSLY IN INTERNATIONAL CRIMINAL LAW (2015).

⁸⁸ Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, 279/03-296/05, African Commission on Human and Peoples' Rights (May 27, 2009).

⁸⁹ NICO MOONS, THE RIGHT TO HOUSING IN LAW AND SOCIETY 19, 27 (2018).

⁹⁰ See MARTHA NUSSBAUM, CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH 33-34 (2011).

⁹¹ ERIN DALY, DIGNITY RIGHTS: COURTS, CONSTITUTIONS, AND THE WORTH OF THE HUMAN PERSON 55 (2013). Further, human dignity is a matter for interpretation and application by courts addressing human rights issues, which may choose to expand rights under the auspices of dignity, as well as for public offices which may be required to use dignity as a benchmark for service provision and redress.

⁹² Riley, *supra* note 69, at 31.

to life, security, and dignity, and its “realization depends on political, economic, social, and cultural policies deployed by national and international organs and institutions.”⁹³ This perspective serves to elevate and advance the right by revealing its layers and implications for various levels of governance. In its present orientation, the right to housing is disconnected from collective goods related to identity, belonging, and community in the city. A collective approach or dimension to the right to housing could therefore be beneficial.

In this respect, communal perspectives may thicken the right to housing and connect it more powerfully to its aims, and may help to preclude deprivations in the current urban social context by bringing within the scope of the right broader social relational and community dimensions. Communitarian perspectives recognize belonging as a central value of morality and argue for political and legal theory to acknowledge the important social aspects of life.⁹⁴ Such perspectives may offer possibilities for enhancing the right to housing and for potentially addressing, or at least more fully understanding, the deeper concerns and implications of displacement in the urban context under study here. As Wiktor Osiatyński has argued: “Undoubtedly, a lot can be done today to make better use of the communal aspect of rights and to use rights to strengthen civil societies and give individuals a sense of belonging rather than separate them from others and from the community.”⁹⁵ A stronger embrace of a communal importance to the right to better reflect and respond to evolving human needs particularly in the changed urban context is warranted.⁹⁶

An extreme example of this position can be seen in the housing policy of Singapore. Singapore, a city-state of 5.6 million people, is an ethnically diverse society made up of three main groups: Chinese (74%), Malay (13%), and Indian (9%). In the context of independence from Malaysia in 1965, the Singaporean government adopted a strategy designed to contribute to social cohesion with respect to its racial and ethnic diversity. This took the form of state imposition of ethnic housing quotas in public housing. The Ethnic Integration Policy (EIP) sets the ethnic composition of public housing blocks and neighborhoods. Sales of new flats as well as re-sales are curtailed to particular ethnic groups if such sales would result in exceeding the ethnic quotas for that block.⁹⁷ It must be noted that in Singapore, 8 out of 10 people live in

⁹³ Theo Van Buren, *Categories of Rights*, in INTERNATIONAL HUMAN RIGHTS LAW 139 (Daniel Moeckli et al., eds.) (2018).

⁹⁴ Hohmann, *supra* note 24, at 178. See also ROWAN CRUFT ET AL., THE PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS 34-36 (2015) (on Marxist and communitarian critiques of human rights).

⁹⁵ WIKTOR OSIATYŃSKI, HUMAN RIGHTS AND THEIR LIMITS 173 (2009).

⁹⁶ See generally JOSEPH RAZ, THE MORALITY OF FREEDOM 254 (1986) (“We find that fundamental moral rights cannot be conceived as essentially in competition with collective goods. On examination either they are found to be an element of the protection of certain collective goods, or their value is found to depend on the existence of certain collective goods.”).

⁹⁷ Public housing in Singapore, http://eresources.nlb.gov.sg/infopedia/articles/SIP_1585_2009-10-26.html?utm_expId=85360850-

public housing and, given this dominance, it does not carry the same kind of stigma associated with public housing in countries like the UK or the US.⁹⁸ It is generally located in suburban areas and is comprised of high-density, high-rise developments.⁹⁹

Tharman Shanmugaratnam, Senior Minister of Singapore and Coordinating Minister of Social Policies¹⁰⁰ explained the program in the following terms:

The most intrusive social policy in Singapore has turned out to be the most important and it has a level of intrusiveness that doesn't come comfortably to the liberal mind...housing estates. 85% of Singapore lives in public housing. It's not public housing that you are familiar with in the UK, it's not like your council housing, because when it's 85% it covers the lower income group, the middle-income group, the upper middle-income group. These are middle class housing estates. But every single block of flats, block of apartments, and every single precinct requires an ethnic balance. That's intrusive. Once a particular ethnic group gets beyond a certain quota in that block or that precinct, the resale market has to adjust. You can't just get more and more of the same people concentrating themselves in the same neighborhood. When it was first done, I don't think we knew how important it was going to be... It was intrusive and it turns out to be our greatest strength. Because once people live together they are not just walking their corridors together every day taking the same elevator up and down; their kids go to the same kindergarten. Their kids go to the same primary school because all over the world, young kids go to school very near to where they live and they grow up together.¹⁰¹

The Housing and Development Board (HDB) as the national housing authority is responsible for this strategy. HDB is the sole provider of public housing in Singapore and its role has been continuously evolving since its inception in 1960 in response to the changing demographic and socioeconomic standing of the Singaporean population. Originally, HDB was about taking the urban poor from squatter settlements to basic rental housing; today, it is about achieving 100 per cent homeownership for the population.¹⁰²

6.qNOOYF40RhKK6gXsQEaAJA.0&utm_referrer=https%3A%2F%2Fwww.google.com%2F (last visited Jan. 25, 2020).

⁹⁸ See Chih Hoong Sin, *The Quest for a Balanced Ethnic Mix: Singapore's Ethnic Quota Policy Examined*, 39 URB. STUD. 1347, 1349 (2001).

⁹⁹ Public housing in Singapore, *supra* note 97.

¹⁰⁰ At the time of this interview with the BBC's Stephen Sackur, May 7, 2015, Mr. Shanmugaratnam was Deputy Prime Minister & Minister for Finance of Singapore.

¹⁰¹ 45th St Gallen Symposium, *Singapore 50 years after independence* https://www.youtube.com/watch?time_continue=557&v=hpwPciW74b8.

¹⁰² Sin, *supra* note 98. at 1349.

The Singapore approach to public housing is explicitly aimed at preventing segregation and ethnic concentration. According to the Housing and Development Board's website:

The EIP is put in place to preserve Singapore's multi-cultural identity and promote racial integration and harmony. It ensures that there is a balanced mix of the various ethnic communities in HDB towns. The EIP limits are set at block/neighbourhood levels based on the ethnic make-up of Singapore.

For the purchase of an HDB flat, a household with members of different ethnic groups can choose to classify their household ethnicity under the ethnic group of any owner or spouse (co-owner or occupier), according to the race shown on the [National Registration Identity Card] of the chosen member.

Once an ethnicity is chosen for the household, it will remain the same when the flat owners subsequently sell their flat on the open market.¹⁰³

More broadly, the Ethnic Integration Policy connects to the state's social and political objectives and is a tool of advancing particular government policies beyond housing. For instance, the government's pro-family and pro-marriage stance was supported by a housing policy in which singles were not allowed to buy HDB flats on their own, a rule which also had an impact on the LGBT community. This has now been relaxed such that Singaporeans 35 and up can purchase resale flats on their own of any size and in any location.¹⁰⁴ But the point still emphasizes how the program is linked to authoritarian approaches to managing societies which are frequently critiqued by liberal human rights proponents as Minister Shanmugaratnam acknowledges. The Singapore strategy is in essence a social engineering approach to preventing racial and ethnic conflicts and tensions which the country feels would be caused by enclaves. Harmony, peace, and prosperity are thought to flow through its approach to public housing and to thereby infiltrate the wider society.¹⁰⁵

The Singapore approach is also based on a fundamental understanding of housing policy that is about particular values of ownership as a means of nation-building. In the words of the country's first Prime Minister Lee Kuan Yew who led for three decades:

My primary preoccupation was to give every citizen a stake in the country and its future. I wanted a home-owning society. I had seen the contrast between the blocks of low-cost rental flats, badly misused and poorly maintained, and those of house-proud owners, and was convinced that if every family owned its home,

¹⁰³ Ethnic Integration Policy and SPR Quota, <https://www.hdb.gov.sg/cs/infoweb/residential/buying-a-flat/resale/ethnic-integration-policy-and-spr-quota>.

¹⁰⁴ Public housing in Singapore, *supra* note 97.

¹⁰⁵ See, e.g., Beng-Huat Chua, *Race Relations and Public Housing Policy in Singapore*, 8 J. ARCH. & PLAN. RES. 343-354 (1991).

the country would be more stable...my other important motive was to give all parents whose sons would have to do national service a stake...If soldiers' families did not own their home, he would soon conclude he would be fighting to protect the properties of the wealthy.¹⁰⁶

As will be discussed in the next chapter, ownership can be a predatory tool for market actors against low-income populations rather than a guaranteed pathway to empowerment and social stability. Still, Singapore is an economic success with an educated and globally connected population. It would be wise not to dismiss their approach to housing out of hand, tempting as this may be for human rights proponents who might find it hard to look past the country's tenuous relationship with rights.¹⁰⁷

At the High-Level Roundtable on Adequate and Affordable Housing at Habitat III, the Singapore Representative spoke up from the audience on his country's approach. In addition to the basic parameters of the policy, the Representative stressed the importance of not allowing public housing to degrade and of a responsible and sustainable financial plan to support public housing. He characterized Singapore's approach to housing as having a strong social dimension by fostering social inclusion through the prevention of ethnic ghettos. There was an aura of pride in his delivery, consistent with both Minister Shanmugaratnam's characterization of the EIP as Singapore's "greatest strength" and of a nation often perceived as seeing technocratic innovation as the means of staying a step ahead of the pack. But not all ethnic enclaves produce ethnic ghettos, and such a stringent stance in favor of forced integration can neglect the benefits of close-knit community, a point that will be returned to in the next chapter.¹⁰⁸

Singapore's policy can be compared with the United States which addresses discrimination in housing through the Fair Housing Act of 1968 (FHA). A 2015 decision from the US Supreme Court regarding the FHA illustrates the historical tensions around racial discrimination in American society and segregated housing patterns. In *Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project*,¹⁰⁹ at issue was the question of

¹⁰⁶ James Lee, *Asset Building and Property Owning Democracy: Singapore Housing Policy as a Model of Social Investment and Social Justice*, 45 J. SOC. & SOC. WELFARE 105 (2018) (quoting LEE KUAN YEW, FROM 3RD WORLD TO FIRST 95-96 (2000)).

¹⁰⁷ On restrictions on speech and assembly, see, e.g., "Kill the Chicken to Scare the Monkeys": *Suppression of Free Expression and Assembly in Singapore*, HUMAN RIGHTS WATCH, Dec. 12, 2017 <https://www.hrw.org/report/2017/12/12/kill-chicken-scare-monkeys/suppression-free-expression-and-assembly-singapore>; on HIV-related travel restrictions, see, e.g., Press release, UNAIDS, UNAIDS and UNDP call on 48 countries and territories to remove all HIV-related travel restrictions, June 27, 2019 https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2019/june/20190627_hiv-related-travel-restrictions.

¹⁰⁸ See the discussion in chapter three on *Bank of America v. City of Miami*.

¹⁰⁹ *Texas Dept of Housing and Community Affairs et al. v. The Inclusive Communities Project, Inc., et al.*, 576 U.S. ___ (2015).

location for low-income housing in Dallas, Texas. Specifically, the case dealt with whether such low-income housing should be built in the inner city or in the suburbs, and was argued under a theory of liability based on disparate-impact discrimination. Under US law, disparate-impact claims can be brought to challenge practices that disproportionately adversely affect minorities when there is no justified legitimate rationale for the practice.¹¹⁰ The specific question before the US Supreme Court was whether such disparate-impact claims are cognizable under the FHA. It held that they are.

In *Texas Dept. of Housing*, the Supreme Court took the time to expound on the history of racial discrimination in the US and how it has led to a problem of segregated housing in the country. Justice Kennedy's words shed light on this social and historical context:

De jure residential segregation by race was declared unconstitutional almost a century ago...but its vestiges remain today, intertwined with the country's economic and social life. Some segregated housing patterns can be traced to conditions that arose in the mid-20th century. Rapid urbanization, concomitant with the rise of suburban developments accessible by car, led many white families to leave the inner cities. This often left minority families concentrated in the center of the Nation's cities. During this time, various practices were followed, sometimes with governmental support, to encourage and maintain the separation of the races: Racially restrictive covenants prevented the conveyance of property to minorities...steering by real-estate agents led potential buyers to consider homes in racially homogenous areas; and discriminatory lending practices, often referred to as redlining, precluded minority families from purchasing homes in affluent areas...By the 1960's these policies, practices, and prejudices had created many predominantly black inner cities surrounded by mostly white suburbs.¹¹¹

Against this backdrop of institutional and cultural racism, a period of social unrest characterized the US in the 1960s.¹¹² Malcolm X would call attention to the denial of human rights for African Americans on the basis of their race. Violent race riots in poor African American urban neighborhoods involving arson, looting, and massive damage to property were widespread and emblematic of a deeply divided nation boiling over.¹¹³ Police presence in

¹¹⁰ This is in contrast to disparate-treatment cases where a discriminatory intent or motive on the defendant must be shown.

¹¹¹ *Texas Dept.*, *supra* note 109 at 5-6.

¹¹² On the longer-term economic effects of this period for African Americans, *see, e.g.*, William J. Collins & Robert A. Margo, *The Economic Aftermath of the 1960s Riots in American Cities: Evidence from Property Values*, 67 J. ECON. HIST. 849-883 (2007).

¹¹³ There were more than 700 riots from 1964 to 1971.

African American communities leading to and during the riots was both repressive and brutal.¹¹⁴ Injuries and loss of life were significant, and a tense culture of fear was created throughout the country with the National Guard and Army called into action on city streets.¹¹⁵

President Johnson set up the National Advisory Commission on Civil Disorders – the Kerner Commission – to investigate the causes of America’s social crisis. The Commission concluded: “Our Nation is moving toward two societies, one black, one white—separate and unequal.”¹¹⁶ It found residential segregation, unequal housing, and economic disparity to be the significant underlying causes of the unrest. The Commission’s report would also note: “What the rioters appeared to be seeking was fuller participation in the social order and the material benefits enjoyed by the majority of American citizens. Rather than rejecting the American system, they were anxious to obtain a place for themselves in it.”¹¹⁷

This period of social distress culminated in the 1968 assassination of civil rights leader Dr. Martin Luther King, Jr. That same year at the Summer Olympic Games in Mexico City, US sprinters Tommie Smith and John Carlos would bow their heads and raise a clenched fist on the medal podium in active protest on the global stage of America’s racial inequities. According to Smith, theirs was “a cry for freedom and for human rights. We had to be seen because we couldn’t be heard.”¹¹⁸

Dr. King’s killing prompted more riots and an urgent need to resolve inner city social tensions in the face of national tragedy.¹¹⁹ The Fair Housing Act as part of the Civil Rights Act

¹¹⁴ “The abrasive relationship between the police and minority communities has been a major—and explosive—source of grievance, tension, and disorder. The blame must be shared by the total society. The police are faced with demands for increased protection and service in the ghetto. Yet the aggressive patrol practices thought necessary to meet these demands themselves create tension and hostility. The resulting grievances have been further aggravated by the lack of effective mechanisms for handling complaints against the police.” Report of The National Advisory Commission on Civil Disorders, <https://www.ncjrs.gov/pdffiles1/Digitization/8073NCJRS.pdf> [hereinafter Kerner Report].

¹¹⁵ For example, in 1967, 43 people died and more than 300 were injured over five days in Detroit. *See also* Peter B. Levy, *What we get wrong about the 1960s ‘riots’: Small-town America has never been immune from big-city problems*, WASH. POST, July 21, 2019 (noting the false belief that “America’s race problems extended only to our large cities and their inner-city ghettos, but not beyond that. The terms that were used – and still use – contributed to the misunderstanding of what was taking place. By using the term ‘riots’, we reinforce the notion that these acts of ‘collective violence’ were spontaneous and apolitical and that they were disconnected to the protests for civil rights in the South.” For Levy, this was a flawed understanding carrying serious consequences which permeate American society today. “Focused on large cities, the national media gave sparse coverage to the revolts in York [Pennsylvania] and other midsize and small cities, despite the fact that the majority of them occurred in such places...The challenges facing black Americans who reside in small and midsize communities are as severe today, if not more so, as they were 50 years ago.”).

¹¹⁶ Kerner Report, *supra* note 114.

¹¹⁷ *Id.*

¹¹⁸ David Davis, *Olympic Athletes Who Took a Stand*, SMITHSONIAN MAGAZINE, Aug. 2008, <https://www.smithsonianmag.com/articles/olympic-athletes-who-took-a-stand-593920/#y5HSFO8wwgwGu8L.99>. The image is now one of iconic athletic protest and has been memorialized at the US National Museum of African American History and Culture. *See* Appendix 2.

¹¹⁹ History of Fair Housing, https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history (last visited Jan. 25, 2020).

of 1968 emerged from this national context. Under Section 804(a) of the FHA, it shall be unlawful: “To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”¹²⁰

To return to the specific facts of the case, the Texas Department of Housing and Community Affairs was responsible for distributing low-income housing tax credits in Texas. These credits are from the federal government and are distributed to developers through state agencies, and favor housing unit development in low-income areas. The Inclusive Communities Project, Inc, is a non-profit that helps low-income families in Texas with securing affordable housing. In the instant case, the Inclusive Communities Project alleged that the Texas Department “caused continued segregated housing patterns by its disproportionate allocation of the tax credits, granting too many credits for housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods.”¹²¹

The Supreme Court held that the “results-oriented language” of the phrase “otherwise make unavailable” in Section 804 “counsels in favor of recognizing disparate-impact liability,” and that recognition of such claims is consistent with the central purpose of the Fair Housing Act.¹²² It noted that claims challenging discriminatory practices such as zoning laws and housing restrictions which seek to exclude minorities from certain neighborhoods without sufficient justification “reside at the heartland of disparate-impact liability.”¹²³

Unlike in Singapore, however, the US court is specifically against the use of quotas and of race becoming central to housing decisions. Justice Kennedy cautioned: “we must remain wary of policies that reduce homeowners to nothing more than their race.”¹²⁴ More specifically:

The FHA imposes a command with respect to disparate-impact liability...Governmental or private policies are not contrary to the disparate-impact requirement unless they are ‘artificial, arbitrary, and unnecessary barriers’...Difficult questions might arise if disparate-impact liability under the FHA caused race to be used and considered in a pervasive and explicit manner to justify governmental or private actions that, in fact, tend to perpetuate race-based considerations rather than move beyond them. Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision...If the specter of disparate-impact litigation causes private developers to no longer construct or renovate housing units for low-income individuals, then the

¹²⁰ 42 U.S.C. §3604(a).

¹²¹ Texas Dept., *supra* note 109 at 3.

¹²² *Id.* at 11.

¹²³ *Id.* at 17.

¹²⁴ *Id.* at 24.

FHA would have undermined its own purpose as well as the free-market system.¹²⁵

Yet, like Singapore, the Supreme Court sees the Fair Housing Act as having an important role in creating a more integrated society against a backdrop of historical and persisting division. While Singapore aims to stamp out prejudice and foster social cohesion at the outset through a program of forced ethnic integration which should trickle down in the form of future generations living more cohesively, the US sees the availability of litigation under the FHA as an appropriate means of addressing discrimination. Disparate impact litigation opens up the possibility for revealing discriminatory intent and serves as a buffer against unconscious prejudices that might not manifest in the form of facially discriminatory policies. Further, the FHA is also a tool for well-intentioned private developers to use against municipalities that may want to perpetuate discrimination through local ordinances. In the words of the Court: “The FHA is not an instrument to force housing authorities to reorder their priorities. Rather, the FHA aims to ensure that those priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation.”¹²⁶

The approaches of Singapore and the US show the markedly different approaches to efforts to promote desegregated communities. Singapore’s is explicit, and seems to see race and ethnicity as an inevitable reality to be accepted and to be managed specifically through housing policy with the aim of pursuing important national interests around community cohesion. The state objectives can be planned into the social order. For the US, the nation is on the defensive in its “quest to reduce the salience of race in our social and economic system”¹²⁷, and the Supreme Court in this decision appears to disavow race classifications entirely and emphasizes the need for American society to delegitimize them and to remove race from law and policy. The latter is certainly a slow burn, and, in the urban context, it is uncertain whether approaching the importance of housing for belonging and inclusion through an ad hoc nondiscrimination lens is an effective means of breaking down the kinds of human preference barriers which contribute to exclusion in the first place. It is certain, however, that for liberal states such as the US, notions of home and housing are politically tied to the respect for and preservation of personal autonomy and a needed private space from state interference.

¹²⁵ *Id.* at 21.

¹²⁶ *Id.* at 18.

¹²⁷ *Id.* at 22.

2.3 Conclusion

There is growing and global unease with living situations around the world directly related to housing, its adequacy and affordability, and to displacements.¹²⁸ While the justiciability and enforceability of human rights protections and accountability for violations has rested disproportionately in the civil and political camp since the post-UDHR splitting of rights into two covenants, nationalist and populist sentiments seem to suggest a growing frustration with hardship, and particularly coming from globalization's apparently forgotten classes. What seems to hold current political attention is the complexity of living a dignified life and how that pursuit or deprivation is tied to broader systems and economies. To some notable extent then, the tide is turning on the dichotomy between civil and political and economic, social, and cultural rights.

Dignity in an individual, subjective, personal sense with respect to adequate housing has always been a concern for society, even if this only translated into the occasional jurisprudential ruling offering some form of individualized and procedural relief. But now, a wider concern with dignity in the context of adequate housing can be observed and this is particularly true in the context of the urban environment and is occurring on a global scale. Society is beginning to view the urban housing crisis as betraying human dignity on an objective, widespread level rather than a purely individual, subjective level. Linking the right to housing in cities with the normative core and pull of human dignity is no longer a vague strategy, but an inevitability of current trends.¹²⁹ The proliferation of discussions on urbanization and housing in legal, political, and social discourse, global conferences, newspaper articles, museum exhibits, documentaries, and books provides mounting evidence of this shift.¹³⁰ Given political will and lack thereof has always marked the dissonance between protection and denial of human rights,¹³¹ there is a certain hope on the horizon.

¹²⁸ This is most prominent in the context of cities but is also of concern in rural areas where corporate dispossessions have begun to attract the attention of supranational institutions. The International Criminal Court's 2016 policy paper outlines a shift in direction going forward toward a focus on land and environmental crimes, there has been discussion of an African Criminal Court which would have jurisdiction to try corporations for similar crimes, and the World Bank has been notoriously forced to pay closer attention to its projects' impacts after decades of destructive practices. See International Criminal Court, The Office of the Prosecutor: Policy paper on case selection and prioritization, Sept. 15, 2016, https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf; Adam Branch, *The African Criminal Court*, in THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT 198-220, 200 (Charles C. Jalloh et al. eds., 2019).

¹²⁹ But see Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRAC. 1, 9 (2017).

¹³⁰ For example, the 'Living Cities' exhibit at the Tate Modern museum in London which showcases examinations of the modern city from artists around the world.

¹³¹ See also Saul *supra* note 27, at 976 (2014) (citing Margot E. Salomon, *Deprivation, Causation and the Law of International Cooperation*, in LANGFORD ET AL., GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 296 (2012)).

Urbanization trends and economic development in the city are being heralded as an opportunity for the normative progression of the right to housing to occur both alongside and in response to these very changes and pressures. Much as a right to privacy must evolve and develop in conjunction with changes in technology or security, so too a right to housing must mature in conjunction with changes in pressures on the resources it requires, the global financial context within which it must be obtained, and the space in which it must be located. These factors influence the parameters and limits of “adequacy”. Indeed, too frequently, the focus has been myopic, directed to “the seemingly radical financial implications of the right’s implementation” with grossly insufficient attention given to exploring the potential and possibilities of the social impacts of a positive right to housing.¹³² The rhetoric falls into the familiar trope of “the potential for ‘housing as a handout’ to undermine individual striving, and reduce incentives to contribute to society.”¹³³ This is dangerous talk and to large extent the work of the current UN Special Rapporteur has been directed at changing the narrative around housing and visible manifestations of the lack thereof. She aims to convince governments, policy makers, and the general public that homelessness and insecurity are failures of the state to implement the right to housing rather than personal, individual shortcomings.¹³⁴ In this formulation, the Special Rapporteur engages with the politics of the housing question to try to mobilize change. But through her efforts she also creeps the right into the sphere of community responsibility. She opens the possibility that housing, and housing vulnerability, is a matter of public concern. This is important work because progress on addressing the urban housing question will require an interest in rather than avoidance of collective responsibility.

The growing urbanization contestations allow for blatant exposure of the right to housing as it is meant to be understood – not as bare physical shelter, but rather as a right concerned with the means of protecting and delivering the life possibilities which flow through such an object. In the contemporary context, the unique life possibilities of urban environments and the related importance of community and belonging in cities must be ingrained in the right to housing. Human dignity must be understood in both an individual and social sense. The discussion of the scope and content of the right to housing in this chapter reveals a right which, when put up against the contemporary urban environment, is failing to address the persistent challenges in cities around housing and increasing urbanization. The right to housing falls short

¹³² Hohmann, *supra* note 24, at 188. Hohmann notes that understanding the right to housing as a public right rather than as a private family matter may provide important incentives for societal civic and political participation, particularly for women.

¹³³ *Id.* (quoting Robert Ellickson, *A Right to Housing?*, 4 RESPONSIVE COMMUNITY 43 (1994)).

¹³⁴ The Special Rapporteur dons a t-shirt to this effect at official engagements. While this may seem a superficial observation, in the visual and social media age, branding is important and often deliberate. See Appendix 3.

in that understood and interpreted as an individual good it does not capture the importance of the individual's relationship with others and with place as central to human dignity, and as experienced in the contemporary urban environment through the need for inclusion in rather than displacement from that environment. Arguments for an expanded right which recognizes the importance of the individual's relationship with others, that is, a right to housing within a community, are turned to next.

CHAPTER THREE

HOUSING AND COMMUNITY

3.1 Introduction

The shape of protection offered by the right to housing as discussed last chapter fails to account for our interpersonal relationships with others in society as mediated through housing. In its individualistic conception, it minimizes our socio-relational nature. This critique highlights the importance of community. It could be said that through the Committee on Economic, Social and Cultural Rights, attempts have been made to advance an understanding of the right to housing which accounts for its wide societal implications. The Committee references the importance of location and cultural adequacy, for example. Specifically, with respect to location, the Committee notes in General Comment No. 4:

Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

On cultural adequacy, the Committee states:

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.

But the Committee's elaborations, too, fall short. They fail to capture the totality of risk involved in an understanding of the right to housing which is decontextualized not only from individual hardship,¹ but also from a recognition of the importance of community. The right to housing must entail the right to have housing within one's community, and must be attune to the intricate processes of diminished belonging and identity brought about by community displacements and disruptions.

¹ See generally JESSIE HOHMANN, THE RIGHT TO HOUSING: LAW, CONCEPTS, POSSIBILITIES (2013) (emphasizing this point throughout).

This chapter advances this claim in two broad parts. First, it emphasizes the significance of housing for community building. It situates this argument in the context of the current global affordability crisis with respect to housing, one of the most pervasive challenges to the implementation of the right to housing in the twenty-first century. Through a variety of ultimately connected mechanisms, severe housing unaffordability is a marker of modern habitation and is now a pronounced global phenomenon. Specifically, the rapid growth of cities and massive urbanization of populations across the globe greatly outpaces the provision of adequate housing. The privatization of housing services, land speculation, and commodification all contribute to the affordability crisis. Added to this, the shifting role of the state with respect to housing away from a social good conceptualization and towards financialization has served to undermine the right to housing.² The result of the affordability crisis in urban centers intersects and manifests with the discriminatory potential of housing, which has long been a recurrent policy theme particularly pertaining to women,³ racial and ethnic minorities,⁴ and indigenous peoples,⁵ offering up increasingly stratified and exclusionary cities.⁶ These points have been repeatedly stressed by the Special Rapporteur. The first part of this chapter elaborates upon her critique underscoring the pivotal but underemphasized dimension of housing's significance for community building.

The second part of the chapter then reveals a different but related angle, that housing can be central to maintaining community identity. This aspect of the argument is illustrated by tying housing to property, and by drawing upon property law theory to better understand property's aims, ends, and underlying values. Property questions and concepts have informed and at times irritated the right to housing and are often at the center of spatial contestations in the city.⁷ In the straightforward terms of the South African Constitutional Court, "expectations

² See also Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2005/48 (Mar. 3, 2005) [hereinafter *Kothari*, UN SR Report]; UN General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Raquel Rolnik, A/67/286 (Aug. 10, 2012) [hereinafter *Rolnik*, UN SR Report].

³ See, e.g., Cecilia Kell v. Canada, CEDAW/C/51/D/19/2008 (Feb. 28, 2012).

⁴ See, e.g., CESCR, Concluding Observations: France, E/C.12/FRA/CO/3 (June 9, 2008).

⁵ The jurisprudence of the Inter-American Court of Human Rights has dealt repeatedly with issues of housing, displacement, and indigenous peoples. See, e.g., Case of the Indigenous Community Yakye Axa v. Paraguay, June 17, 2005, IACHR (Ser. C) No. 125; see also Sawhoyamaya Indigenous Community v. Paraguay, Mar. 29, 2006, IACHR (Ser. C), No. 146 (both cases involved the acquisition of ancestral lands by corporations without provision of due process and access to remedies from the government).

⁶ *Rolnik*, UN SR Report, *supra* note 2 at para. 12 ("As real estate prices and rents increased and came to be financed through global instead of local financial surpluses, more households faced difficulties in accessing adequate housing in the market. Many observers have pointed to the negative impacts of housing asset dispersion on social stratification and inequality, and the uneven spatial impact of these processes within cities, regions and globally.")

⁷ See also Alison Clarke, *Property, Human Rights and Community*, in PROPERTY AND HUMAN RIGHTS IN A GLOBAL CONTEXT 19 (Ting Xu & Jean Allain eds.) (2015) ("Human rights law has an uneasy relationship

that ordinarily go with title could clash head-on with the genuine despair of people in dire need of accommodation.”⁸ But property can and should be understood more fully to include a mix of private and public values which advance its ends and which support the right to housing.

3.2 Housing and Community Building – The Problem with Commodification

One of the main if not the central message advocated by the Special Rapporteur on Adequate Housing at Habitat III was the need for a “paradigm shift” with respect to housing. Specifically, the Special Rapporteur was pointing to what has come to be known as the “financialization of housing”, and was using her platform to present a call to action for the international community – particularly the more than one hundred heads of state in attendance – to view housing not as a commodity or an investment asset, but rather as a human right.⁹ Farha emphasized that social exclusion and stigmatization, forced evictions in the name of development, increases in homelessness, and the ostracization and “othering” of migrants and refugees all flourish in cities. In her view, these problems persist due to a failure to see these matters as human rights issues and to respond with a human rights paradigm. She thus called for a *shift*, which as she explained, directly involves challenging the commodification of housing.¹⁰

Farha’s predecessor, Raquel Rolnik, also identified and cautioned of the trend towards the commodification of housing and land in the expertise of UN Special Rapporteur in earlier reports. In 2012, she noted:

Housing finance is now perceived not only as a tool for promoting access to adequate housing but also as critical to the development of the financial sector, and has become a central pillar of the financial market, expanding the terrain for global capital. The deregulation, liberalization and internationalization of finance that started in the 1980s had major implications for housing and urban development. Funds for mortgage lending now derive from national and international capital markets and not solely from existing

with property. The protection of property rights against the state can be seen as fundamental to the freedom of the individual and the maintenance of the rule of law. From another view it reinforces the grip on power and privilege held by the property-haves over the property-have-nots. Modern human rights law, at both the international and the national constitutional level, struggles to reconcile these opposing views.”)

⁸ Port Elizabeth Municipality v. Various Occupiers, 2005 (1) SA 217 (South African Constitutional Court) para. 23.

⁹ Housing, United Nations Conference on Housing and Sustainable Urban Development, Quito, Ecuador, Oct. 17, 2016.

¹⁰ *Id.* The Special Rapporteur has a website dedicated to ‘The Shift’, initiated by her in partnership with the United Cities and Local Governments and the Office of the High Commissioner for Human Rights, <http://www.unhousingrapp.org/the-shift> (last visited Jan. 25, 2020) (“The Shift is a new worldwide movement to reclaim and realize the fundamental human right to housing – to move away from housing as a place to park excess capital, to housing as a place to live in dignity, to raise families and participate in community.”).

savings and retail finance. These developments have been characterized as the ‘financialization’ of housing.¹¹

And prior to Rolnik, Miloon Kothari in his capacity as Special Rapporteur noted in a 2005 report:

Even where developing countries have successfully attracted a large increase in private capital flows, the rapid growth of cities typically outpaces the provision of adequate housing, resulting in an increased number of the poor living in squatter settlements with no security or civic services. This situation is further aggravated when urban authorities or private operators clear such settlements for commercial use or high-income housing. Moreover, increasing trends towards privatization of housing services and markets typically result in land speculation and the commodification of housing, land and water. The application of user fees for goods such as water, sanitation and electricity, and the repeal of land ceiling and rent control legislation further exacerbate the problem, resulting in increased marginalization of the poor.¹²

Kothari’s findings were particularly focused on developing countries and the structural factors driving homelessness. Similarly, Rolnik’s report discussed the challenges associated with the growth of microcredit in developing countries, and the proliferation of unplanned urban settlements as connected to trends in global housing finance. But today, the focus of the financialization critique from the Office of the Special Rapporteur is much more centered on developed countries and on the ways commodification is resulting in a now universal affordability crisis, stratifying even the wealthiest Western cities.¹³ This transition should not go unnoticed, and is in line with the expanded focus of Agenda 2030 and the Sustainable Development Goals which emphasize that they are commitments aimed at both developing and developed countries.¹⁴

Indeed, manifestations of the commodification trend became painfully apparent during the 2008 US real estate bubble burst and sub-prime mortgage fallout, and the subsequent global financial crisis and mitigation strategies.¹⁵ In this catastrophe, the issue of housing affordability

¹¹ Rolnik, UN SR Report, *supra* note 2, at para. 10.

¹² Kothari, UN SR Report, *supra* note 2, at para. 25.

¹³ This is not to suggest that Ms. Farha’s work is not also paying close attention to vulnerable populations in developing countries.

¹⁴ This is in contrast to the predecessor Millennium Development Goals which were aimed at improvements in the developing world.

¹⁵ Raquel Rolnik & Lidia Rabinovich, *Late neoliberalism: the financialisation of homeownership and the housing rights of the poor*, in ECONOMIC AND SOCIAL RIGHTS AFTER THE GLOBAL FINANCIAL CRISIS 57 (Aoife Nolan ed., 2014) (“From the outset of the financial crisis, housing was converted into one of the main Keynesian strategies to recover from it.”). See also HAROLD JAMES, THE CREATION AND DESTRUCTION OF VALUE: THE GLOBALIZATION CYCLE 98-119 (2009).

was not simply a reaction to financial shocks but, rather, was causally central to the crisis. And, of course, the developments informing this whole trajectory had been occurring long before 2008, as the excerpts from the reports of the Special Rapporteurs and substantial research have demonstrated.¹⁶

It is worth briefly summarizing some of this history. The modern trend towards the commodification of housing harkens back to the late 1970s.¹⁷ During this time, an important transition with respect to housing policy began to take place whereby activities once under the control of the state were shifted to the private sector in a move supported and bolstered by neoliberal economic doctrine.¹⁸ More specifically, this transition meant that governments were encouraged to assume the role of “market enablers” rather than that of suppliers of affordable housing for their populations. The dominant logic at the time was that such a policy stance would enable the efficient functioning of housing markets rather than their distortion through state interference.¹⁹ This logic assumed the appropriate design, regulation, and legal and institutional framework was put in place, and promised to achieve adequate and affordable housing for all.²⁰

It is this interdependence between housing, housing policy, and financial markets, both in terms of the increasing dominance of financial actors, practices, and markets in the arena of housing as well as the accompanying structural developments of economies and firms, such as financial institutions, states, and households, that can be loosely described as the “financialization of housing.”²¹ In the past decades during which the financialization turn has taken hold, a gradual, parallel shift has occurred in which the conceptualization of housing as a social good has been replaced, or at least accompanied, by a greater appreciation for housing as a commodity. Housing has become a source and strategy for individual and household wealth and security, and housing market regulations have been critiqued as serving to promote housing as a financial asset instead of as serving its critical social function.²² These observations do not

¹⁶ See DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005). See also *THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GOVERNANCE* 118 (Rodney Bruce Hall & Thomas Biersteker eds., 2002) (“Indeed there are major transformations underway in the state as political institution. States are decentralizing, deregulating, and liberalizing in order to provide more attractive economic environments for financial capital and, as governments proceed along this path, the domestic safety nets provided by the welfare state are being dismantled”).

¹⁷ JOE WILLS, *CONTESTING WORLD ORDER? SOCIOECONOMIC RIGHTS AND GLOBAL JUSTICE MOVEMENTS* 27-29 (2017); Rolnik & Rabinovich, *supra* note 15, at 59-60. For an example of the experience of neoliberal policies and the response of squatters in New York City, see ALEXANDER VASUDEVAN, *THE AUTONOMOUS CITY: A HISTORY OF URBAN SQUATTING* 211-234 (2017).

¹⁸ Harvey, *supra* note 16, at 160.

¹⁹ Rolnik & Rabinovich, *supra* note 15, at 60.

²⁰ *Id.* at 86

²¹ MANUEL B. AALBERS, *THE FINANCIALIZATION OF HOUSING: A POLITICAL ECONOMY APPROACH* 2 (2016).

²² Rolnik & Rabinovich, *supra* note 15, at 62.

lay at the fringes of international legal discourse on rights-based market critiques. Even major human rights textbooks now discuss the right to housing in the context of the affordability crisis attributed to privatization and financialization,²³ and housing (un)affordability is increasingly a topic of daily news and conversation.

It is therefore now well-known and extensively documented that affordable housing has not been the outcome of the market-based approach. Rather, a widespread real estate bubble and affordability crisis emerged in the housing sector, the effects of which continue to be felt today. This crisis was exacerbated by the hollowing out and liberalization of non-market mechanisms to allocate housing resources.²⁴ In view of these developments, the Office of the Special Rapporteur has taken a vigorous approach to critiquing financialization.²⁵ The homepage of that Office's website proclaims that "Housing is a RIGHT, not a commodity" as a focus issue of the mandate,²⁶ and Farha has articulated a more scathing characterization of the financialization of housing in the wake of the commodification turn:

[T]he "financialization of housing" refers to structural changes in housing and financial markets and global investment whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets. It refers to the way capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity and hence undermines the realization of housing as a human right. It refers to the way housing and financial markets are oblivious to people and communities, and the role housing plays in their well-being.²⁷

Her reference to the role housing plays in the well-being of communities must be duly noted. In this respect, she has pushed that states are holding themselves accountable to markets and investors rather than to the needs of communities.²⁸ The markets in turn are unaccountable,

²³ See, e.g., BEN SAUL ET. AL, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMMENTARY, CASES AND MATERIALS, (2014).

²⁴ "A significant reduction in the construction of adequate public housing for the poor and most vulnerable groups has occurred along with decreasing national budgets and available public funds for social housing." Rolnik & Rabinovich, *supra* note 15, at 63-64.

²⁵ For instance, in March 2019, the Special Rapporteur, in conjunction with Surya Dey the Chairperson of the Working Group on business and human rights, issued letters to Blackstone Group L.P., one of the biggest global investors in residential real estate, and to the Czech Republic, Denmark, Ireland, Spain, Sweden, and the USA regarding their facilitation of the financialization of housing. This discussion will be continued in chapter five. See Press Release, United Nations Human Rights, Office of the High Commissioner, States and real estate private equity firms questioned for compliance with human rights, Geneva (Mar. 26, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24404&LangID=E>.

²⁶ <https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx> (last visited Jan. 25, 2020).

²⁷ 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, Human Rights Council, U.N. Doc. A/HRC/34/51, (Jan. 18, 2017) (by Leilani Farha) para. 1 [hereinafter *Farha*, UN SR Report].

²⁸ *Id.* at para. 16.

and therefore fail to respond to actual housing needs on the ground leading to “urban centres that become the sole preserve of those with wealth.”²⁹ These global competitive pressures on cities will be further elaborated upon in chapter five, and a case example from the US will be discussed shortly to illustrate the ways financialization can indeed disrupt communities.

For now, a further important corollary in this context is the connection between domestic housing policies and the prerogatives of, and arrangements between, central banks and international financial institutions.³⁰ The global financial crisis, and the related sub-prime mortgage and foreclosure crisis, had devastating effects on households across the globe. Loss of home or job or sometimes both was a widespread and acutely felt experience. But financial meltdown did not serve to force states and international financial institutions to rethink the worth of unbridled financialization and to therefore introduce the necessary reforms to ensure that the financial system worked to address rather than exploit the housing needs of low-income households.³¹ Rather, holders of sub-prime mortgages were targeted as culpable for taking on debt beyond their limited financial means and new measures were taken to restrict their ability to gain mortgages.³²

In short and in sum, from the perspective of housing rights advocates and human rights experts, national housing sectors have become fundamentally skewed through the financialization of housing, and this, in turn, negatively impacts the fulfillment of state human rights obligations in the realm of housing. Importantly, at the same time, the harsh austerity measures put in place by creditors resulted in a severe reduction in state housing programs,³³ as well as the sale of housing assets to private equity funds.³⁴

²⁹ *Id.* at para. 29.

³⁰ *Id.* at para. 39. The accountability gap for such institutions in terms of human rights violations within states is a matter of increasing concern and critique, and these institutions are not immune from such rebuke in the context of the right to adequate housing. *See, e.g.*, HUMAN RIGHTS WATCH, AT YOUR OWN RISK, REPRISALS AGAINST CRITICS OF WORLD BANK GROUP PROJECTS 71-75 (2015) https://www.hrw.org/sites/default/files/reports/worldBank0615_4Up.pdf. *See also*, Richard B. Stewart, *Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness*, 108 AM. J. INT’L L. 211, 221 (2014) (“The multilateral development banks have regularly funded infrastructure projects such as dams that displaced local populations and destroyed local communities without adequate consideration or recompense.”).

³¹ *See Farha*, UN SR Report, *supra* note 27, at para. 40 (“Decisions made by central banks and finance ministers in consultation with international financial institutions are rarely informed by input from stakeholders or those involved with housing policy and programmes.”).

³² *Id.* at para. 22. *See also*, Saskia Sassen, *Expanding the Terrain for Global Capital: When Local Housing Becomes an Electronic Instrument*, in SUBPRIME CITIES: THE POLITICAL ECONOMY OF MORTGAGE MARKETS 91 (Manuel B. Aalbers ed., 2012) (Noting that “notwithstanding the costs to particular types of investors, the subprime mortgage is not going to disappear. From the perspective of banks and financial firms, a market comprising potentially billions of modest-income households worldwide is too good a thing to relinquish.”).

³³ Wills, *supra* note 17, at 41.

³⁴ *Farha*, UN SR Report, *supra* note 27, at para. 41.

The nuances of these pressures were articulated by Denis Kellman in his capacity as Minister of Housing, Lands and Rural Development for Barbados, a small island nation, at the Habitat III High-Level Roundtable on Adequate and Affordable Housing:

Adequate and affordable housing but for whom? Are the rating and lending agencies on the same page? They tend to put pressure on states and you need to lecture to the credit rating and lending agencies on these issues so that they stop penalizing states for recognizing these very issues.

The Minister's comments came towards the close of the session and were delivered in exasperated and passionate tones. They were met with strong applause from the auditorium. Immediately following, Karla Šlechlová, the Minister of regional development from the Czech Republic and one of the vice-presidents of Habitat III and a panelist in the roundtable,³⁵ would walk down from the stage to Minister Kellman, shake his hand, and extend her business card. This episode is a snapshot of both the way the global financial crisis and the response measures have had a profound effect on states with respect to housing, and of the way global conferences such as Habitat III are significant tools in the shaping of potential transnational relationships.³⁶ This may be especially the case for smaller and developing countries. In addition to finding these issues particularly relevant, small and developing states may see the international fora and debates where these norms are currently crystallizing as opportunities to assert their success stories³⁷ – whether through adherence to the international guidelines or through their own innovative approaches³⁸ – or, as in this case, to vent their frustrations about the ways international institutions and their work and policies do not always square with the simultaneous dictates of international law for states.³⁹ The Minister's point was a good one, and, in its candor,

³⁵ See also Third UN Conference on Housing and Sustainable Urban Development – Habitat III (Oct. 21, 2016), https://www.mzv.cz/un.newyork/en/news_events/third_un_conference_on_housing_and.html.

³⁶ This point will be returned to in chapter five's discussion of the growing transnational collaboration between cities.

³⁷ It is perhaps also seen as a way to gain international recognition that both resonates deeply in domestic political contexts and gains favor with the international institutions they may currently or one day come to rely upon. This could be, for instance, in the context of sovereign debt negotiations. Further, developing countries may see participation as an opportunity to gain a foothold in an evolving area of international law from the ground up, in contrast to the longstanding imperialist critiques around the development of the modern international human rights corpus.

³⁸ See New Urban Agenda, UNGA A/RES/71/256, para. 82 (on sharing of best practices, policies and programmes among Governments at all levels).

³⁹ See also UN General Assembly, 74th Session, Address by Prime Minister Mia Mottley (“What we want, no what we need is fiscal and policy space. Fiscal and policy space to achieve sustainable development to be nimble, to adapt, and to innovate in ways that allow us to be true and faithful to the task of bringing prosperity to our people, or as in the theme of this General Assembly, to eradicate poverty...”); STEVEN R. RATNER, *THE THIN JUSTICE OF INTERNATIONAL LAW* 359-64 (2015) (on the policy space tensions with respect to investment law rules in the context of expropriations to guarantee basic human rights).

it brought the complexities of financialization for the state to life in a way that contextualized the afternoon's discussion as far more than mere policy guff.

The consequences of financialization and economic crisis have also come to the attention of the Committee on Economic, Social and Cultural Rights through its individual communication procedure. In *IDG v Spain*,⁴⁰ the Committee considered a complaint alleging a violation of the right to adequate housing under ICESCR Article 11(1) due to a home foreclosure in Spain. It must be noted that in Spain, some 400,000 foreclosures were reported between 2007 and 2011. Ms. IDG claimed that the lending institution took mortgage enforcement proceedings against her after she missed several mortgage repayments, but that she did not receive adequate notice and only became aware of the proceedings once her home was ordered auctioned. She thus claimed a lack of “access to effective and timely judicial protection, which prevented her from mounting a judicial response to the proceedings and protecting her right to housing in the courts, with the result that she now finds herself in a position of vulnerability, uncertainty and anxiety.”⁴¹ The Committee found a violation by Spain of the right to housing due to the inadequate notice given during the foreclosure process. This is an important result which serves as a needed rebuke against a state on account of the right to housing. But the Committee focused on the lack of proper procedure with respect to notification, and its views did little to offer substantive protection within the broader context of the dangers of financialization for the right to housing. This outcome therefore serves to further validate critiques of the implementation of the right to housing as too removed from the broader societal context and as discussed previously.

A case from the US context expands this point and brings us to the housing and community implications of financialization. In *Bank of America Corp. v. City of Miami*,⁴² the US Supreme Court also dealt with home financialization and the economic crisis but from the perspective of the city rather than an individual. The City of Miami brought a claim under the Fair Housing Act alleging that Bank of America and Wells Fargo had engaged in discriminatory lending practices against African American and Latino customers. The “predatory” practices alleged included “excessively high interest rates, unjustified fees, teaser low-rate loans that overstated refinancing opportunities, large prepayment penalties, and—when default loomed—unjustified refusals to refinance or modify the loans.”⁴³

⁴⁰ *IDG v Spain*, Committee on Economic, Social and Cultural Rights Communication No 2/2014 (adopted June 2015) UN Doc E/C.12/55/D/2/2014.

⁴¹ *Id.* at para. 10.2.

⁴² *Bank of America Corp. et al. v. City of Miami, Florida*, 581 U.S. ____ (2017).

⁴³ *Id.* at 3.

The injury alleged by Miami was framed both in economic and noneconomic terms. Specifically, the City claimed that the Banks' discriminatory practices resulted in disproportionately higher defaults and foreclosures for minority borrowers. This meant that foreclosures were concentrated in minority neighborhoods and led to reduced property values and declining property-tax revenue. Further, the City claimed that it had higher municipal expenses because higher foreclosure rates, particularly when attenuated by vacant properties, leads to an increased need for police, fire, and building and code enforcement municipal services. Neighborhoods become unsafe and blighted, it was argued. In short, the City claimed injury in the form of lost tax revenue and extra municipal expenses – it lost financially because of the discriminatory lending practices on the part of the Banks.

The Supreme Court held that the City of Miami was an “aggrieved person” and thus able to bring suit under the FHA.⁴⁴ The injuries claimed by the City were deemed to “fall within the zone of interest that the FHA arguably protects.”⁴⁵ The Court concluded, however, that the lower court’s holding that only foreseeability was required with respect to injuries flowing from the alleged FHA violation was insufficient to establish the necessary proximate cause. Justice Breyer put it as follows:

In the context of the FHA, foreseeability alone does not ensure the close connection that proximate cause requires. The housing market is interconnected with economic and social life. A violation of the FHA may, therefore, ‘be expected to cause ripples of harm to flow’ far beyond the defendant’s misconduct. Nothing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel. And entertaining suits to recover damages for any foreseeable result of an FHA violation would risk ‘massive and complex damages litigation.’⁴⁶

While the Court rightly recognizes that the housing market is interconnected with economic and social life, a shortcoming of this decision is that it looks at housing in individual terms with insufficient attention to the wider community aspects of housing and the implications of housing discrimination for wider society. This is out of step with the history and purpose of the FHA and with the protection of housing as a human right. The Fair Housing Act is not about setting up abode on some deserted island; it is about bringing into society those who have been historically discriminated against in a context of still ongoing societal prejudices. The injury the city faced was expressed predominantly in economic terms, but some noneconomic harms were raised as well. For instance, the City alleged that the discriminatory practices by the Banks

⁴⁴ *Id.* at 2.

⁴⁵ *Id.*

⁴⁶ *Id.* at 11.

“adversely impacted the racial composition of the city” and “impaired the City’s goals to assure racial integration and desegregation.”⁴⁷ The City of Miami further alleged its “longstanding and active interest in promoting fair housing and securing the benefits of an integrated community” were frustrated by the Banks’ practices.⁴⁸

These issues were not addressed by the Court and, indeed, the deep injury to the city which the facts of this case bring forward is one of community. The City argued that neighborhoods stricken with urban blight require increased services and police presence which costs the municipality money. Vacant buildings depress property values and reduce the city’s tax coffers. But this point must be taken a step further. The increased state presence itself in these neighborhoods contributes to negative societal perceptions about race and ethnicity. For example, when local evening news reports on crime and violence in minority neighborhoods alongside footage of dilapidated properties it contributes to the creation of negative perceptions about these very communities. By capturing, out of full context, the social distress caused in that particular community, this publicity stokes the kind of social tensions the FHA came about to address in the first place. These perceptions feed into the complexities of achieving social inclusion in cities, and undermine senses of belonging for the discriminated against groups. The use of force by police against (and in) minority communities is a further prong in this cycle, creating social tensions and frustrating social cohesion.⁴⁹ Unlike others who might also be aggrieved in economic terms from the predatory lending practices against minorities – local business, for instance, which would be faced with fewer customers – the city level of governance is uniquely placed to promote inclusion and integration and must ensure a sense of belonging for its residents beyond mere co-existence and toleration. To put a complicated reality simply, space, place, and identity are linked in the pursuit of urban belonging. And belonging is a crucial aspect of community building. When housing and city space are disturbed through identity-based discriminatory practices such as those of the Banks, place becomes corrupted such that belonging is threatened and may be dispossessed.

This case therefore illustrates the social consequences of unbridled commodification of housing. It demonstrates this consequence not just for individuals but also for entire communities in cities. And it exposes the importance, if not centrality, of housing to community building. The case therefore allows reflection on deeper aspects of what city space means, what it means to communities, and how private law mechanisms in housing can infringe upon and damage communities and public values. For instance, the neighborhoods at issue in *Bank of*

⁴⁷ *Id.* at 2.

⁴⁸ *Id.*

⁴⁹ This point is returned to in chapter five in the context of informal neighborhoods in Brazil.

America may well have been stable communities whose members had been building up, individually and collectively, though the economic and social possibilities of owning a home and fomenting a neighborhood.⁵⁰ Housing understood in this way is their foothold in their community and their community's foothold in the city. For an established community with a certain, and probably hard-earned, sense of homeostasis the removal of a portion of the community will create a drain on the community. This bleed is as much social and cultural as it is economic and material. Schools suffer from the depletion of the community, public recreational spaces become more and more void, and all things that require community participation are increasingly diminished. The gutting of the neighborhood through the foreclosure impact of financialization shows this process not only has a dangerous individual effect, but can be profoundly deleterious to community.

The obvious question when people are removed becomes what is introduced in their place and into what was once *their* community and was once stable. Would the foreclosed homes be sold off to lower income individuals who will then be introduced into a neighborhood in which there were no previous class divides? Will the homes become further commodified through investment purchases?⁵¹ These questions suggest that disrupting neighborhoods by removing a chunk of the community, as described through the financial processes contested in *Bank of America*, creates the possibility for social distress and unrest, at once impinging and impugning the particular identity of that community and undermining their efforts to prosper. The US Supreme Court took only a partial view, one which emphasizes property as a matter of private law and the responsibility of the Banks for costing the city financially. But this case raises the issue of public law understandings of property and its close connection to community. It therefore also calls forth the city's responsibility for the deterioration of the neighborhoods and their cultural erosion, and the attendant impact on community and belonging in the city for those affected.⁵²

⁵⁰ On the extreme racial wealth gap in the United States and relations to homeownership, *see, e.g.*, Michael Calhoun, *Lessons from the financial crisis: The central importance of a sustainable, affordable and inclusive housing market*, BROOKINGS, Sept. 5, 2018, <https://www.brookings.edu/research/lessons-from-the-financial-crisis-the-central-importance-of-a-sustainable-affordable-and-inclusive-housing-market/>.

⁵¹ As the Special Rapporteur has noted: "The global financial crisis created unprecedented opportunities for buying distressed housing and real estate debt, which was sold off at fire sale prices in countries such as Ireland, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Blackstone Group, the world's largest real estate private equity firm, managing \$102 billion worth of property, spent \$10 billion to purchase repossessed properties in the United States of America at courthouses and in online auctions following the 2008 financial crisis, emerging as the largest rental landlord in the country." *Farha*, UN SR Report, *supra* note 27, at para. 27.

⁵² *See generally*, Gregory S. Alexander, *Property's Ends: The Publicness of Private Law Values*, 99 IOWA L. REV. 1257 (2014) (arguing that property's ends are both public and private and consist of the inclusive and multiple values which constitute human flourishing, the normative foundation of private property).

Further, this case complicates the virtues of ethnic integration through housing introduced last chapter. It serves to suggest that ethnic enclaves can have and often do have the benefit of promoting community building. This can be achieved through tangible and practical means of support, such as leniency and informality in small business loans and other economic assistance, or in terms of crisis management – when a house floods or a child is sick, neighbors are more likely to chip in because of their common identity. This kind of solidarity can be especially important for immigrants who may have initial language barriers and who may be unfamiliar with local customs. Enclaves may also allow for a stronger form of community development. People may be more likely to agree or to work together in their neighborhoods, building up their cultural and material prosperity and this also helps to promote a level of social cohesion. Heterogeneity, at least initially, can make developing strong community identity and culture more difficult.

To return to the Singapore housing strategy, socially constructed inclusion policies can have the benefit of fostering multicultural societies. It is easy to imagine that diverse ethnic groups living side by side as neighbors in an apartment building might influence each other culturally – through habits and practices as simple as cooking or musical tastes, for example – and this sort of cultural drift would lead, over some time, to the creation of a unified, multicultural national identity as Singapore hopes. In this sense and on the other hand, ethnic enclaves have the clear downside of being potentially less innovative and carry the cliché of echo chamber mentalities holding culture and community static and frozen, sometimes even perpetuating negative and narrow-minded discriminatory attitudes. But Singapore represents a rather restrained form of multiculturalism which, through the stringent level of forced separation, may inhibit more radical voices, politics, and change, and stymie any momentum toward resistance.

Both *IDG* from the CESCR and *Bank of America* from the US courts evince an understanding of housing – whether as an express right as in *IDG* or in the context of protection from discrimination as in *Bank of America* – as a commodity good devoid of wider societal and relational implications and bereft of its community component. These cases also represent the challenges presented to the right to housing by international processes and institutions, and the global market mechanics discussed at the outset of this section.⁵³ Homelessness has reached crisis levels in major world cities as a consequence of unaffordability. The increasing urbanization occurring across the globe alongside the commodified conception of housing as “real estate” has meant that more and more even moderate-income individuals are unable to

⁵³ See also RICHARD PEET, *UNHOLY TRINITY: THE IMF, WORLD BANK AND WTO* 112 (2d ed. 2009).

afford urban housing and, by extension, access to urban life. In many instances, they are economically displaced from the city. Predictable gentrification patterns have also developed,⁵⁴ now attacking even the middle class, with proximate social and cultural relational implications. These once subtle and gradual realities of economic development in the city are now increasingly obtrusive and entail violations of the right to housing.

Yet *Bank of America* illustrates that communities can but should not be destroyed outright in terms of the space they occupy through housing in cities. Indeed, housing is a means of community building and its inverse is inevitably problematic. As cultural and minority rights scholars have pointed out, individual well-being is intertwined with one's community. The cultural and material prosperity of the group "contributes to the richness and variety of the opportunities the culture provides access to."⁵⁵ Multiculturalism, when understood as about public policies, takes its marching orders from human rights norms and aims at deepening relations of democratic citizenship.⁵⁶ Cultural inclusion and integration is necessary in cities and ethnic enclaves have their negatives, but the hollowing out of communities has serious social implications. Pursuant to this, the right to housing must be understood as entailing a community component and its normative scope must include a right to housing in one's community.

3.3 Housing and Maintaining Community Identity – The Promise of Property

As discussed in the previous section, housing is a crucial means of community building. In addition, and relatedly, housing is also a means of maintaining community identity. Take the US context again, for instance, and the examples where middle-class African Americans have chosen to live in suburban enclaves.⁵⁷ The goal is, on the surface, the same as the consumer type preferences which typically drive many middle-class individuals to the suburbs – good public schools for the kids, spacious homes in safe neighborhoods, low property taxes, and lifestyle amenities in close proximity. But on a deeper level, "the middle-class black suburbanite who opts to live in an all-black enclave frequently is acting on a desire to live in a community that creates a "we' feeling".⁵⁸ This is a preference for community rooted in fidelity to the power, benefits, and importance of "being with one's own".⁵⁹

⁵⁴ See further the discussion on gentrification in the next chapter.

⁵⁵ JOSEPH RAZ, *ETHICS IN THE PUBLIC DOMAIN: ESSAYS IN THE MORALITY OF LAW AND POLITICS* 177 (1994).

⁵⁶ See Will Kymlicka, *The rise and fall of multiculturalism? New debates on inclusion and accommodation in diverse societies*, 61 *INT'L SOC. SCI. J.* 97-112 (2010).

⁵⁷ See Sheryll Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 *CORNELL L. REV.* 729 (2001).

⁵⁸ *Id.* at 732 (quoting GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 137 (1999)).

⁵⁹ Cashin, *supra* note 57, at 734.

For African Americans in the US, part of the desire for such community may be the sense of emotional and political security brought about by living in shared community identity. This security operates as a sort of socially protective retort to the everyday rigors and pressures of a not yet post-racial nation.⁶⁰ Its normative rationale lays in the need to at once preserve and benefit from the community's shared identity – to protect their own existence as a group and to enjoy and maintain their cultural identities. These goals are achieved through housing which ties them to their community and serves to perpetuate its identity.⁶¹ Similarly, Jewish communities in New York and Latino communities in Miami have formed enclaves as a means of sustaining the community's identity.⁶² These examples are all underpinned by the reality that ethnic, cultural, religious, and linguistic bonds are integral to human identity and one's sense of self, and that cultural assimilation and dilution can be undesirable and often harmful. These notions are contemplated both in cultural scholarship and minority rights legal protections.⁶³

Current contestations in Antigua and Barbuda provide a yet unexplored illustration of the connection between housing and the desire to hold on to community identity. Further, this example demonstrates the important link between financialization and property rights. More specifically, in the view of the Special Rapporteur:

Financialization is made possible through the legal enforcement of agreements between lenders and borrowers. It relies on legal systems governing property rights, zoning laws and contracts and also on an increasingly complex system of international and regional treaties governing the terms and conditions of investments and government actions that may have an impact on profitability.⁶⁴

The Special Rapporteur's report on the financialization of housing notes the reality of property rights for the entrenchment of financialization, but her report focuses on investment treaties and domestic courts as the major culprits. This is not entirely misplaced as a domestic court's limited interpretation in *Bank of America* showed, but deepening the understanding of property

⁶⁰ *See id.*

⁶¹ *See also*, Eduardo M. Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889, 1940-44 (2005).

⁶² They are, of course, not without their critics. In the case of Latino communities in the US, one of the more prominent and controversial criticisms is that these enclaves, intentionally or unintentionally, discourage the learning of the majority (English) language.

⁶³ *See* Patrick Macklem, *Minority Rights in International Law*, 6 INT'L J. CONST. L. 531 (2008) Macklem notes that “[t]he postwar concern that minority rights might endanger international peace and security has been replaced, gradually, by an equally pragmatic but more nuanced view, one that accepts that failure to protect minority rights might also exacerbate ethnic and cultural tensions between majorities and minorities and lead to the splintering of political communities.” *Id.* at 541. Macklem highlights a tension inherent in international law between understanding minority rights as a “necessary evil” or as having “positive normative value”. *Id.* at 546.

⁶⁴ *Farha*, UN SR Report, *supra* note 27, at para. 51.

rights specifically is a crucial component in reframing and motivating a collective effort to address the housing crisis. The shift, therefore, that the Special Rapporteur calls for must also include, and will benefit from, expanded understandings of property, and this expansion involves advancing property's public values especially community.⁶⁵

In September 2017, a powerful Category 5 hurricane – Irma – bore down on the Leeward Islands of the West Indies. The tiny Caribbean island of Barbuda – 67 square miles – was hard hit, and, along with many other islands as well as the United States, would face catastrophic damage and some loss of life. Barbuda is part of the two-island state Antigua and Barbuda, which gained independence from the British in 1981. While both islands are geographically small, their populations are markedly different in size, in relative terms. Antigua's population is around 95,000 while just 1,800 resided on Barbuda. The two islands are also distinct in terms of levels of infrastructural development; Antigua has a hospital, many commercial and government buildings, an international airport and cruise ship terminal, while Barbuda remains, colloquially, untouched. Once Irma passed, her devastation was apparent – 95% of Barbuda's infrastructure was damaged or destroyed.⁶⁶ In the immediate wake of the storm and as a second one was approaching, the central government of Antigua and Barbuda evacuated all Barbudans onto Antigua. Only about half of Barbuda's population has since returned.

The central government in Antigua has sought to rebuild through an economic development strategy brought about by land privatization and tourism development.⁶⁷ The Caribbean nations have long relied on tourism as the dominant source of foreign exchange, particularly since the decline of the sugar industry for many islands, and Antigua is no different. It is known as the land of 365 beaches, one for every day of the year.⁶⁸ Barbuda is less well-known and far less developed but holds the same potential to lure tourists interested in the spoils of island holiday.⁶⁹

⁶⁵ See *id.* at para. 77.

⁶⁶ *Antigua and Barbuda Prime Minister Gaston Browne On Rebuilding After A Hurricane*, NPR, Sept. 8, 2019, <https://www.npr.org/2019/09/08/758746838/antigua-and-barbuda-prime-minister-gaston-browne-on-rebuilding-after-a-hurricane>.

⁶⁷ Gregory Scruggs, *Barbuda fears land rights loss in bid to spread tourism from Antigua*, THE GUARDIAN, Dec. 27, 2017. Damage was estimated at over USD200 million.

⁶⁸ See, e.g., Kristin Braswell, *A beach a day: Antigua boasts a year's worth of sunny spots*, Mar. 16, 2019, CNN, <https://www.cnn.com/travel/article/antigua-things-to-do/index.html>.

⁶⁹ One particularly controversial matter that preceded Hurricane Irma was a 2015 investment project backed by Hollywood actor and director Robert De Niro, also a real estate investor. The proposed \$250 million mega-resort – “Paradise Found” – has been supported by Prime Minister Gaston Browne. According to the Paradise Found online brochure: “On the leeward side of the island is Paradise Found. True to its name, it's a place of harmony and luxury, with a planned Nobu Hotel, Nobu restaurant, spa and residences. Architecture will seamlessly intertwine with the natural beauty of the island in a way that's at once visually striking and ecologically friendly. Experiences will be crafted with care. And the memories you'll make promise to be every bit as brilliant as the island itself. Barbuda is many-faceted, bound to dazzle those who touch it—and in turn, are touched by it.” <http://paradisefoundbarbuda.com/assets/paradise-found-brochure.pdf> (last visited Jan. 25, 2020).

But tourism makes real estate a commodity,⁷⁰ and this reality complicates Barbuda's historical approach to landholding. In Barbuda, land is held in common rather than as private freehold property. Communal ownership of the land in Barbuda was fought for at the time of independence from the British, and there is a longer history of contention between the people of the two islands regarding Barbuda's landholdings.⁷¹ Under the Barbuda Land Act of 2007, communal ownership became legally enshrined.⁷² Communal ownership means that all the land in Barbuda is held in common by the people of Barbuda. Land is distributed subject to availability, and Barbudans are entitled to exclusive rights of occupation for the purpose of residence, cultivation, and commercial purposes.⁷³ It is therefore possible for an individual to have multiple plots of land held and utilized for different purposes in Barbuda – building one's home, plowing one's farm, and selling one's produce, for instance. The land is not bought because under the communal system it is already yours. There are no property taxes, and the land for major developments is leased rather than sold pursuant to the Land Act.⁷⁴

Land administration and development in Barbuda is determined by the local government, the Barbuda Council.⁷⁵ Further powers and duties of the Council include the designation of areas as residential, agriculture, public purpose, or tourism development, among other uses, and the ability to make regulations and by-laws with respect to the administration and development of land.⁷⁶ Under the 2007 Land Act, the procedures for future development of land in Barbuda are particularly noteworthy. For one, the Council has the power to raise and collect taxes on major developments.⁷⁷ But it is the participation process for land development in Barbuda that is more striking. Major developments require the consultation and consent of the *people* of Barbuda in a process which both starts and ends with them:

17. Major developments

(1) Major developments in Barbuda shall not take place without the agreement of the Cabinet and the Council and the consent of the people of Barbuda in accordance with this Part.

⁷⁰ This point is returned to in the chapter five discussion of Airbnb.

⁷¹ Telephone communication with member of the Barbuda Council (Oct. 2, 2019).

⁷² Barbuda Land Act, 2007, No. 23 of 2007.

⁷³ Barbuda Land Act, 2007, No. 23 of 2007, Sec. 7.

⁷⁴ Barbuda Land Act, 2007, No. 23 of 2007, Sec. 3, 5, 6. Major developments means “(a) a development which will cost in excess of five million four hundred thousand dollars; or (b) a development which in the view of the Council or of the Cabinet will have a significant impact on the economy, environment or infrastructure of Barbuda”.

Paradise Found has become intensely controversial because reports indicate that the memorandum signed by the central government and Paradise Found details that “the venture’s 198-year lease would convert to private land ownership if freehold tenure is established on Barbuda.” Adela Suliman & Gregory Scruggs, *Paradise lost? Barbuda land activists seek action from Commonwealth*, REUTERS, Apr. 16, 2018.

⁷⁵ Barbuda Land Act, 2007, No. 23 of 2007, Sec. 11.

⁷⁶ Barbuda Land Act, 2007, No. 23 of 2007, Sec. 12, 14.

⁷⁷ Barbuda Land Act, 2007, No. 23 of 2007, Sec. 17(3).

- (2) The procedure for considering whether consent should be given to major development proposals for Barbuda shall be that
- (a) Firstly, the Council shall obtain the consent of the people of Barbuda to the principle of the proposal;
 - (b) secondly, the proposal shall be considered and approved in detail by the Council;
 - (c) thirdly, if the proposal is approved in detail by the Council the proposal shall be considered by the Cabinet;
 - (d) fourthly, if the Cabinet agrees to the proposal, the Council shall then obtain the consent of the people of Barbuda.⁷⁸

According to this procedure, before any major development can take place on Barbuda, the people have to give their consent, and they do so twice.

In short order after Hurricane Irma, the central government in Antigua sought to repeal the Barbuda Land Act 2007. Under the proposed Land Act amendments: “The fundamental purpose of the Act is to grant to Barbudans the right to purchase the freehold interest in land situate in Barbuda, or to obtain a leasehold interest therein in the context of the unitary state of Antigua and Barbuda.”⁷⁹ The central government claims it owns the land in Barbuda and has sought to sell occupied lots to Barbudans for a nominal fee of a local dollar.⁸⁰ From the central government’s perspective, the lack of private property title has meant that in the context of Irma’s devastation, Barbudans were not able to borrow against their property. This left many people economically limited and dependent on governmental aid and international charity. The central government sees *individual* private property rights as key to the economic empowerment and future rebuilding of Barbuda and its people, and “the unitary State of Antigua and Barbuda”.⁸¹ In this direction, and in light of the repeal of provisions of the 2007 Act, a political and legal battle has ensued between the local government of Barbuda and the central government in Antigua.

The new Act repeals in its entirety section 17 quoted above regarding major developments and the consultation process. Instead:

⁷⁸ Barbuda Land Act, 2007, No. 23 of 2007, Art. 17(2).

⁷⁹ Barbuda Land (Amendment) Act, 2017.

⁸⁰ See Adela Suliman, *Communal land ownership in Barbuda a myth, says prime minister*, REUTERS, Apr. 23, 2018, <https://www.reuters.com/article/us-britain-barbuda-land/communal-land-ownership-in-barbuda-a-myth-says-prime-minister-idUSKBN1HU2D5>.

⁸¹ This seems broadly in line with the methodologies of Hernando de Soto, historically supported by the World Bank and its perspective on global South development. See generally HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000).

- (1) Any person seeking to carry out a major development in Barbuda shall, as a condition for the approval of his application, submit to the Minister responsible for the administration of the Environmental Protection and Management Act, an environmental impact assessment report in accordance with the Environmental Protection and Management Act.
- (2) The Council may, with the consent of the Minister, make by-laws to levy and collect tax on major developments in Barbuda.

The Amendments have also repealed Section 18 of the Barbuda Land Act 2007 in its entirety. This section elaborated upon the consultation and participation procedure with respect to major developments. For instance, it detailed the Council's responsibility and power to make regulations prescribing the public voting process regarding major development. The amended Act also makes changes to the land registry, removing control from the Registrar of Lands for Barbuda who previously created the registers "he or she considers necessary to ensure the Registry of Lands for Barbuda serves the needs of the people of Barbuda."⁸²

The Barbuda Council is challenging these amendments, which are yet to be enforced, in court. The Council argues that the repeal of the Act amounts to an unconstitutional deprivation of local government powers. The Barbuda Council is enshrined in the constitution and the 1976 Barbuda Local Government Act governs the Council. This dispute between the local and central government is contentious, and implicates political arguments around power and democratic participation, economic arguments around property and taxes, and sociological arguments around housing and community.

The dilution, if not removal, of the involvement of the Barbuda Council and the people's voice in decisions regarding land is crucial to the matter as the provisions above illustrate. In the past, the process of development and foreign investment in Barbuda involved a participative process between the local government and the people of Barbuda, emphasizing local autonomy. They gathered at town hall style meetings, heard, were heard, deliberated, and decided. This collaborative and cooperative process is also part of the Barbudan way of life and carries its own intrinsic even if non-economic value. Further, this sort of consultation with the local community seems to be in line with the kind of participation generally promoted under the good governance and administrative law checks on power coming from international institutions such as the World Bank, and with the international commitments around sustainable development.⁸³

⁸² Barbuda Land Act 2007, Sec. 25(3)

⁸³ See generally, Joseph E. Stiglitz, *Participation and Development: Perspectives from the Comprehensive Development Paradigm*, 6 REV. DEV. ECON. 163 (2002); see also EYAL BENVENISTI, THE LAW OF GLOBAL GOVERNANCE 99-117 (2014) (on human rights law as a source of procedural obligations); Siobhan McInermey-Lankford & Hans-Otto Sano, *Human Rights and the Post-2015 Sustainable Development Goals*:

The Barbuda system seemed to allow for direct voice from the people and left power in their hands rather than those of the notorious “few”. But the central government has sought to remove this system outright in favor of the notion that representative democracy speaks adequately for the people, and that procedure and the lack of private property rights slows development. This may be a misstep on the part of the central government.⁸⁴

Reports indicate that most Barbudans have little to no interest in individual private property title.⁸⁵ In fact, there is a fear among the Barbudan people that the institution of freehold title would lead to the development of a class system in Barbuda, which to date has largely been able to avoid the entrenchment of economic divisions.⁸⁶ Such divisions could likely negatively impact social cohesion. The Barbudan communal property arrangements are both about individual resources and about community and social values. It is not difficult to imagine the benefits of social interactions designed for the purpose of managing and protecting a collective enterprise, particularly in the case of a numerically small and somewhat remote community. Such engagements engender dialogue and deliberation, and they foster trust and cooperation. In this sense, the process builds community. But the communal approach to land also serves to maintain the community’s identity. For Barbudans, the land and the way it is held is part of a unique way of life that they have held onto since emancipation and it forms part of their identity.⁸⁷ As one member of the Barbuda Council put it: “It is heritage, history, culture, and family. Repealing the Land Act is an opportunity for the central government to rob Barbuda again.”⁸⁸

Reactions to the proposed legal changes have been intense and controversial locally, and in the few years since Hurricane Irma, the international media has been reporting sporadically on the potential “land-grab” of Barbuda. The central government rejects this characterization. In its view, sovereignty means it owns the land and can do with it as it sees

Reflections on Challenges and Opportunities, in FINANCING AND IMPLEMENTING THE POST-2015 DEVELOPMENT AGENDA: THE ROLE OF LAW AND JUSTICE SYSTEMS 167-183 (Frank Fariello et al. eds., 2016) (Finding that through its focus on inclusion, the SDG outcome document “contains a stronger reflection of the human rights principle of participation” than the Millennium Development Goals, which had been critiqued on this basis.) *Id.* at 178.

⁸⁴ See Margaret A. McKean, *Success on the Commons: A Comparative Examination of Institutions for Common Property Resource Management*, 4 J. THEORETICAL POL. 247, 260 (1992) (“The importance of independent jurisdiction over the commons is highlighted by the many examples of failed common property systems where national governments undermine the independence and authority of the local unit that has managed common property.”).

⁸⁵ See, e.g., Linda Pressly, ‘Why I don’t want to own the land my business is built on’, BBC NEWS, Aug. 15, 2019, <https://www.bbc.com/news/stories-49210150>

⁸⁶ Telephone communication with member of the Barbuda Council (Oct. 2, 2019).

⁸⁷ See *Antigua and Barbuda: Barbudans Fighting for Land Rights*, HUMAN RIGHTS WATCH, July 12, 2018, <https://www.hrw.org/news/2018/07/12/antigua-and-barbuda-barbudans-fighting-land-rights>.

⁸⁸ Telephone communication with member of the Barbuda Council (Oct. 2, 2019).

fit.⁸⁹ The temptation to privatize, as the central government has framed it, may seem understandable in this natural catastrophe context for the government may genuinely want to be able to rebuild and to provide for and empower its citizens.⁹⁰ Private property rights are seen as the means to enable this economic development. But these framings are indicative of the ways international law can play a role in land dispossessions which impact housing and community. As Surabhi Ranganathan has discussed and as this example shows, through the assertion of formal authority and sovereign power, the intention to development and resilience, and our focus upon the same, we miss the crucial sub-state dynamics of an economic, political, and social nature which are integral to the dispossession.⁹¹ In this case, the fight over land and property has been constructed around narratives of inclusion and exclusion, with the central government arguing that Barbuda wants to maintain a separation from Antigua. Community by its very nature does carry an exclusionary dimension.⁹² But there is also a long and laden history of private ownership utilized as a means of social, political, and physical exclusion.⁹³ In the context of this particular taking, there is a fear among Barbudans of marginalization, and “disenfranchisement from a rock that they used to own in common.”⁹⁴

Barbuda provides a microcosm of housing and land not (yet) commodified. It offers a potent example of life beyond liberal, individual private property notions, and shows that alternative forms of tenure may be subject to usurpation even when backed by law. As the central government opens the door to commodification, it has raised conflict, tension, and concern for the rights and the way of life of the Barbudan people. This contestation is not necessarily a bad thing. Economic development must be debated, and these debates must be linked to debates about culture and community. For instance, many Barbudans may in fact prefer to abandon the communal system in favor of private property and may prefer greater assimilation with the Antiguan community and way of life. But the government must interpret the right to housing for the Barbudan people as linked to their sense of community and this sense

⁸⁹ Cf. Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*, 107 AM. J. INT’L L. 295 (2013) (reminding that “because sovereignty inheres in the people, the primary responsibility of its agents is held to be that of protecting and promoting their citizens’ interests” and noting that “citizens may find their own governments subject to capture by affluent foreigners who intervene in domestic decision making.”) *Id.* at 296 & 298.

⁹⁰ But natural disasters can also be turned into opportunistic moments of “disaster capitalism” which impact upon housing. This has been argued to be the case in Barbuda. See Rebecca Boger & Sophia Perdikaris, *After Irma, Disaster Capitalism Threatens Cultural Heritage in Barbuda*, NACLA, Feb. 11, 2019.

⁹¹ Surabhi Ranganathan, *Seasteads, land-grabs and international law*, 32 LEIDEN J. INT’L L. 204, 214 (2019); see also, Surabhi Ranganathan, *Ocean Floor Grab: International Law and the Making of an Extractive Imaginary*, 30 EUR. J. INT’L L. 573, 599 (2019).

⁹² Alexander, *supra* note 52, at 1275 (“This is the core dilemma that community poses for liberal property. Because of its inherently exclusionary character, community threatens to undermine other values that property serves, most conspicuously, inclusiveness.”).

⁹³ *Id.* at 1273.

⁹⁴ Telephone communication with member of the Barbuda Council (Oct. 2, 2019).

is connected to their historical property system. Through their approach to housing, land, and property Barbudans have held on to a community identity and way of life which is culturally distinct from their national identity. Their strong reactions to the proposed legal changes are indicative of their desire to continue to do so.

It is also worth noting the ways this example reminds of the importance of territory in international law and how it relates to land and grabs. The small size of Barbuda creates a sense that the government is not so much eroding territory by giving away vast swathes to a private investor or foreign government, as is the typical land-grabbing scenario.⁹⁵ Rather, the whole is intact, even strengthened, and the government is pursuing recovery and economic development policy based on its available resources, in this case land and coastline. There is therefore a sense that this situation does not raise concern and international legal scrutiny in the same way as vaster acquisitions. It is not an international site of crisis even though it may well change the everyday life of the Barbudan people. Through the interjection of new policies, the sense of community Barbudans achieved and maintained through their housing and land will surely be disrupted and potentially diminished. There is an ironic and double-edged parallel here to the way small states generally perceive and experience their size disadvantage when it comes to international power politics: Antigua's central government boldly asserting its sovereign prerogative; Barbuda's local council marginalized in spite of having entrenched a system of popular participation that, by all accounts, is pushed from international organizations and principles of international law. National sovereignty represents a freedom that must be committed to international law including international human rights law. The sharp approach the central government has taken in this instance fails to respect and promote a full right to housing, and the social costs of doing so are yet to be fully seen.⁹⁶

More broadly, this example also manifests the common sensibility in the housing rights discourse that liberal private property pursuits have gone too far, to the detriment of human needs and the virtues of community. The UN Special Rapporteurs on Adequate Housing have been critical of private property's reach in the sense of financialization and neoliberal prescriptions having a detrimental impact upon global housing adequacy. From the view of

⁹⁵ See further on this in chapter five.

⁹⁶ *See generally*, McKean, *supra* note 84. (McKean has argued that common property is in fact best thought of as a form of shared private property. She cautions of the dangers of neglecting the possibilities of reinforcing common property by turning too quickly to individualization. As she puts it: "A frequent tragedy today is the failure of governments and development advisors to detect or acknowledge common property institutions where they exist and to assume that the resource in question is in fact unowned and therefore in need of the purported wisdom of government management. That is, government officials look at common property, think they see unowned non-property, and declare it to be public property or state property to save it (or, too often, to sequester rents for themselves or their clients). The results are rarely an improvement for the resource or society as a whole.").

commodification critics, under the liberal private property system, with limited to no intervention from the state other than to protect existing property rights, a dwelling in the city is distributed based simply on the ability to pay. This creates an obvious but fundamental contradiction given that housing needs are universal while the ability to pay is grossly unequal, and is exacerbated by the ballooning housing costs in cities.⁹⁷ Therefore, under an increasingly commodified understanding of housing and land, habitation as a matter of *space* in the city is only (legally) obtained by those who can pay the going rate, and only provided to the extent that it can produce a profit.⁹⁸ And this is the real problem with commodification for urban life – under its logic, housing is conceived as an individual, private good rather than a public process connected to enhancing the community sphere of human interaction, and the fostering of social inclusion and belonging.⁹⁹

The private property system facilitates economic development and, implicitly, its attendant benefits by making markets possible through the protection of investors' property rights.¹⁰⁰ Economic investment has the potential, even if not the primary goal, to improve infrastructure, boost employment, and enhance environmental technologies and progress. These are compelling benefits to the general societal welfare and seem to underpin the position of the Antiguan national government. But this societal defense of property rights can serve to exacerbate the plight of those who suffer the most deprivations under the liberal private property apparatus, again as discussed in the Barbuda example. Further and particularly in the urban context, the claims of individual hardship pertaining to housing deprivations must now be pitted against social values (of environmental sustainability, for instance) or aggregate economic welfare objectives where the disadvantaged were once, themselves, the issue of social concern.¹⁰¹ The disadvantaged, that is minorities, the poor, and the homeless, and, in today's context of increasing urbanization and commodification of housing and land, those of moderate-income in the city are highly affected as profit-driven approaches to housing, investments, and city development come into conflict with those who merely seek housing as their residential home.¹⁰² Halting this trajectory requires more nuanced and plural understandings of property.

⁹⁷ DAVID MADDEN & PETER MARCUSE, IN DEFENSE OF HOUSING: THE POLITICS OF CRISIS 51 (2016).

⁹⁸ The implications of these tensions are drawn out more sharply later in this chapter and the next.

⁹⁹ See HANOCH DAGAN, PROPERTY: VALUES AND INSTITUTIONS 141 (2011).

¹⁰⁰ See Bruce Wardhaugh, *Development, Property and International Investment: The Double-edged Sword of Human Rights*, in PROPERTY AND HUMAN RIGHTS IN A GLOBAL CONTEXT 175 (2015); See also Jeremy Waldron, *Property, Justification and Need*, CAN. J. L. & JURIS. Vol. VI, No. 2, 185, 194 (1993) (“...it can be shown that the institution benefits ‘society as a whole’, by making markets possible and thereby promoting progress and prosperity.”).

¹⁰¹ Waldron, *supra* note 100, at 194.

¹⁰² Madden & Marcuse, *supra* note 97, at 18; Cf. Hanoach Dagan, *Property Theory, Essential Resources, and the Global Land Rush*, in KATHARINA PISTOR & OLIVIER DE SCHUTTER, GOVERNING ACCESS TO ESSENTIAL RESOURCES 89 (2016) (“Moreover, personhood and personal liberty are general, right-based justifications of

To begin, Jeremy Waldron’s “theory of need” provides a basis for interrogating the implications of the material deprivations which inhere, and to whom, in the context of the private property system.¹⁰³ In short, Waldron’s analysis holds that private property’s most distinctive component and arguably major weakness is the power it imposes upon the owner to exclude others, with the accompanying duty to respect this right of exclusion.¹⁰⁴ From Waldron’s moral calculus, the severe material deprivation in which so many live, crucially the homeless, requires a justification of the private property system which accounts for its negative potential for serious individual harm and costs.¹⁰⁵ The private property system, to quote him directly:

[L]eaves large numbers of people with their most basic material requirements unmet so they suffer and die in abject demoralization and despair, and...nevertheless it makes them feel ashamed when they even contemplate infringing the rules it lays down—clearly that is important from a moral point of view.¹⁰⁶

The deprivations regarding private property’s exclusive nature are thus closely connected to the deprivations of those who cannot afford a home and all that entails in terms of individual and community deprivation.¹⁰⁷ The deprivation of a lack of adequate housing is significant indeed.¹⁰⁸ Housing serves vital economic and sociological purposes for individuals and communities. It provides a vessel to access and fulfill basic physical needs related to health and security, and is a manifestation and realization of cultural needs pertaining to belonging and identity. It is a crucial means of community building and of communities maintaining their identities. Land, too, can be seen as an essential resource to the extent that it provides a source

property. Unlike collective justifications, such as aggregate welfare, they rely on an individual interest, and unlike special, right-based justifications such as desert, they rely on the importance of an individual interest as such rather than on a specific event. None of them can justify the law enforcing the rights of property owners unless the law simultaneously guarantees necessary as well as constitutive resources to nonowners.”).

¹⁰³ “A theory of need is what gives us our general bearings in this area: its job is to provide an understanding and typology of the various predicaments that a person may get into as a result of material deprivation.” Waldron, *supra* note 100, at 185.

¹⁰⁴ *See id.* at 205 (“We exhort and require them to obey rules which do *nothing* for them except keep them from the food, shelter and comfort that they seek.”).

¹⁰⁵ Waldron, *supra* note 100, at 214-15.

¹⁰⁶ *Id.*

¹⁰⁷ On modern conceptions of homelessness, see Madden & Marcuse, *supra* note 97 at 69 (“Homelessness is not some quirk of urban life—it is a major segment of the housing system. Whereas in the past the homeless were predominantly single men, modern homelessness is a family phenomenon...Modern homelessness reflects the instability of low-income housing. Cuts to social services, disappearing rent regulations, shrinking public housing programs, and gentrification all contribute to it.”); *See also*, Dagan, *supra* note 99 (Acknowledging that property also obstructed the realization of liberal values such as personhood, community, and distributive justice “notably by neglecting the interests of the have-nots and by its tendency to put everything up for sale.”) *Id.* at 82.

¹⁰⁸ As the South African Constitutional Court put it: “The frustration and helplessness suffered by many who still struggle against heavy odds to meet the challenge merely to survive and to have shelter can never be underestimated.” *President of the Republic of South Africa and others v. Modderklip Boerdery (Pty) Ltd and others*, Constitutional Court of South Africa (CCT20/04) (13 May 2005).

of food, water, and livelihood, and for indigenous peoples and other groups can be intimately connected to collective identity.¹⁰⁹ In Barbuda, the communal holding of land is intertwined with the shared sense of community of the Barbudan people and their ability to maintain their culture and distinct way of life. Make no mistake, the experience of a lack of housing and, in some instances, land is a deep violation and abridgment of fundamental human needs and an affront to human dignity.¹¹⁰

Yet property law need not be defined by exclusion. Despite the focus of many property scholars in addition to Waldron on the right to exclude as the core of property,¹¹¹ there are other theorists who argue that private property is in fact a matter of both private and public law given that by its very nature we essentially exclude others from a part of the globe.¹¹² Rights of entry as a matter of private law become justified, therefore, as a matter of public values and public policy outcomes.¹¹³ The *in rem* nature of property makes it firmly a public law matter and the entire system of ownership must be scrutinized from the perspective of others and from the perspective of human interests to determine the system's worth.¹¹⁴ Modern inquiries in property

¹⁰⁹ And other communities can share similar characteristics with those of indigenous peoples. *See, e.g.*, Case of the Saramaka People v. Suriname, Inter-American Court of Human Rights (Nov. 28, 2007) (on tribal communities and the protection of their communal property rights as integral to their cultural survival).

¹¹⁰ *See, e.g.*, Chameli Singh v. State of U.P., Supreme Court of India, Dec. 15, 1995 (“The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.”). *See also*, Oscar Schachter, *Human Dignity as a Normative Concept*, 77 AM. J. INT’L L. 848, 851-852 (1983); Waldron, *supra* note 100. For Waldron, the poignant question thus becomes “not whether the poor are to be helped, but, instead, whether and for what reasons they should refrain from helping themselves (to what we call the property of others).” *Id.* at 212.

¹¹¹ *See, e.g.*, JAMES E. PENNER, *THE IDEA OF PROPERTY IN LAW* (1997); Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730 (1998) (calling the right to exclude the “sine qua non”); *See also*, KATHARINA PISTOR & OLIVIER DE SCHUTTER, *GOVERNING ACCESS TO ESSENTIAL RESOURCES* 10 (2016) (Pistor and DeSchutter note that exclusion is a feature of not just private property but of any property regime including communal property which excludes some to the benefit of others, but they argue “exclusion does not have to be absolute.”).

¹¹² *See* Johan Olsthoorn, *Two Ways of Theorizing ‘Collective Ownership of the Earth’*, in *PROPERTY THEORY: LEGAL AND POLITICAL PERSPECTIVES* 187-88 (James Penner & Michael Otsuka eds., 2019) (discussing Mathias Risse’s *On Global Justice* and noting that “Any property arrangement that fails to provide the global population with an equal opportunity to satisfy basic needs is unjust: it violates natural rights of common ownership.”) Discussing this point in relation to state sovereignty, *see* Benvenisti, *supra* note 89, at 298 (“Rather, [b]y carving out a territorial jurisdiction for themselves, states withdraw part of the surface of the earth from free access to outsiders.”) (quoting Janos Kis, *The Unity of Mankind and the Plurality of States*, in *THE PARADOXES OF UNINTENDED CONSEQUENCES* 89, 89, 96 (Dahrendorf et al. eds., 2000)).

¹¹³ *See, e.g.*, Kevin Gray & Susan Francis Gray, *Civil Right, Civil Wrongs and Quasi-Public Space*, 1 EUR. HUM. RTS. L. REV. 46, 90 (1999). Necessity and anti-discrimination grounds limit the right of exclusion, as well as eminent domain powers of the state. *See also*, Lisa M. Austin, *The Public Nature of Private Property*, in *PROPERTY THEORY: LEGAL AND POLITICAL PERSPECTIVES* 1-22 (James Penner & Michael Otsuka eds., 2019) (arguing law is inherently public and private property is public in this legal sense).

¹¹⁴ *See generally* Benvenisti, *supra* note 89, at 308 (2013) relying on HENRY SIDGWICK, *THE ELEMENTS OF POLITICS* 255 (4th ed. 1919) (“I do not think that the right of any particular community to the exclusive enjoyment of the utilities derived from any portion of the earth’s surface can be admitted without limit or qualification, any more than the absolute exclusive right of a private landowner can be admitted.”).

and sovereignty therefore underscore the central question of the right to exclusion and increasingly find it wanting if not limited in relation to human need. In fact, like exclusion, inclusion is also intrinsic to property.

Hanoch Dagan's extensive work, in particular, illuminates the normative dimensions of exclusion and inclusion in property, canvassing the moral boundaries of exclusion and the importance of rights of entry.¹¹⁵ Property is, as he has argued, "a complex and heterogeneous legal construct," and "[i]n certain contexts, the right of nonowners to be included and exercise a right to entry is also quite typical of property and is not, or at least should not be, an embarrassing aberration."¹¹⁶ Katrina Wyman gets to this idea more precisely for the matter at hand:

When we look at property law, we see that limits have come to constrain the putative monopoly of the landowner to exclude, especially in the twentieth and twenty-first centuries as populations have increased, societies have become more urbanized, and the negative effects of allowing landowners to arbitrarily exclude have increased.¹¹⁷

Cast in these times, Morris Cohen's famous description of property almost a century ago as a "sovereign power" entailing recognition that "*dominion* over things is also *imperium* over our fellow human beings" still resonates in the face of contemporary urbanization challenges.¹¹⁸

Still, important property values of utility and autonomy are closely connected to the exclusion dimension. The argument here is tied to the right to use, and its significance rests upon links between the freedom to exclusively determine use leading to the freedom to shape one's life and thus a robust individual autonomy.¹¹⁹ In plain and somewhat facetious terms: "By furnishing my house, controlling who enters it, and choosing the plants for my garden, I can implement my agenda for my life."¹²⁰ For James Penner, this formulation of property is central but also inherently involves the possibility of sharing, that is, of social use, as a fundamental aspect of property.¹²¹ But Dagan goes further and argues that property's "real-life manifestations" involve property governance institutions which operate in cooperative rather than competitive fashion. Sharing is not the choice of a person with sole and despotic dominion

¹¹⁵ Dagan, *supra* note 99, at 37-55. Dagan notes the law of fair housing as codifying "the right to entry in what may well be its most important manifestation in contemporary society.") *Id.* at 38.

¹¹⁶ *Id.* at 37.

¹¹⁷ Katrina Wyman, *Limiting the National Right to Exclude*, 72 UNIV. OF MIAMI L. REV. 425, 430 (2018).

¹¹⁸ Morris R. Cohen, *Property and Sovereignty*, 13 CORNELL L. Q. 8, 12-13 (1927).

¹¹⁹ Dagan, *supra* note 99, at 39.

¹²⁰ Wyman, *supra* note 117, at 436.

¹²¹ Dagan, *supra* note 99, at 39 (discussing Penner).

as Penner puts forward, “but rather a constitutive feature of the property institution, which defines the content of that person’s property right.”¹²²

Dagan’s contribution in understanding property as justified by the value of community is particularly of note here. In his approach both autonomy and community can be present in property and ownership. He highlights the need for “an ongoing (albeit properly cautious) process of identifying the human values underlying the existing property forms and designing governance regimes to promote them.”¹²³ The result is property understood as institutions “both construct and reflect the optimal interactions among people in given categories of relationships and with respect to given categories of resources. By facilitating such various categories of human interactions, the forms of property can promote human values.”¹²⁴ Like Waldron then, Dagan also calls for a justification of property. He requires that property’s prescriptions be justified based on the promotion of human values, and, more than sheer preferences, values must be defended with reasons which relate to human interests. And Dagan holds that property institutions must be continuously reevaluated on the grounds of “their effectiveness at promoting their accepted values, and the continued validity and desirability of these values.”¹²⁵

Thus, if we recall the previous chapter’s example of Singapore’s Ethnic Integration Policy, we can see how property – housing resources – is understood to construct and reflect the state’s goal of social harmony and to promote human values of autonomy and (national) community in terms of solidarity and cohesion. Community is indeed an important human value and the right to housing must include the right to have housing in one’s community. But this understanding reveals precisely the dark side of Singapore’s housing approach – the state denies the right to live within one’s ethnic and cultural community. Viewed from this perspective, housing policies can impact one’s sense of community and communal rights, and can infringe the desire to maintain one’s distinct yet shared identity.¹²⁶ It is entirely possible, and likely certain for at least a portion of the population, that minorities in Singapore might not want to be forced to reside separately from each other. Many others may. They may wish to exercise their “right of exit” from their community,¹²⁷ and/or may see and prefer the benefits of assimilation

¹²² *Id.* at 41.

¹²³ *Id.* at 29.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ This was also the argument in Barbuda.

¹²⁷ This is the right that each individual has to choose to abandon their cultural group. *See Raz, supra* note 55, at 14. (“...the opportunity to exit from a group is a vital protection for those members of it who are repressed by its culture...Opportunities of exit should be encouraged as a safeguard, however imperfect, for members who cannot develop and find adequate avenues for self-expression within their native culture.”).

and of a nation-first common bond. But the assumption that this is in fact the case or that this is how it should be is problematic and worthy of critique.¹²⁸ As Joseph Raz has put it:

People's well-being consists in their success in valuable relationships and activities. Their social and other skills to engage in activities and pursue relationships derive from their own cultures, and their sense of their own dignity is bound up with their sense of themselves as members of certain cultures. Up to a point people can retrain and acquire the skills needed to make a life in another culture. In a multicultural society it is important to give people the opportunity to do so. This is what I called the right to exit. But not all could do so, and not all would want to do so. The case for letting people have the chance to carry on with their own cultures and ways of life derives in part from the fact that people's ability to retrain and adapt are limited. But it depends on something even more important: on the fact that such demands, that is *the demand for a forced retraining and adaptation* is liable to undermine people's dignity and self-respect. It shows that the state, their state, has no respect for their culture, finds it inferior and plots its elimination.¹²⁹

It is for these reasons that minority rights as a matter of international human rights law give minorities a measure of protection and autonomy from the state. From a human rights perspective, minority affiliations constitute key aspects of human identity.¹³⁰ But important international legal protections notwithstanding, the practical political and social realities of minority protection in society are hardly worth denying. At the most basic and yet extreme level, minority groups can be seen as threats by the majority in that minority consolidation might undermine the political, economic, social, and cultural power of the majority. This is a well-known fear, and efforts to prevent its realization are often cloaked in notions of social solidarity. This, too, is part of the Singapore housing critique and the property values underlying the institutions and governance regimes around housing there become questionable.

Property institutions must be responsive to the social context in which they are situated in order to be justifiable and to effectively promote normative goals and desirability.¹³¹ The *social* context of housing, land, and space in the city must be fully understood, therefore, in

¹²⁸ See generally Joseph Raz, *Multiculturalism*, 11 *RATIO JURIS* 193 (1998).

¹²⁹ *Id.* at 200.

¹³⁰ See, e.g., International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (Dec. 16, 1966, entered into force Mar. 23, 1976) Art. 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

¹³¹ Dagan, *supra* note 99, at 30-31; see also Wyman, *supra* note 117, at 442 (2018) ("But when private property threatens individual welfare...then private property rights must give way to the ultimate reason that they exist—to promote individual welfare.").

order to properly evaluate property claims and normative possibilities. Such assessment is essential to understanding property as a means of promoting social welfare and serving wider public interests. Case law gives texture to these points.

For decades, India's cities have struggled with the tension between economic development and modern image-making on the one hand, and the plight of its lower classes on the other. This issue has centered on housing and was brought to bear in the landmark *Olga Tellis and Others v. Bombay Municipal Corporation* judgment of the Indian Supreme Court.¹³² *Olga Tellis* involved a claim of a violation of the right to life under Article 21 of the Indian Constitution. Pavement dwellers came from the rural villages to Bombay in search of work, ultimately hawking and existing on the side of the street. The Bombay Municipal Corporation planned to forcibly evict the pavement and slum dwellers from the city. It must be noted that in the Indian context informal or slum dwellers number a staggering 100 million plus, and in this case constituted almost half of the city population.

At its heart, *Olga Tellis* is a case about the recognition of the importance of location for housing, with the Court at pains to point out the difficult and unenviable conditions of those making the pavements their homes “in the midst of filth and squalor”, and attune to the harsh reality of the pressures of urbanization driving rural-urban migration in search of opportunity to earn even the most menial livelihood in the city.¹³³ The decision is widely praised and cited for its recognition of the link between life and livelihood and housing. The Supreme Court held that losing the right to livelihood would be a breach of the right to life, and the Court required deprivation according to procedure as called for in the Indian constitutional protection of life.¹³⁴

But this case also highlights the significance and contentious nature of public property and public space in cities. In *Olga Tellis* and also in *Ahmedabad Municipal Corporation v Nawab Khan Bulab Khan* after it,¹³⁵ the communitarian importance and accessibility of public sidewalks, and the government's ability to regulate conduct therein, was at stake. In *Nawab Khan*, 56 pavement dwellers were in unauthorized occupation of sidewalks on a main road in Ahmedabad where they had constructed huts. They were residing on the footpaths and some were using the huts for commercial activities. The Supreme Court found that while the

¹³² *Olga Tellis and Others v Bombay Municipal Corporation* AIR 1986 SC 180 (Indian Supreme Court).

¹³³ *Id.*

¹³⁴ *Id.* (“The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away...An equally important facet of that right is the right to livelihood, because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.”).

¹³⁵ *Ahmedabad Municipal Corporation v. Nawab Khan Bulab Khan* (1997) 11 SCC 121 (Indian Supreme Court).

pavement-dwellers have a fundamental right to carry on a trade or a business of their choosing, they do not have a right to do so in a particular place. The Court's language is worth quoting:

Footpath, street or pavement are public property which are intended to serve the convenience of the general public. They are not laid for private use indeed, their uses for a private purpose frustrates the very object for which they carved out from portions of public roads. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make uses of the pavement for private purpose. They should allow passing and re-passing by the pedestrians. No one has a right to make use of a public property for the private purpose without the requisite authorization from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians.

While *Olga Tellis* and *Nawab Khan* advance the right to housing in that the protection of pavement dwellers under the constitutional right to life is seen as a positive development, they also underscore that communitarian perspectives can arguably militate against the protection of an individual right to housing, creeping in at any moment to usurp the right. For instance, Jessie Hohmann has observed with respect to the Indian jurisprudence a turn to private property concepts and away from the constitutional cases on the right to housing, such as *Olga Tellis*, for India's informal dwellers. Citing a further case, *Bombay Environmental Action Group and another v AR Bharati and others*, where many thousands of people who had settled and made homes in the Borivili National Park in Mumbai were deemed illegal encroachers and had their evictions sanctioned by the Court, she argues "the characterization of these occupiers as trespassers, and thus as falling outside the protections of the Constitution, represents a significant diminution in the rights of informal dwellers in Mumbai, as well as a considerable shift in judicial rhetoric on the place and worth of slum and pavement dwellers in the city."¹³⁶

In *AR Bharati*, environmental NGOs wanted the park cleaned up as a natural habitat; the "pollution" that was the poor (the informal settlers) had to go. The tensions in these so-called "green" versus "brown" agendas unveil the inconsistent spaces of urban development and

¹³⁶ Hohmann, *supra* note 1, at 211.

the practical reality that, with respect to the sustainable urbanization agenda, the SDG 11 aims of inclusion and sustainability, understood in an environmental frame, can clash.¹³⁷ As Hohmann puts it:

The turn to private property concepts and away from the precedent of the constitutional cases on the right to housing ... illustrates the move from housing as a public (and thus public law) problem to housing in a private law paradigm [and] is reminiscent of the way the South African Constitutional Court has approached constitutional issues of housing through the use of administrative law principles, a move that has been much criticized and which has resulted in less than robust protection of the right to housing under the South African Constitution.¹³⁸

Hohmann's critique earmarks a broader issue with the overly procedural rather than transformational approach to the right to housing. Case law in both the Indian and South African context, the leading jurisdictions for the adjudication of the right to housing, engages largely with the right to housing as a matter of evictions. The courts have issued landmark judgments which offer key procedural protections in these cases. But the judgments do not offer much in the way of substance or normative development and content of the right, and, in this sense, seem to stifle any transformational notion of a right to housing from taking shape. In South Africa, the Constitutional Court recognizes that the divisive apartheid history of the nation, which kept blacks from the cities and on racially designated rural reserves and "townships", has impacted the post-apartheid urban environment in that a severe housing shortage exists owing to the influx of blacks to the cities at long last. The right to access to housing in that nation's constitution was designed to account for this troubled history, suggesting that social inclusion through housing should flow from constitutional protection of the right. Yet, the South African decisions manage to be both dominant in global discussions of housing rights and frequently characterized as offering rather timid protection.

The Indian housing cases can also be critiqued. Those discussed here illustrate a social context in which communitarian perspectives can work for the privileged classes and against the poor, and emphasize the potential conflict between the values of community and inclusion. The community need to enjoy and use a public park or traverse safely on the sidewalks outranks the needs of the poor to make a home in public space. This is highly problematic in a climate of widespread homelessness, and insecure and inadequate housing. As Waldron puts it,

¹³⁷ Helmut Philipp Aust & Anél Du Plessis, *Good urban governance as a global aspiration: on the potential and limits of Sustainable Development Goal 11*, in *SUSTAINABLE DEVELOPMENT GOALS – LAW, THEORY AND IMPLEMENTATION 6* (Duncan French & Louis Kotze eds., 2018).

¹³⁸ Hohmann, *supra* note 1, at 211.

“[f]airness demands that public spaces be regulated in light of the recognition that large numbers of people have no alternative but to be and remain and live *all their lives* in public.”¹³⁹

The Indian cases can be contrasted with a more recent decision coming out of the US federal courts and which also deals with the prevalence of homelessness on city streets. In April 2019, the U.S. Circuit Court of Appeals for the Ninth Circuit in *Martin v. City of Boise*¹⁴⁰ ruled consistent with an earlier decision of the Ninth Circuit, *Jones v. City of Los Angeles*,¹⁴¹ which found the clearing of homeless encampments to be unconstitutional in that such actions violate the Eighth Amendment prohibition on cruel and unusual punishment. The Court in *Martin* held that it was unconstitutional for a city ordinance to prosecute people criminally for sleeping outside on public property when those people have no home or shelter to go to because the number of available shelter beds is fewer than the number of actual homeless individuals. The case involved citations under Boise’s “Camping Ordinance” and “Disorderly Conduct Ordinance”. The former prohibits the use of “any of the streets, sidewalks, parks, or public places as a camping place at any time,” with camping defined as “the use of public property as a temporary or permanent place of dwelling, lodging, or residence.”¹⁴² The latter ordinance prohibits “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private...without the permission of the owner or person entitled to possession or in control thereof.”¹⁴³ In other words, these are local laws designed to keep the homeless off of the city’s public streets and spaces.

The criminalization of homelessness is a particularly offensive violation of human dignity. This is true in an individual and social sense. It sends a state-sanctioned message that personal hardship is a matter of individual rather than community responsibility. The communitarian perspective is framed and adopted against the poor in that “the public” – which does not include the homeless – have a right to the sidewalks and parks which the homeless have turned to of necessity as private space. The notion of jail time and a criminal record for resting in public feels shockingly anachronistic if not simply absurd. Even more “subtle” forms of preventing the homeless from occupying public spaces prove disturbing. “Anti-homeless” or “hostile” architecture – such as slanted benches or benches with armrests designed to deter sleeping – builds an ideology of a narrow view of public property into the physical form and spaces of the city and thereby onto society. These practices, as with anti-homeless laws, perpetuate a culture of exclusion, division, and otherness. They frustrate any sense of belonging

¹³⁹ Waldron, *Homelessness and Community*, 50 UNIV. OF TORONTO L. J. 371, 395 (2000).

¹⁴⁰ *Martin v. City of Boise*, 920 F.3d 583 (9th Cir. 2019).

¹⁴¹ *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006).

¹⁴² *Martin*, *supra* note 140.

¹⁴³ *Id.*

for those without homes and inspire no inclusionary mentality amongst wider society in the city. This is to the detriment of urban community.

In fact, it must be acknowledged that the reality of ownership in the modern city is today quite exclusionary, characterized by disengagement with wider society and an avoidance of contact with the “other”.¹⁴⁴ This is marked, for example, by the proliferation of condominiums and self-contained living communities designed to meet owners’ every need, from personal fitness through on-site gyms to the elimination of everyday errands, such as grocery shopping and dry cleaning, and, essentially, it would appear, to create self-contained compounds of residency and depoliticized neighborhoods.¹⁴⁵ What is more, many of these very housing units remain owned but completely unoccupied as they are held primarily as assets and objects of wealth, supported by the financialization climate and the decline in housing as a political priority.¹⁴⁶ These patterns of ownership are now widespread across the most developed cities of the West.

In the East, the pattern is also evident. For example, China’s urbanization strategy unveiled in 2014 sets out to move 100 million villagers to cities as well as to grant *hukou* to the 100 million rural migrant workers already present in cities but lacking urban status and access to public services. But, as Amnon Lehavi notes:

Urban lands and real estate developments have thus become a market commodity, in which private interests and rights play a substantial role. A key part of the housing reform has to do with employing privatization and commercialization in the housing market not only to shift much of the new development to the private sector, but also to gradually relieve the government of the responsibility for maintaining and managing residential buildings that had originally been built by the state...China created the legal infrastructure for condominiums and their internal governance and maintenance, chiefly through the establishment of homeowner associations. In fact, condominiums now represent the main type of tenure in China’s urban areas.¹⁴⁷

¹⁴⁴ See Madden & Marcuse, *supra* note 97, at 79; See also, Tridib Banerjee & Anastasia Loukaitou-Sideris, *Suspicion, Surveillance, and Safety: A New Imperative for Public Space?*, in SUSAN FAINSTEIN, POLICY, PLANNING, AND PEOPLE: PROMOTING JUSTICE IN URBAN DEVELOPMENT 337-355 (2013) (“The market provision of public goods has contributed to a decline in the intensity and diversity of social contacts as certain groups are excluded through implicit price mechanisms. With public space being treated as a market “good,” the public realm has begun to atrophy.”) *Id.* at 337-338.

¹⁴⁵ On “residential alienation” see generally Madden & Marcuse, *supra* note 97. Raz also discusses the “culture of urban anonymity” noting it “cannot adequately cope with the conditions of today. The threatening results of this failure are the development of a subculture of anomie, of accelerating alienation from society and its institutions, and the emergence of a growing underclass.” Raz, *supra* note 55, at 172.

¹⁴⁶ This point is returned to in chapter five.

¹⁴⁷ AMNON LEHAVI, PROPERTY LAW IN A GLOBALIZING WORLD 101-02 (2019).

There are substantial implications of these new modes of housing on the spatial realities and relations in the city. As it pertains to social inclusion and cohesion, the housing options on offer in the modern city seem to shape the city population and to perhaps even discipline the individual's interaction with the city itself. Homeownership, in particular, has been shown to operate as a neutralizing tool on activist urban politics, resistance, and revolution,¹⁴⁸ and may simply (or solely) serve to shore up votes.¹⁴⁹

But there is a social responsibility component of private property that both corresponds to and is required by “the most appealing conceptions of membership and citizenship” which can and should be drawn upon in promoting the right to housing and ultimately addressing housing questions.¹⁵⁰ Property relations mediate cooperative human interactions including membership in local communities. Further, the nature of the resource subject to property rights and contestation is crucial because of the implications for both its use, and for whether that use requires exclusion. The level of protection accorded is determined by the resource's nature, with constitutive resources linked to the possessor's identity carrying far more protection and individual control than fungible resources.¹⁵¹ Dagan argues, therefore, that “[i]mposing the impersonal norms of the market on these divergent spheres and rejecting the social responsibility of ownership that is part of these ongoing cooperative relationships would effectively erase these spheres of human interaction and human flourishing.”¹⁵² Human flourishing is in fact property's ultimate end,¹⁵³ and Dagan is talking about the danger to community, one of the public values underpinning human flourishing.

Essentializing property as an exclusive right expresses and reinforces a culture of alienation that underplays the significance of belonging to a community, and perceives our membership therein in purely instrumental terms. In other words, this approach defines our obligations *qua* citizens and *qua* community members as ‘exchanges for monetizable gains,’ and

¹⁴⁸ This idea comes up in the context of gentrification and development where rising property values can lead to overly passive attitudes toward government decisions.

¹⁴⁹ See DOUG SAUNDERS, *ARRIVAL CITY: HOW THE LARGEST MIGRATION IN HISTORY IS RESHAPING OUR WORLD* 177 (2010) (discussing *gecekondu* in Istanbul and Turgut Özal's response to these squatter communities: “In 1998, [Özal] boasted to a reporter that he had won over the outskirts by replacing the passions of revolutionary activism with the more pedestrian delights of home ownership: ‘We have given land certificates to those people, they own land and now their buildings, their streets are clean, they now have playgrounds for children, sports installations for the young, and therefore they vote for us, not for the left.’”).

¹⁵⁰ Dagan, *supra* note 99, at 45.

¹⁵¹ *Id.* at 42; Cf. JAMES E. PENNER, *THE IDEA OF PROPERTY IN LAW* 205- 207 (1997) (arguing that fungible resources, or property we just consume, also can be constitutive). See also MARGARET JANE RADIN, *REINTERPRETING PROPERTY* (1993).

¹⁵² Dagan, *supra* note 99, at 45.

¹⁵³ See generally Alexander, *supra* note 52.

thus commodifies both our citizenship and our membership in local communities.¹⁵⁴

Commodification and the market effect have influenced not only our ability to obtain housing in an individual sense, but also much more broadly our ability and willingness to be members of our local communities.¹⁵⁵ To return to the US judgment, those against the holdings of *Martin* and *Jones* argue that the ruling puts a significant strain on local government and would require cities to invest unreasonably in housing and shelters. The City of Boise further argued that the *Martin* decision established a constitutional right to camp and thereby exempts public encampments from various public health and safety laws. The City petitioned the US Supreme Court for review.¹⁵⁶ They were not alone. Many West Coast cities such as Los Angeles, also subject to the Ninth Circuit ruling in *Martin*, filed amicus briefs urging the Supreme Court to provide a clear legal framework that would aid them in balancing the competing needs in public city spaces.¹⁵⁷ And the inclusion of a dissenting opinion in *Martin*, which argued that the case represents a break with precedent, suggested an eager invitation for the Supreme Court to step in. But the Court passed and rejected the petition in December 2019. The cities' desire for guidance and clarity from the courts is certainly understandable. The crisis of homelessness is a difficult one. But it is not one with an easy out because it is a social question marked by contestations around social change. It therefore implicates the masses more than just the technique of law, and their political movements and popular resistance toward historical transformation.¹⁵⁸

3.4 Conclusion

This chapter has sought to highlight the crucial links between housing and community. In the contemporary urban context, communities are at risk of marginalization as they are displaced from cities and broken up and weakened through financialization as seen in *Bank of America Corp. v. City of Miami*, for instance. The foreclosure crisis of over a decade ago might

¹⁵⁴ Dagan, *supra* note 99, at 45. *See also*, Madden & Marcuse, *supra* note 97, at 59-60 (“The experience of residential alienation in contemporary society, therefore, is precarity, insecurity, and disempowerment. It is fostered by commodification, displacement, and dispossession, and exacerbated by inequality. Residential alienation represents the painful, at times traumatic, experience of a divergence between home and housing.”).

¹⁵⁵ *See* Lehavi, *supra* note 147, at 98 (“The control of land and the socio-political construction of communities and nations have traditionally gone hand in hand.”).

¹⁵⁶ City of Boise Formally Asks U.S. Supreme Court to Hear *Martin* Case, Aug. 22, 2010, <https://www.cityofboise.org/news/mayor/2019/august/city-of-boise-formally-asks-us-supreme-court-to-hear-martin-case/>.

¹⁵⁷ *See, e.g.*, Brief of Amicus Curiae the City of Los Angeles in Support of Grant of Petition for Certiorari, https://www.supremecourt.gov/DocketPDF/19/19-247/117074/20190925155640739_19-247%20Amicus%20City%20LA.pdf.

¹⁵⁸ *See* BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW* 233 (2003).

seem like old hat, particularly for those economies that have managed to bounce back from the global recession. But the jarring number of foreclosures and evictions remains on record,¹⁵⁹ and helps us to appreciate the way financialization is not simply a matter of affordability for individual households but also of potentially severing the link between housing and community with longer term societal effects. Looking in the rearview mirror as this chapter has done reveals one of the crisis' many lessons – the right to housing must be interpreted to include the right to housing within one's community.

Security of tenure is a critical aspect of achieving this and is a necessary component of adequate housing. At its core, it serves to provide legal protections and remedies against forced evictions.¹⁶⁰ It provides a necessary safeguard against arbitrary displacement,¹⁶¹ and one which becomes of heightened importance in the context of increased commodification of housing and land through global investments, both in the urban and rural spheres. There are various ways in which such security can be recognized, however, including through individual titling schemes, which, for some time, were thought to be the preferred means of securing title in a variety of contexts.¹⁶² But there are weaknesses of this approach. Liberal, individual conceptions of property rights can be found wanting in the sense that they are marked by significant deprivations in the urbanization context and also potentially crowd out alternative forms of security of tenure which may more appropriately meet individual and community needs, and which may in fact better serve the intended goals and ends of tenure security, housing, and property itself.¹⁶³ The individual titling mechanism is deeply related to the alienability of

¹⁵⁹ For example, the Special Rapporteur reports over 13 million foreclosures in the US resulting in over 9 million evictions, half a million foreclosures resulting in 300,000 evictions in Spain, and almost one million foreclosures in Hungary. *Farha*, UN SR Report, *supra* note 27, at paras. 5 and 21.

¹⁶⁰ United Nations Committee on Economic Social and Cultural Rights, *The Right to Adequate Housing: Forced Evictions* (Article 11(1): Committee on Economic, Social and Cultural Rights General Comment 4 (1991) E/1992/23 para. 8(a) (“all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”).

¹⁶¹ See MICHELE MOREL, *THE RIGHT NOT TO BE DISPLACED IN INTERNATIONAL LAW* 236 (2014) (“The underlying social value of the right not to be arbitrarily displaced is the basic human need to feel at home somewhere in the world. Home is the place where somebody feels comfortable, secure, peaceful, protected. It is the place providing privacy, solace and rest. The home includes the physical building or place where one eats, sleeps and loves, but it is more than that. It is a place that carries memories, connects people to their past, and to which somebody is sentimentally attached. Home is where a person belongs. When people lose their home, they may lose the means to fulfil themselves as human beings. The right not to be arbitrarily displaced, by ensuring that no one is deprived of his or her home without a good reason and sufficient guarantees, thus reflects a ‘fundamentally important social value or human need’. In other words, sufficient moral reasons underlie the human rights claim.”).

¹⁶² For example, titling schemes were promoted as a way to secure tenure for the rural farming poor and were also used in South Africa post-Apartheid. See MAKAU MUTUA, *HUMAN RIGHTS: A POLITICAL & CULTURAL CRITIQUE* 142 (2002).

¹⁶³ See, e.g., *HOLDING THEIR GROUND: SECURE LAND TENURE FOR THE URBAN POOR IN DEVELOPING COUNTRIES* (Alain Durand-Lasserve & Lauren Royston eds., 2002) (highlighting the gender element of the tenure process and noting the critique that “the introduction of titled tenure sharpens the status divisions between owners and renters and landlords and tenants, ironically reproducing the very dependency relationship

housing and land and thus the possibilities for establishing market economics and transactions involving such. This can be a true financial benefit and resource, but there is also a danger, at least a little paternalistic, that individual titling can ultimately lead to less security when the possibility of credit and mortgages produce attendant pressures to sell.¹⁶⁴ Additionally, it may simply fail to represent or adequately address the interests of those for whom communal approaches serve as central to their identity and way of life. Other weaknesses of formal titling include the reality that in some contexts the process may be susceptible to both corruption and capture by the historically powerful elite, and it may reinforce existing inequalities particularly along gender, ethnic, and socio-economic lines, or create new ones.¹⁶⁵ The land dispute in Antigua and Barbuda brings these kinds of concerns forward.

But property is comprised of public values, particularly community, which promote property's ends. These ends are often contrived as private and individualistic, but property can also entail a social function. This is directly applicable to the contemporary urban context. The city's exchange or profit-oriented value has been emphasized over its use value or social function producing an environment increasingly marked by homelessness, displacement, and socio-spatial segregation.¹⁶⁶ As Dagan has argued, "[o]ne who acknowledges that negative liberty is not an ultimate value but rather a means for individual autonomy must recognize that the claims of people who wish to establish their life in a certain locus override those of people who perceive property as a fungible asset."¹⁶⁷ Under commodification, housing moves closer to a fungible rather than constitutive asset – the home – as it is held as real estate and often totally unused. The claims of those seeking to establish or maintain a life in the city can therefore come to override those who hold property there as fungible assets.¹⁶⁸ This theory is at the heart of the Berlin protests noted at the beginning of the last chapter. And it relates to the central argument of the next chapter – the right to housing should include the right to housing in a specific city.

that security was designed to erase. Those who suffer most are women.") *Id.* at p. 240. For a discussion of the relationship between tenurial options and land reform (laws intended to reduce poverty by raising the poor's share of land rights) in developing countries, *see generally*, MICHAEL LIPTON, LAND REFORM IN DEVELOPING COUNTRIES: PROPERTY RIGHTS AND PROPERTY WRONGS 150-189 (2009).

¹⁶⁴ See Olivier De Schutter, *The Green Rush: The Global Race for Farmland and the Rights of Land Users*, 52 HARV. INT'L L. J. 504, 527-31 (2011). *See also*, Gregory S. Alexander, *Culture and Capitalism: A Comment on de Soto*, in HERNANDO DE SOTO AND PROPERTY IN A MARKET ECONOMY 46 (D. Benjamin Barros ed., 2010) ("Customary land is characteristically managed by a group of elders or chiefs. Attempts to title such land often fail because locals view customary ownership as more stable and reliable than government-issued land titles.").

¹⁶⁵ De Schutter, *supra* note 164, at 528.

¹⁶⁶ See the discussion on Henri Lefebvre and the "right to the city" in the next chapter.

¹⁶⁷ Dagan, *supra* note 99, at 53.

¹⁶⁸ *See generally*, Wyman, *supra* note 117.

CHAPTER FOUR

HOUSING AND THE CITY

4.1 Introduction

The right to housing must entail the right to housing in a specific city. The predominant argument behind this specificity of the right is one of access and it is one that courts have recognized, at least in part. The city is a major center of economic activity and thus livelihood is tied to access to cities. This is the argument the South African and Indian courts have made repeatedly with respect to the forced evictions of squatter settlements and pavement dwellers. And the CESCR's articulation of the importance of location for adequate housing is precisely about this connection between housing and economic opportunity. But the city also holds important aspects beyond livelihood which demand a more expansive understanding of the right to housing and which apply to the very poor and to those with greater means. This is about city life itself – the diversity, opportunities, activities, energy, and physical and social infrastructure available in cities. In this regard, Iris Marion Young has put forward a normative ideal of city life with city life understood as “the being together of strangers.”¹ For Young, constructing a normative ideal of city life provides an important alternative to the ideal of community which itself has serious shortcomings around exclusion. A normative ideal of city life also operates as an alternative to the asocial character of liberal individualism. In her words: “In the city persons and groups interact within spaces and institutions they all experience themselves as belonging to, but without those interactions dissolving into unity or commonness.”²

The contemporary city is out of line with this ideal. It is far more exclusionary, and is bending further and further in the direction of homogeneity. Individuals and groups no longer experience themselves as “belonging to” certain urban spaces. And cities are increasingly becoming spaces that facilitate a sameness of activities and ideologies which provide not necessarily a unity, but certainly the convenience of familiarity and predictability. These trends are to the detriment of the ideal of city life and the particular virtues of urban social relations. We are characteristically social beings with a level of interdependency intrinsic to our socialization and necessary for human flourishing.³ Our neighborhoods and our municipal communities are important spaces, therefore, in which we must be embedded in order to develop

¹ IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 236 (1990).

² *Id.* at 237.

³ See generally Gregory S. Alexander, *Property's Ends: The Publicness of Private Law Values*, 99 IOWA L. REV. 1257 (2014).

and protect the capabilities essential to human flourishing.⁴ A right to housing in the city is necessary to promote our full well-being and to realize the ideal of city life.

This specificity of the right to housing is supported by at least two important arguments. The first and more obvious is an argument about access as noted above. The right to have access to the things, opportunities, and spaces of the city for economic but also for social and cultural reasons. French theorist Henri Lefebvre's "right to the city" concept has come to inform much discussion and scholarship on urban issues. Lefebvre's work is vast, dense, and involves interconnected and interlocking themes of which the right to the city is one important thread. Modern explorations and extrapolations of the right to the city seem to draw more vividly from geographer David Harvey's work, especially his influential essay *The Right to the City*, published in the *New Left Review* in 2008, than they do from the depths of Lefebvre's philosophical work. In legal scholarship, the right to the city has garnered some attention, but it remains largely a preliminary matter. Jessie Hohmann offers a nod to the radical potential of the right to the city as a means of augmenting the right to housing when viewed through the conceptual lens of space. Edésio Fernandes has explored the concept in the context of Brazil where it is a legally protected constitutional right.

But in spite of these limited interactions with the concept, the right to the city can no longer be considered a relatively obscure idea or even an outlier Marxist theory of capitalist rebuttal. The right to the city is increasingly championed by social movements across the globe, exercised as a means of local struggle against privatization, commodification, displacement, and gentrification. And, crucially, the right to the city has made its way into the text and certainly the global discourse of the recently enacted global political commitments to address urbanization and housing. It is in this context, as a potential solution to global urban housing challenges, and with this background that the right to the city must be explored and critiqued. Such analysis leads to the conclusion that the underpinnings of the right to the city should be embraced because they support the access argument. But the analysis also reveals that deeper understandings of the power of urban space are needed to properly reorient the right to housing in the direction of urban belonging. This leads to a second crucial argument which explains the right to have housing in a specific city. The city – the urban community – cannot be allowed to become homogenous, and a right to housing in a specific city helps to prevent this homogenization of urban space. More specifically, the right to housing in the city serves to promote cultural diversity and operates as a defense against the expulsion of gentrification, which represents a threat to the heterogeneity of cities and is a dispossession of belonging. This

⁴ *Id.* at 1270.

chapter contextualizes this discussion with reference to the promotion of inclusive cities under SDG 11 and the NUA.

4.2 Access and the “Right to the City”

On March 18, 2019, the High Court of Delhi at New Delhi delivered a judgment in *Ajay Maken & Ors v. Union of India & Ors*.⁵ The case involved the forced eviction of approximately 5,000 slum dwellers at Shakur Basti in December 2015. In its decision, the Indian court drew specific reference to what is known as the “right to the city”. The court discussed international law on the right to adequate housing, in particular ICESCR Article 11 and the statements of interpretation by the CESCR, relating the Committee’s recommendations to the domestic Indian context in Delhi. Of note, the Court also drew heavily upon the jurisprudence of the South African Constitutional Court on the right to adequate housing, finding it is “instructive and helps understand the expanding horizons of the right,”⁶ and that the principles of the South African cases “provide useful guidance to Courts on developing the jurisprudence around the right to adequate housing.”⁷ But, importantly, the Court transitioned from its discussion of the international law on the right to housing and of the jurisprudence of the South African courts to a focused discussion of the right to the city. It noted: “the right to adequate housing is not a right to bare shelter, but *a right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city.*”⁸

In *Ajay Maken*, the Court found it necessary to specifically acknowledge “an increasing recognition in the international sphere of what is termed as the ‘right to the city’,”⁹ and traced the background of the increasing recognition of the right to the city in international law “as an integral part of the right to housing.”¹⁰ In its exposition, the Court discussed the developments and commitments made at UN-Habitat II in 1996 in Istanbul, and the unanimous adoption of the “New Urban Agenda” at Habitat III in Quito in 2016 and later in the General Assembly, in which it was endorsed by all UN Member States committed to working together towards a paradigm shift in the way cities are planned, built, and managed.¹¹

In its decision, the Court drew upon the prep work for Habitat III citing a policy paper from the “Right to the City, and Cities for All” Policy Unit, which defined the right to the city as follows:

⁵ *Ajay Maken & Ors v. Union of India & Ors*, W.P.(C) 11616/2015, Mar. 18, 2019 (Delhi High Court).

⁶ *Id.* at para. 69.

⁷ *Id.* at para. 78.

⁸ *Id.* at para. 79 (emphasis added).

⁹ *Id.* at para. 80.

¹⁰ *Id.* at para. 81.

¹¹ *Id.* at para. 81-82.1.

10. The right to the city is...defined as the right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life. The right to the city further implies responsibilities on governments and people to claim, defend, and promote this right.¹²

The Delhi High Court found the right to the city clearly applicable to the facts on hand in the case.

The [right to the city] acknowledges that those living in JJ clusters in *jhuggis*/slums continue to contribute to the social and economic life of a city. These could include those catering to the basic amenities of an urban population, and in the context of Delhi, it would include sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life. Many of them travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life. Prioritizing the housing needs of such population should be imperative for a state committed to social welfare and to its obligations flowing from the ICESCR and the Indian Constitution. The [right to the city] is an extension and an elaboration of the core elements of the right to shelter and helps understand the broad contours of that right.¹³

The Indian court's recent discussion of the right to the city, and of the relevant international debates and commitments leading to the acknowledgment of the concept in global parlance, is indicative of the current resurgence and in fact prominence of "right to the city" rhetoric in global discourse on housing and cities. That one of the foremost jurisdictions on housing rights cases, and particularly a state which deals in pronounced ways with the real and hard pressures of urbanization, has leaned upon the concept is a hugely notable development, underscoring the urgent need to examine the notion of the right to the city.

All due for the right to the city must be given first to Henri Lefebvre who put forward the concept in his highly influential writings on Paris in the 1960s. Lefebvre's work has been greatly elaborated by David Harvey, and much of the modern pontifications on the meaning and potential of the right to the city take Harvey's work as the most accessible starting point. In Harvey's words:

The question of what kind of city we want cannot be divorced from that of what kind of social ties, relationship to nature, lifestyles, technologies and aesthetic values we desire. The right

¹² *Id.* at para. 82.2.

¹³ *Id.* at para. 83.

to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the process of urbanization. The freedom to make and remake our cities and ourselves is, I want to argue, one of the most precious yet most neglected of our human rights.¹⁴

Harvey's understanding and approach is about capital and crisis, and while his work has certainly mainstreamed the right to the city in many aspects of academic and intellectual consciousness, he does not approach the concept from a predominantly international human rights perspective. He is critical of human rights in general, arguing that they fail to challenge neoliberal market logics and are, in reality, trumped by the profit rate and private property rights.¹⁵ Harvey emphasizes the links between capitalism and urbanization, seeing the process of urbanization as profitable terrain for production and absorption of the surplus product.¹⁶ For instance, he describes the transformations of Paris in the mid-1800s and in New York post-WWII. In Paris, he recounts how Louis-Napoleon Bonaparte brought in Georges-Eugène Haussman to completely reconfigure Paris' urban infrastructure as a means of using urbanization to solve the problem of surplus-capital and unemployment. Harvey argues that the urban transformation of Paris also created a specific urban persona and Parisian way of life: "Paris become 'the city of light', the great centre of consumption, tourism and pleasure; the cafes, department stores, fashion industry and grand expositions all changed urban living so that it could absorb vast surpluses through consumerism."¹⁷ But the point of Harvey's illustration is the reaction to the fallout from the 1868 financial crash that resulted from speculation – the rise of the Paris Commune. In his words: "One of the greatest revolutionary episodes in capitalist urban history, wrought in part out of a nostalgia for the world that Hausmann had destroyed and the desire to take back the city on the part of those dispossessed by his works."¹⁸

Similarly, Harvey describes the ways Robert Moses approached New York City as Haussmann did Paris, also in the effort to absorb surplus capital. In the US context in the mid-1900s, it was about transportation revolutions (highways over public transit) that lead to suburbanization and a reengineering of the city and the wider metropolitan region.¹⁹ As with Paris, there was a tremendous lifestyle transformation in suburban America, and Harvey argues

¹⁴ David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23 (2008).

¹⁵ *Id.*

¹⁶ *Id.* at 24-25.

¹⁷ *Id.* at 26.

¹⁸ *Id.*

¹⁹ *Id.* at 27.

that “subsidized home-ownership for the middle classes changed the focus of community action towards the defence of property values and individualized identities, turning the suburban vote towards conservative republicanism.”²⁰ As in Paris, revolution ensued in the US with the events described in chapter two in the context of 1960s social turmoil and the civil rights movement which led to the Fair Housing Act. For Harvey, “the soulless qualities of suburban living” played a role in this uprising as discontented white middle-class students aligned with marginalized groups to rally against American imperialism and for civil rights, and to create a movement to build a different world and urban experience.²¹

In short, Harvey’s argument is that mega-urbanization can serve to stabilize global capitalism and that it is pursued for this purpose. It has taken hold in China and in the spectacular projects of Middle Eastern regions such as Dubai. Its consequence is crisis, as the sub-prime mortgage fallout proved. But its consequence is also a commodification of the city and of the quality of urban life under a political economy marked by consumerism, tourism, and cultural and knowledge-based industries: “This is a world in which the neoliberal ethic of intense possessive individualism, and its cognate of political withdrawal from collective forms of action, becomes the template for human civilization.”²² And its consequence is of course displacement and “accumulation by dispossession” – “...repeated bouts of urban restructuring through ‘creative destruction’, which nearly always has a class dimension since it is the poor, the underprivileged and those marginalized from political power that suffer first and foremost from this process. Violence is required to build the new urban world on the wreckage of the old.”²³ In response and rebuttal, Harvey subscribes to Lefebvre’s radical, political understanding and ideal of the right to the city as a means of urban transformation. He holds that the right to the city is about the demand for “greater democratic control over the production and utilization of the surplus,” a global struggle needed to refute “the accumulation by dispossession visited upon the least well-off and the developmental drive that seeks to colonize space for the affluent.”²⁴

In simple terms, the right to the city at least in a utopian frame is “a struggle over the terms of a better city and society, over decisions that happen at the urban level,”²⁵ and “speaks to a larger ideal vision of human community.”²⁶ It is Lefebvre’s rallying call for the struggle

²⁰ *Id.*

²¹ *Id.* at 28.

²² *Id.* at 31-32.

²³ *Id.* at 33. See also DAVID HARVEY, *THE NEW IMPERIALISM* (2005).

²⁴ Harvey, *supra* note 14, at 37 & 39.

²⁵ Margot Young & Sophie Bender Johnston, *A Tale of Two Rights: The Right to the City and a Right to Housing*, in *REGULATING THE CITY: CONTEMPORARY URBAN HOUSING LAW* 19 (Julian Sidoli et al. eds., 2017).

²⁶ *Id.*

integral and necessary to an emancipatory politics of space. Lefebvre's theory is based on the interrelated notions of inhabitance, appropriation, and participation. Crucially, civic citizenship is grounded in inhabitancy rather than a legal, formal citizenship status, as the *Ajay Maken* court understood and underscored with respect to informal dwellers. Underlying inhabitance are the right to use and the right to participation, and these two rights inform much of the discussion around the right to the city in both the dense academic literature and looser policy debates. At its core, the participation right is about the ability to shape the decision-making which ultimately shapes the city. It is not a thin form of participation, however. It requires control by the urban inhabitants themselves,²⁷ and participation must be thick and robust if it is to be meaningful and to resist cooptation: "Without self-management, 'participation' has no meaning; it becomes an ideology, and makes manipulation possible."²⁸

Democratic deliberation in this view is not confined to state decisions but rather must apply to *all* of the decisions which would contribute to the production of urban space.²⁹ As Mark Purcell explains: "The right to the city stresses the need to restructure the power relations that underlie the production of urban space, fundamentally shifting control away from capital and state and toward urban inhabitants."³⁰ In this way, it becomes clear that investment decisions of firms or international financial institutions, or urban development strategies pursued through mega-events for instance, would easily fall under the purview of the right to the city given the impact these decisions have on the production of urban space.³¹ Further, this understanding reveals the radical nature of Lefebvre's philosophy. As Mark Purcell notes, "the dominant model of citizenship is entirely upended by the right to participation...[and] urban inhabitance directly confronts national citizenship as the dominant basis for political membership."³² Under the rigorous right to the city notion of participation:

[I]nhabitants must have a right to participation regardless of nationality. Therefore, the right to participation rejects the Westphalian notion that all political loyalties must be hierarchically subordinate to one's nation-state membership. It proposes a political identity (inhabitance) that is both independent of and prior to nationality with respect to the decisions that produce urban space.³³

²⁷ CHRIS BUTLER, HENRI LEFEBVRE: SPATIAL POLITICS, EVERYDAY LIFE AND THE RIGHT TO THE CITY 146 (2014).

²⁸ HENRI LEFEBVRE, THE SURVIVAL OF CAPITALISM: REPRODUCTION OF THE RELATIONS OF PRODUCTION, 120 (1976).

²⁹ Mark Purcell, *Excavating Lefebvre: The right to the city and its urban politics of the inhabitant*, 58 GEOJOURNAL 99,101 (2002).

³⁰ *Id.* at 101-102.

³¹ *See id.* at 102. See the discussion on mega-event urban development in chapter five.

³² Purcell, *supra* note 29, at 103.

³³ *Id.*

It is at once clear how this kind of right could mount a serious challenge to the excesses of capitalism and the attendant deprivations around housing and cities discussed earlier and hence its appeal, and how it could also lead to questionable and negative outcomes in cities. This point will be returned to momentarily.

The right to use or to appropriate urban space is based upon the purported superior use-value needs of city inhabitants as a matter of everyday inhabitation of space. This is in contrast to the profit-oriented exchange value, pursued by neoliberal approaches to urban governance and supported by commodification. In this context, the right to the city takes aim at property owners – “property rights no longer place property rights holders at the centre of decision-making and of the physical geography of the city” – because it views the right to inhabit as a right to housing in a non-commodified sense, with greater emphasis on self-productive and creationist dimensions.³⁴ In this way, the appropriation dimension of the right to the city allows for the physical presence – the access to and occupancy of city space as commonly associated with modern right to the city claims as a means of resisting displacement from city spaces.³⁵ But Lefebvre takes it further still, calling for the right not just to occupy the already existing spaces but also to produce new ones as needed by inhabitants. As Lefebvre describes it, the urban is “more or less the *oeuvre* of its citizens”³⁶ and in this way it is made and remade in a constant process.³⁷ Further, the urban is a space of encounter particularly for difference which encounter itself encourages,³⁸ and for possibilities of collective action.³⁹ The right to the city under Lefebvrian analysis is denied when individuals and groups cannot fully participate in this collective creation of the *oeuvre*.⁴⁰

To exclude the *urban* from groups, classes, individuals, is also to exclude them from civilization, if not from society itself. The right to the city legitimates the refusal to allow oneself to be removed from urban reality by a discriminatory and segregative organization. This right of the citizen...proclaims the inevitable crisis of city centres based on segregation...which reject towards peripheral spaces all those who do not participate in political privileges.⁴¹

³⁴ Young & Johnston, *supra* note 25, at 19.

³⁵ See generally DON MITCHELL, *THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE* (2003).

³⁶ HENRI LEFEBVRE, *WRITINGS ON CITIES* 117 (Eleonore Kofman & Elizabeth Lebas, eds. 1996).

³⁷ See Harvey, *supra* note 14.

³⁸ See Young, *supra* note 1 (discussing the eroticism of city life and experiences of difference).

³⁹ Butler, *supra* note 27, at 143.

⁴⁰ *Id.*

⁴¹ Lefebvre, *supra* note 36, at 158.

The right to the city has been used as a compelling political slogan by social movements particularly in the global South for decades.⁴² And as a theoretical concept, it is on point with respect to current urban housing struggles particularly for the marginalized. The right to appropriation in particular is an explicit stance against the kinds of commodification and narrow private property conceptualizations of urban space brought on by capitalist production and critically assessed by the Special Rapporteurs. But there is also a more reformist view of the right to the city which is gaining traction. The reformist agenda sees pragmatic discussion and compromise as the crucial means of enhancing the economic and social system so as to develop the necessary institutional conditions to improve urban lives.⁴³ This perspective seeks to go beyond struggle as opposition – the social movement political fights that have characterized engagement – and toward strategic legal reforms.⁴⁴

The right to the city was an important point of debate in the lead-up to Habitat III and is explicitly mentioned at the beginning of the New Urban Agenda. Its insertion speaks to the growing relevance of the concept at a global and not purely sub-national or sub-spatial level and as an applicable concept for cities of the developed world.

We share a vision of cities for all, referring to the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all. We note the efforts of some national and local governments to enshrine this vision, referred to as “right to the city”, in their legislation, political declarations and charters.⁴⁵

Related to the reformist agenda, there is an apparent tension and lack of clarity about the extent to which the right to the city is to be viewed and promoted as a separate legal human right or, rather, as a means of simply encapsulating a broader set of human rights around not only housing but also concerning association, assembly, expression, and nondiscrimination, for instance, or, even as nothing more than social discourse and symbolic, political catchphrase. Cities are increasingly being seen through utopian eyes as a sort of panacea to many of the most pressing and significant global challenges.⁴⁶ Meanwhile, a potent and ongoing critique of the

⁴² Much of this reliance was in response to the perceived urban disenfranchisement for the masses caused by neoliberal restructuring and its resultant threat to democracy. See Purcell, *supra* note 29.

⁴³ Ivan Turok & Andreas Scheba, ‘Right to the city’ and the New Urban Agenda: learning from the right to housing, 7 TERRITORY, POLITICS, GOVERNANCE 494 (2018).

⁴⁴ This repositioning is demonstrated through the initiatives of local government as an actor in pursuit of human rights, for instance. See *id.* See more on this in the next chapter.

⁴⁵ New Urban Agenda, UNGA A/RES/71/256, para. 11.

⁴⁶ This is further examined in the next chapter.

human rights landscape has been by those who caution of the dangers of seeing human rights, too, as a panacea for the world's problems and the tendency this drives to push too eagerly in the direction of rights expansion.⁴⁷ The right to the city straddles both of these perspectives, serving as a means of reiterating the growing importance of the city as a matter of global concern and as a potential expansion of the human rights corpus.

Activists and academics, civil society organizations and grassroots mobilizations, local governments and states, have all turned to the right to the city as a way of encapsulating at once the struggles of city life and the means of resolving those struggles, for activating the right to the city is itself a process of ongoing struggle. In short, the right to the city has been proffered on various levels and from multiple directions as a possible means of addressing the difficult tensions of the modern urban environment. This is because the crisis of housing in cities concerns not only the individual violations of the right to housing as the case law has canvassed; the urban housing crisis is also soaked in matters of growing global inequality and social and distributive justice. The right to housing is the natural and obvious starting point for any efforts to evaluate and address the painful lack of adequate housing in cities across the globe.⁴⁸ But as the cases in many ways demonstrated, and as critical human rights scholarship has long acknowledged, human rights as a body of law regulates the relationship between the individual and the state in a frequently narrow sense which fails to provide broad-based societal change and reconstruction.⁴⁹ In the specific context of the urban housing challenge, the right to the city as a theoretical frame shifts this understanding and rebuts this critique. The right to the city concept serves as a bridge to a more transformational potential of rights which empowers individuals and communities to reconstruct society, specifically urban space, through a process of persistent “cry and demand”.

The foremost critique of any positivist right to the city, in national constitutions or international human rights law, is that it will compromise the radical potential Lefebvre originally conceptualized with respect to contesting state power. And yet the radical

⁴⁷ Hurst Hannum, *Reinvigorating Human Rights for the Twenty-First Century*, 16 HUM. RTS. L. REV. 409, 435 (2016) (“While reminding states of their obligations to protect the human rights of all those within their jurisdiction is appropriate and welcome, when human rights experts offer gratuitous advice on economic policy, it simply supports the nefarious notion that ‘human rights’ offer the answer to all the world’s problems.”). See also Philip Alston, *Conjuring Up New Human Rights: A Proposal for Quality Control*, 78 AM. J. INT’L L. 607 (1984); ERIC POSNER, *THE TWILIGHT OF INTERNATIONAL HUMAN RIGHTS LAW* 94, 138 (2014); ALLEN BUCHANAN, *THE HEART OF HUMAN RIGHTS* 286 (2013).

⁴⁸ See, e.g., Leilani Farha, Oral Statement, High Level Political Forum 2018 - Thematic Review of SDGs Implementation (“Homelessness, and inadequate housing are an assault on dignity and life and as such go to the heart of what triggers human rights concern. Human rights violations of this nature demand human rights responses.”).

⁴⁹ For a recent perspective, see, e.g., SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018).

implications of Lefebvre's ideas for modern day urban life also need to be normatively evaluated. Inhabitation under the right to the city "imagines a scalar arrangement in which the urban is the hegemonic scale at which political community is defined," as opposed to at the national citizenship level, and all other community scales are subordinated to the urban.⁵⁰ This produces great control over urban space for the inhabitants. But urban hegemony presents clear risks for the state itself and also for the non-urban – notably the village dweller⁵¹ – and is subject to capture from particular forms of political identities and interests. Localities may take shape which may not be at all progressive, welcoming of difference, or in line with global political commitments and wider community responsibilities. There is an implicit assumption in the right to the city discourse that it is positive and inherently inclusive, but this is an uncritical assumption.

The great strength of the right to the city concept is that it can add a much-needed collective dimension to the right to housing which can be easily critiqued as too individualistic, particularly in the urban context where the importance of belonging and relations with others and with the city space itself are so important. The individual nature of the right to housing also means that the right is claimed by those individuals specifically affected, rather than in a wider collective or communal sense by all those who should be concerned about the implementation or achievement of the right in society. The right to the city prompts a wider engagement by those not explicitly affected but yet impacted by failures to implement the right to housing. It draws in a wider pool of the concerned because it views urban space not as a commodity but as an ongoing and shared process and thus helps to reorient the right to housing, building its content and billowing its contours. Appreciating the right to the city concept thus helps to rebut the presumptions around housing as entitlement that have served to undermine the right's realization.

But there is still a further ambiguity to the right to the city in that its commonsense understanding is as an argument for rights *in* the city, but this is complicated by the reality that the right to the city is just that, a right to the *city* and in this sense the city is open to all who seek to inhabit. It is an argument for access to and control of the *city* as a concept and entity. The tensions here are also mirrored in the murkiness of the approach to sustainable cities as articulated in Agenda 2030. The ability and mechanisms for balancing what can be competing aims of making cities and human settlements "inclusive, safe, resilient, and sustainable" have already been scrutinized in the few years that have passed since the adoption of SDG 11 and have also been shown in this writing. Making cities inclusive in the sense of open borders may

⁵⁰ Purcell, *supra* note 29, at 105.

⁵¹ See section 4.4 in this chapter.

undermine sustainability in terms of numbers and environmental pressures if vast populations migrate to the city. Making cities sustainable in an environmental sense may stifle inclusivity as competing agendas between informal settlers who may utilize public lands and resources for housing may be thought to contribute to environmental degradation and face eviction and exclusion as a result. Similarly, making cities safe might include walkable, unobstructed public spaces such as sidewalks which again can be home to low-income communities as the Indian pavement dweller and US camping ordinance cases showed.

A further example sharpens our view on how these tensions really play out in everyday life. In August 2019, the NoMa Business Improvement District (BID) published an open letter regarding underpass encampments in the area. NoMa is a neighborhood in Washington, DC situated close to the Capitol Hill area. It takes its name from its location North of Massachusetts Avenue – NoMa – akin to New York City’s well-known SoHo neighborhood located South of Houston Street in Manhattan. According to its website, the NoMa Business Improvement District was created in March 2007 by the Council of the District of Columbia and Mayor.⁵² A Business Improvement District in DC is defined as follows:

[A] self-taxing district established by property owners to enhance the economic vitality of a specific commercial area. The tax is a surcharge to the real property tax liability. The tax is collected by the District of Columbia and all revenues are returned entirely to the nonprofit organization managing the BID. Business and property owners control the BID and how funds are spent.⁵³

The NoMa BID is funded through a special assessment collected from property owners within a 35-block area,⁵⁴ and provides services such as planning and economic development, public safety, beautification, marketing, and events. These services are to supplement rather than replace services provided by the DC governments – “In many cases, the BID acts as a liaison between local government and private entities that are cooperating to make infrastructure and community improvements.”⁵⁵ The NoMa BID therefore offers a mix between the public and private sector – mandatory taxes coupled with a business sensibility to management and the willingness to compensate for city service deficiencies in the realm of public welfare. It is a

⁵² <https://www.nomabid.org/wp-content/uploads/2017/08/NoMa-BID-Legislation.pdf>

⁵³ Department of Small and Local Business Development, <https://dslbd.dc.gov/service/business-improvement-districts-bids> (last visited Jan.30, 2010). In DC, there are a total of 11 business improvement districts.

⁵⁴ This applies to commercial property, residences of 10 or more units, and hotels.

⁵⁵ NoMa BID Services, <https://www.nomabid.org/noma-bid-services/> (last visited Jan. 30, 2020).

form of decentralized power – a private organization governed by unelected officials controlling from the basis of property ownership rather than citizenship.⁵⁶

The NoMa BID letter speaks directly to the matter at hand and several of its passages are worth quoting directly. It begins, in boldface font:

The NoMa BID wishes to share publicly the sentiment expressed in an increasing volume of complaints we are receiving from neighbors in NoMa: Namely, that conditions are worsening at the encampments in the underpasses and on First Street NE, and that people are worried about their ability to safely traverse these public spaces. Many report that they have been harassed as they walk by the tent encampments, where people frequently engage in aggressive panhandling and occasionally menace passersby. Used and bloody hypodermic needles and other drug paraphernalia, rotting food, trash, broken glass, public nudity, prostitution, sales of illegal drugs, and human urine and feces are encountered by those whose routes take them by the encampments and pervade the space in which encamped individuals are living.

While we appreciate the efforts of the Office of the Deputy Mayor for Health and Human Services (DMHHS)...the agency's ongoing biweekly encampment engagements have not improved the unsafe and unsanitary environments that affect NoMa residents, workers, and visitors attempting to get around the neighborhood and take care of their daily needs. It is essential that something be done to recognize and protect the right of D.C. residents, workers, and visitors to safely use and pass through public space in NoMa.⁵⁷

The letter highlights that the sidewalks “are unique in their limited width, and they lack access to adjacent spaces that serve as refuge, such as a store or building setback. If a pedestrian or bicyclist is confronted by an unsafe condition in an underpass, there is no way to avoid it without subjecting oneself to the risk of being struck by a vehicle traveling in the road.”⁵⁸ The letter stresses that it is concerned about “the rights of all NoMa community members,” suggesting that too much focus is on the rights of the homeless – “The NoMa BID must also, however, advocate for the needs of community members who are not illegally encamped on public sidewalks.”⁵⁹ The NoMa BID recommends that “pedestrian safe-passage zones” be put in place

⁵⁶ BIDs can raise US constitutional questions under the one person, one vote requirement of the Fourteenth Amendment. *See, e.g., Kessler v. Grand Central District Management Association, Inc.*, United States Court of Appeals, Second Circuit, 1998, 158 F. 3d 92.

⁵⁷ An Open Letter From the NoMa BID About Underpass Encampments, Aug. 19, 2019, [hereinafter NoMa Open Letter] <https://www.nomabid.org/an-open-letter-from-the-noma-bid-about-underpass-encampments/>. *See also* Appendix 4.

⁵⁸ *Id.*

⁵⁹ *Id.*

which “would require the establishment of minimum clear sidewalk widths for busy commercial zones like the core of NoMa and would create appropriate procedures for immediately removing tents and other personal property obstructing a sidewalk.”⁶⁰ The thrust of the letter makes no bones about protecting “the rights of residents, workers, and visitors to safe passage through public space...”⁶¹

BIDs in general have been critiqued as structured to serve the interests of wealthy businesses rather than the people. The notion of BIDs developed in response to the loss of middle- and upper-income residents to the suburbs of America, resulting in a diminished tax base for the abandoned city. This led to a reduced ability to provide city services in terms of infrastructure maintenance, cleanliness, and sanitation, which prompted a further exodus of residents and business. The purpose of BIDs was precisely to clean up cities and to provide services local government ceased to be able to afford. BIDs therefore allow cities to compete with the suburbs by eliminating the elements that caused suburban flight in the first place, but they do so at the steep price of making the public sphere increasingly private.⁶² They are an urban development strategy and are fundamentally about aesthetic values, cleanliness, and safety as a means of spurring economic profitability. In this optic, the homeless in NoMa are a manifestation of failure for the BID – a sense that one part of the neighborhood is still controlled by the “public” rather than the “private”. Encampments thus represent a direct affront to BID ambition.

NoMa’s Vision 2021 and strategic plan is aimed at further developing the neighborhood through the growth of business, community activities, and public spaces.⁶³ The moniker itself seems intended to ride on Soho, NYC’s popularity and portray the kind of sophisticated, urban neighborhood desirability that attracts economic growth and affluent residents. The approach to growth and development of this neighborhood illustrates the contemporary problem and interface of homelessness and private property. To attract residents and businesses, the presence of the homeless is problematic. They are seen as a threat to society and to the value of property. This is a quality of life question. To see typically private activities taking place in public makes people uncomfortable; to be approached by a stranger looking for food or money makes people afraid. But more to the point, it is a downer to walk past poverty and deprivation on your way to the office at nine in the weekday morning, or for brunch with your dog and friends at weekend.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Wayne Batchis, *Business Improvement Districts and the Constitution: The Troubling Necessity of Privatized Government for Urban Revitalization*, 38 HASTINGS CONST. L.Q. 91,94 (2010).

⁶³ NoMa Business Improvement District, Strategic Plan 2016-2021, <https://www.nomabid.org/wp-content/uploads/2017/10/NoMa-BID-Strategic-Plan-2016-2021.pdf>

For NoMa, the homeless encampments are a particular problem because part of the functioning of the district relies upon the ability of people to traverse on foot. This foot traffic is important for businesses which benefit from pedestrians who stop in and patronize, and which contribute to the functioning of the BID through taxes. And *you* must walk or cycle, because modern city neighborhoods and cosmopolitan, responsible individuals need to be concerned about their carbon footprint and personal health and fitness. The city must cater to and hone this sensibility, and this is in fact the message emanating from global institutions when it comes to sustainable urbanization.

Helmut Aust has used a case study of a city poster in Atlanta, Georgia, to articulate an example of the deliberate conditioning of visions of good urban governance from international institutions that become targeted specifically to local citizens.⁶⁴ This “good urban citizen” as he calls it is shaped by the imperatives of the international stemming from the kind of commitments governments make at international conferences concerning pressing urban issues such as sustainability or security.⁶⁵ The “*be a neighbor*” poster in Atlanta, Georgia’s Midtown district calls upon the city’s residents to “*Be a neighbor - Build a business - Catch a show - Take a class - Grow a friendship - Start a family - Commute by foot*”. For Aust, the poster is a plain manifestation of international law developments transposed to the urban space, and, more troublingly, “the campaign is an attempt at designing urban spaces in a specific way, yet it is also contributing to an unmaking of urban space.”⁶⁶ Given the hard and fast financial limitations of cities, Aust argues “a need for educating the urban citizen arises, for turning her into the good urban citizen who feels responsible for her urban environs.”⁶⁷ The risk in this approach as Aust cautions is to the political, and, crucially, for “depoliticizing the debate on what urban life means in the 21st century.”⁶⁸ Further, when these city formations are distilled to the level of individuals, linking economic success to worthiness and connecting social citizenship with material or commodified participation in city life, obvious and substantial risks along the social inclusion continuum emerge into view. This is evident in NoMa.

And the reactions to the homeless in NoMa as raised through the open letter illustrate further important nuances. One pertains to what NGOs and development scholars have

⁶⁴ Helmut Philipp Aust, ‘*Good Urban Citizen*’, in *INTERNATIONAL LAW’S OBJECTS* (Jessie Hohmann & Daniel Joyce eds., 2018).

⁶⁵ *Id.* at 233.

⁶⁶ *Id.* at 227.

⁶⁷ *Id.* at 233.

⁶⁸ *Id.* Similar concerns have been raised in the context of smart cities with scholars concerned that the urban citizen and notions of citizenship itself are compromised particularly in political terms. Constructions of the ‘smart citizen’ who will occupy smart cities are based on particular modes of citizenship which relate to the particular visions, imageries, and fantasies of the smart city built around information and communication technologies and big data. See, e.g., Federico Caprotti et al., *The New Urban Agenda: key opportunities and challenges for policy and practice*, 10 *URB. RES. & PRAC.*, 367, 375 (2017).

examined in the context of “beautification” projects in cities as a means of conveying a “developed” status. This is seen particularly in the context of a state or city on grand public display through hosting an international mega-event, for instance, as will be discussed in the next chapter. The belief is that in these contexts the visibility of the poor must be reduced or eliminated in order to convey a sense of developed status to the wider world. For the 2010 Commonwealth Games in New Delhi, for instance, it was reported that the poor were to be hidden away behind bamboo “curtains”.⁶⁹ Similarly, for a neighborhood such as NoMa, there is a need to convince wider city (and suburban) residents that this particular pocket of the city is “developed”, gentrified, and free of urban fissures – it is safe and pleasant for you to come here. This is quite ironic in the context of a “developed” country.

It is also interesting to recognize the framing of the crisis of homelessness and, in particular, the presence of homeless encampments in cities. Homelessness is inextricably linked to economic conditions and a lack of affordable housing, but there are also connections to drug and alcohol addiction as well as mental illnesses. In fact, much of the current discourse on homelessness in the US and UK evinces a pushback against the liberal thesis of unaffordability as the dominant cause of homelessness, and places greater emphasis on substance use and mental health theories. Notably, the NoMa BID open letter specifies that the focus on affordable housing is misplaced in addressing the homelessness situation, and, rather, claims to “know that the primary challenges are the result of mental health and substance-abuse disorders.”⁷⁰ The letter states: “housing alone, no matter how much is built, simply will not solve the encampment issues,” and calls out various factors which it feels have served to constrain dialogue and governmental responses to these encampments.⁷¹ “The first is the fact that public dialogue around ‘solutions’ has focused almost exclusively on the provision of more affordable housing. Another challenge is legal efforts focused on protecting the rights of encamped individuals to keep property in public space.”⁷²

Related to this, one more passage from the NoMa BID open letter bears mention:

Finally, the views of ordinary residents, workers, and visitors have not been widely heard on these issues. There are many people whose passion for improving the housing situation and protecting what they think should be the legal rights of encamped individuals is a calling or a career. But there is no

⁶⁹ See, e.g., Dean Nelson, *New Delhi to hide slums with bamboo ‘curtains’ during 2010 Commonwealth Games*, THE TELEGRAPH, Aug. 17, 2009 available at <http://www.telegraph.co.uk/sport/othersports/commonwealthgames/6043719/New-Delhi-to-hide-slums-with-bamboo-curtains-during-2010-Commonwealth-Games.html>.

⁷⁰ NoMa Open Letter, *supra* note 57.

⁷¹ *Id.*

⁷² *Id.*

similar advocacy group devoted to making sure that people can safely pass through public spaces.⁷³

The frustration expressed in this excerpt must be taken seriously. The liberal soapbox will buckle under its own self-righteousness if the tensions between housing, homelessness, and city space are smoothed over rather than teased out. Housing questions, particularly in cities, are complex and must be subject to contestation and public debate. In this respect, the NoMa BID can be praised for initiating what is indeed a crucial conversation. Further, this portion of the letter is an explicit rendering of the more widespread sentiment of many individuals across the globe who feel they lack a stake in the human rights movement and that the enterprise works only for the “marginalized”.⁷⁴ But the critique here of the business improvement district as an entity of governance, however, is its usurpation of the public space in an effort to manage and control in the interest of particular stakeholders – those tied to commercial activity. BIDs represent a capture of urban space and a transformation of that space into something more elite and in which the homeless (and it might not stop with those experiencing homelessness) simply do not fit. It is no real surprise that the NoMa BID takes issue with the encampments, but it is telling that the BID has issued the letter itself. This suggests both a desire to engage with public perception and an instinct that their position is not particularly far out of line with that of the wider populace.

Many actors have the ability to influence public perception and political mobilization around issues of housing and housing deprivation. This point was raised in chapter two with respect to the Special Rapporteur’s emphasis on the importance of courts for catalyzing a political engagement with the right to housing and spurring its implementation. But bodies beyond courts can influence the politics of housing, and the NoMa BID letter is not only a representation of the views of NoMa residents and businesses as it claims, but is also an attempt to shape the views of residents and businesses in NoMa and potentially beyond. Feelings that may have been individually and internally conflicting (a disdain for the homeless, a desire to cross the street or alter one’s route to avoid an encounter) are given a mandate of normalcy and validity through the letter’s rhetoric. These inclinations are of exclusion rather than inclusion and belonging. They seek to exclude the marginalized from the urban community. It is a dangerous narrative when institutions which carry important voice use that voice in a way which dilutes community responsibility and reframes the debate as against rather than in favor of stronger social citizenship. The reality underpinning the tensions in NoMa is the juxtaposition

⁷³ *Id.*

⁷⁴ See Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRAC. 1, 6 (2017).

of, on the one hand, a society that has been prepped and sold on a consumption based view of city life (which entails things like a chic apartment and access to art, entertainment, leisure, and sports, and the idea that engaging these things adds up to being a part of the community and to fulfilling one's civic duty) and, on the other hand, the fact that urban life necessarily entails an unpredictability and a level of confrontation with difference. This politics of people is in fact part of the normative ideal of city life, but it is not always part of the dream being sold in the creation of modern city neighborhoods and through the work of BIDs.

This is one of the fundamental problems with the NoMa BID letter – it misunderstands and misrepresents the importance and purpose of urban community. Just as courts have been shown to contribute to the normative development of socio-economic rights, the local context – in terms of governments, businesses, NGOs, and individuals – also has the power to shape and develop international human rights law relying upon the courts and also through the use of other mechanisms such as local laws, political and social protest, and interjections into the public discourse. As Upendra Baxi has put it: “in the making of human rights it is the local that translates into global languages the reality of their aspiration for a just world.”⁷⁵ Local practice in the form of resistance to abuses of power and viewed from a “struggle approach” to human rights perspective,⁷⁶ has both historically and can continue to contribute to definitions of global human rights standards.⁷⁷ The SDGs and New Urban Agenda include a manifestation of local urban struggles including around the right to the city as translated to the international level. These new developments in international law on cities and urbanization point towards an important and necessary normative development of socio-economic rights, particularly the right to housing as enhanced by the right to the city and which aligns with the global commitment to inclusive cities. The importance of the right to the city and the evidential value of the New Urban Agenda were demonstrated in the *Ajay Maken* case of the Delhi High Court, thereby feeding into the broader, influential Indian jurisprudence which has long been adding to the substantive development of the right to housing on a global scale.

Further, the right to the city has been institutionalized in some contexts. In Brazil, it is legally codified as a collective right in the Federal City Statute of 2001, which is the country's legal framework governing urban development and which regulates the urban policy chapter of

⁷⁵ UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS* 101 (2nd ed., 2006); see also Barbara Oomen, *Human Rights Cities: The Politics of Bringing Human Rights Home to the Local Level*, in *MOBILISING INTERNATIONAL LAW FOR 'GLOBAL JUSTICE'* 209 (Jeff Handmaker & Karin Arts, eds., 2019) (“These local struggles are part of a haphazard, patchy process of rights realization that is as much bottom-up as top-down.”).

⁷⁶ Cristof Heyns, *The Struggle Approach to Human Rights*, in *HUMAN RIGHTS, PEACE AND JUSTICE IN AFRICA: A READER* (C. Heyns & K. Stefiszyn eds., 2006).

⁷⁷ George Ulrich, *Epilogue: widening the perspective on the local relevance of human rights*, in *THE LOCAL RELEVANCE OF HUMAN RIGHTS* 355 (Koen De Feyter et al. eds., 2011).

the 1988 Constitution.⁷⁸ Interestingly, much of Lefebvre's work on space even beyond the right to the city discusses informality and Latin American *favelas* and it is fitting that much of the urban reform strategies from NGOs and urban social movements in the region have drawn from his theories.⁷⁹ Brazil is an example of attempts to take the right to the city beyond philosophical, theoretical, and political formulations and into the domain of legal right. In this respect, much of the right to the city surge evident today can be attributed to its development in Latin America and in Brazil specifically.⁸⁰

Brazil's urban development has been historically marked by undeniable patterns of socio-spatial exclusion and segregation. At the same time, Edésio Fernandes has observed that processes of re-democratization have lent a special emphasis to possibilities for a new legal-urban order governing land use and development, and how these processes might better promote socio-spatial inclusion and environmental sustainability.⁸¹ In particular, the constitutional commitment to the socio-environmental function of property and the city is a hallmark of the shifting legal-urban order. According to Fernandes, the Brazil City Statute "clearly laid the legal foundations of the 'right to the city' in the country," and "[t]he role of municipalities is crucial so that the exclusionary pattern of urban development can be reversed."⁸² But many scholars are skeptical of any purported success of the institutionalization of the right to the city in Brazil, even though credit must be given for taking this radical initiative as a means of addressing what are deeply ingrained problems of social exclusion in the country's cities.⁸³ With the passing of time, the dangers associated with establishing the right to the city as a matter of legal, juridical right have been realized in Brazil where struggle and contestation can be stifled under less progressive and sympathetic governmental regimes.⁸⁴

But this is not to give up on the concept. The right to the city provides a fuller expression of the right to housing in the urban context, more clearly underscoring the importance of participation in and access to the city environs. It helps to add texture to the right to housing situating it in a particular and important spatial context. Transposed to the NoMa example, it appears as a counterclaim battling other spatial claims that seek to displace the marginalized from cities.

⁷⁸ City Statute, 1988 Federal Constitution and Law No. 10.257, Brazil (2001).

⁷⁹ See the discussion in the next chapter on the Rio Olympics.

⁸⁰ See also Constitution of the Republic of Ecuador, Oct. 20, 2008. Art. 31.

⁸¹ Edésio Fernandes, *Constructing the 'Right to the City' in Brazil*, 16 SOCIAL & LEGAL STUDIES 201, 204 (2007).

⁸² *Id.* at 215.

⁸³ See generally, Implementation of the International Covenant on Economic, Social and Cultural Rights, Economic and Social Council, Brazil, E/C.12/BRA/2 (Jan. 28, 2008) para. 352-411.

⁸⁴ See Alston, *supra* note 74, at 10.

And there is a solid moral basis for the right to the city bolstered by increasing urbanization, the economic and sociological needs to be in cities, and the concomitant risks of injustices in cities in terms of displacement, homelessness, and social exclusion. The right to the city helps make the deprivations of urban living in terms of these issues more poignant and gives those affected a status of concern. It provides a discursive means of at once expressing the challenge of housing in cities as well as gives a sense of how to solve it through collective transformation.

In this sense, the right to the city should not be advanced as a separate legally codified right, but rather as part of the bundle of housing rights. It should be explicitly linked to the right to housing and this can be achieved through the work of the CESCR and the UN Special Rapporteur as well as by civil society and especially by international law scholars and practitioners. These actors are in fact already working in interconnected manners on the right to housing.⁸⁵ Further, the inclusion of the right to the city in the New Urban Agenda in 2016 is an indication of its recent normative elevation. Fifteen months after the adoption of the New Urban Agenda in February 2018, the World Urban Forum held its Ninth Session to discuss implementation of the NUA and “Cities for all” was high on the debate table, not articulated as a legal right to the city but rather as the overarching guiding concept and social discourse.⁸⁶ As the urban increases in importance due to the demographic shifts discussed in the introduction as well as the increasing focus on cities in terms of governance of global challenges, the city takes on a different level of citizenship importance and there is also a need to belong in the city as “a common good essential to the quality of life”, to reference the Delhi High Court again. That the right to the city has been acknowledged by the Indian court and linked to the right to housing there in 2019 further attests to its elevation.

As Conor Gearty has argued: “The idea of human rights is open-textured. Its content changes as new ways of expressing basic values come to the fore, assuming a human rights shape in order both to capture the essence of what the right is about and at the same time to push for its further realization in the culture in which the argument for it is being made.”⁸⁷ The right to the city should be embraced because it helps bolster the right to housing and helps move the right along towards a more pluralist approach to housing, community, and urban access. But it does not quite get it all the way there. Far deeper and broader understandings of the power and dynamics of urban space are needed to reorient the right to housing in the direction of urban belonging and to promote a right to housing in *the* city.

⁸⁵ This is discussed further in the next chapter.

⁸⁶ See Appendix 5.

⁸⁷ CONOR GEARTY & VIRGINIA MANTOUVALOU, *DEBATING SOCIAL RIGHTS* 53 (2011).

4.3 Cultural Diversity and the Harm in Gentrification

A right to housing in *the city* serves as a necessary defense against the harms of gentrification. Gentrification can be understood as the transformation of spaces in favor of progressively higher income groups. Rapidly rising rents and taxes force residents out. The issue is particularly controversial because it is frequently claimed that the gentrification process is tied to minority communities, and that there is a discriminatory element implicit in these economic and spatial transformations.⁸⁸ In the classic scenario, an affordable block of apartments is renovated and offered as more luxurious and expensive units; next door, a long-standing, makeshift football pitch or basketball court is converted into a dog park. In this respect, gentrification is about not only physical displacement, but also significant political and cultural displacements. In its negative aspects, gentrification has become one of the most talked about phenomena of modern cities, especially in the developed world.⁸⁹

As has been argued, location for housing is important not purely in economic terms and on the basis of its connection to livelihood and employment, but also because of its connection to community, and to belonging, inclusion, and social dignity. The problem with gentrification, first and foremost therefore, is the way it undermines these relational factors. Incoming communities may but do not necessarily seek to displace previous ones – they may simply crave the opportunities of life in new urban environments – but they do, typically, seek to replace, or are largely indifferent to the fact that they do. From the perspective of those whose cultural identities as related to spaces are being reshaped through gentrification, the intensity of this change can be penetrating. They endure a process of collective more than individual loss; less the loss of one's individual home, and more the loss of one's neighborhood in the sense of its character. It constitutes an erasure of an established urban foothold placed through cultural identity. The loss of space and place is a unique kind of expulsion, and key to the harm of gentrification, therefore, is this function of being replaced and not solely (and even not necessarily) physically displaced.

Gentrification is connected to an understanding of housing in its commodity form. Under prevailing liberal private property systems, access is there for those who can afford the market cost. It is when costs cannot be borne that various forms of displacement take place, or

⁸⁸ For an ongoing gentrification battle, *see, e.g.*, Forced from Home: A Human Rights Assessment of Displacement and Evictions in Boston's Chinatown, Displacement Research and Action Network, <https://static1.squarespace.com/static/56340b91e4b017e2546998c0/t/5c7811640852290f392207ca/1551372655581/CPA+report+final+2019.pdf>.

⁸⁹ Even well-intentioned interventions in the name of opening up, expanding, and activating urban public space can cause gentrification with the related negative consequences of displacement and segregation. *See, e.g.*, NEIL BRENNER, CRITIQUE OF URBANIZATION: SELECTED ESSAYS 123 (2016) (discussing the High Line in Chelsea, Manhattan, New York City).

that access is precluded. Part of the problem which gentrification entails is that once people are able to afford to live in a particular location in the city, the perception is that this then also entitles them to own that space in the city and to control the related social and cultural engagements in that space. The result is obviously exclusionary urbanism. Space can no longer be accessed equally and even if it can *de jure*, the feeling of full belonging in that space has been stripped for those who have been physically and/or culturally displaced. The space no longer belongs to them in either a sense of ownership or a sense of being a pivotal part of the whole. This can be a damning denial considering that the gentrification optic is popularly one in which spaces that were once too toxic, dangerous, deprived, or impoverished to be caught dead in are suddenly attractive and are usurped accordingly. In this whole operation, there is no genuine desire to live *in* and *with*, but rather to live merely alongside or to replace entirely. Much more gradual than the brutality of forced evictions, gentrification is a piercing way many urban dwellers experience the transformation of cities brought about by international law processes, and is a manifestation of the way international law influences the internal living conditions of states in acute, complex, and everyday ways.⁹⁰

Among the virtues of city life Young articulates, the importance of social differentiation without exclusion in the city and the importance of publicity are particularly noteworthy. In ideal form, social group differences should flourish in cities. Cities provide the critical mass and freedom necessary to embolden minority affinity groups and to change one's identity and life course. Think of all the movies and books where dreams of a better life are pursued in cities – in the fantasy, no one leaves their small town to “make it” in another small town. And in cities as opposed to rural towns, people “tend to recognize social group difference as a given, something they must live with.”⁹¹ Thus, the group differentiation that comes with idealized city life freedom is a social and spatial differentiation without exclusion, groups “overlap and intermingle without becoming homogenous.”⁹²

To this point and more importantly, cities can foster the kind of social interaction that over time helps to advance social causes and social justice. City life serves as a form of cultural education where we learn tolerance from its diversity and where group identity is validated through place-based belonging. This is part and parcel of the “politics of differences” which open and accessible public spaces support.

Politics, the critical activity of raising issues and deciding how institutional and social relations should be organized, crucially depends on the existence of spaces and forums to which everyone has access. In such public spaces people encounter

⁹⁰ See generally, Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377 (2002).

⁹¹ Young, *supra* note 1, at 237.

⁹² *Id.*

other people, meanings, expressions, issues, which they may not understand or with which they do not identify. The force of public demonstrations, for example, often consists in bringing to people who pass through public spaces those issues, demands, and people they might otherwise avoid. As a normative ideal city life provides public places and forums where anyone can speak and anyone can listen.⁹³

The ideal of city life can only be accomplished through a right to housing that protects the right to housing in a specific city.

The focus on inclusion in SDG 11 and the New Urban Agenda is a plain recognition of the proliferation of exclusionary city spaces across the world as “often an irrefutable reality.”⁹⁴ Goal 11 is ambitious in nature, as it must be given the tremendous scale of the global urbanization challenge. In addition to the overarching targets of inclusion, safety, resilience, and sustainability, Goal 11 specifies the following sub-targets:

- 11.1 By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums
- 11.2 By 2030, provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons
- 11.3 By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries
- 11.4 Strengthen efforts to protect and safeguard the world’s cultural and natural heritage
- 11.5 By 2030, significantly reduce the number of deaths and the number of people affected and substantially decrease the direct economic losses relative to global gross domestic product caused by disasters, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations
- 11.6 By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management

⁹³ *Id.* at 238.

⁹⁴ New Urban Agenda, UNGA A/RES/71/256, para. 3.

- 11.7 By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities
- 11.a Support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening national and regional development planning
- 11.b By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disaster, and develop and implement, in line with the Sendai Framework for Disaster Risk Reduction 2015-2030, holistic disaster risk management at all levels
- 11.c Support least developed countries, including through financial and technical assistance, in building sustainable and resilient buildings utilizing local materials⁹⁵

The targets are further fleshed out through various sections of the New Urban Agenda. The shared vision of the New Urban Agenda is one in which cities and human settlements:

Are participatory, promote civic engagement, engender a sense of belonging and ownership among all their inhabitants, prioritize safe, inclusive, accessible, green and quality public spaces that are friendly for families, enhance social and intergenerational interactions, cultural expressions and political participation, as appropriate, and foster social cohesion, inclusion and safety in peaceful and pluralistic societies, where the needs of all inhabitants are met, recognizing the specific needs of those in vulnerable situations.⁹⁶

The NUA is touted as a transformative political commitment for an urban paradigm shift grounded in the social, economic, and environmental dimensions of sustainable development. There are multiple references to the importance of culture, cultural diversity, and heritage throughout, and even one direct mention of gentrification.

We will promote planned urban extensions and infill, prioritizing renewal, regeneration and retrofitting of urban areas, as appropriate, including the upgrading of slums and informal settlements, providing high-quality buildings and public spaces, promoting integrated and participatory approaches involving all

⁹⁵ Transforming our World: The 2030 Agenda for Sustainable Development, UNGA A/Res/70/1.

⁹⁶ New Urban Agenda, UNGA A/RES/71/256, para. 13(b).

relevant stakeholders and inhabitants and avoiding spatial and socioeconomic segregation and gentrification, while preserving cultural heritage and preventing and containing urban sprawl.⁹⁷

Among the commitments for sustainable urban development for social inclusion and ending poverty is a specific one dealing with people, culture, diversity, and equality.

We commit ourselves to urban and rural development that is people-centred, protects the planet, and is age- and gender-responsive and to the realization of all human rights and fundamental freedoms, facilitating living together, ending all forms of discrimination and violence, and empowering all individuals and communities while enabling their full and meaningful participation. We further commit ourselves to promoting culture and respect for diversity and equality as key elements in the humanization of our cities and human settlements.⁹⁸

There is also a commitment to facilitating social mix through affordable housing as an urban planning strategy to promote social inclusion and cohesion, and to “favouring social and intergenerational interaction and the appreciation of diversity.”⁹⁹ Culture is also to be included “as a priority component of urban plans and strategies in the adoption of planning instruments”, and a “diverse range of tangible and intangible cultural heritage and landscapes” is to be safeguarded and protected “from potential disruptive impacts of urban development.”¹⁰⁰

The provisions are plentiful¹⁰¹ and key buzzwords are present, but overall, for a twenty-year urban commitment that is in good measure promoted as about inclusion, the references to and discussions of the importance and difficulties of diversity for the urban environment are superficial. There is a lack of depth with respect to the ways cultural and political displacements have led (and will continue to lead) to the very socio-spatial segregation and exclusion that the New Urban Agenda consistently references. Specific thematic areas, such as informal settlements and public space, are given more attention, but a robust commitment to the promotion of diversity as a means of creating inclusive cities – and for inclusion’s sake as an end in itself rather than as a means to economic growth – is lacking.

Instead, the New Urban Agenda takes a commodified view of heritage, seeing it as something to be leveraged, albeit sustainably, as a high-value-added economic sector in the

⁹⁷ *Id.* at para. 97.

⁹⁸ *Id.* at para. 26.

⁹⁹ *Id.* at para. 99, 106.

¹⁰⁰ *Id.* at para. 124.

¹⁰¹ This has been a source of critique for some commentators. See, e.g., Helmut Philipp Aust & Anél du Plessis, *Good urban governance as a global aspiration: on the potential and limits of Sustainable Development Goal 11*, in *SUSTAINABLE DEVELOPMENT GOALS – LAW, THEORY AND IMPLEMENTATION* 215 (Duncan French & Louis Kotze eds., 2018).

rehabilitation and revitalization of urban areas.¹⁰² The NUA references natural and cultural heritage and, with respect to the latter, acknowledges both the tangible and intangible cultural heritage but it links protection to the power of investment “to safeguard and promote cultural infrastructures and sites, museums, indigenous cultures and languages, as well as traditional knowledge and the arts...”¹⁰³ The strengthening of social participation and the exercise of citizenship are mentioned in connection with cultural heritage, but not expounded upon. A wide commitment to embracing diversity is offered which references social cohesion, intercultural dialogue, tolerance, respect, innovation, entrepreneurship, inclusion, identity and safety, dignity, livability, and a vibrant urban economy.¹⁰⁴ In its breadth it is also vague.

While there is a pronounced focus on heritage coming from the New Urban Agenda, cultural diversity is in fact foundational to the true protection of cultural heritage and social development. Agenda 2030 does not include a specific sustainable development goal focused on culture,¹⁰⁵ but includes the protection and safeguarding of cultural heritage as an SDG 11 target as noted above, and notes the importance of culture and cultural diversity to its cause:

We pledge to foster intercultural understanding, tolerance, mutual respect and an ethic of global citizenship and shared responsibility. We acknowledge the natural and cultural diversity of the world and recognize that all cultures and civilizations can contribute to, and are crucial enablers of, sustainable development.¹⁰⁶

¹⁰² See UNGA A/RES/71/256 at para. 38 & 60.

¹⁰³ *Id.* at para. 38.

¹⁰⁴ *Id.* at para. 40.

¹⁰⁵ See Ben Boer, *Culture, Rights and the Post-2015 Development Agenda*, in *HERITAGE, CULTURE AND RIGHTS: CHALLENGING LEGAL DISCOURSES* (Andrea Durbach and Lucas Lixinski eds., 2017) (“Despite the robust and determined efforts by a range of bodies—the recommendations of the Hnagzhou Declaration, the resolutions of the General Assembly, the arguments made by the Special Rapporteur on the right to culture—that a specific goal focused on culture be incorporated into the post-2015 Agenda, such a goal was not in fact specifically included in the SDGs. Notwithstanding the lack of a specific goal, the links between culture and sustainable development were nevertheless incorporated to some degree in *Transforming our World.*”) *Id.* at 52.

¹⁰⁶ A/RES/70/1 para. 36.

Taking the interpretation of the protection of the right to culture from the CESCR, culture is to be understood in a broad anthropological sense,¹⁰⁷ and is deeply linked to human dignity.¹⁰⁸ These understandings must become situated within a conceptualization of sustainable development as a process that innately entails not only economic growth but also human growth. Sustainable development must be understood as a mechanism for unlocking and expanding individual freedom, which requires a social dimension and which includes cultural freedom.¹⁰⁹ Effective protection of cultural heritage is indeed integral to the respect of the multiple cultural expressions of various individuals and groups, and their cultural identity, but it is through the effective protection of cultural diversity that cultural heritage can be preserved in its broadest sense.¹¹⁰ Minority groups and enclaves must be carefully considered in the context of the protection of their own culture and cultural heritage, but also in terms of the inclusion of that culture into the formulation of the wider city space and urban community.¹¹¹

¹⁰⁷ Laura Pineschi, *Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights*, in CULTURAL HERITAGE, CULTURAL RIGHTS, CULTURAL DIVERSITY: NEW DEVELOPMENTS IN INTERNATIONAL LAW 33 (Silvia Borelli and Federico Lenzerini, eds., 2012) (“The notion of culture and, as a consequence, the notion of the right to take part in cultural life, can be interpreted in different ways. In principle, however, two fundamental approaches can be identified: a narrow interpretation, confined to a traditional meaning of culture (‘the arts’, i.e. literature, music, theatre, monuments, paintings and sculpture), and a wider notion, where ‘culture’ is understood in an anthropological sense, including the distinctive lifestyle, traditions and values of a certain community and the individuals belonging to it.”); *See also*, Roger O’Keefe, *The ‘Right to Take Part in Cultural Life’ under Article 15 of the ICESCR*, 47 INT’L & COMP. L. Q. 904, 916 (1998).

¹⁰⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 21, para. 40 (“The protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life.”); JANET BLAKE, *EXPLORING CULTURAL RIGHTS AND CULTURAL DIVERSITY: AN INTRODUCTION WITH SELECTED LEGAL MATERIALS* 83 (2014) (“Cultural identity—at whatever level it operates—is an essential component of human dignity and attempts to strip people of their dignity very often involve attacks on their cultural identity. Given that protecting human dignity is a fundamental basis for human rights, the protection of cultural heritage can, therefore, also be viewed as an essential part of protecting human rights.”); *See also*, Oscar Schachter, *Human Dignity as a Normative Concept*, 77 AM. J. INT’L L. 848, 849-850 (1983).

¹⁰⁹ *See* Valentina Sara Vadi, *Culture, Development and International Law: The Linkage between Investment Rules and the Protection of Cultural Heritage*, in CULTURAL HERITAGE, CULTURAL RIGHTS, CULTURAL DIVERSITY: NEW DEVELOPMENTS IN INTERNATIONAL LAW 414 (Silvia Borelli & Federico Lenzerini, eds., 2012) (“The underlying thesis of the chapter is that reconciliation is possible, and that development should be conceived as a broad concept inclusive not only of mere economic growth but also of human well-being for which cultural elements are crucial.”).

¹¹⁰ Pineschi, *supra* note 107.

¹¹¹ *See generally*, Committee on Economic, Social and Cultural Rights, General Comment No. 21 (“Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.” Para. 1; “The concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity. This concept takes account of the individuality and otherness of culture as the creation and product of society.” Para. 12). *See also*, New Urban Agenda, UNGA A/RES/71/256, para. 33 (on cultural integration of marginalized communities). But it should also be noted that not all minority culture should be protected. Consider for example cultures which do not promote gender equality.

Although perhaps unusual to think of, urban indigenous peoples represents a critical and underexplored challenge. In Latin America, 49 percent of the indigenous population currently lives in urban areas, with that figure rising to over 60 percent in Chile and Venezuela.¹¹² As a 2015 World Bank report on the subject notes:

[E]ven if generally better off than their rural peers – in material terms at least – 36 percent of indigenous urban dwellers are relegated to slums, or the so-called “informal city,” where they often face extreme poverty, inhabiting insecure, unsanitary, and polluted areas. As such, while indigenous urban populations have better chances of accessing public services than their rural peers, they lag behind non-indigenous urban dwellers and are exposed to new dimensions of exclusion.¹¹³

Important questions emerge regarding not only discrimination and the protection of heritage, but also concerning the unique status of indigeneity with respect to connections to ancestral lands as has been recognized in law. Further, questions of how urban indigenous peoples shape and are shaped by the city and of how their identities are protected in this context come to the fore and further emphasize the evolving nexus between international law and city space. There is no question that indigenous peoples are owed a tremendous debt for the violent dispossessions and callous erasures they have endured. It will be an important challenge to both repay this debt and further protect the rights of indigenous peoples in the urban context whilst also protecting and preventing further dilutions and erasures of culture through gentrification for various urban minorities.

In these respects, some cautious parallels can be drawn between the struggles of indigenous peoples and the harms of gentrification.¹¹⁴ The fight of indigenous peoples is for the preservation of their culture and way of life, and, in effect, for their own history. In the indigenous context, the right to life is closely linked to cultural identity, which is in turn linked to ancestral lands. In the urban context, cultural identity can be tied to city space and to a spatial history, memory, and imagination.¹¹⁵ Gentrification puts this identity at risk through cultural and political dislocations and replacements. New people, identities, and cultures, as well as new things – retail spaces, businesses, and amenities to support the new population’s lifestyle and cement their social infrastructure – come in and, in effect, clear out. This sort of transformation cuts deep for the affected groups. They watch their struggled for and written history in

¹¹² *World Bank Group Report, Indigenous Latin America in the Twenty-First Century: The First Decade* (2015) p. 30.

¹¹³ *Id.* at 41.

¹¹⁴ See also MARGARET KOHN, *THE DEATH AND LIFE OF THE URBAN COMMONWEALTH* (2016).

¹¹⁵ See DAVID HARVEY, *SOCIAL JUSTICE AND THE CITY* 23-24 (Rev. ed. 2009) (on “spatial consciousness” or the “geographical imagination” which “enables the individual to recognize the role of space and place in his own biography”).

geography effaced through a palpable process of urban spatial takeover. The rights of indigenous peoples have been recognized in law and legal scholarship. The rights of people in cities is not nearly as clearly articulated, particularly as it pertains to the need to preserve cultural legacies and to transmit them to future generations.¹¹⁶ The right to housing in a specific city serves to protect these interests and to prevent this kind of expulsion.

Our experiences of inclusion and exclusion are manifested in the spaces we live, inhabit, and experience in our everyday life,¹¹⁷ and housing has been central to contestations over space in cities for some time.¹¹⁸ The connections between housing and physical space are obvious in that housing is clearly a material object as distinguished from more abstract concepts and rights such as privacy or freedom.¹¹⁹ But the connection between housing as a social dignity right and conceptions of the city as *social* space are less apparent, as are the connections between the shaping of urban citizens and their desires (and deprivations) around housing and community. The city and the question of urban housing is not only a matter of legal and political construction, but is also subject to social control and struggle.¹²⁰ The radical potentiality of cities as spaces “to change ourselves by changing the city”¹²¹ requires us to unpack the means by which we conceive of city space and the priorities therein, for there are various possible and often competing configurations. Two simple points undergird this call. First, there can be no city without human subjects and these subjects not only influence the law but are also influenced by the law of the spaces they inhabit. Second, and relatedly, law’s relationship with space is marked by its ability to instructively structure space and the relationships and possibilities for life, relationships, and citizenship within that space. Space is malleable rather than static or neutral in nature.¹²² Conceptualizations of space and the vision of our urban future are thus

¹¹⁶ See, e.g., *Sawhoyamaya Indigenous Community v. Paraguay*, Mar. 29, 2006, IACHR (Ser. C), No. 146 (discussing this with respect to indigenous peoples).

¹¹⁷ Purcell, *supra* note 29, at 102.

¹¹⁸ For example, in the South African context, see, e.g. *Government of the Republic of South Africa and others v. Grootboom and others* (CCT11/00) (2000) ZACC 1 (21 September 2000) (“The cause of the acute housing crisis lies in apartheid. A central feature of that policy was a system of influx control that sought to limit African occupation of urban areas.”) para. 6; *Ex Parte Western Cape Provincial Government and Others: In Re DVB Behuising (Pty) Ltd v. North West Provincial Government and Another* 2000 (4) BCLR 347.

¹¹⁹ JESSIE HOHMANN, *THE RIGHT TO HOUSING: LAW, CONCEPTS, POSSIBILITIES* 198 (2013).

¹²⁰ Yishai Blank & Issi Rosen-Zvi, *The spatial turn in legal theory*, HAGAR: STUDIES IN CULTURE, POLITY AND IDENTITY 2, 20 (2010) (For the “law and geography” school of thought, marked by a fusion of legal scholarship with social science and hallmarked by the integration of legal analysis and social, political, and urban geography, “the relationship between law and space is of mutual dependence and influence. On the one hand, law shapes and impacts the spaces in which we live; and, on the other hand, space shapes our laws. Space is not just the physical or material environments which we inhabit; it is also socio-political (intersubjective) and mental (subjective). And the law is not just a collection of rules and doctrines; it is also the way these written rules are applied by judges and administrative agencies, as well as the way they are experienced and understood by various social actors.” The spatial dimension reflects “both a social product and a mechanism that reproduces social formations.”).

¹²¹ Harvey, *supra* note 14.

¹²² See Blank & Rosen-Zvi, *supra* note 120.

integral to how we assess the challenges of urbanization and address the process itself. We can do so on either technocratic terms,¹²³ or through a normative and human lens.¹²⁴

The global market effects on cities and the commodification of housing and land have meant that the geography of cities the world over increasingly reflects these pressures through the prevalence of inadequate housing, spatial segregation, displacement, gentrification, and social exclusion. This is a well-known and well-worn argument and there is plain truth to it. But arguments about the negative impact of the market upon the geography of cities and their social landscape are insufficiently complicated and critiqued with respect to the function of the people, the human subjects in cities. We are reticent to acknowledge the role of the people in their choices and exercise of preferences, and overly critique abstract market forces as the sole culprit in creating increasingly exclusionary and unequal cities. In reality, the desire for homogeneity and exclusion on the part of individuals is a significant practical problem in cities, which stifles the viability of housing solutions, particularly for the most vulnerable populations. Too frequently, people seek a separation between them, and the space in which they live, and what they perceive as problems. Noise, pollution, and traffic are all nuisances which do not “belong” where people live – similarly, there are individuals and groups, classes and races, which also do not belong. This is seen clearly with respect to homelessness crises in city neighborhoods.

Further, even when people choose to interact with difference – through heritage or indo-tourism, for instance, but also through facets of gentrification in which people might opt to live in particular neighborhoods of difference – the tendency to step into something different always inevitably entails the desire to in some way step back out. This is manifested, for instance, in the form of choosing not to educate one’s children in the neighborhood’s schools. A micro-segregation and a lack of true mixing and community building ensues on the ground rather than any real integration, cohesion, or solidarity.

In urban space, legal norms, rules, and institutions manage to create and mold particular human subjects with very specific values.¹²⁵ From a critical legal geography perspective, the human subject is seen not as “an ahistorical, pre-legal and pre-social given,” but as “a product” constructed from specific legal rules and their production of space.¹²⁶ These rules are then

¹²³ Technocratic approaches to urbanization are often marked by highly technologically innovative approaches around infrastructure and mobility which can have strong synergistic and efficiency benefits. *See also*, Transforming our World: The 2030 Agenda for Sustainable Development, UNGA A/Res/70/1, para. 70 on the Technology Facilitation Mechanism.

¹²⁴ For a critique of the literature on law and space as lacking sufficient theoretical foundation, *see* Andres Philippopoulos-Mihalopoulos, *Law’s Spatial Turn: Geography, Justice and a Certain Fear of Space*, 7 L., CULTURE & THE HUMAN. 187 (2010).

¹²⁵ *See also* Blank & Rosen-Zvi, *supra* note 120, at 16.

¹²⁶ *Id.*

expanded or contracted by courts which, through judicial rhetoric and interpretation, may then perpetuate or aggravate these particular formulations of spaces and accompanying human subjectivities. This can be seen for instance in the pavement dweller cases in India and the evolving and oscillating nature of the Indian Supreme Court's treatment of the right to life in either pro-poor or pro-environmental terms,¹²⁷ in Brazil, where courts are called upon to protect the social function of property and the city,¹²⁸ and in the United States where courts have been grappling with local laws pertaining to homelessness or discrimination in low-income housing location.¹²⁹

These often fluctuating, competing interests in cities and surrounding the contestation of rights is implicated but not fully addressed or resolved in the new international guidelines and norms around urbanization.¹³⁰ The New Urban Agenda is a collective vision and political commitment adopted to promote sustainable urban development. It is about leveraging the "key role of cities and human settlements as drivers of sustainable development in an increasingly urbanized world."¹³¹ An agenda around the need for more altruistic approaches to the city and particularly the public space has developed, grounded in the acknowledged importance of social inclusion and cohesion and the purported promise of urbanization in achieving these values.

Inclusion in the context of the New Urban Agenda can be understood as a commitment to facilitate access. This could be for persons with disabilities, those experiencing homelessness, women and girls, informal settlers, refugees, indigenous peoples, and various

¹²⁷ Jessie Hohmann, *Visions of Social Transformation and the Invocation of Human Rights in Mumbai: The Struggle for the Right to Housing*, 13 YALE HUM. RTS. & DEV. J. 135, 164-179 (2014).

¹²⁸ See generally, Implementation of the International Covenant on Economic, Social and Cultural Rights, Economic and Social Council, Brazil, E/C.12/BRA/2 (Jan. 28, 2008) para. 352-411; See also, Colin Crawford, *A Funcao Social Da Propriedade e o Direito a Cidade: Teoria e Pratica Atual* (working paper on file with author).

¹²⁹ See Blank & Rosen-Zvi, *supra* note 120, at 7, 16. (Law can have an unintentional but profound impact on physical spaces leading to spectacular spatial transformations as seen in the case study of the American suburb. More specifically, it has been argued that the 1950s desegregation policies of the United States which followed *Brown v. Board of Education* prompted the phenomenon of "white flight" to create largely white suburbs in the outskirts of white-black cities. Richard Thompson Ford, *The boundaries of race: Political geography in legal analyses*, 107 HARV. L. REV. 1841 (1994); Richard Thompson Ford, *Geography and sovereignty: Jurisdictional formation and racial segregation*, 49 STANFORD L. REV. 1365 (1999). As Ford has argued the failure to properly analyze residential segregation and the spatial distribution of racial and ethnic identities resulted in unintended and difficult consequences. The creation of the white American suburb alongside the depleted inner cities left behind in their wake and against a backdrop of notorious "urban renewal" marked by crippling and dilapidated conditions for racial and ethnic minorities has been considered "a matter of record in U.S. planning's worst hour." Michael B. Teitz & Karen Chapple, *Planning & Poverty: An Uneasy Relationship*, in POLICY, PLANNING, AND PEOPLE: PROMOTING JUSTICE IN URBAN DEVELOPMENT (Naomi Carmon & Susan S. Fainstein eds., 2013).

¹³⁰ It has always been difficult to balance the pillars of sustainable development. See generally, CHRISTINA VOIGT, SUSTAINABLE DEVELOPMENT AS A PRINCIPLE OF INTERNATIONAL LAW: RESOLVING CONFLICTS BETWEEN CLIMATE MEASURES AND WTO LAW 32-33 (2009); SUSTAINABLE DEVELOPMENT PRINCIPLES IN THE DECISIONS OF INTERNATIONAL COURTS AND TRIBUNALS 1992-2012 10 (Marie-Claire Cordonier Segger with H.E. Judge C.G. Weeramantry, eds., 2017).

¹³¹ UNGA A/RES/71/256 at para. 22.

other groups which have historically experienced marginalization and continue to face exclusion. The NUA recognizes that spatial organization and the accessibility and design of urban space can positively or negatively impact social cohesion, equality, and inclusion.¹³² This is another example of the important general statements the NUA makes and can be understood to support the importance of cities and a right to housing in *a* city. We are, in some respects, seeing a (rhetorical) conceptualization of the city as social space through the language of these political agreements.¹³³ But not enough is done to push for an expression of inclusion as a means of protecting belonging in cities, that is, for a right to housing in *the* city.

The vision of urban public space put forward in the New Urban Agenda confirms the point.

We commit ourselves to promoting safe, inclusive, accessible, green and quality public spaces, including streets, sidewalks and cycling lanes, squares, waterfront areas, gardens and parks, that are multifunctional areas for social interaction and inclusion, human health and well-being, economic exchange and cultural expression and dialogue among a wide diversity of people and cultures, and that are designed and managed to ensure human development and build peaceful, inclusive and participatory societies, as well as to promote living together, connectivity and social inclusion.¹³⁴

This mandate is a utopian and contrived vision of an idyllic city where people simply come together to live well. There is no accounting for the reality of deprivation, disdain for difference, alienation, and the non-utopian ways these inevitably manifest in city spaces both public and private.¹³⁵ And there is no accounting for their particularity in specific cities. Public space as articulated in the NUA is too narrowly tied to property's economic value and to economic development with insufficient focus on the ways spaces might facilitate the hard work needed to achieve social ends.¹³⁶ Wider ambitions of the city beyond housing are being pushed in the direction of commodification, and this is encouraged without simultaneously promoting a pluralistic value understanding. This is a dangerous move which is sure to have contrasting impacts upon civic commitment and urban life. In a great many cities, it is likely to promote an easy social cadence of further individualism rather than to inspire the collective struggle and fight to tackle the tough questions, build much needed community, and develop a truly inclusive urban soul.

¹³² *Id.* at para. 25.

¹³³ *See id.* paras. 25-62.

¹³⁴ *Id.* at para. 37.

¹³⁵ There are, however, reactionary mentions of the importance of safety and security.

¹³⁶ UNGA A/RES/71/256 at para. 53.

We must be mindful that “[i]t is not only the passage of laws that affects how cities develop. Our ideology, that is, our way of understanding the world, affects our selection of the laws we pass, and that understanding itself, in addition to the laws it generates, affects people’s actions and thus the development of social life.”¹³⁷ And we must conceive of the city as a social space and of our urban vision for the future as one in which we as subjects also have the ability to shape this space and our relationships with it and within it. Housing – where we live and with whom we live in community – is very much at the center of all of this and thus remains (and should remain) paramount in contestations over space. A human right to housing in the city protects individual rights as well as collective belonging. The process of promoting that right can serve to fulfil the potential of the relationship between cities and international law’s normative aims, and therefore between law and society, and between cities and possibilities for social inclusion and social change.

4.4 A Note on the Rural

Equipping the right to housing to more fully respond to the contemporary challenges of making a home in the city, in physical and sociological terms, is now a matter of urgency. With the urban population projected to double in the next thirty years, the future would appear to be an urban one. But against the heightened and increasing focus on the urban in global discourse there is a tremendous need for care in potentially turning away too quickly from the rural context.

Processes of villagization in Africa exemplify the caution, and Rwanda provides a brief example. Rwanda has been heralded on the African continent and in international circles as a beacon of developmental success, a mantle viewed as particularly groundbreaking considering the country’s relatively recent history of catastrophic genocide.¹³⁸ The country has made impressive strides in reducing poverty and improving health and is regarded as safe and stable. Human rights NGOs, however, caution of a hidden side of the country’s development, which

¹³⁷ Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1080 (1980).

¹³⁸ Twenty-five years after the genocide the history is now well known. The scale and speed of the atrocities, the profoundly horrific nature of the violence, the widespread use of hate speech as incitement and rape as a weapon, and the staggering lack of response by the international community to these horrors make the Rwanda genocide one of the greatest human rights atrocities of all time and one of the most prolific failures of international law. See generally, William A. Schabas, *Hate Speech in Rwanda: The Road to Genocide*, 46 MCGILL L. J. 141 (2000); Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 VA. J. INT’L L. 485 (2008); Llezlie L. Green, *Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law*, 33 COLUM. HUM. RTS. L. REV. 733(2002); Catharine A. MacKinnon, *Rape, Genocide and Women’s Human Rights*, in GENOCIDE AND HUMAN RIGHTS 11-12 (Mark Lattimer ed., 2007). See also, Errol P. Mendes, GLOBAL GOVERNANCE, HUMAN RIGHTS AND INTERNATIONAL LAW: COMBATING THE TRAGIC FLAW 51 (2014) (discussing “the CNN factor” as part of “the tragic flaw that plagues the institutions of global governance and international law.”).

they allege is marked by violations of civil and political rights and crackdowns on dissenters.¹³⁹ In short, attempts to overcome the ethnic divisions and tensions that led to the 1994 genocide are deemed to be casting too broad a sweep over important fundamental human rights protections. Nonetheless, by many accounts Rwanda has managed to bounce back in highly impressive form from the physical and economic destruction of catastrophic mass atrocity.

Along the way, Rwanda has implemented development policies aimed at overcoming poverty and division, creating peace and security, attracting foreign investment and stimulating competitive economic growth.¹⁴⁰ Specifically, through Rwanda's Vision 2020, which strives towards achieving middle-income status for the country and aims at diversifying from agricultural dependence to a knowledge-based and service-oriented economy, the government committed that by 2020 at least 70 percent of rural Rwandans would be living in planned settlements. Rural villages have been targeted for infrastructure and services in planned attempts to create modernized settlements and to connect these villages to not only infrastructure, but also to services and markets, electricity and water, and to lower the costs of doing business in Rwanda.

Rwanda will pursue a harmonious policy of grouped settlements based on economic activity. Rural settlements organized into active development centres will be equipped with basic infrastructure and services. This system of settlement will serve as an entry point into the development of non-agricultural income generating activities. Land will be reorganized and consolidated so as to create adequate space for modern and viable farming.¹⁴¹

Rwanda's proposal is one of modern infrastructural development and amenities, aimed at rapid economic growth. While Rwanda's heavy focus on development and growth has been critiqued as coming at the expense of important civil liberties, deeper individual and community ties and practices are also at stake through housing and housing development policies, indicating the need for a broader critique of the country's development beyond the civil and political rights discourse. As global processes of commodification will surely take place in the capital of Kigali and other cities, the rural villages must be either an appealing or necessary option for the masses of people that will likely be displaced, or for the ever expanding "urban fabric" to take hold

¹³⁹ See, e.g., Human Rights Watch, *Rwanda: Locking Up the Poor: New Findings of Arbitrary Detention, Ill-Treatment in "Transit Centers"*, July 21, 2016. <https://www.hrw.org/news/2016/07/21/rwanda-locking-poor> Human Rights Watch has claimed "scores of people, including homeless people, street vendors, street children, and other poor people, are being rounded up off the streets and detained in 'transit centers' or 'rehabilitation centers' for prolonged periods."

¹⁴⁰ The World Bank in Rwanda, <https://www.worldbank.org/en/country/rwanda/overview#3>.

¹⁴¹ Republic of Rwanda, Ministry of Finance and Economic Planning, *Rwanda Vision 2020*, Kigali, July 2000, p. 19, <https://www.sida.se/globalassets/global/countries-and-regions/africa/rwanda/d402331a.pdf>.

of.¹⁴² The urban-rural linkages being crafted through villagization must be carefully considered. For instance, in some rural settlements it has been reported that people have been living without roofs due to the fact that the traditional thatched roofs have been prohibited by the government as part of its modernization agenda.¹⁴³ Whether sufficient attention is, or should be, paid to the identity and community dynamics affected by the country's rural development plans, and by whom, warrants further investigation.¹⁴⁴ Suffice it to say here, housing as a right even in its broad understanding as connected to life and life possibilities may be being used as a social and political tool to redraw identities and socially engineer society.¹⁴⁵ This suggests the need for greater concern with the wide effects of urbanization, and the related increasing prominence of cities as global actors on rural communities and environments rather than just a view from the city dweller and business city perspective. Rwanda's development is evolving¹⁴⁶ and is potentially an important case study on the various complex conceptualizations of globalization, particularly theories which view globalization as a further colonization of the global South by the global North as well as those which understand globalization as a process of cultural dissemination.¹⁴⁷

4.5 Conclusion

The city is a rich social and institutional, not just economic, frontier and access to this space is necessary and can be achieved through a right to housing. Cities hold real risks for becoming homogenous and exclusionary which undermine their normative ideal. Gentrification, an expulsion that is neither brutal nor legalistic, fully reiterates the harms posed by urbanization and the challenges and tensions inherent to housing and space. The harm

¹⁴² On "planetary urbanization" and the purported redundancy of the urban and rural, see Andy Merrifield, *The right to the city and beyond: Notes on a Lefebvrian re-conceptualization*, 15 CITY 473, 474 (2011) (noting "rural places have become an integral part of post-industrial production and financial speculation, swallowed up by an 'urban fabric' continually extending its borders, ceaselessly corroding the residue of agrarian life, gobbling up everything and everywhere in order to increase surplus value and accumulate capital."); see generally NEIL BRENNER, *IMPLOSIONS/EXPLOSIONS: TOWARDS A STUDY OF PLANETARY URBANIZATION* (2014).

¹⁴³ It is also interesting to note the position of the Indian Supreme Court in *Shantistar Builders v. Narayan Khimalal Totame* (1990) 1 SCC 520: "It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation." para. 9.

¹⁴⁴ See generally Malcolm Langford, *A Sort of Homecoming: The Right to Housing*, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 190 (Mark Gibney & Sigrun Skogly, eds., 2010) (Discussing slum upgrading and noting that "projects have failed because they did not address cultural concerns of minorities, indigenous peoples, or religious groups, leading to the non-use or even destruction of housing.").

¹⁴⁵ Taylor Mayol, *Why One Country Banned Bare Feet*, OZY THE DAILY DOSE, Aug 5., 2016.

¹⁴⁶ See The Republic of Rwanda, *7 Years Government Programme: National Strategy for Transformation (NST 1) 2017-2024*, http://www.minecofin.gov.rw/fileadmin/user_upload/NST1_7YGP_Final.pdf.

¹⁴⁷ See generally, Yishai Blank, *Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance*, 37 FORDHAM URB. L. J. 509 (2010).

experienced through gentrification is about a diminished sense of place and the connection this erasure shares with participation and community. It results in an inability to participate in the urban community, and this lack of participation affects our socialization and prohibits us from benefiting from the opportunities and possibilities in the city. A right to housing in the city protects against exclusions, displacements of communities from the urban, and dispossessions of belonging.

Human rights as a broader concept has always been related to and encompassed aspects which go well beyond law, extending into the realm of morality, politics, and visionary goals and aspirational frameworks. This marks the situation today with respect to housing in cities and the specific global efforts to address this growing challenge. The sustainable development agenda as articulated through the SDGs and NUA represents possibilities for the right to housing beyond the legal interpretations of courts. While they do not go far enough in elucidating the challenges of the urban environment around housing and space as this chapter has discussed, these commitments do give a sense of the kinds of global pressures impacting cities. They cause us to think about duties, roles, and responsibilities in the realm of the right to housing in the city.

CHAPTER FIVE

DUTIES

5.1 Introduction

With the discussion of the right to housing in the city in hand, this chapter turns to the corresponding duties. The focus is on the global pressures of inter-city competition for private economic investment pursued as part of an urban development strategy. Critics of court decisions that invalidate anti-homeless ordinances, like those highlighted in chapter three, ground their arguments in the issue of resources. They argue that providing more shelters and more affordable housing puts too much pressure on already financially strapped local governments. Cities both feel this resource pressure and are beholden to internal state structures which impacts their ability and power to make certain choices and to take certain actions. Simply put, local governments do not always receive the necessary financial backing from the national government to support their populations. As a result, in order to raise funds cities must attract the kind of investment needed to pursue their developmental agendas, which can be (but is not always) oriented towards residents, in terms of the provision of public goods and services. This is now a high-pressure globally competitive process to attract investment.

This chapter explores global competition first through the use of a thematic case study on mega-sporting events (MSEs). MSEs and city competition provide a concrete example of the ways notions of belonging in the city, as linked to and advanced through housing, can be challenged by the state and the municipality. As will be demonstrated, the contestations which arise are precisely around claims against the government regarding a specific place of living and against the disruption of communities in cities through housing transformations. These tensions as played out in mega-sporting event bidding, preparation, and staging sit at the intersection of the public and private conceptualizations of the city.

The private city relates to what Saskia Sassen has famously dubbed “global cities”.¹ She observes trends in urban acquisitions which can be linked to the crucial importance of urban space in the world economy. In this context, a dramatic increase in the purchase of high-end properties of both a residential and commercial nature by national and foreign investors is shifting the shape and texture of the modern urban landscape.² These acquisitions are not fully used and may even remain empty for extended periods begging the question, as Sassen puts it,

¹ SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* (4th ed. 2012).

² “What is different about the current phase is the scale of these investments, the vast globalizing of the destinations of these investments, and the frequent underutilization of the properties.” Saskia Sassen, *The Global City: Enabling Economic Intermediation and Bearing Its Costs*, *CITY & COMMUNITY* 15, 104-105 (2016).

“as to what it is that investors are after.”³ She argues that such investment is about acquiring urban land specifically because of the strategic value of urban space.⁴

[A]t its most generic, the buying of urban property is a mode of gaining access to urban space in a context where a growing number of cities are emerging as significant in the current and near future global economy. In short, investing in corporate properties in cities is perhaps an inevitable consequence of the enormous value attached to these advanced production sites, that is, to the Global City function.⁵

Janne Nijman, on the other hand, distinguishes Sassen’s notion of the global city by tying it specifically to private economic imperatives. The global city is “first and foremost the global *private* city. It is concerned with private economic interests. It is the urban private sector which seeks global opportunities and drives economic globalisation.”⁶ This is in contrast to the global *public* city, which for Nijman is “the legal notion of ‘city government’, which is not just part of the state structure but also a democratic representative of the urban public sphere and may thus operate to some extent autonomously from the state and develop external relations on a global scale to defend and promote urban values and urban public interests.”⁷ Under the global public city conceptualization, “the ideational structures of global society” are the explanatory and constitutive structures rather than the global economic underpinnings of the global private city.⁸ But the interests and agendas of the global public and private city overlap and intersect in ways that include and impact upon urban housing, and the case study of MSEs demonstrates this acutely.

MSEs also serve to demonstrate how complex global governance processes and institutions impact cities on the ground with significant human consequences. The World Bank and UN-Habitat have become involved in urban issues such as planning, growth, poverty, and sprawl, and view localities as objects of international regulation and interventions. These institutions have been promoting the decentralization and subsidiarity agenda through which decision-making powers and responsibility for the provision of public services are devolved to the smallest jurisdictions by which they can be efficiently performed.⁹ The push toward

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 105.

⁶ Janne Nijman, *The Future of the City and the International Law of the Future*, in *THE LAW OF THE FUTURE AND THE FUTURE OF LAW* 217 (Sam Muller et al. eds., 2011).

⁷ *Id.*

⁸ Janne Nijman, *Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors*, in *THE TRANSFORMATION OF FOREIGN POLICY: DRAWING AND MANAGING BOUNDARIES FROM ANTIQUITY TO THE PRESENT* (A. Fahrmeir et al. eds., 2016).

⁹ Yishai Blank, *Localism in the New Global Legal Order*, 47 *HARV. INT’L L. J.* 263, 267 (2006).

decentralization, coupled with city assertiveness through independent city action and collectively in city networks, has led to an apparent broader rise of cities in global affairs.

Further supporting this trend, international commitments – specifically, the SDGs and the New Urban Agenda – are aimed at cities and local governance, and represent an urban turn once novel at the beginning of the twenty-first century but now growing more mainstream. Local governance is a part of sustainable development broadly speaking, and sustainable *urban* development is a particular concern of international institutions such as the World Bank and UN-Habitat. But while SDG 11 can be viewed as recognizing local governance as “an autonomous yet interrelated part of the global pursuit of sustainable development,”¹⁰ there is also a need to recognize the competitive context of domestic and global pressures to attract foreign investment and how it impacts a city’s choices, paths, and strategies towards its future development. These competitive pressures threaten the right to housing in the city. The MSE example illuminates these complexities of urban development, and the related phenomena of displacement and gentrification which test the right to housing in the contemporary city. Through this core thematic case study, the ways laws and institutions – and the nexus between international, public, and private law – both enable and constrain the rights enhancing function of cities is revealed.

And, of course, there are many competitive pressures beyond global sport. For instance, the right to housing in the city is also threatened by foreign investment and the commodification of housing and land, and by globalization and the increase in tourism. These realities summon collective efforts to mitigate the negative effects of competition on urban housing and community, and to ensure the right to housing in the city.

5.2 Mega-Sporting Events and Host City Contestations

Mega-sporting events such as the Olympic Games and World Cup Football are commonly perceived as special global events representing community and unity, promoting camaraderie and pride, and allowing for the rare coming together of people from all over the world across geopolitical and economic divides to partake in top-notch competition. This broadly favorable sentiment has met with pushback. In the past few years, a noticeable realization that the level of production required to stage a mega-sporting event has included an intolerable human cost has become more mainstream. Increased attention to human rights issues by NGOs have brought questionable practices into the public consciousness,¹¹ with the

¹⁰ HELMUT PHILIPP AUST & ANÉL DU PLESSIS, *THE GLOBALISATION OF URBAN GOVERNANCE: LEGAL PERSPECTIVES ON SUSTAINABLE DEVELOPMENT GOAL 11* (2018).

¹¹ *See, e.g., Building a Better World Cup – Protecting Migrant Workers in Qatar Ahead of FIFA 2022*, Human Rights Watch, June 2012 http://www.hrw.org/sites/default/files/reports/qatar0612webwcover_0.pdf.

international media playing an important role in the shaming of both powerful organizations and discordant states.¹² Specific revelations have been brought to the fore regarding the ways these mega-spectacles can negatively impact human rights.¹³ Qatar's preparation for the 2022 Fédération Internationale de Football Association (FIFA) World Cup stands out as the new example for human rights abuses in the name of global sport. Reports from human rights watchdogs and NGOs have found severe migrant worker exploitation related to the construction of facilities for the football mega-event.¹⁴ To these largely Western human rights defenders, Qatar represents an obvious and simple failure to protect human dignity by a rogue state, and FIFA a complicit and corrupt organization direly in need of reform and responsibility.¹⁵ The alleged labor abuses in Qatar are vile, and remain at the tip of the tongue when posed with the question of human rights abuses in sport. Less apparent, though arguably more far-reaching, are the violations of the right to adequate housing which often occur in the preparation and hosting of MSEs, and which have taken effect in states across the development spectrum.

Housing is particularly impacted by mega-sporting events. These occasions implicate both urban development and city beautification schemes which can have a detrimental impact on communities, and which present comprehensive risks of housing violations for a broad cross-section of individuals often with a disproportionate impact on vulnerable populations such as the poor and minorities.¹⁶ These realities led the Center on Housing Rights and Evictions (COHRE) to undertake a comprehensive research study canvassing several cases studies of Olympic host city redevelopment and related housing impacts.¹⁷ COHRE's findings uncovered that millions have been displaced in the name of mega-events. Along with other NGO reports and campaigns, as well as academic research, it is now steadily documented that mega-sporting

¹² See *Migrant workers suffer 'appalling treatment in Qatar World Cup stadiums, says Amnesty*, THE GUARDIAN, Mar. 31, 2016, <http://www.theguardian.com/global-development/2016/mar/31/migrant-workers-suffer-appalling-treatment-in-qatar-world-cup-stadiums-says-amnesty>; *Qatar's Showcase of Shame*, N.Y. TIMES, Jan. 5, 2014, http://www.nytimes.com/2014/01/06/opinion/qatars-showcase-of-shame.html?_r=0. See generally Eric Heinze, *The reality and hyper-reality of human rights: public consciousness and the mass media*, in EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS, 193-216 (Rob Dickinson et al eds., 2012).

¹³ For example, racism and discrimination on the basis of sexual orientation in the hosting of games was found in the context of Russia's hosting of the 2014 Winter Games. See also *Striving for Excellence: Mega-Sporting Events and Human Rights*, Institute for Human Rights and Business, Occasional Paper Series, Paper Number 2, Oct. 2013, http://www.ihrb.org/pdf/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf.

¹⁴ See, e.g., *The Case Against Qatar*, ITUC Special Report, Mar. 2014 http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf.

¹⁵ See, e.g., *The Ugly Side of the Beautiful Game: Labor Exploitation on a Qatar World Cup Venue*, Amnesty International, 2016, <https://www.amnesty.org/en/documents/mde22/3548/2016/en/>.

¹⁶ See United Nations Committee on Economic, Social and Cultural Rights, *The Right to Adequate Housing (Article 11(1))*: Committee on Economic, Social and Cultural Rights, General Comment 7 (E/1998/22) (1997) [hereinafter General Comment 7], para 7.

¹⁷ *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights*, Centre on Housing Rights and Evictions (2007) [hereinafter COHRE Report], <http://www.ruig-gian.org/ressources/Report%20Fair%20Play%20FINAL%20FINAL%20070531.pdf>.

events can prove to be a source of injustice in the context of their preparation and staging, a critique typically situated in the literature on dispossessions and capitalist accumulation.

Staging a mega-sporting event is a tremendous endeavor for a host city requiring significant redevelopment and construction in order to meet the standards and strict timeframe set by the international sporting body, as well as to accommodate the massive influx of spectators for the event. The city transformation undertaken for an MSE has often been underscored by urban planning processes and decisions marked by inequality and deliberate attempts to reconstruct cities to the detriment of vulnerable and marginalized groups. In Atlanta, for instance, COHRE found criminalization and arrests of homeless people with a disproportionate effect on African American populations during the 1996 Olympics, and, in Athens, aggravated discrimination and marginalization against Roma populations was recorded in the context of the 2004 Olympics. The injustices attached to MSEs are largely etched in the form of human rights violations and abuses, and have proliferated for a number of years and across a number of different host states. Concurrently, the human rights project, at least in the developed world, has achieved much resonance,¹⁸ and, further still, social movements, particularly in cities in the last decade, have begun to take social injustice and inequality to task.¹⁹ The cry is for improvements to public goods and services such as housing, health, and education, and for greater citizen participation in city economic decision-making.

In this context, the exorbitant costs of global sporting events have caused many developed, democratic countries to shy away from hosting them in response to economic concerns from local citizenry.²⁰ Simply put, there is a public sensibility that taxpayer dollars could be better spent. In July 2015, Boston, the official US bid city for the 2024 Olympic Games, withdrew from contention amid great public controversy. Reports indicated a lack of local public support for the hosting of the Olympics in Boston, due to concerns over economic risks, public spending, and social injustices arguably inherent in the hosting of the Games as among the concerns of Boston's residents leading to the bid's eventual termination.²¹ This kind

¹⁸ *But see* Susan Marks, *Backlash: the undeclared war against human rights*, 4 EUR. HUM. RTS. L. REV. 319 (2014).

¹⁹ *See, e.g.*, Nurit Alfasi & Tovi Fenster, *Between socio-spatial and urban justice: Rawls' principles of justice in the 2011 Israeli Protest Movement*, 13 PLANNING THEORY 407 (2014).

²⁰ Kathryn Henne, *Reforming Global Sport: Hybridity and the Challenges of Pursuing Transparency*, 37 L. & POL'Y 265, 336 (2015).

²¹ *See generally* Mark Arsenault & Michael Levenson, *USOC, Boston organizers halt bid to host Olympics*, BOSTON GLOBE, July 27, 2015, <http://www.bostonglobe.com/metro/2015/07/27/discussions-underway-that-could-end-boston-olympic-bid/WlJIAoTnCF23rGy5hrpQtN/story.html>; Jules Boykoff, *Boston beware: The Olympics are a destroyer of cities*, AL JAZEERA, Jan. 15, 2015, <http://america.aljazeera.com/opinions/2015/1/boston-olympics-agendaio.html>. *See also* John Lauerma, *Boston's Olympic bid and the evolving urban politics of event-led development*, 37 URB. GEOGRAPHY 313 (2016).

of hesitance on the part of the developed world from the once solid temptation of MSE hosting honors has been simultaneously complemented by strong interest from developing nations, and rapidly developing ones, as well as authoritarian regimes,²² keen to use these sport spectacles as a means of putting the homeland on show for both economic and political reasons.²³ For instance, once Oslo dropped out of 2022 Olympic Winter Games host contention, Beijing and Almaty, Kazakhstan, were the remaining bids.²⁴ And in the span of a decade, Beijing hosted the Summer Games in 2008, Sochi the Winter Games in 2014 and Rio de Janeiro was host city for the 2016 Summer Olympics as well as the 2014 FIFA World Cup. Meanwhile, in 2010, South Africa hosted the FIFA World Cup and India hosted the Commonwealth Games.

The economic agendas behind these MSE pursuits can be traced to the connections between hosting a mega-event and urban redevelopment. By way of background, in the 1970s a clear link between hosting MSEs and urban transformation emerged, with the construction of new sports infrastructure for mega-events being used as a tool for city renewal.²⁵ Further, in the 1980s, the International Olympic Committee (IOC) began to progressively incorporate the private sector in Olympics promotion, and by the 1990s, “organizing mega-events as a component of cities’ strategic planning, with a view to repositioning them in a globalized economy, became the hegemonic practice.”²⁶ The traditional logic is that the immense international attention stemming from a global sporting event can serve to allow emerging global cities to (re)define their image to the investment and tourist market along economic, political, and social dimensions. Researchers have found the planning strategies and the “vision” for the new City of Toronto as a “competitive city” in the global economy were specifically shaped by Toronto’s 2008 Olympics bid.²⁷ Likewise, in Seoul, the 1988 Olympics

²² See Travis Nelson & M. Patrick Cottrell, *Sport without referees? The power of the International Olympic Committee and the social politics of accountability*, EUR. J. OF INT’L REL. 15 (2015) (“In the wake of the 2014 Sochi Olympics – which occurred under shadow of Russia’s anti-gay laws, accusations of corruption, and an inflated budget exceeding all previous Winter Games combined – the IOC has once again been confronted with pressure to change. Voters in several European states that could have been potential Olympic hosts opposed application for the 2022 Winter Games...”).

²³ See also COHRE Report, *supra* note 17 (“Hallmark events provide an opportunity to ‘show off’ the city for a variety of economic, political and status reasons – motivations that exceed the simple chase for the tourist dollar.”).

²⁴ Matt Bonesteel, *To the surprise of no one, the 2020 Tokyo Olympics are going massively over budget*, WASH. POST, Oct. 9, 2018 (Beijing will be host city.).

²⁵ Report of the UN 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, Raquel Rolnik, A/HRC/13/20 (Dec. 18, 2009) [hereinafter UN SR Report]; see also Solomon J. Greene, *Staged Cities: Mega-events, Slum Clearance, and Global Capital*, 6 YALE HUM. RTS. & DEV. L. J. 161, 165 (2003) (“In the American context, local governments adopted mega-events as one of the main ‘entrepreneurial policies for economic development’ after federal aid was cut in the 1980s.” quoting Greg Andranovich et al., *Olympic Cities: Lessons Learned from Mega-Event Politics*, 23 J. URB. AFF. 113, 113-14 (2001)).

²⁶ UN SR Report, *supra* note 25, at 3.

²⁷ Stefan Kipfer & Roger Keil, *Toronto Inc? Planning the Competitive City in the New Toronto*, ANTIPODE 234-35(2002) (“The competitive city has three major dimensions: the entrepreneurial city, the city of

were pursued to spur participation in the global economy and specific legal reforms and rule of law institutional strengthening mechanisms were the preferred competitive strategy.²⁸ In the US context, MSEs were seen since the early 1980s as a strategic way for municipalities to attract funding and investment in the face of federal aid reductions.²⁹

Today, this political economy remains a critical thrust of MSEs. They continue to be used by many host cities as a way to spur modern infrastructural development as well as to promote a new public image to coax investment, causing a significant and contrasting impact on the social and economic development of the city.³⁰ The global media attention accompanying mega-sporting events puts the host city and nation on grand display. It is undoubtedly a unique spotlight to showcase what one has to offer and to project a particular, and *preferred*, image. The prestige of hosting honors itself and the long event cycle from awarding to fruition also carries the opportunity for local and national leaders to spend years promoting the mega-event and the city, as they carry out their representational duties in various unrelated international fora. In these ways, MSE hosting becomes a precise manifestation of inter-city competition for global capital. The opportunity leads to city beautification schemes and infrastructural development plans which can have a dramatic impact on city transformation and on the right to housing, leaving both positive and negative legacies on each in its wake. Brazil's experience as host of the 2014 FIFA World Cup and 2016 Olympics exposes these housing tensions. The example of Brazil also demonstrates the way international organizations – in this case the World Bank – are intertwined with cities and with both their public and private functions and development strategies. States and cities have an obligation to ensure the right to housing in the city even under the threats to that same right stemming from global competition.

difference, and the revanchist city. These dimensions each comprise a set of policies, ideological forms, and state orientations that articulate strategies of accumulation (the entrepreneurial city), patterns of class formation (the city of difference), and forms of social control (the revanchist city). These different aspects of the competitive city have one thing in common: they are tied to an overarching (imputed or material) imperative of intercity competition that treats cities as homogenous units that compete with each other for investment and mobile segments of new urban middle classes through strategies of municipal state restructuring and policies of economic development, finance, taxation, land-use planning, urban design, 'culture,' diversity management, policy, and workfare. Competitive city governance is thus not reducible to the economic and social policies of neoliberalism. It represents a project of cementing and reordering the social and moral landscape of the contemporary urban order.”)

²⁸ Greene, *supra* note 25, at 184. See also Michele Grigolo, *Human rights and cities: the Barcelona Office for Non-Discrimination and its work for migrants*, 14 INT'L J. HUM. RTS 896, 900 (2010) (On Barcelona: “Especially since the 1992 Olympic Games the local government has promoted strategic planning and tourism as ways of transitioning from an industrial to a service economy.”).

²⁹ See Andranovich, *supra* note 25.

³⁰ UN SR Report, *supra* note 25, at 3-4.

Rio de Janeiro

Rio 2016 was the first time the Olympics were held in South America. As has been the case for many other host cities, for Rio, the Olympics represented a golden chance to catalyze and display its full transformation into a global city. This is the schism between global North host cities and those of the global South – for cities of the global North, a newish reticence can be observed due to the burdensome human and economic costs of Olympic transformation. In the global South on the other hand, the Games, and other mega-sporting events, provide a more complex opportunity. Favorable global attention and political and economic gains are thought to accompany successful urban transformation once viewed under an international mega-event spotlight. This publicity serves to showcase hitherto unknown political and economic stability of the host city (and state).

For Rio, the 2016 Olympics was the culmination of a far longer-term effort to use mega-sporting events as a means of global image rebranding,³¹ and the awarding of the XXXI Olympiad to Rio on October 2, 2009 was upon the city's third attempt.³² The Rio municipality leaned heavily on the Brazilian federal government for financing of the Games. This is not always feasible, but in a global South context, particularly for a state like Brazil which at the time of bidding and preparation had been emerging as a new economic success story on the world stage, this kind of top-down support makes sense. Mega-events provide a national not merely local strategic and geopolitical opportunity.³³ They provide a simultaneous occasion to revitalize and revamp neglected parts of cities and “to ‘aspire’, because they provide a platform to narrate national ambitions, demonstrate economic progress, and also launch urban mega-projects to make host cities world-class and global.”³⁴ This, in short, is the method of using mega-events as a means of entering the “global city” market on the basis of transforming and conforming local realities to global norms around infrastructure, sustainability, security, and economic positioning.³⁵

³¹ Since the 1990s and supported by the State and Federal Government, the Municipality of Rio de Janeiro embarked on a two-step plan toward a global reintroduction – first, the use of public funding for urban renewal projects and second, attracting MSEs as a means of boosting the economy and city image. *See generally*, Simona Azzali, *Mega sporting events as tools of urban redevelopment: lessons learned from Rio de Janeiro*, Proceedings of the Institution of Civil Engineers – Urban Design and Planning 2 (2018).

³² In the interim, the city had hosted the 2007 Pan American Games as a sort of instrumental trial run to inspire IOC confidence.

³³ *See generally*, Gabriel Silvestre, *An Olympic City in the Making: Rio de Janeiro mega-event strategy 1993-2016*, IOC Olympic Studies Centre (2012).

³⁴ Xuefei Ren, *Aspirational urbanism from Beijing to Rio de Janeiro: Olympic cities in the Global South and contradictions*, 39 J. URB. AFF. 894, 897 (2017).

³⁵ In Beijing, for instance, hosting the Summer 2008 Olympics entailed extraordinary efforts to address air pollution in the city, through measures such as relocating factories and building green belts, given poor air quality is an inappropriate image for global city status. *See id.* at 902.

Pursuant to this agenda, the Rio Games were meant to include a legacy of city transformation toward sustainable development and social inclusion.³⁶ Rio is a stratified city – the north is poorer than the south in which the most exclusive neighborhoods are located and these economic disparities coincide with a social division that the hosting of the Games was meant to help to ameliorate. Yet the subject of housing and particularly displacement was a central feature of the mega-event preparation, and a positive social legacy of the Rio Games is widely perceived to have fallen well short.

The displacement of families at Vila Autódromo is perhaps the most famous contested displacement issue emerging in the context of Rio 2016.³⁷ Upon the 2009 announcement of Rio as the 2016 Olympic host city, the city's mayor, Eduardo Paes, announced the removal of over a hundred favela communities. Researchers have noted that this plan lacked transparency and participation, coming to favela residents via the media rather than any kind of city consultation.³⁸ Vila Autódromo is located in the Barra da Tijuca neighborhood in the Western part of Rio and right next to the Olympic Park. It was a favela, although much smaller than those typical of Rio and not situated on its steep hillsides as is common. It is also a site of prime waterfront real estate given its proximity to the Jacarepagua lagoon.

The Vila Autódromo situation calls forth an important aspect of the discourse regarding low-income housing and the urban poor more broadly. It is a reiteration of the ways environmental and ecological agendas can be used as a pretext for displacement, and of how SDG 11 city deliverables of sustainability and inclusion can be at odds. The tensions are often hidden behind a neat narrative of state humanitarianism intended to improve living conditions for the benefit of the individual tenants themselves or for that of wider society, and to preserve ecological resources. Within a year of the awarding of the Olympics, in June 2010 it was announced that Vila Autódromo was an environmental risk which required resident relocation. Further, the plans for the Olympic Park included a proposed preservation area which went beyond a legally mandated 25-meter setback from the water to encompass favela dwellings. As

³⁶ As Carlos Roberto Osorio, secretary general of the Brazilian Olympic Committee put it: “We are not shy to say that Brazil is a country that has social problems. One of the biggest problems that we have is the inequalities within our society...So, the social legacy of the Games will be a very, very important part of our project. Everything that is going to be done in Rio [relates to] a vision of physical legacy – that’s very important. But more important is this big opportunity to leverage [social] programs that already exist, to foster integration within the society, and to raise a younger generation to a better standard of living.” *Brazil’s Gold: How Rio Won its Olympic Bid*, Wharton: University of Pennsylvania, Mar. 3, 2010, <https://knowledge.wharton.upenn.edu/article/brazils-gold-how-rio-won-its-olympic-bid/>.

³⁷ See, e.g., Jo Griffin, *Change beckons for Vila Autodromo, the favela that got in the Rio Olympics’ way*, THE GUARDIAN, Apr. 26, 2016, <https://www.theguardian.com/global-development/2016/apr/26/rio-de-janeiro-favela-change-vila-autodromo-favela-olympics>.

³⁸ Sukari Ivester, *Removal, resistance and the right to the Olympic city: The case of Vila Autodromo in Rio de Janeiro*, 39 J. URB. AFF. 970, 977 (2017).

Lawrence Vale and Annemarie Gray have framed it: “On the competition site plan, the strip along the lagoon was boldly coded as ‘preserved area’—but the Olympic planners are using ‘preservation’ in the ecological, not social, sense. What is being ‘preserved’ is not the longstanding community but instead a newly created environmental buffer.”³⁹ This kind of narrative was also observed in the Atlanta Olympics of 1996 in which a public housing complex, Techwood Homes, was thought to be inappropriately in the line of sight and encounter for spectators and media.⁴⁰ Vale and Gray have argued that the comparison of this housing complex to a cesspool by a Georgia Institute of Technology university representative “conveyed more than vitriolic humor; it acknowledged (perhaps unintentionally) that flood-prone Techwood had been built on the buried streambed of Tanyard Creek, and it even implied that removing public housing residents from the site and reworking the infrastructure could be rationalized as environmentally protective.”⁴¹

In the context of the 2016 Rio Olympics, however, a contrasting displacement story would play out. Mobilized under the right to the city as enshrined in Brazilian federal law, a Popular Plan was developed in consultation with the affected community and with the support of the Federal University of Rio de Janeiro and the Federal University Fluminense.⁴² This urban development plan was aimed at demonstrating the possibilities for community preservation alongside the hosting of the Olympic Games. Eventually, the academic support for Vila Autódromo would expand to that of local NGOs and professional allies, and the Popular Plan became an instrument of community resistance and political struggle.⁴³ Nonetheless, Mayor Paes rejected the Plan, which in fact was shown to be of less economic, social, and environmental cost than the proposed removal and resettlement.

Over many months, an intense process of eviction and resistance engulfed Vila Autódromo. By January 2016, only 50 houses remained of the original 500. Many families left Vila Autódromo bowing to pressures from enlisted community members as well as alleged threats and fabrications spun by city government officials.⁴⁴ The neighborhood became

³⁹ Lawrence Vale & Annemarie Gray, *The Displacement Decathlon: Olympian struggles for affordable housing from Atlanta to Rio de Janeiro*, PLACES (2013).

⁴⁰ See generally, Andranovich, *supra* note 25, at 122 (“Opposition to particular development projects often centred on long-standing issues of race and class.”). See also Laura Parker, *Neighboring Housing Project Tarnishes Atlanta’s Dream Site for Olympic Gold*, WASH. POST, July 7, 1991, <https://www.washingtonpost.com/archive/politics/1991/07/07/neighboring-housing-project-tarnishes-atlantas-dream-site-for-olympic-gold/46b177e2-6544-41d7-95c8-bacabc775aa1/>.

⁴¹ Vale & Gray, *supra* note 39.

⁴² Ivester, *supra* note 38, at 978.

⁴³ *Id.*

⁴⁴ See Adam Talbot, *Vila Autodromo: the favela fighting back against Rio’s Olympic development*, Jan. 12, 2016, THE CONVERSATION, <https://theconversation.com/vila-autodromo-the-favela-fighting-back-against-rios-olympic-development-52393>.

increasingly hollowed out as demolitions occurred as quickly as families left.⁴⁵ But resistance continued and by April 2016, the mayor ultimately signed an agreement which allowed 20 families to stay at Vila Autódromo and a victory in a struggle for urban space was achieved under a mega-sporting event spotlight.⁴⁶ Through a collective effort, the city was forced to respond to its obligation to protect the right to housing in the city. Ensuring the right to housing in the city entails ensuring that global competitive pressures – in this case global sport – do not serve to displace people from cities.

The Vila Autódromo saga also suggests that mega-events are not necessarily a discrete situation in which the complex aims of social inclusion can be pre-planned and technocratically fostered in bid proposals. Rather, the physical urban transformations of these undertakings summon the possibility to mobilize an emancipatory view of rights in the face of proposed restructurings and dispossessions. For it is the marginalized who themselves must be a central part of any strategy aimed at their own inclusion. This point is especially resonant when social inclusion is pursued under an umbrella which links it to securitization as a social cohesion strategy.

In 2008, in response to the problem of violence associated with favelas and the unyielding tensions around social inclusion in Rio, as well as the compromised authority of the state in the city's informal neighborhoods – issues that would be particularly magnified by the international spotlight coming with Rio's status as a host city for the 2014 World Cup Football and the 2016 Olympic – the state introduced a program of Police Pacification Units – Unidades de Policia Pacificadora (UPPs). The UPPs entailed the establishment of community police stations in favelas⁴⁷ as a means of resolving public order issues and facilitating, through pacification, the social integration of these residents into the wider city.⁴⁸ In short, they represented a quasi-military occupation of neighborhoods;⁴⁹ the Brazilian state presence in favelas it had long struggled to get a hold of from organized crime, and the taking of legitimate authority over territory.

The World Bank openly supported the now defunct UPP program in Rio. It did so under the broader territorial approach to urban and social development it supports “in both the State and city of Rio de Janeiro, and for which the historical alliance between federal, state and

⁴⁵ Ivester, *supra* note 38 at 980.

⁴⁶ *Id.*

⁴⁷ See Appendix 6.

⁴⁸ Maria Clara Dias & Luis Eslava, *Horizons of Inclusion: Life Between Laws and Developments in Rio de Janeiro*, 44 U. MIAMI INTER-AM. L. REV. 177 (2013).

⁴⁹ Michael Riegner, *International Institutions and the City: Towards a Comparative Law of Glocal Governance*, in THE GLOBALISATION OF URBAN GOVERNANCE: LEGAL PERSPECTIVES ON SUSTAINABLE DEVELOPMENT GOAL 11, 57 (Helmut Philipp Aust & Anél Du Plessis eds., 2018).

municipal governments in Rio has been crucial.”⁵⁰ This support from the Bank is illustrative of the ability and willingness of international institutions to intervene in domestic affairs and to impact local human habitation and relations quite directly based upon international standards and aspirations. Through various financing mechanisms such as development policy loans and technical assistance loans:

[T]he Bank has been helping Rio to reinforce an integrated, multi-sectoral approach to the sustainable growth of territory. These projects have focused on strengthening planning and management of urban growth in the metropolitan region, promoting the provision of affordable housing with access to infrastructure and service, and supporting the implementation of a targeted, comprehensive social development program for the urban poor.⁵¹

This sounds good on the surface, but drilled down, the UPP program was about the promise of social services for the bargain price of pacification linked to a questionable notion that the social inclusion of a segregated community into the wider city will flow from revitalized state security presence in and control of the neighborhood.

More generally speaking, the presence of vulnerable communities in the form of illegal neighborhoods is seen as at odds with new development models of decentralization and aspirations for cities and their “internationalization”, rather than as state human rights failures to effectively implement the right to adequate housing,⁵² or as spaces for citizens – illegally housed or not – to contest. The modern, model urban citizen is also a legal and law-abiding citizen. Luis Eslava has demonstrated this in his ethnographic research of Bogotá’s illegal neighborhoods and in his critique of the new international law and development focus on localities. In incorporating members of the Colombian capital’s peripheral and illegal neighborhoods, the “informal” inhabitants have been pushed by city governmental interventions to develop an ethic of law-abidingness in order to become a part of the urban fabric. The local administration uses surveillance and policing techniques as a means of regulating and micromanaging Bogotá’s peripheral, informal, and illegal communities, ultimately constructing what Eslava characterizes as “lawful subjects”.⁵³ Neighborhood legalization processes and

⁵⁰ World Bank Report – Bringing the state back into the favelas of Rio de Janeiro: Understanding changes in community life after the UPP pacification process, Oct. 2012, p. 13.

⁵¹ *Id.* at 13.

⁵² This posturing also applies to the treatment of homeless populations in cities. Comments made by UN Special Rapporteur Leilani Farha at UN Habitat III Conference, Quito, Ecuador, *Housing*, October 17, 2016.

⁵³ See also Peter Marcuse, *What’s new about divided cities*, 17 INT’L J. URB. & REGIONAL RES. 355 (1993).

pedagogies ultimately seek “to generate residents who do not hinder the development process of Bogotá and who internalize their obligations to the city.”⁵⁴

These preoccupations with legality and law-abidingness extend beyond issues of tenure and squatting and yet still impact urban habitation as with the UPPs. “Internationalization” conceptions of the city also include a perception of violence as undermining social cohesion and sustainability, and can trigger a dangerous securitization and pacification impulse which may exacerbate social exclusion and stifle political resistance.⁵⁵ Whether the UPP program was indeed a success in fostering citywide social inclusion remains highly dubious, and yet it has been reported that the program managed to redefine community life and culture in the favelas in structured and stifling ways.⁵⁶ The program has been heavily criticized by researchers of favela life in Brazil, particularly on the grounds that it did little to actually advance social inclusion in Rio despite its surface-stated purpose.⁵⁷ Police brutality and state violence were thought legitimated under the program, already a long-standing source of tension in Brazil.⁵⁸ Further, residents’ experiences of protection and social and economic provision may have been higher (and cheaper) under illicit authority. Organized crime groups which control the physical, social, economic, and political space of the favela also tend to implement a particular legal code and sanctioning in which populations may be protected.⁵⁹ Formalization comes with economic

⁵⁴ LUIS ESLAVA, LOCAL SPACE, GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT 297 (2015): “This configuration aims to construct an official city out of Bogotá’s present realities, while instilling in illegal residents – and in the residents of the city in general – a formal respect for the city’s laws and its development policies. These administrative exercises aspire to create a parallel jurisdiction that is amenable to technical administration, and to reconstruct residents’ perceptions of themselves vis-à-vis the city’s ideals and its law, a decentralized state and a global order.”

⁵⁵ See generally, Susan Marks, *Human Rights and Root Causes*, 74 MODERN L. REV. 57, 61 (2011) (Discussing what causes human rights abuse and the interrelation of different human rights, and noting: “Renewing the longstanding question of how civil and political rights affect and are affected by economic, social and cultural rights, attention is called to the links between violence, on the one hand, and poverty, discrimination, marginalization and social exclusion, on the other.”). But it should be noted that violence has always been a part of social struggle. For example, in South Africa, Sundhya Pahuja has stated that the anti-apartheid movement is mistakenly recast as a human rights struggle when it was in fact a political struggle. She argues that to cast the movement as a part of the liberal human rights project negates this and the violence that it involved. *Hersch Lauterpacht Memorial Lectures*, Lauterpacht Centre for International Law, Cambridge, Mar. 9, 2018.

⁵⁶ See also Thaisa Comelli et al., *Socio-spatial legibility, discipline, and gentrification through favela upgrading in Rio de Janeiro*, 22 CITY 633 (2018).

⁵⁷ Communication with local researchers in Rio de Janeiro (Jan. 2017).

⁵⁸ “According to Amnesty International’s research, military police across Rio de Janeiro has regularly used unnecessary and excessive force during security operations in the city’s favelas.” *Brazil: ‘Trigger happy’ military police kill hundreds as Rio prepares for Olympic countdown*, Amnesty International, Aug. 3, 2015, <https://www.amnesty.org/en/latest/news/2015/08/brazil-trigger-happy-military-police-kill-hundreds-as-rio-prepares-for-olympic-countdown/>.

⁵⁹ On various forms of extra-State authority, see generally, THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GOVERNANCE (Rodney Bruce Hall & Thomas Biersteker eds., 2002) (“Indeed there are major transformations underway in the state as political institution. States are decentralizing, deregulating, and liberalizing in order to provide more attractive economic environments for financial capital and, as governments proceed along this path, the domestic safety nets provided by the welfare state are being

costs through taxes and escalating real estate prices, which reinforce processes of and fears around the negative economic, cultural, and political effects of gentrification.⁶⁰ Without more, the social inclusion approach of the UPPs demonstrates “how securitization helps to bring into the boundaries of legality and development those economically and normative peripheral subjects of Rio de Janeiro,” but still keeps these communities effectively excluded.⁶¹

When the global sporting events Brazil had been prepping for arrived, reports were rampant of discrimination and exclusion against residents of Rio’s poorer neighborhoods. Alarming accounts of Brazilians stopped by police on buses and patrolled on their own beaches, ultimately shunned from Rio on the basis of their ethnicity and socio-economic standing were common.⁶² In reality, the UPPs had always been widely perceived to be a temporary measure designed specifically in preparation for Rio’s hosting of these major international sporting events. This dominant suspicion was arguably confirmed by the “Olympic belt” geographical focus of the UPPs in which strategically located favelas were targeted first and as specifically acknowledged in the World Bank Report on Rio and the UPPs.⁶³ This kind of discriminatory approach to marginalized populations in preparation for host city status is now a distinct pattern in the legacy of global sporting events. The mega-events of the Olympics and World Cup have long been perceived as spectacles for building private profits and luring tourist dollars to a city on grand and global public display. But MSEs also represent deeper and more complicated relationships between global governance institutions and cities, and the potentially negative

dismantled.”). *Id.* at 118. On rebel governance and the administration of justice in the context of the FARC and Colombia, see Rene Provost, *FARC Justice: Rebel Rule of Law*, 8 U.C. IRVINE L. REV. 227 (2018).

⁶⁰ But see James D. Wolfensohn, *The World Bank and Global City-Regions: Reaching the Poor*, in GLOBAL CITY-REGIONS: TRENDS, THEORY, POLICY 48 (Allen J. Scott ed., 2001) (Discussing the World Bank perspective and noting: “I remember in 1997 when I was in the favelas of Rio. We had put in a program of water provision and sewage disposal, and I went in to meet the women. As often happens, if you have been in these places, they want to show you the toilet. So they take you to it and they flush it, because that is something that allows them to live a more civilized life. The water and sewage disposal facilities are put in privately. They are self supporting. And it saves the women from walking down the hill for two hours a day with these yoke-like poles over their shoulders with water buckets on the ends, and the walking back up the hill. All this I say, and thought, how remarkable it is. Then I went for a drink with all the women. One of them came up to me and shook a piece of paper in my face, which was her water bill. She showed me that she had paid five reals, or whatever the amount was, for that month. Then others came up. And then the mayor of Rio told me, ‘Jim, they’re not showing you this to show you that they’ve paid. This is the first time in their lives that they have had a piece of paper with their name on it. They are now recognized, they’re now part of society.’ By bringing in infrastructure, by giving them a chance, and by giving them recognition, you unleash a force of people who are now transforming their city and their environment.”).

⁶¹ Dias & Eslava, *supra* note 48, at 7. See also Didier Bigo, *Security and Immigration: Toward a Critique of the Governmentality of Unease*, 27 ALTERNATIVES 63, 78 (2002). As Bigo notes in the securitization of migration context, “migration is then defined in such a way that heterogeneous elements (like the circulation of movement or life in poor areas of cities) are recontextualized as a matter of immigration.”

⁶² See also UN SR Report, *supra* note 25, at 9-10 (discussing discrimination against various groups during MSEs).

⁶³ World Bank Report, *supra* note 50, at 88.

impact of global norms and pressures on the ground particularly as related to housing, space, and inclusion.⁶⁴

As the international level of governance, through various manifestations, becomes more present and directive of the local environment, it produces, and sometimes ignores, casualties in its wake.⁶⁵ As the UPP example showed, the World Bank's direct relationship with cities through bilateral agreements impact upon urban housing and development. As cities' financial resources derive from World Bank loans, the loan agreements often stipulate particular conditions concerning not only purely economic matters but also pertaining to the environment and human rights, and, in particular, notions of good governance.⁶⁶ The financial clout of the Bank and the scale of its development projects mean that its involvement in city matters has tremendously far-reaching impacts upon individual and community life, and for the wider societal fabric.

By way of background, the disastrous history of Bank-funded projects in developing countries in the wake of decolonization was marked for many decades by involuntary displacement, environmental destruction, and rank disregard of the rights of indigenous peoples.⁶⁷ Tethering in the direction of reform attenuated to human, social, and environmental concerns was thus inevitable,⁶⁸ and the Bank would come to adopt its environmental and social

⁶⁴ See generally Richard B. Stewart, *Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness*, 108 AM. J. INT'L L. 211, 220 (2014) ("Many global regulatory authorities have been justly criticized for giving inadequate regard to the interests and concerns of vulnerable and politically weak groups, diffuse and less well-organized and resourced societal interests, and vulnerable individuals, which has resulted in decision making that causes unjustified harm or disadvantage. This article refers to these practices and their institutional sources, operating at the global level and in their distributed administrations, collectively as the problem of disregard.").

⁶⁵ Luis Eslava, *'I Feel Like a Dog with the Tail Between its Legs': On the Limits of Protest and Urban Law in our Decentralized World*, 3 (SSRN) (For, as Eslava has argued, the push for the implementation of international norms on the local is felt acutely by "those at the margins of this new geography" in which decentralization simply serves as "a reminder of their liminal position in an increasingly more complex world.").

⁶⁶ Ileana Porras, *The City and International Law: In Pursuit of Sustainable Development*, 36 FORDHAM URB. L. J. 537 (2009).

⁶⁷ See David Freestone, *The World Bank and Sustainable Development*, in THE WORLD BANK AND SUSTAINABLE DEVELOPMENT: LEGAL ESSAYS 7-41 (David Freestone ed., 2012); Balakrishnan Rajagopal, *The Violence of Development*, WASH. POST, Aug. 9, 2001; GRAHAM HANCOCK, LORDS OF POVERTY: THE POWER, PRESTIGE, AND CORRUPTION OF THE INTERNATIONAL AID BUSINESS 113 (1989) ("Long after the experts and professionals from the United Nations or the EEC or USAID or World Bank have packed their bags and their cute souvenirs, boarded their aircraft and fled northwards, the ill-conceived development projects they have been responsible for continue to wreck the lives of the poor. During the past twenty years millions of rural people in Africa, in Asia and in Latin America have been forcibly removed from their homes to make space for the expanding reservoirs of giant hydroelectric dams; like ghosts not yet laid to rest, troubled but invisible, the dispossessed *still* wander from place to place in search of recompense.").

⁶⁸ In 1997, the Committee on Economic, Social and Cultural Rights drew attention to the World Bank's impact on forced evictions in General Comment No. 7: "The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, inter alia, that 'international agencies should scrupulously avoid involvement in projects which, for example...promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale

safeguard policies as well as the Inspection Panel as an accountability mechanism to hear complaints from affected parties in these kinds of circumstances. The pivot to considering and influencing the broader policy implications of, and the increased expectations attached to, World Bank money can be linked to these pushes for and processes of reform in light of the Bank's troubled history, as well as to its purported embrace of the 2030 Agenda and the SDGs.⁶⁹ And yet the normative value of Bank directives in shaping sustainable urban development is both lauded and critiqued.⁷⁰

For example, Michael Riegner has considered a 2010 World Bank development policy loan of over one billion USD to the municipal government of Rio de Janeiro to be an incisive example of the Bank's increasingly direct, functionalist relationship with cities and the related implications and consequences for housing and inclusion.⁷¹ The loan represents many facets of modern development strategy, particularly the shift in international institutional policy from the mere support of physical infrastructure common prior to the 1990s to financial support as tied to broader urban governance policies and expectations. This shift itself underscores a level of frustration with the ability of nation-states and national administrations to achieve development and good governance,⁷² implicit in broader decentralization processes and the emergence of "the local" in this realm.⁷³ In fact, the legal relationship between the Bank and the city sits within the growing "glocalization" discussions in recent global governance scholarship, and as Riegner suggests, "can affect the bargaining power and political economy at competing levels of government."⁷⁴

The World Bank has paid increased attention to those affected by its projects under pressure from not only such stakeholders themselves, but also civil society and other international organizations. This role expansion by the Bank is deemed to be too political by

evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account."").

⁶⁹ Press Release, World Bank, Statement by Multilateral Development Banks: Delivering on the 2030 Agenda (Oct. 9, 2016).

⁷⁰ See generally, Gunther Handl, *The Legal Mandate of Multilateral Development Banks as Agents of Change Toward Sustainable Development*, 92 AM. J. INT'L. L. 642, 646 (1998) (discussing tensions between shareholding countries in terms of the Bank as a purely financial/economic institution versus a sustainable development orientation).

⁷¹ Riegner, *supra* note 49, at 45.

⁷² Neil Brenner has been highly critical of the good governance trope, arguing that "rather than offering a basis for establishing more democratic, progressive or ecological forms of urbanism, the discourse of 'good governance' serves as an ideological weapon for justifying regressive institutional reforms that enhance commodification, social polarization and uneven spatial development within and among cities, while simultaneously undermining the capacities of state institutions to manage accelerated processes of urban restructuring in ways that serve the public interest." See NEIL BRENNER, *CRITIQUE OF URBANIZATION: SELECTED ESSAYS* 113 (2016).

⁷³ Eslava, *supra* note 54, at 294.

⁷⁴ Riegner, *supra* note 49, at 45.

some critics, who in turn see the expansion as raising important sovereignty concerns for impacted states. The foray into non-economic matters has been pejoratively described as mission creep, in essence, the notion that the Bank acts beyond the scope of its mandate under the Articles of Agreement when it focuses attention and resources on matters deemed non-economic, such as human rights, environmental protection, and governance.⁷⁵ Yet, this certainly occurs and the loan agreement between the World Bank and Rio was a huge matter both in terms of its numerical value and also its socio-political impact. At the time, the conservative leaning mayor of Rio, Eduardo Paes, who concluded the agreement stood in contrast to the liberal national government of President Lula.⁷⁶ That the loan agreement included specific requirements to upgrade low-income neighborhoods suggests to Riegner an obvious negotiation and compromise between divergent state and local level government agendas, as well as underscores the substance of international institutional norms – in this case, the powerful urban development theme of informality.⁷⁷ Informality is a persistent global urbanization challenge and is in many ways a defining feature of urban Brazil.⁷⁸

It is interesting to note at this juncture that the opening ceremony for the Rio Olympics showcased the favelas. The unveiling of the Games traced Brazil's heritage paying tribute to its rich ethnic diversity and historical journey. Indigenous peoples and ways of life, the landing of Portuguese colonists, the shackled arrival of enslaved Africans, and immigration from the Middle East and Asia were all artistically recreated on the Maracanã stage. This was followed by a depiction of Brazil's pride and glory: the feats in construction of contemporary Brazil; a trip across the night sky honoring the first flight of aviator Alberto Santos-Dumont; the supermodel Gisele Bündchen's final career catwalk to a live performance of *The Girl from Ipanema*. A serene and hypnotic homage to innovation, ingenuity, and beauty then sharply cut to the voice of the favelas. The informal neighborhoods, which number in the thousands in Brazil, were depicted in bold beats and vibrant colors. Escalating blocks of housing took full frame and dancers gyrated to rhythms familiar to favela social and cultural life, but which have also spread to wider popular society, domestic and international.

⁷⁵ Johanna Aleria P. Lorenzo, *Development versus Sustainable Development: (Re-)Constructing the International Bank for Sustainable Development*, 51 VAND. J. TRANSNAT'L L. 399, 428 (2018) ("Implicit in this argument is a broad proposition that the economic domain does not or cannot involve social or environmental concerns, and as an international economic organization, the World Bank has neither authority nor competence to act on issues that are not economic in character. Curiously, in a manner that echoes this mission creep position, the Bank has invoked the political activity prohibition under its Articles to argue that no legal obligations relating to human rights can be attributed to it.").

⁷⁶ Riegner, *supra* note 49, at 47.

⁷⁷ *Id.*

⁷⁸ See generally Ananya Roy, *Urban Informality: Toward an Epistemology of Planning*, 71 J. AM. PLANNING ASSOC. 147 (2005).

In this way, the opening ceremony's portrayal of favelas perhaps can be attributed to the ongoing commodification of heritage that includes an apparent fascination with favela life in global popular culture. In addition to portrayals in books and films – the most famous is probably the 2002 film *City of God* which was directed by Fernando Meirelles and Katia Lund, with Meirelles also directing the Olympics opening ceremony – it is also possible to engage with favela life as a tourist attraction. Favela tours are common; on foot with local guides or in safari-style jeeps complete with cage bars for the less intrepid traveler.⁷⁹ Merchandise – including but not limited to t-shirts, fridge magnets, postcards, and tote bags – bearing the iconic and irreverent favela architecture and geography are readily available in souvenir shops.⁸⁰

But the favela showcase during the Rio 2016 opening ceremony also indicates and reiterates the state's assertion that the favelas are territory within their control, and perhaps was intended to send a message both inside the Brazilian state and outside to the wider world audience that the sovereign state had not been usurped by what became very publicized favela resistance in the lead up to the Games. It served the dual purpose of offering a nod to the commitment to social inclusion the original Olympic bid posited as part of its legacy by publicizing the favelas and favela life as undeniable to the urban fabric of Rio, and it also served as a subtle way to reassure investors and tourists that Brazil has it all under control.

Even with the favela segment, the central theme of the Rio opening ceremony was unmistakably the environment, not the right to housing or the inclusion of marginalized communities. The production featured a heavy focus on the stunning physical geography of Brazil, from its oceans to its famous forest, and issued a powerful gloom and doom warning about climate change and rising sea levels, cartographically depicting the swallowing whole of specific cities such as Lagos, Miami, and Rio itself. As a sign that all environmental hope is not lost, the Olympic athletes each carried seeds that would grow in a special park, and the all too familiar interlocking rings which mark the Olympic brand bloomed from green vegetation rather than the traditional blue, yellow, black, green, and red.

While the social legacy of the Rio Olympics may not have been the kind of transformational inclusion and equality that had been initially touted and that would appear to conform to global norms around sustainable urban development, the successful social protest and mobilization around Vila Autódromo, and which had a global connectivity and reach, is

⁷⁹ This favela tourism can be paralleled with what urban sociologists have observed in many Northern cities with respect to a desire to live in an urban neighborhood with an aura of attendant violence. *See also* Rob Crilly, *Madonna's favela fashion ignites outrage in Brazil*, THE TELEGRAPH, Oct. 27, 2017, <https://www.telegraph.co.uk/news/2017/10/27/madonnas-favela-fashion-ignites-outrage-brazil/>.

⁸⁰ *See also* Jake Cummings, *Confronting favela chic: the gentrification of informal settlements in Rio de Janeiro, Brazil*, in GLOBAL GENTRIFICATIONS (Loretta Lees et al. eds., 2015).

indeed its own form of social legacy and progress.⁸¹ This is an important way of thinking about MSEs. The right to housing is not only at heightened risk of violation in this context, but MSEs are also a means of (re)awakening the right and its potential in the urban arena. As bid withdrawals represent a normative questioning of why cities should bother to host mega-sporting events at all, it is worthwhile to remember that they are still opportunities for what is often badly needed urban societal debates and transformations, and that sport itself has a collective positive power.⁸² This case study thus shows the inherent connection between the duty to act collectively to ensure the right to housing in the city and to respond rather than to be beholden to the global competitive pressures which threaten that very right.

London

While the discussion thus far has focused on some of the troubling aspects of MSE urban development, there are a number of positive possibilities in relation to the right to housing which can and have been realized in the context of MSE redevelopment. The significant redevelopment of the host city can lead to noticeable improvements in city infrastructure resulting in improved mobility and increased housing stock. Specifically, the large tourist crowds accompanying mega-sporting events drive major urban development of the host city which can result in new dwellings for the local population upon completion of the event. Further, transportation upgrades such as enhanced metro systems and enlarged airports are a common feature of mega-sporting event city renewal, and these are important components in supporting relational aspects of housing with respect to proximity to work and social opportunities, for example. Additionally, increases in the availability of cultural venues, sport facilities, and public open spaces can also be an important by-product of MSE city regeneration. Barcelona's hosting of the 1992 Olympic Games is frequently cited for this kind of city transformation, to the point where a "Barcelona model" has emerged on the mega-event consultancy circuit.⁸³ New highways and neighborhoods as well as the renovation of the city's now celebrated seafront were outcomes of its mega-event hosting, and Rio de Janeiro attempted to follow this playbook of city transformation by developing early links with Barcelona's local

⁸¹ See Timeline: Vila Autodromo, Story of Resistance, RioOnWatch, https://www.rioonwatch.org/?page_id=28610 (offering a summary of the contentions from the 1960s through 2018).

⁸² "Sport is also an important enabler of sustainable development. We recognize the growing contribution of sport to the realization of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion objectives." Transforming our World: The 2030 Agenda for Sustainable Development, UNGA A/Res/70/1, para. 37.

⁸³ See also Barcelona 1992: A Model of Olympic Legacy, June 14, 2019, <https://www.olympic.org/news/olympic-legacy/barcelona-1992/barcelona-1992-a-model-of-olympic-legacy>.

policy-makers. Mega-event preparation can also provide an opportunity for environmental upgrades in the form of improved sanitation services and the clean-up of contaminated areas.⁸⁴ All of these changes represent positive impacts for the host city and population, generally speaking. In reality, however, these events tend to leave contested legacies.

The 2012 Olympic and Paralympic Games hosted by London provides insight. The Games came to fruition under a heavy focus from promoters on leaving a lasting, sustainable legacy for the city of London, particularly the east London working-class and multi-ethnic neighborhoods where the Games were held.⁸⁵ At the bidding stage, then-London Mayor Ken Livingstone would proclaim:

The Olympics will bring the biggest single transformation of the city since the Victorian age... It will regenerate east London and bring in jobs and massive improvements in transport infrastructure. There will be 190 teams at the Olympics, and every one of them will find people who speak their language and pray to their god. London is the world in one city, it is an Olympic city par excellence.⁸⁶

The legacy plan was central to London's successful bid and quite clearly manifested a response to the history of previous Games which came at exorbitant spending costs and led to white elephant infrastructure. The experience of Athens is paradigmatic. For Greece, original home of the Olympics, the 2004 Games in Athens cost around €9 billion and left abandoned, dilapidated venues and a legacy of bitterness in the capital of a country dealing with the scourge of debt crisis and economic depression.⁸⁷

The price tag for the London Games was over £9 billion. The intention was to host a spectacular and successful sporting event in the short-term, which would lead to a transformational community legacy, particularly for the host boroughs, in the long-term.⁸⁸ The

⁸⁴ UN SR Report, *supra* note 25, at 4-5 (In Seoul, the 1988 Olympic host city, "the polluted Hang River was cleaned and new systems to handle air pollution and collect garbage were created," while in Beijing, "640 km of sewage pipes were renovated and two natural gas pipelines created in the run-up to the 2008 games.").

⁸⁵ See London Legacy Development Corporation, *Your Sustainability Guide to Queen Elizabeth Olympic Park 2030*, https://www.queenelizabetholympicpark.co.uk/-/media/lldc/policies/lldc_your_sustainability_guide_to_the_queen_elizabeth_olympic_park2030.ashx?la=en.

⁸⁶ Paul Kelso & Sarah Hall, *Blair lights London's Olympic torch*, THE GUARDIAN, May 15, 2003 <https://www.theguardian.com/politics/2003/may/16/uk.sport>.

⁸⁷ See, e.g., Steven Bloor, *Abandoned Athens Olympic 2004 venues, 10 years on – in pictures*, THE GUARDIAN, Aug. 13, 2014. Brazil too has been critiqued in this vein. See *Rio Olympic venues already falling into a state of disrepair*, THE GUARDIAN, Feb. 10, 2017. See also Mike Raco, *Delivering Flagship Projects in an Era of Regulatory Capitalism: State-led Privatization and the London Olympics 2012*, 38 INT'L J. OF URB. & REGIONAL RES. 176, 183 (2014) (discussing criticism of the Athens Olympic development model as inefficient and too closely attuned to local political demands).

⁸⁸ See Olympic Park Legacy Company, *Creating the Queen Elizabeth Olympic Park: Post-Games Transformation*, <https://www.queenelizabetholympicpark.co.uk/-/media/qeop/files/public/publications/80251749transformationbrochurejan2012.ashx?la=en>.

Games' Olympic Park is now the Queen Elizabeth Olympic Park, a huge public space resulting from the environmental cleanup of industrially contaminated areas and today hosting millions of annual visitors and various public events.⁸⁹ The Olympic Stadium is now leased to English football club West Ham United, a more controversial move. For the team's supporters they feel a loss of identity from giving up their old sports "home" for the promise of bigger site business revenues.⁹⁰ For British taxpayers more broadly, the deal has been seen as more favorable for West Ham as the cost of conversion of the stadium from Olympic venue to London Stadium was high and the public owned operator, E20, has been losing money.⁹¹

Beyond the transformations of these specific athletic venues, the legacy plan for London 2012 included a key focus on housing and the regeneration of east London alongside the creation of a new residential community. This part of London had long struggled with issues of overcrowding and homelessness underpinned by a lack of affordable housing particularly social rental housing.⁹² The conceptual idea was to produce a social legacy from London's hosting of the Olympic Games by providing needed affordable housing in east London. In the planning, the Athletes Village was designed to become homes for a new mixed community. Post-games, it became 2,818 homes, split roughly evenly between ownership by Triathlon Homes and availability on the private market, mostly for rent rather than sale. Of the Triathlon Homes, 675 homes were allocated for social rent, and the remaining for intermediate rent and sale through shared-ownership and shared-equity schemes. Further, development goes beyond East Village with plans to establish neighborhoods in the surrounding areas.

Even with these apparent commitments to affordable housing, criticism has come that increasing rental prices are in fact pricing locals out of their home city.⁹³ The area has been developed and renewed with sports venues, shopping malls, and more luxury housing accommodations unaffordable to low-income populations. The future phases of transformation for the area around Olympic Park include thousands of homes, a new commercial district, and a cultural and education district to host museums as well as two new university campuses. All of this development comes with an increase in property values and an attendant economic

⁸⁹ <https://www.queenelizabetholympicpark.co.uk/>.

⁹⁰ Jacob Steinberg, *West Ham's first season at London Stadium: a 'terrible' experience or a step forward?*, THE GUARDIAN, May 4, 2017.

⁹¹ For a detailed analysis, see Moore Stephens Olympic Stadium Review, Nov. 2017, <https://www.london.gov.uk/sites/default/files/olympic-stadium-review.pdf>.

⁹² Paul Watt, *'It's not for us': Regeneration, the 2012 Olympics and the gentrification of East London*, 17 CITY 99, 103 (2013).

⁹³ Matthew Ponsford, *Five years after London Olympics, Games' legacy is off-track for locals*, July 26, 2017, REUTERS, <https://www.reuters.com/article/us-britain-olympics-housing/five-years-after-london-olympics-games-legacy-is-off-track-for-locals-idUSKBN1AB32H>.

displacement of locals. Social housing was cleared in the preparation for the Games and it has not been sufficiently replaced with new homes, and there are long waiting lists.⁹⁴

It is still relatively early given that the Games were held in 2012 and large-scale redevelopment can take many years, but the effects of Olympic urbanism are being familiarly and negatively felt in the context of housing displacement. Further, legacy promises made at the bidding and award stage in 2005 become more difficult to realize in the context of global financial catastrophe and austerity, complicating the broader premise and predictability of a pre-scripted notion of mega-event “legacy”. The London Games commitment to a sustainable legacy also demonstrates how the drive to secure needed and urgent environmental lifestyle changes can obscure important human questions around housing and place. London committed to developing sustainable infrastructure for sustainable lifestyles as a model of urban regeneration specifically through its Olympic legacy. But more careful attention to striking the balance between private development interests and economic gain, and catalyzing such through the regeneration of the area, and community building as a public good was needed. This could be achieved through closer attention to housing, community, and inclusion as a component of sustainability itself rather than a predominantly environmental framing of sustainability.

As London 2012 shows, MSEs can be marked by indirect displacement due to gentrification of the host city and escalating housing costs which ultimately drive locals from the city and prevent any new housing from being within financial reach. Social housing may be drastically reduced, as MSEs may target such housing in redevelopment plans. In this context, low-income communities are forced out in favor of middle- and upper-class earners, and the city is thus remade from an economic, social, and demographic perspective.⁹⁵ The implications of such change on a city and on its communities can be profound as discussed last chapter. Having been pushed beyond the city, those displaced suffer the loss of their community ties and endure further deprivations due to the reduction in employment and educational opportunities and the steep increase in their commuting costs, for instance.⁹⁶ Their once held sense of place and belonging in the city has surely been touched through this displacement.

The city housing tensions raised in mega-event redevelopment are often underpinned therefore by deeper questions of inclusion and social justice in the context of urbanization, and by political contestation around the quality of urban life for the masses and their place in cities.⁹⁷

⁹⁴ See also Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, Visit to the United Kingdom of Great Britain and Northern Ireland, A/HRC/41/39/Add.1, 23 April 2019 (“There were 1.2 million people on the social housing waiting list in 2017, but less than 6,000 homes were built that year.”) para. 22.

⁹⁵ UN SR Report, *supra* note 25, at 6.

⁹⁶ *Id.* at 7.

⁹⁷ See generally, DAVID HARVEY, SOCIAL JUSTICE AND THE CITY (Rev. ed. 2009).

To give another example, in *Residents of Joe Slovo Community v. Thubelisha Homes*,⁹⁸ the South African Constitutional Court ordered the eviction of 20,000 residents of an informal settlement near Cape Town. The developers seeking the eviction orders from the Court sought to develop the site for low-cost housing, and, in the process, the current residents of the informal settlement were to be relocated 15km away in Delft, quite a distance from their sources of livelihood. The Court found that the right to evict the occupiers had been established and took particular note of the level of engagement and consultation (or lack thereof) in the development planning process. The Court found that any failure by the government to meaningfully engage with the settlers could be remedied going forward through the judgment of the Court.⁹⁹

The eviction in *Joe Slovo* did not ultimately take place amid fears of huge relocation costs compared to *in situ* upgrading which was ultimately pursued for the settlement in question.¹⁰⁰ Sandra Fredman has thus argued that this case shows the importance of genuine and meaningful engagement for housing cases and the central importance of location to livelihood and therefore housing.

By failing to involve beneficiaries as participants, the huge project ignored issues which were essential to the latter. There was little understanding of the interconnected livelihood strategies by which poor communities survive, which crucially rely on resources within their settlements. These sources of livelihood would be lost to residents on relocation to Delft...In any event, Delft was simply too far away, even with the provision of transport.¹⁰¹

In this case, the informal settlement in question was linked to preparations for the 2010 South Africa World Cup,¹⁰² due to its location of “high visibility on the gateway corridor linking Cape Town International Airport with the City.”¹⁰³ This sort of scenario is not particularly unique or unusual as this chapter’s discussion has shown. In reality, major sporting events have been specifically highlighted by the CESCR as a potential source of problems related to evictions and development.

⁹⁸ *Residents of Joe Slovo Community v Thubelisha Homes* CCT 22/08 [2009] ZACC 16 (South African Constitutional Court).

⁹⁹ Additionally, as Sandra Fredman has shown, this case underscores the recurring theme in housing jurisprudence marked by the courts’ “desire to avoid encouraging land invasion as a means of jumping the queue and obtaining housing ahead of others who have waited for an equally long time and in equally miserable conditions.” SANDRA FREDMAN, *COMPARATIVE HUMAN RIGHTS LAW* 291 (2019).

¹⁰⁰ See also Roy, *supra* note 78 (discussing informal settlement upgrading).

¹⁰¹ Fredman, *supra* note 99, at 284.

¹⁰² The N2 Gateway Project: Housing Violations as ‘Development’ in South Africa, Centre on Housing Rights and Evictions (2009).

¹⁰³ Caroline Newtown, *The Reverse Side of the Medal: About the 2010 FIFA World Cup and the Beautification of the N2 in Cape Town*, 20 URB. FORUM 93, 101 (2009).

[I]nstances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, *or the holding of major sporting events like the Olympic Games*.¹⁰⁴

The practice of forced evictions is a gross and devastating violation of human rights, and is seen as “prima facie incompatible with the requirements of the Covenant.”¹⁰⁵ Yet, forced evictions are perhaps the most jarring and prevalent violations of the right to adequate housing evident in MSE preparation and hosting. They typically occur as the host city seeks to remake itself in an attempt to project a new international image through the mega-sporting event. While the rationale for this change usually entails the belief that the opportunity to showcase an attractive city to a global audience will lead to long-term economic investment benefits, such redevelopment “often implies the removal of signs of poverty and underdevelopment through reurbanization projects that prioritize city beautification over the needs of local residents.”¹⁰⁶ These methods can go so far as to include the clearing of slums from areas in visitors’ sight, whether or not framed within larger redevelopment projects.¹⁰⁷ Informal settlements, whose residents often include ethnic minorities and migrants, can be seen as representing “poverty and underdevelopment”¹⁰⁸ thus ruining the image that the city intends to publicly project both during the MSE and after, that is, as a world-class city ready for immediate and long-term foreign investment.

As a result of such beautification efforts and image concerns, housing of the very poor is commonly demolished in the preparation for a mega-sporting event without adequate compensation or alternative housing.¹⁰⁹ The result of such action can be penetrating as “[e]ntire communities are forced to relocate, generally to the outskirts of the city or to rural areas, where they find no means of subsistence, few employment opportunities or little access to informal markets, and where they find themselves removed from communal ties.”¹¹⁰ In *Joe Slovo*, the 15km distance to Delft would have produced crippling transportation costs to sources of livelihood as acknowledged by the South African Constitutional Court.

¹⁰⁴ General Comment 7, para 7 (emphasis added).

¹⁰⁵ General Comment 7, para 1.

¹⁰⁶ UN SR Report, *supra* note 25, at 6.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *Id.* at 9.

¹⁰⁹ Newton, *supra* note 103, at 101.

¹¹⁰ *Id.*

What might at first blush appear a trivial example or connection to urbanization – sport – is in fact a source of serious human rights violations especially pertaining to housing. Global sporting bodies and their flagship events offer an incisive yet practicable example of the interplay between global economic competition, city development, location, displacement, global governance, and international norms. But as the next and final example shows, MSEs and the intense media attention they attract in the lead up present crucial opportunities for localities to debate and grapple with important economic and social questions pertaining to housing. In this sense, they underscore the reality of city competition for global investment and also serve to stimulate debate about the need and obligation to respond to the attendant threats to the right to housing in the city.

San Francisco

The vulnerability of those experiencing homelessness is increased in the context of a mega-sporting event where they can be targeted for removal and “cleaned up”¹¹¹ from areas in the public eye, again under the assumption their presence denotes poverty, and perhaps even danger.¹¹² The violations against the homeless in this context are particularly egregious with “reported cases in which camps or large facilities have been used to accommodate homeless people and other ‘unsightly’ groups during the duration of an event.”¹¹³ The human rights impact is magnified in this context, as it is felt by the most vulnerable sectors of society in a most degrading way. Nonetheless, anecdotal evidence suggests many people are aware of and tolerate such treatment of the homeless in the context of MSEs.¹¹⁴

One of the most poignant examples of these tensions in anticipation of a mega-sporting event could be seen in the context of Super Bowl 50 held in San Francisco, California, in February 2016. The Super Bowl is American football’s annual championship event and captures a television audience of around 100 million viewers. The half-time entertainment show garners the world’s premiere entertainers and similarly high viewership to the game itself if not

¹¹¹ COHRE Report, *supra* note 17, at 15.

¹¹² See generally, Marks, *supra* note 55; see also, Robert Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public Space Zoning*, 105 YALE L.J. 1165 (1996).

¹¹³ UN SR Report, *supra* note 25, at 9-10 (“In Atlanta, homeless and related activities were made illegal and over 9,000 citations were issued against homeless people”. Further, the report notes that: “in Vancouver, the city is funding private security guards to remove homeless persons and beggars from commercial areas.”).

¹¹⁴ Perhaps this is due to the tendency in liberal Western conceptions of rights to constitute property as personhood thus linking property and identity, particularly through individual home ownership. See JESSIE HOHMANN, *THE RIGHT TO HOUSING: LAW, CONCEPTS, POSSIBILITIES* 175 (2013) (This understanding “can be seen as a profoundly commodified vision of the human person,” and “is one in which the propertyless experience a lesser identity by virtue of their inability to consume goods in the market. The marginalization of identity that comes with the ‘failure’ to own one’s own house is reflected in the lesser social status afforded to the informal settler, the homeless street dweller or the occupant of social housing.”).

more,¹¹⁵ and 30-second commercials during the Super Bowl broadcast cost upwards of \$5 million.¹¹⁶ More than these figures can portray, the Super Bowl is a quintessential part of American culture and, without doubt, the biggest sporting event in the United States.

But Super Bowl Sunday in San Francisco brought intense tensions to light around the proverbial tale of two cities. “Super Bowl City” a National Football League (NFL) street fair erected on the Embarcadero waterfront to host the event and the NFL broadcast booth¹¹⁷ stood in complete contrast to the “tent cities” of San Francisco. San Francisco’s homeless population is estimated at 7,000 in a city with a population of 860,000. It ranks in the top ten of US cities with the highest number of people experiencing homelessness, behind New York, Los Angeles, Seattle, San Diego, San Jose/Santa Clara, and the District of Columbia.¹¹⁸ California is in fact the state with the largest homeless population in the US, a country with a total homeless population of roughly 553,000 in 2018.¹¹⁹ Put in perspective, California has about 12% of the nation’s total population but half of its unsheltered homeless.

The housing situation in San Francisco in particular is far more complex and contrasting. The city is, on the one hand, widely considered to be progressive in nature. It is held out as a beacon of diversity, tolerance, and inclusion. Liberal leaning and voting, it is commonly perceived as one of America’s most progressive if not utopian cities, pushing the envelope on law and policy.¹²⁰ But the crisis of homelessness that has afflicted the city is a pervasive marker of the wider housing affordability crisis that has made San Francisco increasingly and visibly unequal. It is also a striking manifestation of the contrast between progressive governance, economic success, and seemingly intractable human hardship. The presence of tech companies,

¹¹⁵ In the past ten years, The Who, Madonna, Beyoncé, Katy Perry, and Lady Gaga have all performed.

¹¹⁶ See Nelson Granados, *2019 Super Bowl Ads Were Viewed Massively Online Before and After the Game*, FORBES, Feb. 8, 2019, <https://www.forbes.com/sites/nelsongranados/2019/02/08/2019-super-bowl-ads-were-viewed-massively-online-before-and-after-the-game/#cb90af941b04>.

¹¹⁷ The game itself was held at Levi’s Stadium in Santa Clara, approximately 50 miles south of San Francisco. San Francisco hosted pregame festivities, fan events, and the “Super Bowl City”. See Mollie Reilly, *San Francisco Relocated Homeless for Super Bowl. Here’s What Cities Should Do Instead*, HUFFPOST, Feb. 4, 2016.

¹¹⁸ Phoenix, Boston, and Las Vegas are the other three cities in the top ten. See U.S. Department of Housing and Urban Development, *The 2018 Annual Homeless Assessment Report (AHARA) to Congress*, Dec. 2018, <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>. See also Niall McCarthy, *The U.S. Cities With The Most Homeless People in 2018*, FORBES, Dec 20, 2018, <https://www.forbes.com/sites/niallmccarthy/2018/12/20/the-u-s-cities-with-the-most-homeless-people-in-2018-infographic/#4e29a36a1178>.

¹¹⁹ The 2018 Homeless Assessment Report to Congress, The U.S. Department of Housing and Urban Development, Office of Community Planning and Development, Dec. 2018, https://www.novoco.com/sites/default/files/atoms/files/hud_ahar_2018_121718.pdf.

¹²⁰ See, e.g., *San Francisco council calls NRA ‘domestic terrorist organization’*, BBC NEWS, Sept. 4, 2019 (Interestingly, the National Rifle Association (NRA) “responded by calling it a ‘ludicrous stunt’ that is intended to ‘distract from the real problems facing San Francisco, such as rampant homelessness, drug abuse and skyrocketing petty crime, to name a few.”); *San Francisco is first US city to ban facial recognition*, BBC NEWS, May 14, 2019.

and their high-earning employees, has been blamed for the alarming and growing rents in the city, which make housing grossly unaffordable and serve to push middle-class residents out. Twitter's headquarters in the Bay Area is a now notorious symbol of the gentrification and skyrocketing housing costs in the city¹²¹ – San Francisco is the most expensive housing market in the United States.¹²² A city for decades seething with a palpable homelessness problem, tent cities have made the homeless and their living conditions more visible and pronounced in public spaces and everyday life.¹²³ Next to “Super Bowl City” they struck a sharp discord.

Much of the negative public reaction to the presence of homelessness on the streets is about the manifestations of these individuals' and families' lack of homes in the form of a physical private space to conduct their personal affairs. The homeless make their bed in front of stores, offices, and private homes. Trash, feces, and hypodermic needles are visible on sidewalks, bus stops, and storefronts. In San Francisco, as with elsewhere, homelessness is connected also to substance addiction and to mental illness. But a growing tendency to reframe homelessness primarily as an addiction and mental health problem can be observed in the discourse. This trend must be viewed with caution. It is taking shape right as campaigners are finally seeing results in changing the public perception around homelessness, and as the middle class are simultaneously feeling and reacting to the urban housing affordability crisis. This new narrative around homelessness is a way of tempering this dissonance. While the middle class can be economically displaced from cities quietly, the visible manifestation of homelessness sends an in-your-face message about a clear housing crisis. Any severing of that crisis and its consequences from the growing unaffordability of housing in cities should cause skepticism. In San Francisco, the presence of the homeless is more obvious than that discussed in NoMa, DC. But as with in DC, in San Francisco there is a concern not only about health, safety, and sanitation, but also about the potential negative impact on property values as a result of the proximity of the homeless.

In the months before the Super Bowl, then-San Francisco mayor, Ed Lee, stated that the homeless would have to leave before the event, but that alternatives would be provided in terms of shelter space. His comments seemed to suggest that the pressures on city government to host a sports mega-event and the temptation to show-off the most pristine version of the city

¹²¹ Dave Zirin, *The Streets of San Francisco: 'Super Bowl City' Meets Tent City*, THE NATION, Feb. 4, 2016. <https://www.thenation.com/article/the-streets-of-san-francisco-super-bowl-city-meets-tent-city/>.

¹²² San Francisco has been reeling from the negative effects of gentrification in a way that not only residents but also visitors can feel. Many report a sense that the culture of San Francisco has changed.

¹²³ See also *Reach for the sky: Can a new mayor fix San Francisco's housing and homelessness problems?*, THE ECONOMIST, May 31, 2018. (The June 2018 mayoral election was defined by “the twin topics of housing and homelessness”).

prevailed over any liberal ethos of tolerance and inclusion, or even hard reality.¹²⁴ As thousands of visitors descended on the Bay Area for Super Bowl 50 and millions watched at home, the Coalition on Homelessness organized public protests against the city's spending of \$5 million in order to host the week of activities for the mega-event. The Coalition argued that such money should go towards getting the homeless off the streets and to creating affordable housing stock.¹²⁵ As with the other sporting events examined, the juxtaposition of short-term athletic celebration with long-term city social struggles was laid bare, and helped to stoke an essential conversation about housing in the city.

This is an ongoing conversation. In the face of California's homelessness statistics, President Trump has suggested through various news media outlets that unilateral federal action may be coming. Reports indicate that teams from the Trump administration – made up of representatives from the White House, the Department of Housing and Urban Development, the Justice Department, and the Department of Health and Human Services – have been assembled and dispatched to the West Coast to investigate the legal and logistical possibilities for the federal government to get the homeless off of California's streets.¹²⁶ The US system of federalism places constitutional limits on federal authority and is rooted in the Tenth Amendment which gives state governments a level of autonomy over their own affairs and protects the "People". Historically, it has been a politically divisive legal doctrine with the left favoring greater federal control and seeing federalism as unequivocally tied to Southern state resistance to civil rights era federal legislation.¹²⁷ The right has viewed federalism as a necessary means of protecting the states from national intrusion on matters such as abortion and gun control. But today, this divide has shifted such that traditionally Democratic regions appear to be using federalism as a means of countering the Trump administration's conservative policies on the environment and immigration.¹²⁸

Critics of President Trump's interest in the California homelessness crisis cite the President's own framing of the issue – in terms of the impact of homelessness on the beauty of

¹²⁴ See Joanna Walters, 'No app for that': tech-rich San Francisco's intractable homelessness, THE GUARDIAN, Sept. 7, 2015, <https://www.theguardian.com/us-news/2015/sep/07/san-francisco-homelessness-tech-sector>.

¹²⁵ Katy Steinmetz, *San Francisco Protestors Tackle Homelessness Outside Super Bowl City*, TIME, Feb. 4, 2016

¹²⁶ Philip Rucker & Jeff Stein, *Trump: Homeless people hurt the 'prestige' of Los Angeles, San Francisco*, WASH. POST, Sept. 17, 2019, https://www.washingtonpost.com/politics/trump-homeless-people-hurt-the-prestige-of-los-angeles-san-francisco/2019/09/17/71e71b9e-d982-11e9-ac63-3016711543fe_story.html.

¹²⁷ On this point more generally, See Oscar Schachter, *The Decline of the Nation-State and its Implications for International Law*, 36 COLUMBIA J. TRANSNATIONAL L. 7 (1998) ("Localism—whether based on federalism or ethnicity—may also be used to deprive vulnerable groups of benefits and protection that they receive from the central state...there is ample historical evidence that relief from local tyranny and injustice may come from more distant central authority.") *Id.* at 17.

¹²⁸ This is most evident in the realm of "sanctuary cities".

and property values in cities such as San Francisco and Los Angeles – as cause for skepticism. Critics also point to the Administration’s own policies as exacerbating homelessness, such as cuts to federal support for housing programs and more stringent immigration policies.¹²⁹ While city and state officials may be willing to accede to genuine cooperation in the name of increased funding to address a serious local issue, they are not likely to easily bend to federal intrusion into tackling local homelessness on the ground. San Francisco benefits from California’s home-rule provisions which essentially give cities greater powers and allow the city government to flex its muscles in governing municipal affairs. It remains unclear the extent to which cities hold the same kind of protection as states under the Tenth Amendment given city police power comes from the state, but it has become increasingly clear that cities are interested in taking strong stances against the federal government rather than doing its bidding, and that there are normatively compelling reasons for cities to avail themselves of federalism protection.¹³⁰ Chief among these reasons is the city’s responsibility for fostering community and belonging within the locality and for its people. Yet when it comes to the issue of homelessness, this is a far more tangled matter given the problem of individual preferences and NIMBYism, and the divergent positions on the place of those experiencing homelessness in the city.

In July 2019, President Trump commented on the homelessness crisis in US cities. In a Fox News interview while at the G20 summit in Japan, the President responded to a question about the “filth” in American cities such as New York, Los Angeles, and San Francisco:

When you have leaders of the world coming in to see the President of the United States and they’re riding down a highway, they can’t be looking at that. I really believe that it hurts our country. They can’t be looking at scenes like you see in Los Angeles and San Francisco. San Francisco, I own property in San Francisco, so I don’t care except that it was so beautiful. And now areas that you used to think as being you know really something very special, you take a look at what’s going on in San Francisco, it’s terrible. So, we’re looking at it very seriously. We may intercede. We may do something to get that whole thing cleaned up. It’s inappropriate. Now, we have to take the people and do something. We have to do something. And you know we’re really not very equipped as a government to be doing that kind of work. That’s not really the kind of work that the government probably should be doing. We’ve never had this in our lives before in our country. And it’s not only those few cities, it’s a couple of other cities also. At the same time, most of our cities are doing great. But if you look at some of these, they’re usually sanctuary cities run by very liberal people

¹²⁹ See, e.g., Jeff Stein et al., *Trump pushing for major crackdown on homeless camps in California, with aides discussing moving residents to government backed facilities*, WASH. POST, Sept. 10, 2019.

¹³⁰ See generally, Christine Kwon & Marissa Roy, *Local Action, National Impact: Standing Up for Sanctuary Cities*, 127 YALE L.J.F. 715 (2018).

and the states are run by very liberal people. But the thing that nobody can figure out is, do these governors or mayors, do they really think this is a positive? Do they really think this is okay? [Because] it's not. It's destroying their city and it's destroying a whole way of life. And it's not our country, it's not what our country is all about.

The US President has hit on what is indeed a tense and difficult issue across the state. On the one hand, a liberal populace whose moral sensibilities prohibit them from taking draconian measures against those without means, on the other, the inability to avoid or simply tax away this crisis as much as they might like to do so. Everything from robots to boulders, both characteristically Californian, has been utilized in a less and less clandestine fight to get rid of the homeless.¹³¹

The example of global sporting events has served to animate the global competitive pressures in which cities can be enmeshed to attract investment and the corresponding disruptive effects on housing. Disturbing behind-the-scenes city transformations involving human and community deprivations stand in contrast to the gleaming, pristine cities on show during a mega-sporting event in a “cosmetics of injustice.”¹³² The right to housing in the city is repeatedly threatened in this context. The MSE example has also highlighted the relationship between international bodies and global governance processes and that of cities, habitation, and human lives. Thus, while often heralded as a great opportunity for economic regeneration and growth, the effect through housing and displacement on the city and the lives of the local population, especially the most disadvantaged sectors of society, is arguably inadequately considered in MSEs. As the Special Rapporteur on Adequate Housing has noted: “The alleged economic benefits of staging the games are not spread evenly throughout the local population. Instead, old disparities appear to be exacerbated as the processes of regeneration and beautification of the city usually focus on areas mostly populated by poor and vulnerable groups.”¹³³

The window to a foreign land provided by a few short weeks of media coverage may not paint an accurate picture of what a city truly looks like, or, worse, what it cost to convey that particular image and its longer-term legacy. The removal of the homeless and of informal

¹³¹ Erin McCormick, *Big Brother on wheels? Fired security robot divides local homeless people*, THE GUARDIAN, Dec. 17, 2017, <https://www.theguardian.com/us-news/2017/dec/16/san-francisco-homeless-robot>; Hannah Knowles, *Residents put huge rocks on their sidewalk to keep the homeless away – and launched a battle*, WASH. POST, Oct 1, 2019, <https://www.washingtonpost.com/nation/2019/10/02/residents-put-huge-rocks-their-sidewalk-keep-homeless-away-launched-battle/>.

¹³² See Jeremy Waldron, *Homelessness and Community*, 40 UNIV. OF TORONTO L. J. 371, 388 (2000) (“Maybe aggressive policing strategies mean that we can have all the glamour of a prosperous-looking society without doing very much – doing perhaps much less than we have done in the past – to help the poor, the unfortunate, and those who have made disastrous choices.”).

¹³³ UN SR Report, *supra* note 25, at 6.

settlements can lead to socio-spatial exclusion in the city, where these communities are increasingly marginalized from society and where economic inequality is closely linked to spatial inequity. This tendency is out of step with the guidance provided by the CESCR. According to the Committee: “States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”¹³⁴ Such consideration of the vulnerable raises critical questions from the perspective of social justice, access, and equity. But questions also emerge regarding power in decision-making processes in terms of national and local urban planning and governance decisions, and also at the global governance level.¹³⁵ It must be stressed that global sport is more than just business,¹³⁶ and to ignore the administration of international sport as global governance may miss significant issues relevant to addressing human rights concerns.¹³⁷

The issues of gentrification and reduced affordable housing stock as well as the practice of forced evictions against vulnerable populations that attend MSE urbanism have raised questions on the importance of genuine transparency and participation in decision-making procedures,¹³⁸ and of access to urban resources particularly for lower-income communities. The dangers of MSEs for housing are particularly concerning in the developing world, where most global urbanization is currently centered and where the urban population is thus growing exponentially.¹³⁹ As countries in Africa and South Asia move to host further mega-sporting events, the right to adequate housing in the city must be carefully considered. The procedural requirements mandated in the context of forced evictions in the CESCR General Comments must be adhered to,¹⁴⁰ but the substantive implications of even procedurally adequate decisions

¹³⁴ General Comment 4, para 11 (“It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.”).

¹³⁵ See Martti Koskeniemi, *What Use for Sovereignty Today?*, 1 ASIAN J. INT’L L. 61, 68 (2011).

¹³⁶ See Richard Craven, *State aid and sports stadiums: EU sports policy or deference to professional football*, 35 EUR. COMPETITION L. REV. 453 (2014).

¹³⁷ Henne, *supra* note 20, at 328 (“In essence, the IOC is more than an affluent private organization concerned with corporate profits; it contributes directly to global governance and transnational legal ordering.”). See also Eyal Benvenisti, *THE LAW OF GLOBAL GOVERNANCE* 114-117 (2014); Lorenzo Casini, *Sports Law: A Global Legal Order?*, L. & SOC. FORUM 4 (2012).

¹³⁸ As Benvenisti has observed, “domestic democratic processes are vulnerable to systemic failures that hamper individuals’ ability to have a voice and take an actual part in government.” Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*, 107 AM. J. INT’L L. 295, 303 (2013).

¹³⁹ UN Habitat, *The State of the World Cities Report 2016* at 3.

¹⁴⁰ General Comment 7, para. 15 (“The Committee considers that the procedural protections which should be applied in relation to forced eviction include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all

and action must also be thought through from a policy perspective if inclusive cities are to be fostered in the context of development efforts and agendas. The community notions emphasized in the African Charter and the work of the African Commission on Human and Peoples' Rights offer promise.

And promise is indeed important because while attention and interest in one sport or the other may ebb and flow with times and politics, sport as a whole remains a compelling manifestation of the human spirit and an increasingly rare form of globally shared joy and passion. The \$5 million spent for Super Bowl San Francisco seems paltry compared to the \$25 billion being spent in Tokyo for the 2020 Olympics.¹⁴¹ Yet it goes to show that even “smaller” MSEs and slimmer budgets can still raise urgent societal questions and have important effects. These effects are not necessarily neatly positive or negative. They are instead contrasting and can serve to be deliberative of the right to housing in the city and the collective duties to ensure that right.

5.3 Competitive Pressures Beyond Mega-Sports

As the case study of MSEs suggests, cities are willing to compete globally to attract economic investments which can ultimately produce unequal effects with respect to the right to housing.¹⁴² This competition extends well beyond periodic mega-sports, however, and increasingly takes the form of a consistent global pressure on cities. As is well understood, business location decisions can be influenced based on the improvement of relative profitability of investing at a specific site. As a result, a competitive atmosphere is in play for new private investment, particularly between localities, which offer incentives to influence these business location decisions and attract economic investment.¹⁴³ This competition occurs globally as a product of deindustrialization and globalization,¹⁴⁴ but also takes effect on a national, regional, and local scale where localities even within the same metropolitan region are forced to compete. To return to the context of competitive bidding for the Olympic Games, for example, only one city per nation can be put forward to the IOC by the state's National Olympic Committee. Domestic cities therefore compete with each other to be the national choice. They must then compete at the global level against other city candidates put forward by their respective national

persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”)

¹⁴¹ Matt Bonesteel, *To the surprise of no one, the 2020 Tokyo Olympics are going massively over budget*, WASH. POST, Oct. 9, 2018 (Japan is reportedly over three times the original budget announced when they were awarded the Games in 2013 and 80 percent is expected to be footed by taxpayers.).

¹⁴² See Yishai Blank, *supra* note 9, at 273.

¹⁴³ See generally PAUL E. PETERSON, *CITY LIMITS* (1981); SASKIA SASSEN, *THE GLOBAL CITY* (1991).

¹⁴⁴ DAVID HARVEY, *SPACES OF GLOBAL CAPITALISM* (2006).

committees.¹⁴⁵ While these events are massive and transformational undertakings, outside of the mega-event cycles cities face constant economic competitive pressures and opportunities.

The locational decision for Amazon's newest expansion of its US campuses after a 13-month nation-wide competition is illustrative of this practice. In November 2018, Amazon announced Arlington, VA (just outside Washington, DC and next to the Pentagon) and New York City as the split winners, out of a whopping 238 bids from various cities and towns for its private investment. Amazon is one of the world's biggest and most valuable corporations.¹⁴⁶ In the competition and decision process, some 25,000 high-paying jobs was promised by Amazon, in exchange for billions in tax benefits and other incentives which the company is due to receive from local and state government.¹⁴⁷

From a political economy perspective, in the US states and municipalities are part of a competitive inter-jurisdictional locality market in which incentives appear necessary to lure new investment and jobs, and, crucially, the taxes resulting from that investment. This leads to the financial and economic imperatives of competing – new investment and the attendant jobs and spending is thought to serve to both maintain and expand the local government's revenue base and to improve its ability to provide services for its residents. In turn, the new investment is intended to increase local residents' income and by extension, their quality of life.

But the dangers of intercity incentive competition are of course quite obvious. Technology continues to intensify jurisdictional competition through the free movement of capital and production. Investors, manufacturers, and corporations are able, therefore, to chase tax-beneficial localities thus driving tax rates down and ultimately reducing the resources available for public services.¹⁴⁸ There is also a concern that incentive packages are based on pure politics rather than a proper consideration of both local cost-benefit analysis and the appropriate size and scope of an incentive package to encourage firm (re)location. There is thus a sort of collective action problem which results in races to the bottom, felt most prominently in the context of the provision of public goods and services and leading to inefficiency and

¹⁴⁵ See also The 2016 Bid Process Explained, Oct. 2, 2009, <https://www.olympic.org/news/the-2016-bid-process-explained>.

¹⁴⁶ Global 500, <https://fortune.com/global500/2019/> (last visited Jan. 27, 2020).

¹⁴⁷ Robert McCartney, *Amazon HQ2 to benefit from more than \$2.4 billion in incentives from Virginia, New York and Tennessee*, WASH. POST, Nov. 3, 2018, https://www.washingtonpost.com/local/virginia-news/amazon-hq2-to-receive-more-than-28-billion-in-incentives-from-virginia-new-york-and-tennessee/2018/11/13/f3f73cf4-e757-11e8-a939-9469f1166f9d_story.html.

¹⁴⁸ One of the most important drivers of this collective action problem can be therefore attributed to loopholes around international taxation and, while beyond the scope here, this area is a critical and urgent aspect of international law's relationship with the promotion or denial of economic, social, and cultural rights. See also Eyal Benvenisti, *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167, 169-70 (1999) (also discussing the ability of corporations to gain immunity from national courts thereby avoiding regulation).

inequality between competing localities.¹⁴⁹ The result of this cycle, in actuality, can be increased costs of public services for local residents.¹⁵⁰ In particular, gentrification and higher housing prices can quickly follow the new investment, as was ultimately feared in New York, a city with a familiar housing affordability crisis.

In February 2019, in response to fierce local backlash and protest against the promise of public subsidies, Amazon announced, rather suddenly, it would no longer establish a campus in New York. While the governor of New York State, Andrew Cuomo, and the mayor of NYC, Bill de Blasio, both championed the Amazon opportunity, local politicians were far more skeptical and critical of the purported corporate welfare and the risk of increased rents, ultimately shutting down the city's economic development plans. Alexandria Ocasio-Cortez, Congresswoman for the Bronx and Queens, would frame victory in terms of the masses: "Anything is possible: today was the day a group of dedicated, everyday New Yorkers & their neighbors defeated Amazon's corporate greed, its worker exploitation, and the power of the richest man in the world."¹⁵¹ But Governor Cuomo would blame his own Democrats now in control of the State Senate for the demise of Amazon New York.

Amazon chose to come to New York because we are the capital of the world and the best place to do business. We competed in and won the most hotly contested national economic development competition in the United States...However, a small group of politicians put their own narrow political interests above the community – which poll after poll showed overwhelmingly supported bringing Amazon to Long Island City – the state's economic future and the best interests of the people of this state. The New York State Senate has done tremendous damage. They should be held accountable for this lost opportunity.¹⁵²

Amazon's own statement corroborated the Governor's view: "A number of state and local politicians have made it clear that they oppose our presence and will not work with us to build the type of relationships that are required to go forward."¹⁵³

¹⁴⁹ Derek Thompson puts it bluntly: "Why the hell are U.S. cities spending tens of billions of dollars to steal jobs from one another in the first place?" *Amazon's HQ2 Spectacle Isn't Just Shameful—It Should Be Illegal*, THE ATLANTIC, Nov. 12, 2018, <https://www.theatlantic.com/ideas/archive/2018/11/amazons-hq2-spectacle-should-be-illegal/575539/>.

¹⁵⁰ See generally Peterson, *supra* note 143 (explaining that for localities, supporting welfare with high taxation would drive out investment and therefore limits cities' redistributive capacities).

¹⁵¹ @AOC, <https://twitter.com/AOC>.

¹⁵² New York State Governor's Office, Statement from Governor Andrew M. Cuomo, <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-196>.

¹⁵³ J. David Goodman, *Amazon Pulls Out of Planned New York City Headquarters*, N.Y. TIMES, Feb. 14, 2019, <https://www.nytimes.com/2019/02/14/nyregion/amazon-hq2-queens.html>.

New York, in its initial written submission to the Amazon city competition, showed robust support for Amazon in its attempt to broker a deal. In particular, Priya Gupta observes that a tremendous amount of due diligence was conducted by the city for the company at taxpayer expense, and that legal processes around land use and acquisition were even skirted in proposing sites in the city.¹⁵⁴ Gupta is also properly concerned about the antithetical impacts of this particular kind of investment – online market platforms and prolific home delivery service – on city life, in terms of housing, living costs, and transport pressures, and the failure of New York to account for such disruption in their bid proposal.¹⁵⁵ Amazon’s quick withdrawal suggests that the voice of voters was heard rather than marginalized in this case,¹⁵⁶ but also more than hints at the company’s ability and willingness to exploit “the global prisoner’s dilemma game” through a clear lack of commitment to a specific jurisdiction.¹⁵⁷ Or, as State Senator Michael Gianaris from Queens, New York put it: “Like a petulant child, Amazon insists on getting its way or takes its ball and leaves...The only thing that happened here is that a community that was going to be profoundly affected by their presence started asking questions.”¹⁵⁸

Investment projects such as the Amazon campus site raise housing questions and cities have to deal directly with these questions. Cities also face pressures from residents and from court decisions, such as seen in *Martin v. City of Boise*, to address housing needs. This demands resources, and it is the demand for resources that drives cities to compete in the first place. But the question of resources itself can be fraught with tensions implicating varying levels of responsibility for housing. In *City of Johannesburg v. Blue Moonlight Properties*, the South African Constitutional Court considered whether occupiers of private property must be evicted in the interest of the full exercise of property rights by the owner, Blue Moonlight, and, if so, whether that eviction must be accompanied by an order for the City of Johannesburg to provide the occupiers with accommodation.¹⁵⁹ The case was therefore about the *city’s* obligations with respect to the right of access to adequate housing in the South African constitution, and the constitutional allocation of powers and functions to municipalities in relation to housing and concerning resources.

¹⁵⁴ Priya S. Gupta, *The fleeting, unhappy affair of Amazon HQ2 and New York City*, 10 TRANSNAT’L L. THEORY 97, 100, 112-115 (2019).

¹⁵⁵ *Id.* at 100.

¹⁵⁶ See Harvey, *supra* note 97 at 75 (discussing the expectation in urban politics “that the more powerful community (in financial, educational or influence terms) may be able to dominate locational decisions to its own advantage.”).

¹⁵⁷ See Benvenisti, *supra* note 148, at 200.

¹⁵⁸ J. David Goodman, *Amazon Pulls Out of Planned New York City Headquarters*, New York Times, Feb. 14, 2019, <https://www.nytimes.com/2019/02/14/nyregion/amazon-hq2-queens.html>. See also Appendix 7.

¹⁵⁹ *City of Johannesburg v. Blue Moonlight Properties Ltd*, (CCT 37/11) (2011) ZACC 22 (Constitutional Court of South Africa).

In *Blue Moonlight*, the occupiers argued that it would not be just and equitable to grant eviction if an eviction would render them homeless. The City itself did not seek eviction, which was in fact sought by Blue Moonlight, but the City argued that it could not be held responsible for providing accommodation to all people who are evicted by private landowners.¹⁶⁰ In deciding this case, the Court paid close attention to the City's obligations and conduct. It noted that the "joinder of the City as the main point of contact with the community is essential,"¹⁶¹ and that the duty regarding housing under section 26 of the South African Constitution falls on the local, provincial, and national spheres of government which must cooperate.¹⁶²

The primary duties placed on national and provincial governments do not absolve local governments. The Constitution places a duty on local governments to ensure that services are provided in a sustainable manner to the communities they govern...A municipality must be attentive to housing problems in the community, plan, budget appropriately and co-ordinate and engage with other spheres of government to ensure that the needs of its community are met. Its duty is not simply to implement the state's housing programme at a local level. It must plan and carry some of the costs...¹⁶³

With respect to the role of local government, the Constitutional Court explained that this was an important one in the provision of housing. Under Chapter 7 of the South African Constitution, which deals with the functions and powers of local government, a municipality must "structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community."¹⁶⁴ The Housing Act which gives effect to the section 26 right to housing, "obliges municipalities, as part of the process of integrated development planning, to take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure, amongst other things, that the inhabitants of their respective areas have access to adequate housing."¹⁶⁵

The analysis in *Blue Moonlight* involved an examination of the resources and budget of the City of Johannesburg. A crucial aspect of the City's argument was that it could distinguish between those evicted and rendered homeless by the City, for which the city will provide accommodation, versus those so rendered by private landowners. The Court rejected this

¹⁶⁰ *Id.* at para. 32.

¹⁶¹ *Id.* at para. 45.

¹⁶² *Id.* at para. 42. See also *Government of the Republic of South Africa and others v. Grootboom and others* (CCT11/00) (2000) ZACC 1 (Sept. 21, 2000) para. 40.

¹⁶³ *City of Johannesburg v. Blue Moonlight Properties Ltd*, (CCT 37/11) (2011) ZACC 22 (Constitutional Court of South Africa), Footnote 49.

¹⁶⁴ *Id.* at para. 22 (quoting Section 153(a) of the Constitution).

¹⁶⁵ *Id.* at para. 24.

contention and found the City's housing policy "unconstitutional to the extent that it excludes the Occupiers and others similarly evicted from consideration for temporary accommodation. The exclusion is unreasonable."¹⁶⁶ The Constitutional Court was unimpressed by the City's failure to budget for the possibility of a need for emergency housing in the event of eviction, and details around the City's financial resources were shady.¹⁶⁷ The Court noted that the City's interpretation of the National Housing Code "as neither permitting nor obliging them to take measures to provide emergency accommodation, after having been refused financial assistance by the province, is incorrect."¹⁶⁸ The Court held that the City was obliged to provide temporary accommodation and ordered that it be "in a location as near as possible to the area where the property is situated,"¹⁶⁹ reiterating the importance of location to economic opportunity now evident in both the Indian and South African jurisprudence.

The City, for its part, highlighted the pressures it faces in dealing with housing – an existing backlog in terms of housing, a continuous influx of people through urbanization and immigration, illegal land and building invasions, as well as issues of unemployment and poverty.¹⁷⁰ The pressures described by the City of Johannesburg are real for many cities, and the housing question is often contested on the basis of resources. Using a game theory-lite analysis, critics have long termed sub-state and local incentive competition a zero-sum game because in their view it does not actually lead to a net national job creation and its overall benefits to the nation are near nil.¹⁷¹ Cities provide taxes and incentives to influence investment and location decisions but this may "merely result in the spatial reshuffling of investment, which would, *sans* incentives, have occurred *somewhere* anyway."¹⁷² Under this view, there is no net national gain from the empowerment of the city.¹⁷³ But there are of course important *local* gains, and it is because of the contemporary push for cities to assume greater responsibilities for their populations through decentralization, to interact with international institutions to achieve

¹⁶⁶ *Id.* at para. 95.

¹⁶⁷ *Id.* at para. 73: "The Occupiers put the City's budgetary projections in its Integrated Development Plan before the High Court. The City objected to the projections being used. It pointed out that not all projections are accurate. A budget surplus was predicted, but the City says this projection was incorrect and that it is now in a budget deficit. Projections are an unreliable source of information, because they are simply estimates that may prove to be inaccurate, the City submits. However, it has not provided documentation to substantiate its claims of a deficit. The Occupiers' calls for it to do so went unanswered."

¹⁶⁸ *Id.* at para. 96.

¹⁶⁹ *Id.* at para. 104.

¹⁷⁰ *Id.* at para. 77.

¹⁷¹ PETER S. FISHER & ALAN H. PETERS, *INDUSTRIAL INCENTIVES: COMPETITION AMONG AMERICAN STATES AND CITIES* 9 (1998).

¹⁷² *Id.*

¹⁷³ It is also frequently argued that competition among places in the era of globalization and economic restructuring leads to growing social inequality. *See, e.g.*, RESTORING JUST OUTCOMES TO PLANNING CONCERNS, IN *POLICY, PLANNING, AND PEOPLE: PROMOTING JUSTICE IN URBAN DEVELOPMENT* 43 (Naomi Carmon & Susan S. Fainstein eds. 2013).

global norms, to operate on the international plane, and especially to attract global capital to function and grow that this kind of competition occurs.

Yet cities and states have a duty to ensure the right to housing in the city even under the pressures of competition. In *Blue Moonlight*, the Court's decision underscores the duty to ensure a form of secondary protection – in this instance, the duty to ensure the right to housing for those evicted from privately owned property.¹⁷⁴ This form of protection has also been called for by the CESCR. *Mohamed Ben Djazia and Naouel Bellili v. Spain* dealt with eviction, access to public housing, and homelessness, and involved an eviction from private rental housing on the grounds that the contract had ended between the private individuals. The question at issue was whether the failure of the Spanish authorities to grant alternative housing constituted a violation of the right to adequate housing under Article 11(1) in view of the fact that the family in this instance was rendered homeless.¹⁷⁵ The Committee expounded clearly in its views that the protection of legal security of tenure “applies to persons living in rental accommodation, whether public or private; such persons should enjoy the right to housing even when the lease expires,”¹⁷⁶ and that the protection against forced evictions carries for those in rented accommodation.¹⁷⁷ Thus, the state party is under obligation to ensure that eviction even in the context of a rental contract between individuals still does not violate Article 11(1).

The Committee found that Spain did indeed violate the right to housing under the Covenant and usefully offered comment beyond the usual procedural rhetoric:

The Committee considers that States parties, with a view to rationalizing the resources of their social services, may set criteria or conditions that applicants must satisfy in order to receive social services. These conditions, however, must be reasonable and very carefully designed so as to prevent not only any stigmatization but also that the mere behavior of a person in need of alternative housing be used to justify denying his or her application. In addition, the conditions must be communicated in a transparent, timely and complete manner to the applicant. Furthermore, it should be taken into account that the lack of housing is often the result of structural problems, such as high unemployment or systemic patterns of social exclusion, which it is the responsibility of the authorities to

¹⁷⁴ See also *President of the Republic of South Africa and Another v. Modderklip Boerdery (Pty) Ltd CCT 20/04* (South African Constitutional Court) (2005) (The Constitutional Court conditioned an eviction order of informal settlers from private property on the state first having to provide alternative land or housing for them. In the interim, the occupiers were entitled to remain on Modderklip's private land while Modderklip received state compensation.).

¹⁷⁵ *Mohamed Ben Djazia and Naouel Bellili v Spain*, Committee on Economic, Social and Cultural Rights Communication No. 5/2015 (adopted 20 June 2017) UN Doc E/C.12/61/D/5/2015, para. 12.7.

¹⁷⁶ *Id.* at para. 13.2.

¹⁷⁷ *Id.* at para. 13.3.

resolve through an appropriate, timely and coordinated response, to the maximum of their available resources.¹⁷⁸

The Committee was particularly concerned with Spain's characterization of Mr. Ben Djazia in terms of his employment status and lack of a job. The language "...so as to prevent not only any stigmatization but also that the mere behavior of a person in need of alternative housing be used to justify denying his or her application" is potentially very important in understanding state duties going forward. As previously noted, the links between homelessness and substance use are becoming more dominant in the public discourse. The Committee's instruction regarding stigmatization and personal behavior is a needed admonishment of the tendency for judgmental attitudes to rush in and be used as a tool of rights denial.

In *MBD*, the Committee expressed concern with what it characterized as the state's regression with respect to the right to housing. Crucial to this matter, Spain failed to explain and justify the fact that the regional authorities in Madrid sold part of the public housing stock to investment companies even though there was a significant backlog with respect to public housing, with vastly fewer housing units available than in demand.¹⁷⁹

The Committee considers that States parties have a certain amount of discretion to make the most appropriate use of tax revenue with a view to guaranteeing the full realization of the rights recognized in the Covenant, and that, in certain circumstances, they may take deliberately retrogressive measures. However, in such cases, the State must demonstrate that the decision was based on the most thorough consideration possible and was justified in respect of all the rights under the Covenant and that all available resources were used. In times of severe economic and financial crisis, all budgetary changes or adjustments affecting policies must be temporary, necessary, proportional and non-discriminatory. In this case, the State party has not convincingly explained why it was necessary to adopt the retrogressive measure described in the preceding paragraph, which resulted in a reduction of the amount of social housing precisely at a time when demand for it was greater owing to the economic crisis.¹⁸⁰

This communication is an overdue manifestation of the financialization and commodification critique propounded for many years now by the UN Special Rapporteurs. There is already a wide academic literature on the global financial crisis and the housing impact. It is now important progress to see a rights-based decision revealing the market-based

¹⁷⁸ *Id.* at para. 17.2.

¹⁷⁹ *Id.* at para. 17.5 ("For instance, in 2013, the Madrid Housing Institute sold 2,935 houses and other properties to a private company for €201 million, justifying the measure by a need to balance the budget.")

¹⁸⁰ *Id.* at para. 17.6.

displacements and disturbing social outcomes of the crisis, and deeming a state in violation. *MDB* shows the implications of the state in both creating and failing to respond to a situation of inadequate housing, ultimately resulting in homelessness for an entire family. While the impacts of homelessness are multiplied for families and implicate further and serious vulnerabilities especially with respect to childhood development, it is important to see homelessness writ large through a human rights lens and to be cautious about the dangers of categorizing this housing deprivation. Such categorization might run the risk of prompting discriminatory approaches to allocating resources, if families tend to be more common in particular ethnic or class groups as opposed to others for example, and should therefore be considered carefully by the Committee as it advances protection of the right to housing and further delineates state duties.

Governments have an obligation to promote the right to housing in the city and, as this chapter has attempted to demonstrate, a major contemporary threat to ensuring this right comes from the pressure of global competition and the way that pressure specifically manifests in cities. As noted, the financialization of housing has created a context in which foreign investors buy and hold property in cities as a source of wealth rather than as a place to live.¹⁸¹ This climate has been supported by governments which seek to attract wealthy investors and capital through methods such as tax reductions and “golden visas”.¹⁸² The reality of this pressure – cities in which a vast portion of residential property is foreign owned and often unoccupied and where many struggle to afford an urban home – is at once a pedestrian and provocative form of the tensions around the need for housing in the city, the inability of individuals to fulfill that desire, and the failure of the state to act to ensure the right.

As a follow-up to her 2017 report on financialization, in March 2019, the UN Special Rapporteur on Adequate Housing issued a series of letters concerning large-scale housing investments in cities.¹⁸³ The Blackstone Group, a giant real estate private equity firm with \$136 billion of assets which had already been targeted in Farha’s 2017 financialization critique, received a direct communication from the Special Rapporteur, as did the governments of the Czech Republic, Denmark, Ireland, Spain, Sweden, and the United States.

¹⁸¹ See also 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, Human Rights Council, U.N. Doc. A/HRC/34/51, (Jan. 18, 2017) (by Leilani Farha) [hereinafter *Farha*, UN SR Report] para. 15.

¹⁸² Foreign investors can receive permanent residence or citizenship for investing a certain amount in property. See *id.* para. 23, 25.

¹⁸³ These letters were sent jointly by the Special Rapporteur on Adequate Housing and the Working Group on the issue of human rights and transnational corporations and other business enterprises. See Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and 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, OL OTH 17/2019, Mar. 22, 2019 [hereinafter *Blackstone Letter*].

The letter to Blackstone is critical of its general residential real estate business model which the Special Rapporteur argues demands short-term profits. It asserts that the company plays a “dominant role...in financial markets through residential real estate,” and outlined three particular ways Blackstone’s practices have infringed the enjoyment of the right to housing.¹⁸⁴ First, in the wake of the 2008 financial crisis, the letter alleges that Blackstone “purchas[ed] an extraordinary and unprecedented number of foreclosed single-family properties, which were then converted into rental accommodation.”¹⁸⁵ According to the Special Rapporteur: “This large-scale ownership has made it possible for single family rentals (SFR) to become, for the first time, an asset class and has had deleterious effects on the enjoyment of the right to housing.”¹⁸⁶ More specifically, institutional owners of SFRs are thought to contribute to the housing affordability crisis because of a tendency to engage in undue rent increases. The letter also claims Blackstone has been purchasing multi-family units across the world at unprecedented rates. The letter identifies a pattern: “A building or several buildings are determined to be located in an undervalued area, which often means they house poor and low-income tenants. Blackstone purchases the building, undertakes repairs or refurbishment, and then increases the rents – often exorbitantly – driving existing tenants out, and replacing them with higher income tenants.”¹⁸⁷ Finally, the Special Rapporteur claims Blackstone has been “using its significant resources and political leverage to undermine domestic laws and policies that would in fact improve access to adequate housing consistent with international human rights law.”¹⁸⁸ The letter concludes by noting that given Blackstone’s leadership position in global residential real estate, its “engagement in this discussion could help to change the global narrative around housing.”¹⁸⁹

Blackstone responded to the Special Rapporteur’s letter just three days later. Its main position was that it is in fact helping to address the undersupply of housing in major urban centers globally by contributing “to the availability of well managed rental housing by bringing significant capital and expertise to the sector.”¹⁹⁰ For Blackstone, “the answer to affordability is to increase the supply of housing” and it sees the injection of private capital into the housing market as part of the solution to the problem of undersupply.¹⁹¹ Further, any harm is to be attributed to market forces and related laws to which Blackstone is in compliance. For instance,

¹⁸⁴ Blackstone Letter.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ See Blackstone, Mar. 25, 2019, https://www.ohchr.org/Documents/Issues/Housing/Financialization/Reply_OL_OTH_17_2019.pdf.

¹⁹¹ *Id.*

the Blackstone response letter highlights its compliance with strict eviction procedures in the US context. This defense validates the point advanced throughout this study of the dangers of an overly procedural approach to understanding and implementing the right to housing. Blackstone is now able to use the law and legal protections as a means of absolving itself of responsibility for the far wider community effects stemming from its part in the financialization of housing.¹⁹²

While the Blackstone denial of any wrongdoing is hardly surprising, the company's prompt response is telling. It shows the real potential of human rights critique as no longer simply a tool for shaming rule-breaker states (the US is yet to respond to the Special Rapporteur's letter), but now also as a means of prodding powerful corporations to acknowledge their relationship with human harms. There is real potential for change in going down this road as will be discussed later in this chapter.

The Special Rapporteur's letters to the various states focus on critiquing the laws and policies which support financialization, and calls for a transformed relationship between governments and the financial sector which includes taxation, regulation, and planning measures so as to push human rights implementation as the primary goal. For instance, with respect to Ireland, the letter notes:

In Ireland, in late 2007 to early 2008, the housing bubble – which started in the early 1990s – burst and the construction sector collapsed. Given the very close financial connection to developers and construction firms, so did Ireland's banks.

Central to the Government's recovery strategy was the introduction of austerity measures, a programme of ridding domestic banks of non-performing debt assets, and increasing levels of foreign financial investment in the domestic housing and mortgage market. Sweeping cuts were introduced notably to the public housing capital construction budget – from €1.46bn in 2008 to €167m in 2014 – which was disproportionately higher and more severe than other public sectors. As a result, newly built social housing stock fell from 5,300 units in 2009 to 1,000 in 2012 and then an effective ceasing of the social house-building programme with just 476 units built in 2015. Between 2005 and 2017, the number of families on the social housing waiting list increased by 100% from 43,000 to 86,000.

Foreign investment and finance was brought into the country by the Irish State in the post-crisis period through a number of measures including: the establishment of the National Asset Management Agency (NAMA) charged with selling assets to global investors; the introduction of the 2013 Real Estate

¹⁹² See also David Birchall, *Human rights on the altar of the market: the Blackstone letters and the financialisation of housing*, 10 *TRANSNAT'L L. THEORY* 446 (2019).

Investment Trusts (REIT) tax, which enabled and encouraged the establishment of REITs to benefit investors; and the sale by the state controlled Irish banks of non-performing loans to investment funds. The loans NAMA has purchased have a combined real value of €74.2bn, but were purchased by NAMA for less than half of that, €31.8bn. Owing to the heavy deregulation of foreign investors, and the legislative changes introduced to make Irish property markets more attractive to these investors, the sale of non-performing loans and securitized assets to private financial institutions has increased exponentially. Of all assets sold by NAMA, 93% have gone to foreign investors, with 90% being sold to US private equity funds. By 2016, one third of all properties sold in Ireland were being purchased by investors.¹⁹³

These excerpts are in line with the Special Rapporteur's overall concerns regarding the financialization of housing and are occurring in states beyond Ireland. Ireland produced a lengthy response letter in May 2019. It generally critiqued the UN letter's stats as outdated and highlighted various more recent policy measures the country has taken to address housing. It drew attention to its increasing yearly housing budgets noting that for 2019 the budget is "just under €2.4billion".¹⁹⁴ It also discussed the introduction of a vacant site levy "as a mechanism to incentivize the development of vacant and underutilized sites in urban areas for both the provision of housing and regeneration more generally."¹⁹⁵ While acknowledging the pressure in private residential rentals, Ireland argued that it is seeking to stabilize rents and increase supply in both the private and social sectors. Measures include "Rent Pressure Zones" where rents are capped at a 4% increase annually.¹⁹⁶ Finally, Ireland's response letter addressed the financialization critique by noting that finance is "a vital element in the provision of any type of housing, be it public or private," and holding that there are many positive effects on housing coming from institutional investment, particularly in terms of supply and especially for apartments in the main urban centers.¹⁹⁷

The exchange of letters reflects what is now a consistent and widespread global competitive pressure on cities regarding foreign investment and is connected to the global city function discussed at the outset of this chapter. Contemporary urban environments in cities such as Dublin are increasingly marked by high numbers of foreign owned properties. A particular critique of this investment trend is the connection to the lack of affordable housing in cities.

¹⁹³ Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and 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, OL IRL 2/2019, Mar. 22, 2019.

¹⁹⁴ Ireland's Response to the joint communication from Special Procedures OL IRL 2/2019, May 2019, at 2.

¹⁹⁵ *Id.* at 8.

¹⁹⁶ *Id.* at 10.

¹⁹⁷ *Id.* at 14.

Many of these foreign owned properties sit empty or are bought as speculative investment limiting availability and driving up costs. Ireland's reference to its vacant site levy is its attempt at responding to this problematic trend. Similarly, in the UK, and particularly London, the kinds of concerns the Special Rapporteur raises around financialization are acute and urgent. London has for many years been seen as a secure place to invest, and foreign purchases of homes is not just in the luxury market but also of more affordable homes that would be suited to many first-time homebuyers.¹⁹⁸ The lower pound associated with Brexit has also induced residential buyers to London further pinching supply. This has become a source of tension in the city. In the 2019 UK general elections, for instance, the specific question of foreign investment in housing was an important issue. Labour announced a plan to increase taxes on foreign companies and trusts buying UK properties.¹⁹⁹ According to the Labour pledge: "A company purchasing residential property benefits from the UK's infrastructure and legal framework, and ought to pay a small levy to acknowledge that."²⁰⁰ The thought behind the additional tax, proposed at 20% for property purchases and projected to raise £3.3 billion a year, was to take some of the heat off of the housing market and to raise money needed for public services.²⁰¹ Conservatives felt Labour's suggestion was far too steep, but also announced a 3% surcharge for companies and individuals buying UK property but not tax resident in the country. The discussions around the financialization of housing and the human rights issues associated with financialization – retrogression in affordability which has sub-effects around displacement from cities, as well as increases in evictions and homelessness – bring us full circle, therefore, to the early acknowledgment in chapter two that housing is, more often than not, a political question.

Connected to this crisis of vacant but unavailable (for long-term rent or purchase) housing in cities is modern tourism. International travel is up, and European cities are a particularly desirable destination. Part of the travel industry's growth can be attributed to the rise of Airbnb, a barely twelve-year old accommodations website,²⁰² ironically launched in San Francisco by two millennials struggling to make rent. The company connects accommodation hosts with guests and now has more than 7 million listings in over 100,000 cities worldwide. The average number of people sleeping on Airbnb per night is 2 million, and it has hosted 500 million guests since its inception.

¹⁹⁸ See Robert Booth, *Foreign investors snapping up London homes suitable for first-time buyers*, THE GUARDIAN, June 13, 2017.

¹⁹⁹ Labour's Fair Tax Programme 2019, p. 14 <https://labour.org.uk/wp-content/uploads/2019/11/Fair-Tax-Programme-2019.pdf>.

²⁰⁰ *Id.*

²⁰¹ See also *General election 2019: Labour plans extra property tax on foreign buyers*, BBC NEWS, Nov. 22, 2019.

²⁰² <https://www.airbnb.com>.

Airbnb sees the service as an opportunity to connect people to communities through travel and immersion, and as an avenue to support economic empowerment. The company facilitates cheaper accommodation options than available through the traditional hotel route thereby enabling travel. Further, property holders are able to earn supplemental income by simply opening up their homes. But owners are not just comprised of families renting out a spare room to earn a bit of extra cash. Rather, critics argue that Airbnb compounds the housing crisis, displacing tenants, further squeezing housing markets, and ultimately fueling urban inequality. The theory is that because short-term holiday rentals are more lucrative, and are now in high-demand and easily facilitated thanks to Airbnb, the number of properties available for purchase or long-term rent declines in order for owners to partake in the holiday market. There are reports of tenants in various cities being evicted precisely for the purpose of turning the accommodation into an Airbnb listing, and the short-term holiday rental market attracts foreign investors who see purchasing property for tourist accommodation as a financial opportunity. Though not explicitly mentioned in the Special Rapporteur's letter, this pattern has led to much debate and protest in Dublin in just the past few years. The pattern is prevalent elsewhere as well. In some cities such as Florence, the result is that residents simply move farther from the center, strategically letting out their own properties on Airbnb or displaced because of a lack of available and affordable housing in the city center under the changing rental dynamics.²⁰³

Related to this, for many cities, particularly in Europe but also elsewhere,²⁰⁴ there is a sense that the mass influx of tourists brought through the Airbnb revolving door is changing the identity of cities, impacting neighborhood character and undermining community.²⁰⁵ Stores and services that long supported locals are replaced to suit the demands of tourists. Local transport is strained due to the vast numbers circulating in the city and public spaces are entirely overwhelmed. The built environment can be an important aspect of cultural heritage in cities, and through UNESCO, this form of culture can gain international protection under the auspices of "world heritage sites".²⁰⁶ But there are related links to the commodification of housing and land in the area of these sites, and of gentrification as brought on by the heritage tourism drive; a drive promoted in the New Urban Agenda and its emphasis on the economic value of cultural heritage. The risks of exploitation and deprivation through heritage commercialization and

²⁰³ See also *Charlemagne: the backlash against Airbnb*, THE ECONOMIST, July 7, 2019.

²⁰⁴ See, e.g., Trevor Bach, *Is Airbnb Ameliorating – or Exacerbating – Inequality in Cities?*, US NEWS, May 2, 2019 (discussing the impact in New Orleans).

²⁰⁵ See, e.g., Prof. Daniel Guttentag, *What Airbnb really does to a neighborhood*, BBC NEWS, Aug. 30, 2018.

²⁰⁶ See United Nations Educational, Scientific and Cultural Organization, World Heritage List, <https://whc.unesco.org/en/list/>.

tourism are obvious in terms of physical displacement,²⁰⁷ but gentrification also presents risks for the protection of immaterial cultural heritage. This is precisely the concern around identity and community dispossessions brought about through mass tourism and has led to repeated protests in some cities, such as Barcelona. These protests are against tourists and embody a refusal to allow the city's identity to succumb to capitalist logic.²⁰⁸ It also represents an interesting twist given that Airbnb's purported appeal is the opportunity for an authentic local experience through home stay and its mission is to create a world where anyone can belong anywhere. Thus, alongside declines in public housing and gentrification impacts, cities are also increasingly reeling from a sense that tourism can aggravate the housing needs of locals again under the auspices of links to big money corporations and foreign investment.²⁰⁹

This is a difficult burden for cities, but it is one that they must overcome. Tourism is an important economic strategy for many European cities and can constitute a significant portion of GDP, but, as with MSEs, these strategies must be pursued while ensuring that the right to housing in the city is protected. This calls for regulation and for cooperation. Airbnb is a major player in the sharing economy and its platform connects accommodation hosts with guests. The Court of Justice of the European Union has ruled that it is an "information society service" rather than a real estate agent.²¹⁰ This makes it difficult for government authorities to hold Airbnb to the kind of licensing rules that would regulate hotels for instance. In response to the Court's decision, Airbnb wrote to mayors of major European cities emphasizing the company's intention for collaboration. Nathan Blecharczyk, co-founder and chief strategy officer, stated: "We fundamentally believe that home sharing is good for cities and the people who live in them," noting the economic impact of the platform.²¹¹ He also wrote:

We also want to be good partners to everyone in the communities where we operate, which is why we welcome fair regulations and fundamentally believe that clear rules are good news for all.

²⁰⁷ Consider, for example, the promotion of tourism at the expense of indigenous peoples' land and cultural sites. See, e.g., *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, 276/03, African Commission on Human and Peoples' Rights (Nov. 25, 2009) (Case involved the forced eviction of the Endorois community in the Lake Bogoria region where the government of Kenya created a game reserve).

²⁰⁸ See, e.g., Stephen Burgen, 'Tourists go home, refugees welcome': why Barcelona chose migrants over visitors, THE GUARDIAN, June 25, 2018, (discussing marches behind banners reading "Barcelona is not for sale" and "We will not be driven out"), <https://www.theguardian.com/cities/2018/jun/25/tourists-go-home-refugees-welcome-why-barcelona-chose-migrants-over-visitors>.

²⁰⁹ John Harris, *30,000 empty homes and nowhere to live: inside Dublin's housing crisis*, THE GUARDIAN, Nov. 29, 2018.

²¹⁰ Airbnb Ireland Case C-390/18, Dec. 19, 2019.

²¹¹ Airbnb Responds to EU Court Decision, Dec. 19, 2019, <https://news.airbnb.com/airbnb-responds-to-eu-court-decision/>.

At Airbnb, I am proud that we have institutionalized this intention and every day around the world, we are working with cities on regulations and proposals that diversify tourism, protect housing and make it easier for more hosts to pay more tax. Already we have worked with more than 500 authorities globally and we have partnered to collect more than \$2 billion in hotel and tourist taxes on behalf of hosts and guests. We are eager to continue our strong relationships.

Indeed this case was always about how our platform should be regulated – not whether it should be regulated. Cities can, should and do have their own clear and modern rules for home sharing, and we have worked with governments across the globe on measure to help hosts share their homes, follow the rules and pay their fair share of tax.²¹²

As the letter suggest, there are means of regulating Airbnb and thereby attempting to address its negative impacts upon urban housing. Taxes are important but they are not the only method because part of the issue with Airbnb is its expanse in cities and the way it is seen to infiltrate neighborhoods that were not intended as tourist havens. In this respect, owners, individual landlords and developers, can and have been limited as to the number of nights properties may be available for short-term rentals. In this way, the incentive for turning purely to the tourist tenant is reduced and the desire for longer term tenants increases. Many cities have been aggressive in prohibiting short-term rentals altogether (of less than six months, for instance) and in implementing steep fines against violations. But strategies must be implemented across the board with respect to regional cities in order to stabilize the housing situation. Airbnb and current trends in tourism represent a clear risk for races to the bottom to prevail and this will lead to further urban displacements. Instead, cities need to work collectively to prevent this and to limit competition and its negative effects on housing and community. This duty to act collectively is on the owners as well and requires them to appreciate the social function of their property and the values of community discussed earlier.

The global competitive pressures discussed thus far have focused on the urban geographical context, but as has been noted earlier there are always important linkages to the rural when dealing with cities. In particular, one major driver of urban growth, particularly in the global South, is rural to urban migration.²¹³ The reasons for such internal migratory flows,

²¹² *Id.*

²¹³ *See generally*, UN-HABITAT WORLD CITIES REPORT 2016: URBANIZATION AND DEVELOPMENT – EMERGING FUTURES (2016) pp. 35, 173, <http://wcr.unhabitat.org/wp-content/uploads/sites/16/2016/05/WCR-%20Full-Report-2016.pdf>. *See also*, Jochen von Bernstorff, *Who is Entitled to Cultivate the Land? Sovereignty Land Resources and Foreign Investments in Agriculture in International Law*, in NATURAL RESOURCES GRABBING: AN INTERNATIONAL LAW PERSPECTIVE 57 (Francesca Romanin Jacur, *et al.* eds., 2016).

which see more and more people seeking urban residence, are historically varied. They can range anywhere from environmental degradation to economic opportunity.²¹⁴ But there is also cause for concern regarding increasing rural-urban migration as prompted by the tremendous growth in foreign acquisitions of agricultural land.²¹⁵ The UN Special Rapporteur on Adequate Housing, Miloon Kothari, has found a clear connection between lack of land access and urbanization noting:

[T]he empirically proven global trend of large-scale rural exodus and migration to the mega-cities and to other more affluent countries is not or not predominantly the result of industrial urban development. Rather, it is often caused by rural poverty, which can be explained by lack of land ownership, insecure landholding and new forms of land use.²¹⁶

Kothari is describing various aspects of the process of “land-grabbing” touched upon in chapter three and which has become an increasingly debated and critiqued global phenomenon. Land-grabbing involves the purchase or lease of huge portions of farmland and other resources by private investors as well as foreign national governments.²¹⁷ It is most associated with investment in land in Sub-Saharan Africa, but it also occurs elsewhere such as in Eastern Europe and Latin America. Since 2007-2008, land-grabbing has greatly accelerated due to the global food crisis,²¹⁸ which has resulted in both national outsourcing of food production and private

²¹⁴ For a journalistic memoir canvassing several case studies, *see generally* DOUG SAUNDERS, *ARRIVAL CITY: HOW THE LARGEST MIGRATION IN HISTORY IS RESHAPING OUR WORLD* (2010); *see also* Shanti Star Builders v Narayan K Totame (1990) 1 SCC 520 para. 10 (“Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialization is equally responsible for concentration of population around industries. These are feature which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.”).

²¹⁵ SASKIA SASSEN, *EXPULSIONS: BRUTALITY AND COMPLEXITY IN THE GLOBAL ECONOMY* 80 (2014) (“The acquisition of local land by foreign governments and foreign firms is a centuries-old process in much of the world. But we can detect specific phases in the diverse histories and geographies of such acquisitions. A major such shift began in 2006, marked by a rapid increase in the volume and geographical spread of foreign acquisitions, as well as the diversity of the buyers. More than 200 million hectares of land are estimated to have been acquired from 2006 to 2011 by foreign governments and firms.” Sassen argues this “extremely sharp change in the total level and geographical range of foreign land acquisitions” is divergent from a long-term trend and thus “becomes an indicator of a larger systemic shift, one that goes beyond the old, established patterns of acquisition.”) *Id.*

²¹⁶ Miloon Kothari, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, U.N. Doc. E/CN.4/2005/48 (Mar. 3, 2005).

²¹⁷ Olivier De Schutter, *The Green Rush: The Global Race for Farmland and the Rights of Land Users*, 52 HARV. INT’L L. J. 504 (2011); On the World Bank’s perspectives and response to land-grabbing *see generally* Francesco Sautu, *On the World Bank’s Efforts in Defence of the Human Right to Land in NATURAL RESOURCES GRABBING: AN INTERNATIONAL LAW PERSPECTIVE* 294-313 (Francesca Romanin Jacur *et al.* eds., 2016).

²¹⁸ *See generally* CESCR, Statement: The World Food Crisis, E/C.12/2008/1 (20 May 2008).

sector interest in agricultural investment.²¹⁹ The former UN Special Rapporteur on the Right to Food, Olivier de Schutter, has produced extensive work on the links. As he has explained:

[P]rivate investors came to realize that the era of low and decreasing prices for agricultural commodities may be coming to an end; that suitable farmland and fresh water might in the future become scarce commodities; and that, as the growth in demand for agricultural commodities was outpacing the ability for the supply side to respond, investing in agriculture might be highly profitable.²²⁰

In 2018, over 18 million hectares of land were part of large scale, private investment land deals.²²¹ There is thus a commodification of land (and water)²²² occurring alongside global shifts in agricultural production, and this, in turn, involves the development of a global market for land rights.²²³

Two broadly divergent reactions to the controversial global land-grab have become evident. On the one hand, there is the position that the global rush for farmland carries important economic opportunities and benefits which are deemed to naturally attend foreign investment, with any potential negative externalities mitigated through “responsible” investment.²²⁴ This is the approach advocated by the World Bank, which has long seen market liberalization as central to foreign investment, economic growth, and development in the global South. On the other, these large land deals are seen as of serious danger to the wellbeing of impacted countries, where forced displacement of farmers and related disruptions to food supplies are problematic in and of themselves. But also, and specifically relevant here, there is a concern that land-grabs lead to the growth of informal settlements in cities, as Kothari cautions. These acquisitions displace rural communities and trigger rural-urban migrations underscoring the inescapable but often

²¹⁹ De Schutter, *supra* note 217 (Discussing, for example, Saudi Arabia’s heavy investment in Sudan.) *Id.* at 515-516; *Cf.* ECKART WOERTZ, OIL FOR FOOD 145 (2013) (“The problem has not so much been a ‘foreignisation of space,’ but an agricultural expansion that could be to the detriment of smallholders and pastoralists regardless of investors’ nationality.”).

²²⁰ De Schutter, *supra* note 217, at 515-516.

²²¹ Land Matrix, Analytical Report of the Land Matrix II.

²²² On the proper role of property in water and its commodification *see, e.g.*, Alison Clarke & Rosalind Malcolm, *The Role of Property in Water Regulation: Locating Communal and Regulatory Rights on the Property Rights Spectrum*, in REGULATORY PROPERTY RIGHTS: THE TRANSFORMING NOTION OF PROPERTY IN TRANSNATIONAL BUSINESS REGULATION 121-140 (Christine Godt ed., 2017) (focusing on England and Wales).

²²³ Sassen, *supra* note 215, at 80-81; De Schutter, *supra* note 217, at 517 (relying upon Howard Mann & Carin Smaller, *Foreign Land Purchases for Agriculture: What Impact on Sustainable Development?*, 8 SUSTAINABLE DEV. INNOVATION BRIEFS 3 (2010)).

²²⁴ Jochen von Bernstorff, “Community Interests” and the Role of International Law in the Creation of a Global Market for Agricultural Land, in COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW 281 (Eyal Benvenisti & Georg Nolte eds, 2018); Saturnino Borrás et al., *The Challenge of Global Governance of Land Grabbing: Changing International Agricultural Context and Competing Political Views and Strategies*, 10 GLOBALIZATIONS 161 (2013).

neglected linkages between the urban and rural spheres. These polarized positions around land-grabbing can also play out on smaller scales as seen with the allegations in Antigua and Barbuda with no less contentious impact. In fact, “land-grabbing” is now a derogatory term and discursive tool to frame land dispossession and community disruptions related to the perceived exploitation of resources, liberal private property interests, and a narrow and commercial understanding of housing and land. It is a loaded and political term designed to convey a sense of illegitimate, even violent, dispossession and carries heavy neo-colonial overtones. Though the transactions may often be removed from the city, it is a further global competitive pressure which bears down on the right to housing in the city.

The global land-grab implicates both international institutions and international norms. Structural adjustment programs of the World Bank and IMF (institutions created by international law) have led to the demise of the public agricultural infrastructure in various developing countries,²²⁵ international trade law has permitted subsidized agricultural products from the global North to drive out local competition, and international investment law protects foreign interests through bilateral investment treaties.²²⁶ The result is a global land market upon which developing countries are increasingly forced to be reliant created by international law processes. In addition, international law’s discursive structures, in particular the principle of territorial sovereignty, when combined with the postcolonial heritage relevant to many of the countries where the global land-grab is most prevalent further supports these vast acquisitions.²²⁷ There are thus various roles international law plays in facilitating and formalizing land-grabbing before, during, and after the fact.²²⁸

There is an ongoing danger of rural farmers and communities losing their land as a result of foreign agricultural investments.²²⁹ This threat stems from property systems similar to that discussed in Barbuda and the reality that many rural landholders do not have legal security of tenure, at least not with respect to classic Western liberal conceptions of property rights.²³⁰ Rather, it is not atypical in developing countries for governments to formally own the rural land

²²⁵ As Malcolm Langford has put it: “Indeed, one of the most outstanding human rights impunity questions is what responsibility the World Bank, the IMF, and their members share for their contribution to retrogression in socio-economic rights in the South from their structural adjustment policies—policies that many Northern governments expressly rejected for their own countries.” Malcolm Langford, *A Sort of Homecoming: The Right to Housing*, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 190 (eds. Mark Gibney & Sigrun Skogly, eds. 2010).

²²⁶ von Bernstorff, *supra* note 224, at 281.

²²⁷ *Id.* at 282.

²²⁸ Umut Özsü, *Grabbing land legally: A Marxist Analysis*, 32 LEIDEN J. INT’L L. 215, 225 (2019).

²²⁹ Woertz, *supra* note 219, at 146; Sassen, *supra* note 215, at 80-83.

²³⁰ De Schutter, *supra* note 217, at 508 (“...there is far more to security of tenure than property rights as understood in the Western legal tradition...”).

which is actually privately held and cultivated by its rural citizenry.²³¹ This situation, a relic of the colonial period and matter of historical fact,²³² can produce legal uncertainty leading to reduced access to legal remedy to challenge eviction, and to provide compensation should eviction in fact result.²³³ And because most of the agricultural land is formally state property with privatized ownership being the exception rather than the rule, “through their status as sovereign entities and owner of most of the land...official governments were and often still are in a position to enter into contractual relations with foreign investors for the notorious large-scale land deals.”²³⁴ This has led to what Saskia Sassen has described as “a structural hole in the tissue of national sovereign territory.”²³⁵ Important and difficult geopolitical and international legal questions around the potential implications of any weakening of the state-territory-authority nexus come to the fore.²³⁶ For instance, foreign governments and actors controlling and fully exploiting huge amounts of state territory suggests a weakening of self-rule.²³⁷ Additionally, Sassen’s assessment also seems to feed into discussions about whether new conceptualizations of sovereignty might be opened up to allow for new global actors such as cities.

Because of strong and growing concern that Western, liberal property rights will be adopted in these contexts,²³⁸ a tension is created where rural farmers and communities stand to easily lose rights to land and common resources that they have resided upon, labored, and accessed for often many years or even generations, and which have traditionally been recognized as their own through customary and communal rights.²³⁹ This loss of land and disruption of community prompts rural exodus and the growth of mega cities as Kothari described in his report. The land-grabbing phenomenon thus impacts not only the particular swath of land in question and the particular transaction between the government and investor, but also carries much wider social, cultural, political, and economic implications.

²³¹ *Id.* at p. 524; *See also* JOHN G. SPRANKLING, *THE INTERNATIONAL LAW OF PROPERTY* 124-125, 130-132, 357 (2014).

²³² KLAUS DEININGER ET AL., *WORLD BANK, RISING GLOBAL INTEREST IN FARMLAND: CAN IT YIELD SUSTAINABLE AND EQUITABLE BENEFITS?* (2011).

²³³ De Schutter, *supra* note 217, at 524.

²³⁴ von Bernstorff, *supra* note 224, at 283-84.

²³⁵ Saskia Sassen, *Land Grabs Today: Feeding the Disassembling of National Territory*, 10 *GLOBALIZATIONS* 25, 43 (2013).

²³⁶ von Bernstorff, *supra* note 224, at 284.

²³⁷ *Id.*

²³⁸ De Schutter, *supra* note 217, at 506; Sprankling, *supra* note 231, at 357.

²³⁹ *See* Woertz, *supra* note 219, at 158. Note also that the African Commission on Human and Peoples’ Rights has found violations of the right to property even where legal title was lacking. In *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions v. Sudan*, the Commission found that the State did not take steps to protect Darfurians from the Janjaweed militia who destroyed their houses and other property, noting: “It doesn’t matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by Article 14.” 279/03-296/05. *Id.* at para. 205.

Through an ethnographic study of Boeung Kak Lake in Phnom Penh, Cambodia, Henrietta Zeffert further emphasizes the consequences of land dispossessions and displacements through the prism of “home”. She underscores direct links between international institutions, specifically the World Bank, and land-grabbing. Zeffert takes home “as central to being and belonging in the world,” to “ontological security”, and as thus “a pivotal site for directing enquiries about the everyday life of international law.”²⁴⁰ Her study outlines a 2008 land-grab, in which Boeung Kak Lake and its nine surrounding villages was leased for ninety-nine years to a private investor by the Municipality of Phnom Penh, uprooting some 4,000 families in the process.²⁴¹ According to Zeffert, “[s]ince the mid 2000s, Phnom Penh’s city policy has been to make the capital competitive with other Southeast Asian cities, an aspiration reflected in the pace of construction,” but, she observes that the Cambodian capital “now bears all the tumours of neoliberal urban growth in the global South: a building boom, rising land values, and swelling slums.”²⁴²

The Boeung Kak Lake sale coincided with a 2002-2009 World Bank development project in Cambodia – the Land Management and Administration Programme (LMAP) – which included the lake, and in which the Bank “promised to improve security for local people by distributing land titles, and to stimulate investment in land.”²⁴³ More specifically, the Bank’s understanding of the land titling, tenure security, and investment connections is articulated as follows:

Around one million households in both rural and urban areas will receive land titles under the project. The beneficiaries of land titles will enjoy the benefits associated with the titles, including increased tenure security, access to credit, and the

²⁴⁰ Henrietta Zeffert, *The Lake Home: International Law and the Global Land Grab*, 8 ASIAN J. INT’L L. 432, 439 (2018). For Zeffert and many others, home is “an ‘intensely political’ site.” *Id.* at 438 quoting Alison Blunt, *Cultural Geographies of Home*, 29 PROGRESS IN HUM. GEOGRAPHY 505, 510 (2005).

²⁴¹ Zeffert, *supra* note 240. Reports of land grabs in Cambodia have been frequent, particularly those involving violent evictions. See Alice Beban, et al., *From Force to Legitimation: Rethinking Global Land Grabs in Cambodia*, 48 DEV. & CHANGE 590, 591 (2017) (discussing the ways people are excluded from land through law, informal political networks, legitimizing discourses and market-based mechanisms.). See also HUMAN RIGHTS WATCH, AT YOUR OWN RISK: REPRISALS AGAINST CRITICS OF WORLD BANK GROUP PROJECTS 71-84 (2015).

²⁴² Zeffert, *supra* note 240, at 451. See also Commission on Human Rights, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Report to the Commission on Human Rights, Miloon Kothari, E/CN.4/2005/48 (Mar. 2005) (“... Governments continue the practice of mass evictions in cities as means of creating ‘world-class cities’, lured by the prospect of international investment. Economic globalization has created competition amongst cities that is to the detriment of the poor. The example of Mumbai, India, is very recent. Between December 2004 and January 2005, 80,000 homes were demolished rendering 300,000 people homeless. For the vast majority of those evicted there was no advance notice, the evictions were violently carried out, and the belongings, including identity cards, of many were damaged or burnt. Those evicted have not been offered alternative accommodation, clearly exacerbating the situation of homelessness in Mumbai. The Chief Minister explained these brutal demolitions as the only way to create a ‘world-class’ city in the future.”) para. 27.

²⁴³ Zeffert, *supra* note 240, at 433.

opportunities to increase investments and productivity. Many of the expected beneficiaries are poor and vulnerable. Providing them with secure titles would sharply reduce the risks of dispossession that they now face.²⁴⁴

In the Bank's view, the land-grab and dispossession was a coincidence, a "regrettable but unintended consequence of the project," and the Bank's Inspection Panel "effectively cleared the organization and its staff from wrongdoing during LMAP."²⁴⁵

Zeffert rejects this contention, and her empirical study at the Lake, investigating links between international law, land grabbing, and the concept of home, leads her to conclude that the World Bank's land titling intervention in Cambodia ultimately "transformed *home into property*, giving rise to opportunities for speculation and the transfer of wealth from the poor to the more secure. In the process, home at the lake became not a source of wealth but a means through which wealth was reorganized and accumulated."²⁴⁶ She contends that "the Bank's support for regulating large-scale land acquisition makes international law complicit in dispossessory paths of economic growth and development."²⁴⁷ This example serves to remind of the growing links between cities and international institutions, in this case Phnom Penh and the World Bank, and the way these institutions seek to establish particular urban development themes. Further, Zeffert's critique is consistent with the more critical views of land-grabbing. Such interpretations associate it with capturing control of land and resources through extra-economic coercion and large-scale capital, shifting the orientation of resource use all as part of capital's response to crises.²⁴⁸

Barbuda and Boeung Kak Lake illustrate that the competition for and commodification of land as related to foreign investment, coupled with the spread of Western, liberal conceptions of property rights creates problems for those holding alternative forms of tenure and can lead to disruptions in housing and senses of community. The granting of title as a means of improving economic growth and situating land at its "best use" has been critiqued by scholars who argue that land commodification in fact only leads to distress sales and ultimately benefits investors.²⁴⁹

²⁴⁴ *Id.* at 441 (2018) (quoting World Bank, "World Bank Approves Credit for Land Management and Administration Project in Cambodia", Press Release Number 2002/216/EAP, Feb. 26, 2002).

²⁴⁵ Zeffert, *supra* note 240, at 433 & 450.

²⁴⁶ *Id.* at 434; see also Malcolm Langford, *A Sort of Homecoming: The Right to Housing*, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 179 (Mark Gibney & Sigrun Skogly eds., 2010) ("The World Bank has attracted sustained criticism for its sponsorship of such projects which lead to displacement and ecological destruction. Even when it is a minor financial contributor, its concessional loans provide a stamp of creditworthiness that can be used by borrowing states to leverage other investment.").

²⁴⁷ Zeffert, *supra* note 240, at 434.

²⁴⁸ See Borrás Jr & Franco, *supra* note 248, at 1725.

²⁴⁹ Olivier de Schutter, *How Not to Think of Land-Grabbing: Three Critiques of Large-Scale Investments in Farmland*, 38 J. PEASANT STUDIES 248, 270 (2011).

What is more, the historically weak property rights systems and land-tenure regimes of developing countries often work to the disadvantage of the disadvantaged – rural small-scale farmers, pastoralists, women, and children – who do not typically hold formal title. For instance, the Uganda High Court in *Muhindo James & Ors v. Attorney General* acknowledged the disproportionate effect on vulnerable groups particularly children in the context of investment related eviction. One of the applicants in this case, Charles Topoth, recounted that in 2013 an investor, Jan Magal & Co Ltd, a Ugandan subsidiary of an Indian jewelry company, started excavations in his area under a government exploration license from the Ministry of Energy and Minerals. The area was fenced off and guarded by the Ugandan army, and the excavations entailed the installation of high-pressure pumps leading to massive river drainage which affected local livelihoods. Mr. Topoth alleged that his family and clan were evicted, displaced, and scattered, and that they lost land and endured the breakage of family and social community ties. In this case and also more widely, the gendered nature of displacement was evident for girls whose schooling tends to be interrupted or completely stopped in the context of evictions.²⁵⁰

Returning to the Special Rapporteur's assessments stated at the beginning of this section, the displacement of rural dwellers may prompt an influx of people arriving at the nearest urban core, with their first and often permanent stop being informal and inadequate housing on the periphery.²⁵¹ Their precariousness is translated and transposed to the urban environment where they, and the city itself, face additional pressures. This whole process is thus a precipitating and participating factor in the increasing urbanization occurring on a global scale and in the challenge to ensure the right to housing in the city. Encounters and interactions on the urban peripheries are prompted by dispossessions in both the rural and the urban center, a process, as Andy Merrifield puts it, of “sucking people into the city while spitting others out of the gentrifying center, forcing poor urban old-timers and vulnerable newcomers to embrace each other out on the periphery, out on assorted zones of social marginalization, out on the global *banlieue*.”²⁵² Whether in pursuit of city space for economic development and global market connections, or of rural acquisitions for agriculture and commodified resource extractions, people are being forced around by global capital and are dispersed in search of housing.

²⁵⁰ *Muhindo James & Ors v Attorney General*, High Court of Uganda at Kampala, Jan 25, 2019 (finding that the absence of adequate procedure governing evictions is a threat to and can lead to violation of the rights to life, dignity, and property in the Ugandan constitution as well as binding international human rights law and standards).

²⁵¹ See Woertz, *supra* note 219, at 155 (“A worst-case scenario of international agro-investments would entail expropriation of smallholders and pastoralists, followed by impoverishment or migration to the cities without encountering sufficient job opportunities.”); Sassen, *supra* note 215, at 82.

²⁵² Andy Merrifield, *The right to the city and beyond: Notes on a Lefebvrian re-conceptualization*, 15 CITY 473, 474 (2011).

5.4 Collective Efforts to Ensure the Right to Housing in the City

As discussed thus far, the municipal political economy involves urban agendas driven by globally competitive economic pressures and growth strategies aimed at cultivating the significance of urban space in that particular city.²⁵³ But this narrative is not separate from the duty to ensure the right to housing in the city. In this context, a growing city assertiveness vis-à-vis the state leaves room for optimism. At an individual level, cities are holding themselves out as champions of environmental progress,²⁵⁴ havens for migrants,²⁵⁵ and enclaves of tolerance separately from their nation-states. At a collective level, cities have shown that they know how to cooperate as well as compete forming various transnational collaborative networks. Thus, in spite of the prevalence and pitfalls of inter-local competition, particularly in economic and social terms,²⁵⁶ city governments are managing to form potentially powerful alliances globally.

There are various reasons for this. For one, localities have sought to escape from the grasp of and defend themselves against central governments which have sometimes developed a pattern of making government decisions not from the input of inter-local negotiation and compromise, but from the playbook of party discipline.²⁵⁷ Additionally, cities have developed a “global consciousness” underscored by economic globalization and its impact on cities as well as the reality that the most pressing and significant global problems are acutely felt by the inhabitants of cities across the globe.²⁵⁸ The growth of local networks reflects this and suggests a self-recognition by localities of their own importance as well as an admonishment of the level of participation they hold in global governance projects, a slight which induces cooperation rather than solely competition in a longer-term strategy of greater influence and standing.²⁵⁹

And cities have also become targeted in the global normative agenda. In short, this is because of their perceived capacity for real action in contrast to purported state bureaucracy and ineptness. Cities are viewed as more progressive than states and thus able to fill governance

²⁵³ Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 492 (2009) (discussing Harvey Molotch’s “city as growth machine” which argues “[c]onditions of land-based elites...drive urban politics in their quest to expand the local economy and accumulate wealth.”) Harvey Molotch, *The City as a Growth Machine*, 82 AM. J. SOC. 309, 309 (1976).

²⁵⁴ See, e.g., The City of New York, Office of the Mayor, ‘Executive Order No. 26: Climate Action Executive Order’, 2 June 2017.

²⁵⁵ For an analysis of Dutch cities, see Barbara Oomen & Moritz Baumgartel, *Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law*, 29 EUR. J. INT’L. L. 607 (2018).

²⁵⁶ See also Gerald E. Frug, *City Services*, 73 N.Y.U. L. REV. 23 (1998) (“It is useful to also acknowledge the much critiqued Tieboutian model which sees jurisdictional competition as advantageous and holds that interlocal competition responds to individual preferences and mobilities about where to live thus garnering economic growth and improved services.” Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).)

²⁵⁷ Gerald E. Frug, *The Central-Local Relationship*, 25 STANFORD L. & POL’Y REV. 1, 5 (2014).

²⁵⁸ Janne Nijman, *supra* note 6, at 214.

²⁵⁹ Blank, *supra* note 9, at 268; see also JOLENE LIN, GOVERNING CLIMATE CHANGE: GLOBAL CITIES AND TRANSNATIONAL LAWMAKING 61 (2018).

gaps, and as holding a special kind of democratic legitimacy due to their status as the level of the state closest to the people. They are seen to be differentiated from states' preoccupation with the preservation of their sovereignty, and, in this way, better equipped for outreach, networking, collaboration, and problem solving. This is the dominant narrative around the rising importance of cities in global affairs today.²⁶⁰ And as discussed last chapter, the concerted international efforts to address and plan a sustainable global future move beyond a state-centric focus. Urbanization is now key to sustainable development.²⁶¹ Through commitments such as SDG 11 and the NUA, international law as a process is further interacting with the complexity of cities, and cities have similarly sought to engage with international norms and institutions.²⁶²

Cities themselves have played a prominent role in the shaping of these global norms, holding court in the international debates on these guidelines and working together through networks such as the United Cities and Local Governments (UCLG) and the Cities Alliance seemingly supported and respected by international organizations. The commitments themselves are directly addressed to cities as well as to states. The New Urban Agenda in particular is heavily focused on local governments, and local government presence exceeded that of national governments at Habitat III.²⁶³ The New Urban Agenda and the 2030 Agenda explicitly call up action at the local level and by local governments even though these are international law commitments encompassing global agendas and visions.²⁶⁴ They, in essence, ask cities to use international law to shape municipal law and urban spaces. This injection of cities into the focus of international normative processes is part of understanding how cities themselves shape the global normative context in which they operate,²⁶⁵ and how international

²⁶⁰ BENJAMIN BARBER, *IF MAYORS RULED THE WORLD. RISING CITIES, DECLINING NATION STATES* 70-71 (2013); Helmut Aust, *Lauterpacht Centre for International Law Talk – ‘Cities and Climate Change: International Law Perspectives’*, Nov. 3, 2017. Aust also notes that the local level of cities can also serve as a counterforce to conservative elections, but this would seem to potentially undermine democracy arguments and represent a threat and risk to democracy itself. *See also*, Gerald Frug, *The City as a Legal Concept*, 93 *HARV. L. REV.* 1057, 1968 (1980) (“...the argument for city power rests on what cities have been and what they could become...They could respond to what Hannah Arendt has called the need for ‘public freedom’ – the ability to participate actively in the basic societal decisions that affect one’s life.”).

²⁶¹ *See, e.g.*, EDWARD GLAESER, *TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* 75 (2011) (“Yet urban poverty, despite its terrors, can offer a path toward prosperity both for the poor and for the nation as a whole. Brazil, China, and India are likely to become far wealthier over the next fifty years, and that wealth will be created in cities that are connected to the rest of the world, not in isolated rural areas. It is natural to see the very real problems of poorer megacities and think that people should go back to their rural villages, but cities, not farms, will save the developing world.”).

²⁶² *See* Nijman, *supra* note 6, at 216 (“As the city once more becomes conscious of its global context, the urban level of governance draws closer to the global level of governance.”).

²⁶³ *See, e.g.*, *New Urban Agenda*, UNGA A/RES/71/256, para. 15 & 16.

²⁶⁴ *Id.* at para. 21.

²⁶⁵ Nijman, *supra* note 6, at 218.

norms and institutions shape cities, their inhabitants, and their possibilities.²⁶⁶ Some scholars even hold that the emerging body of “international local government law” which addresses the city directly and not as a state organ is becoming a part of international law.²⁶⁷ For Gerald Frug and David Barron, the ways that international law seeks to regulate subnational governments by penetrating the nation-state shows that international law “is also attempting to redefine the legal position of cities vis-à-vis both higher-level subnational governments and the nation-state itself.”²⁶⁸ Put differently, it is a matter of international law specifically and separately targeting the city at and as a distinct governmental level for legal transformation.²⁶⁹ Thus cities can be viewed both and simultaneously as subordinate domestic governments and as independent international actors.²⁷⁰ In this way, state sovereignty is also tested as the city becomes more empowered and gains growing recognition as international actor.²⁷¹

But let us take an important step back. International law has failed to sufficiently tackle global issues around economic, social, and cultural rights particularly in the face of economic globalization,²⁷² and has, through global governance institutions and processes, even undermined the ability of the state to achieve these rights.²⁷³ Subnational entities, including cities, are stepping into this gap and may ultimately prove more appropriate fora to champion socio-economic rights than nation-states. In California, for example, the homelessness crisis in cities has led to discussions of a legal right to shelter, something non-existent at the national level, and which might be pursued through local city ordinances.²⁷⁴ Thus as Saskia Sassen frames it: “The national as container of social process and power is cracking up, opening up

²⁶⁶ Helmut Philipp Aust, *The Good Urban Citizen*, in INTERNATIONAL LAW’S OBJECTS 225 (Jessie Hohmann & Daniel Joyce, eds. 2018).

²⁶⁷ See also, Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSNAT’L L. 875 (2006).

²⁶⁸ Gerald Frug & David Barron, *International Local Government Law*, 38 THE URBAN LAWYER 1, 21 (2006).

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 11.

²⁷¹ See Blank, *supra* note 267, at 892; Aust, *supra* note 266; Nijman, *supra* note 8.

²⁷² “...States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.” Committee on Economic, Social and Cultural Rights, 1993 World Conference on Human Rights.

²⁷³ See generally, JOE WILLS, CONTESTING WORLD ORDER? SOCIOECONOMIC RIGHTS AND GLOBAL JUSTICE MOVEMENTS (2017); See, e.g., Jochen von Bernstorff, *International Law and Global Justice: On Recent Inquires into the Dark Side of Economic Globalization*, 26 EUR. J. INT’L. L. 279, 283 (2015) (on extreme poverty and the need for international law prioritization in this respect).

²⁷⁴ The US has signed but not ratified the ICESCR. A legal right to shelter for homeless individuals exists in New York City pursuant to the Callahan Consent Decree. See <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/CallahanConsentDecree.pdf>.

possibilities for a geography of politics that links subnational spaces. Cities are foremost in this new geography.”²⁷⁵

The empowerment of localities therefore has a particular hope in the context of human rights, and there is a burgeoning discourse which sees cities as a means of overcoming the recent challenges to the human rights agenda. More specifically, the argument is that human rights as a legal project can gain sorely needed renewed relevance and legitimacy through the work of cities, where international law’s potential correlation with genuine local democracy may be most apparent.²⁷⁶ “Human rights cities” may offer an overdue opportunity for the human rights movement to become an actual participant in governance rather than solely its critic.²⁷⁷

The interaction between the local and global is thus not solely imposed on cities from the top-down by international institutions such as the World Bank and UN-Habitat as discussed previously; localities are also assertively and voluntarily enforcing and advancing international norms. This is evidence that local actors can be more committed to serving as human rights duty bearers and therefore “invoke responsibilities derived from international human rights law to ‘decouple’ their policies from those adopted nationally.”²⁷⁸ At a political level, there is a particularly important local role to be played with respect to rights.²⁷⁹

A “human rights city” label, going beyond a mere transparent political branding of it,²⁸⁰ may lead to a competitive edge while simultaneously comporting with progressive local city ideals and international human rights standards.²⁸¹ It inspires a race to the top where competitiveness is imbued with solidarity and sustainability, or the urban public interest.²⁸² In the climate of intense inter-city competition for private investment, it may seem unlikely that individual mayors and even a small circle of policymakers choose to advance a human rights

²⁷⁵ Saskia Sassen, *TERRITORY, AUTHORITY, RIGHTS: FROM MEDIEVAL TO GLOBAL ASSEMBLAGES* 314 (2006).

²⁷⁶ See Oomen & Baumgartel, *supra* note 255. See also Allen Buchanan, *Why International Legal Human Rights?*, in *THE PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS* (2015).

²⁷⁷ See David Kennedy, *The international human rights regime: still part of the problem?*, in *EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS*, 27 (Rob Dickinson et al eds., 2012).

²⁷⁸ See Oomen & Baumgartel, *supra* note 255, at 614. But human rights can be understood not solely as law, but also as values and as governance. See Sally Engle Merry et al., *Law from Below: Women’s Human Rights and Social Movements in New York City*, 44 *LAW & SOC’Y REV.* 101, 107 (2010) (Describing human rights as good governance: “It is the product of a merger of human rights with development and democracy projects, an approach beginning in the 1980s.”).

²⁷⁹ CONOR GEARTY & VIRGINIA MANTOUVALOU, *DEBATING SOCIAL RIGHTS* 53 (2011) (“The basic ICESCR rights are there for all to see but what they entail in concrete terms and the extent to which they are supported, complemented and supplemented remain open to discussion, debate and further action, at the international, regional, state or even purely local level...the framing, detailing and embedding of social rights are quintessentially political activities.”).

²⁸⁰ See Grigolo, *supra* note 28.

²⁸¹ *But see*, Eli Lauterpacht, *Sovereignty – myth or reality?* 73 *INT’L AFF* 137, 141 (1997) (“...the benefits derived from a commitment to observance of human rights, though politically real and significant, are not generally measurable in economic terms.”).

²⁸² See generally Nijman, *supra* note 8.

agenda, especially at the risk of national sanctions and given the additional financial and administrative expenditure, without a longer-term economic agenda about the city's (or their own) future.²⁸³ Global attention to private sustainability initiatives and a growing culture of business accountability can make the notion of human rights cities a more attractive construction and normative ambition that lines up with the pressure to attract investment. The standard race to the bottom gripe around high capital mobility suggests that the fear of capital leaving has a negative impact on economic, social, cultural, and environmental policy. This has certainly been a substantial part of the municipal political economy as the discussion in this chapter has demonstrated.²⁸⁴ But a race to the top is also viable.²⁸⁵

An example of an inter-city competition for a global sporting event helps illustrate the point. When Boston withdrew from contention for the 2024 Olympic Games, after previously beating out Los Angeles, San Francisco, and Washington, DC, Los Angeles was put forward as the official US bid city. Los Angeles campaigned strongly on an agenda of sustainability and fiscal responsibility, emphasizing the use of existing infrastructure and the importance of post-event legacy. That Los Angeles was ultimately selected as host city (for 2028)²⁸⁶ suggests that the International Olympic Committee has come to recognize the need for rehabilitation and the specific possibility for doing so through a revamped approach which emphasizes sustainability and the business and human rights mantra of doing no harm. Accordingly, the LA2028 website describes their vision as “to help transform the Games, utilizing our city’s ideal climate, unparalleled culture of creativity and imagination, and youthful energy to make them the most sustainable in decades. We believe this will serve the (Olympic) Movement well beyond 2028.”²⁸⁷ It further notes that internationally, it will “[c]hampion an Olympic and Paralympic Games hosting model that delivers sustainable benefits to host communities and inspires bidding cities in the future.”²⁸⁸ Notions of sustainability and legacy management have indeed become more relevant for the future of the Olympics, as demonstrated even at the Habitat III conference where a side event on “Olympic Legacies – Commitments for Sustainable Development” was

²⁸³ See generally RICHARD FLORIDA, CITIES AND THE CREATIVE CLASS 137-39 (2005) (on the potential for a city’s openness to immigration and its level of social tolerance to be connected to local economic development).

²⁸⁴ Schragger, *supra* note 253, at 526.

²⁸⁵ See *id.*

²⁸⁶ The bid process became complicated by the withdrawal of Hamburg, Rome, and Budapest as bid cities, leaving only Paris along with LA. In an extraordinary measure, the IOC decided to elect both the 2024 (Paris) and 2028 (Los Angeles) host cities at the same time, further highlighting the crisis of the organization and its flagship event.

²⁸⁷ <https://la28.org/vision>.

²⁸⁸ <https://la28.org/vision>.

on the dock of the world's biggest summit on sustainable urbanization and put on by the World Union of Olympic Cities, yet another city network.²⁸⁹

More than LA's own strategic bidding approach, in January 2017, the IOC announced that it was revising its host city contract to include human rights clauses. This marks the first time in Olympic history that human rights protections have been afforded in host city contracts. It also represents a deliberate policy shift on the part of the IOC which had been critiqued in 2015 for its failure to include a specific reference to human rights.²⁹⁰ The 2024 host city contract for the Summer Olympic Games in Paris and for the 2028 Games in Los Angeles both contain human rights clauses, and this recognition can help to ensure that sustainability is framed in social and not solely environmental terms. Further, in line with a report it commissioned in 2016 from John Ruggie,²⁹¹ author of the UN Guiding Principles on Business and Human Rights, FIFA implemented new bidding requirements for the 2026 World Cup which was awarded to a joint bid from the US, Canada, and Mexico in 2018. FIFA's new bidding requirements expressly include human rights.

These developments can be situated in the broader context of backlash against global sports organizations which have been taking place over the past few years. With the US indictment of high-ranking FIFA officials in May 2015 on charges of money laundering, bribery, and companies and governments receiving preferential treatment in bidding for contracts related to sports events,²⁹² the human rights criticisms long associated with MSEs were thrust into the spotlight in a new and unapologetic way. The FIFA corruption scandal was broadly representative of an increased awareness of corporate misconduct in sport, and the allegations seemed designed to send the message that international football is big business and must take greater responsibility in terms of more transparent and accountable governance practices.²⁹³ Human rights NGOs concerned with violations related to sport hitched their cause to this push for reform, piggybacking a human rights agenda onto the legal pressure for greater transparency and an end to corruption in global sports bodies. Increased media attention and public pressure have caused organizations such as the IOC and FIFA to reconsider their human rights obligations and responsibility in the context of the Olympic Games or World Cup, and

²⁸⁹<http://habitat3.org/the-conference/programme/all/olympic-legacies-commitments-for-sustainable-development/>.

²⁹⁰ Amnesty International UK Press releases, *2024 Olympics: "Astonishing" omission of human rights in Host City Contract*, <https://www.amnesty.org.uk/press-releases/2024-olympics-astonishing-omission-human-rights-host-city-contract>.

²⁹¹ See John G. Ruggie, "For the Game. For the World." FIFA and Human Rights, Corporate Responsibility Initiative Report No. 68 (2016).

²⁹² See generally Cecily Rose, *The FIFA Corruption Scandal from the Perspective of Public International Law*, 19 AMERICAN SOCIETY OF INTERNATIONAL LAW 23 (2015).

²⁹³ Henne, *supra* note 20, at 325.

they have begun to demonstrate some commitment to the promotion and protection of human rights. This commitment appears to be contested at the level of global sports governance, however, where different states seem to have different understandings of the scope and substance of such a human rights agenda and some states have also raised objections to their portrayal as human rights violators on the familiar grounds that it constitutes Western imperialism.²⁹⁴

In celebrating the gains of the human rights reforms, it is important to also recall that part of the often-overlooked societal benefit of bidding for and staging an MSE is the space it opens up to contest and deliberate difficult urban questions, especially for housing. The quest for human rights recognition and accountability from powerful private actors – the sports governing bodies – must not serve to quiet such protest, for human rights have an unfortunate way of avoiding rather than fully exposing the complex, structural dynamics underlying and informing individual harms. This is particularly true with respect to the right to housing, which suffers from a failure to properly encapsulate the social relational importance of urban housing and urban belonging. Instead, the duty on states and cities is to ensure the right to housing in the city and the robust participation in urban development the right entails. In this respect, it is notable that in 2019, the IOC announced Airbnb as a major sponsor for the Olympic Games.²⁹⁵ This partnership met with pushback from cities, particularly Paris, host of the 2024 Olympics. Mayor Anne Hidalgo has even written to the IOC President emphasizing Airbnb’s negative effect on housing adequacy in Paris.²⁹⁶ But this relationship between the IOC and Airbnb is a prime opportunity for deliberation and collaboration with and among local governments in a collective effort to ensure the right to housing in the city, and should be approached as such.

This leads to a broader point regarding the so-called rise of cities in international law. Trending in the legal literature, is a growing attention to the work of city networks, particularly in pursuit of urgent environmental goals, stepping in to address climate change in the face of faltering nation-states.²⁹⁷ At international law academic conferences, too, the role of subnational entities has been appearing more frequently as a thematic area. But the changing form of

²⁹⁴ *UN Forum on Business and Human Rights: Challenges associated with Mega Sporting Events*, (UN Web TV, Nov. 17, 2015) (Comments from Representative of Qatar Ministry of Foreign Affairs in response to the International Trade Union Confederation (ITUC) Representative’s allegations of migrant worker exploitation in Qatar, stating the ITUC criticism is “ill-founded, politically-motivated, self and interest driven”).

²⁹⁵ IOC and Airbnb Announce Major Global Olympic Partnership, Nov. 18, 2019, <https://www.olympic.org/news/ioc-and-airbnb-announce-major-global-olympic-partnership>.

²⁹⁶ See Feargus O’Sullivan, *Airbnb’s Olympic Sponsorship Deal Isn’t Playing Well in Paris*, CITYLAB, Nov. 21, 2019, <https://www.citylab.com/life/2019/11/airbnb-olympic-sponsor-paris-mayor-hidalgo-rental-tourism/602410/>.

²⁹⁷ See Helmut Philipp Aust, *Shining Cities on the Hill? The Global City, Climate Change, and International Law*, 26 EUR. J. INT’L L. 255 (2015); Lin, *supra* note 259. See also HAROLD KOH, *THE TRUMP ADMINISTRATION AND INTERNATIONAL LAW* 39-54 (2019).

contemporary cities in human terms, as exemplified by the global urban housing crisis and related deprivations, calls for closer attention to the role of cities in international law. The normative arguments underpinning the focus on cities must be questioned on the basis of the housing tensions illuminated throughout this study. Cities are thought to be the level of government closest to the people and therefore best able to speak for and act in the interest of the local community. Through the commodification and financialization of housing, processes supported by international law and institutions, a trend has developed towards exclusionary cities which increasingly become home only to the well-off in physical terms and certainly in political and cultural terms. Giving more voice to cities as global actors in the international arena therefore may further negate already disregarded voices of those displaced from or marginalized within cities. It is critical for any increased status of local governments at the international level – a broader trend beyond housing – to occur alongside a renewed understanding of and commitment to the right to housing in the city.

Goal 11 and the New Urban Agenda articulate a now widespread recognition that cities are both a cause of contemporary global sustainability problems and can and must be part of the solution to these same problems. This is one aspect of the way in which these new developments in international law in fact demonstrate a reconceiving of the role of cities in international law.²⁹⁸ A specific urban development goal and the global urban policy agenda adopted at Habitat III ensure the centrality of cities to global development debates and underscore the internationalization of urban governance, further supporting the standing of cities as international actors.²⁹⁹ This pro-urban turn toward taking cities much more seriously is largely based on the profound demographic shift characterized by the growing global population in cities as noted in the introduction. But the new trajectory must also be significantly attributed to the political campaigning for an urban-specific SDG as carried out through the concerted mobilization efforts of international networks of local governments and their interest alignment.³⁰⁰ These would include the UCLG and Cities Alliance, as well as the ICLEI – Local Governments for Sustainability, the C40 Cities Climate Leadership Group, and many others from academia and the private sector.³⁰¹

²⁹⁸ See Helmut Philipp Aust & Anél Du Plessis, *Good urban governance as a global aspiration: on the potential and limits of Sustainable Development Goal 11*, in SUSTAINABLE DEVELOPMENT GOALS – LAW, THEORY AND IMPLEMENTATION 201 (Duncan French & Louis Kotze eds., 2018) (noting that SDG 11 on cities is unique as the only actor-specific goal in the SDGs).

²⁹⁹ Helmut Philipp Aust, *The Shifting role of cities in the global climate change regime: From Paris to Pittsburgh and back?*, 28 RECEIL 57, 64 (2019).

³⁰⁰ Clive Barnett & Susan Parnell, *Ideas, implementation and indicators: epistemologies of the post-2015 urban agenda*, 28 ENVIRONMENT & URBANIZATION 87, 89 (2016).

³⁰¹ *Id.* The New Urban Agenda specifically calls for cooperation among local governments as a means of realizing the goals agreed in that Agenda. UNGA ‘New Urban Agenda’ UN Doc A/RES/71/256 (25 January 2017) Annex. para. 149 (“We will expand opportunities for North-South, South-South and triangular regional

This alignment is also indicative of and inspiring for the collective effort needed to ensure the right to housing in the city. Scholars seem attentive to the protection of the environment as the most urgent dimension and strongest potential of city assertiveness and cooperation. This is indeed critical. But attention to actualizing the right to housing in the city and to the related *social* aspects of sustainable urban development should also be a priority, especially given that the central claim for city power rests on a democratic legitimacy argument. It is normatively significant to consider the local citizens to whom the local government is in turn accountable, and who therefore influence local government action and agendas that ultimately are becoming global. Many cities appear to be progressive in their efforts to implement international law focusing on human rights and environmental concerns, and there are noticeable and promising networks of cooperation between local governments which are often recognized at the international level. It is in this novel context that cities have a heightened duty to ensure the right to housing in the city in order to prevent the entrenchment of urban exclusion and the transposition of this exclusion to global governance levels. There are hopeful signs that this is indeed in the works.

Habitat III and its outcome document the NUA can be seen as a manifestation of the way the right to adequate housing is currently being normatively developed in international law. This is accomplished through the collaboration and coordination of a variety of different actors. At Habitat III, the UN Special Rapporteur and voices from international institutions, such as the World Bank, local governments, civil society associations, such as the Slum Dwellers International, and city networks all engaged with the right to housing. The interconnected discourses of these various players are shaping the global understanding of the right to housing. The plural approach advanced by the Special Rapporteur and as discussed throughout this study – engaging with states and treaty bodies, such as the Human Rights Committee, as well as private corporations, such as Blackstone – brings a greater pool of stakeholders to the housing discussion table. And the Special Rapporteur is also working with cities. For instance, the Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City was adopted in July 16, 2018. The Preamble states:

Building on the milestones of the New Urban Agenda of Habitat III (Quito, 2016) and the momentum of “The Shift”, a global initiative on the right to housing, the signatory cities below take part in this High-Level Political Forum of the United Nations to follow up on Sustainable Development Goal 11...with the

and international cooperation, as well as subnational, decentralized and city-to-city cooperation, as appropriate, to contribute to sustainable urban development, developing capacities and fostering exchanges of urban solutions and mutual learning at all levels and by all relevant actors.”).

support of UCLG (United Cities and Local Governments), the Office of the High Commissioner for Human Rights, and Leilani Farha, UN Special Rapporteur on the right to housing.

We, the local governments, are the public officials who are most sensitive to the everyday needs of our citizens. In the contemporary world, lack of national and state funding, market deregulation, growing power of global corporations, and increasing competition for scarce real estate often become a burden on our neighborhoods, causing serious distortions in their social fabric, and putting the goal of ensuring equitable, inclusive, and just cities at risk. We, the local governments strongly believe that all people should have actual access to “adequate housing”, understood by the United Nations as one that has the correct “affordability”, “legal security of tenure”, “habitability”, “availability of services, materials, facilities and infrastructure”, “accessibility”, “location” and “cultural adequacy”. Nevertheless, real estate speculation, high cost of housing, inadequate regulation, socio-spatial segregation, insecurity of tenure, substandard housing, homelessness, urban sprawl or informal urban enlargements without requisite facilities or infrastructure, are growing phenomena that threaten the equity and sustainability of our cities. Given this situation, local governments cannot stay on the sidelines, and need to take a central role.³⁰²

The Municipalist Declaration provides for five specific actions:

(1) We demand more legal and fiscal powers to regulate the real estate market in order to fight against speculation and guarantee the social function of the city; (2) We demand more resources and commit increased investment to strengthen the public housing rental stock in all of our neighborhoods; (3) We are committed to boosting mixed residential solutions, which are neither solely government-driven nor purely based on commercial gain; (4) We are committed to planning mixed, compact and polycentric cities where housing benefits from a balanced context and contributes to the social, economic and environmental sustainability of the urban fabric; (5) We want to enhance cooperation and solidarity within city networks that defend affordable housing and equitable, just, and inclusive cities by boosting long-term strategies on a metropolitan scale.³⁰³

³⁰² As of Aug. 28, 2019, the endorsing cities are Amsterdam, Asunción, Bangangté, Barcelona, Barcelona Provincial Council, Beitunia, Berlin, Birmingham, Blantyre, Bologna, Buenos Aires, Cascais, Copenhagen, Durban, Eyyübiye, Geneva, Jakarta, Lisbon, London, Mannheim, Mexico City, Medellín, Montreal, Montevideo, New Taipei, New York, Paris, Rennes, Rio Grande, San Antonio de Areco, Seoul, Strasbourg, Taipei, Terrassa, Tlajomulco, Vienna, Zaragoza, along with the metropolitan entities of Barcelona Metropolitan Area, Greater Manchester, and Grand Paris. <https://citiesforhousing.org/cities/>.

³⁰³ *Id.*

The language of the Declaration is in line with the commodification critiques of the Special Rapporteur, and the specific reference to the criteria on adequacy as laid down in CESCR General Comment No. 4 demonstrates the Declaration's basis in the international human right to housing. It is a noteworthy development in the effort to advance the right to housing in cities. Local governments can contribute to the substantive development of the right to housing through their work in the transnational and global space, and by linking the right to housing and the right to the city. As discussed last chapter, framed through the right to the city, the right to housing is seen less as a commodity good to be given and more as a process in which all kinds of actors, international and local, private and public, can be a part of understanding and implementing the right. In this effort, the human right goes beyond the individual legal claim. It is imbued with both a collective responsibility and the spirit of social and political protest always needed for any kind of actual societal transformation.

Indeed, implementing the right to housing in the city requires a reach beyond the role of states in terms of duties and responsibilities. Sub-state actors – sub-national and city governments – are critical and non-state actors also bear a responsibility for elevating and addressing the global urban housing crisis. NGOs are already active in this space and their work on thematic areas such as homelessness and informal settlements provides key research which feeds into the public consciousness at local, national, and international levels. The United Nations, particularly through the agency of the Special Rapporteur on Adequate Housing, also holds special responsibility for underscoring the urgency of the housing question. Two other crucial actors have a significant role to play in addressing housing questions. First and foremost, individuals must rethink their approach to and relationship with housing, property, and community. We too often fall back on our desire to assuage our own personal preferences with respect to ideal neighbors and neighborhoods, and frequently display a tendency to see urban life as a community in which we are entitled to live in but for which we have no obligation to be active participants. In this misguided approach, we think problems can and must be solved through our payment of taxes alone, and that there is no actual need to think about one's own role in resolving the more difficult and contentious urban questions. But this is precisely our role because globalization has created a host of contested political choices for urban communities.

Second, businesses have to make a contribution in financial as well as social discourse terms. In this study, the example of global sports showed the ways that private organizations are implicated in urban social and economic development. The connection between cities and hosting mega-sporting events made this nexus particularly close. But there are many other

opportunities for businesses to contribute to social questions, and there are important indicators to suggest that this is not just an idealistic aspiration.

For instance, in August 2019, the Business Roundtable redefined the purpose of the corporation in America. Per the statement:

Since 1978, Business Roundtable has periodically issued Principles of Corporate Governance. Each version of the document issued since 1997 has endorsed principles of shareholder primacy – that corporations exist principally to serve shareholders. With today’s announcement, the new Statement supersedes previous statements and outlines a modern standard for corporate responsibility.

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders.³⁰⁴

This is a clear departure from Milton Friedman’s famous standard of purely shareholder profit maximization. The 2019 Statement on the Purpose of a Corporation commits to delivering value to customers, investing in employees, dealing fairly and ethically with suppliers, and generating long-term value for shareholders. In particular, under the standard, corporations commit to “supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.”³⁰⁵

Specifically on the housing front, major corporations have announced contributions to the US housing crisis in California. In 2019, Apple pledged \$2.5 billion to address the California housing shortage, with Facebook and Google having already made promises in this same direction.³⁰⁶ According to Tim Cooke, Apple’s CEO and a signatory of the Business Roundtable’s updated statement on corporate purpose:

Before the world knew the name Silicon Valley, and long before we carried technology in our pockets, Apple called this region home, and we feel a profound civic responsibility to ensure it remains a vibrant place where people can live, have a family and contribute to the community...Affordable housing means stability and dignity, opportunity and pride. When these things fall out of reach for too many, we know the course we are on is

³⁰⁴ <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

³⁰⁵ <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>. American business schools have also announced that they are redesigning the MBA degree in order to better respond to the “new capitalism” which requires a commitment to more than shareholder profits. *See American business schools are reinventing the MBA*, THE ECONOMIST, Nov. 2, 2019.

³⁰⁶ Conor Dougherty, *Facebook Pledges \$1 Billion to Ease Housing Crisis Inflamed by Big Tech*, N.Y. TIMES, Oct. 22, 2019, <https://www.nytimes.com/2019/10/22/technology/facebook-1-billion-california-housing.html>.

unsustainable, and Apple is committed to being part of the solution.³⁰⁷

This discourse and financial commitment appear positive, but the effort must be closely monitored and its specifics interrogated. Sustainability must not become coopted as a term of loose branding for individuals, corporations, or even cities to use as a means of rubber-stamping trite efforts which fall under a broad and unspecified agenda, or which focus solely on environmental objectives. Sustainability must also include social solidarity. And it is in this realm that housing becomes central to the conversation.

5.5 Conclusion

The question of housing in the city carries global dimensions and factors, and processes of globalization, including commodification and competition, as well as decentralization manage to simultaneously challenge and empower the city.³⁰⁸ The interrelation between the city and the global in terms of these forces means that not only the state but also the city holds potential and arguably unique responsibility for addressing the challenge of housing in the context of growing urbanization and under the pressures of global competition.³⁰⁹

Many of the most important and cited cases on the right to housing animate issues of location and, in particular, proximity to and space in the city. In *Blue Moonlight*, the Court noted that the location of the occupied building was crucial to the income of the occupiers, and took note of the occupiers claim that they would be forced to sleep on the streets if evicted because they would not be able to find affordable accommodation. But location is important not only to residents. Location is also of great importance to the state, city, and public and private economic development interests and strategies. It is in this context that various competitive pressures continuously threaten the right to housing in the city.

Mega-sporting events are illustrative of these often-competing perspectives on location. They show the intersections between elements of the public and private city, and the specific impacts upon housing in cities, whether in the negative form of forced evictions and gentrification, or as potentially positive legacies. But they also show the ways that urban development can be challenged and resisted by local communities who fight to hold on to their

³⁰⁷ Apple Newsroom, Press Release, Apple commits \$2.5 billion to combat housing crisis in California, Nov. 4, 2019, <https://www.apple.com/newsroom/2019/11/apple-commits-two-point-five-billion-to-combat-housing-crisis-in-california/>.

³⁰⁸ New Urban Agenda, UNGA A/RES/71/256 (“...we have reached a critical point in understanding that cities can be the source of solutions to, rather than the cause of, the challenges that our world is facing today. If well-planned and well-managed, urbanization can be a powerful tool for sustainable development for both developing and developed countries.”) Foreword, p. iv; Nijman, *supra* note 6, at 214.

³⁰⁹ See generally Blank, *supra* note 267.

space in the city. Similarly, local communities across major European cities are actively engaged in struggles against the changing character of their urban neighborhoods under the pressures of tourism and have been spurring political action to curb housing unaffordability as brought on by foreign investment.

It is hard to deny that in this age of noticeable nationalism, isolationism, and exceptionalism, the human rights project faces heavy pressure. The future of human rights broadly speaking, and the continued need for implementation, a particularly desperate one in terms of the right to housing, requires deep contemplation. But there is much scope for optimism. There is a noticeable enthusiasm coming from cities with respect to international law. Cities seek, bottom-up, to project themselves on the international stage by incorporating international norms, policies, guidelines, and principles, implementing international law autonomously and strategically for their own purposes. The local flex is not solely a defensive imperative from cities against the state. Rather, international institutions and processes have also pushed the local seeing local governments as a critical means of advancing global policy goals and implementing global political commitments. The relationship between cities and international law is thus a two-way street in which cities may influence international law and international law influences cities.³¹⁰ But the exclusive nature characterizing cities today under financialization where income is increasingly tied to space gives pause to these trends. The nature of global competition can alter the city, its people, and notions of citizenship and community as this chapter has discussed.³¹¹

Thus, in advancing the global political commitments adopted in the name of sustainable urbanization cities can and must seek a more appropriate balancing of the often-clashing interests and dimensions of sustainable development itself. What is called for are strategies to elevate the neglected social pillar of sustainable development as tied to housing, community, and belonging in the urban context. That leading cities have been cooperating in the realm of climate change and other areas suggests that cities can also collaborate in a necessary and urgent collective effort to limit competition and its negative impact on housing. While not all global problems can or should be solved through cities, the connections between housing and physical space make the challenge of adequate housing one that is uniquely promising for an active role

³¹⁰ In this context, the rise of global cities, particularly global public cities, holds promise for making international law more “international”, especially to the extent international law becomes less state-centric and more frequently shaped by cities. *See generally* ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* (2017); *see also* Nijman, *supra* note 6, at 229 (“The urbanisation of international law not only means an increase of international ‘soft’ law created by cities or city involvement. Also, the ‘hard’ international law of the future will be more urban than it is today, since the interests of the state will increasingly be defined by the interests of cities.”).

³¹¹ *See also* JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 213 (2005) (noting “...liberal democratic institutions cannot easily engage in cosmopolitan action unsupported by the people.”).

for local governments.³¹² This role should be viewed less in the context of implementing and promoting an understanding of the right to housing limited to the protection of its procedural aspects – notice before a forced eviction from city streets, for example – and more in terms of the possibilities for enhancing the substance of the right to housing and implementing a right to housing in the city.

³¹² See also David J. Barron, *The Promise of Cooley's City: Traces of Constitutionalism*, 147 U. PA. L. REV. 487 (1999) (on the idealistic promise of cities).

CHAPTER SIX

CONCLUSION

6.1 Introduction

Housing determines the mutual relationship between every single human being and surrounding physical and social space. This involves degrees of exclusion or inclusion in terms of collective and civic life which, together with socioeconomic conditions, are the essence of urban dynamics. That is why the fate of housing will largely determine the fate of our cities.¹

This is a true statement. The protected interest with respect to housing as a matter of international law is more than bare shelter. Such rudimentary protection might not be properly equipped with heating, water, or light, or might be in some remote location cut off from economic opportunity and social services. These factors have been contemplated by the Committee on Economic, Social and Cultural Rights in its specifications on “adequacy” since 1991. But the right to housing also entails an important community dimension. It encapsulates the right to have access to your community, to what your community wants to offer you and to enable you to have, and to build relationships with people close to you and with whom you identify. Further, the right to housing takes on a different level of significance in the urban context. Cities are not just centers of economic and social activity. Much more than that, they are heterogeneous spaces of socialization holding possibilities for encounter with difference and bearing the promise of progressive social change. The complexities of the contemporary urban environment present increased challenges for the right to housing. Access remains crucial and yet threatened or denied, as economic displacements abound in modern cities marked by commodification and succumbing to the pressures of competition. But alongside access, the importance of urban identity and community have begun to be carried forward by those interested in both articulating and challenging housing deprivation. This is exactly as it should be and there is much more work to be done.

6.2 Findings and Implications

For several decades now, urban challenges around growth, sprawl, the provision of services, and the proliferation of slums and informal settlements have persisted in many cities. As these issues continue, the urban environment is now also increasingly defined by newer trends and difficulties. In the contemporary context, emerging issues of climate change, increased international migration, insecurity, and especially exclusion now emerge as among

¹ UN Habitat, The State of the World Cities Report 2016, p. 49.

the most pressing challenges facing the world's cities. While informal settlements and slums are often thought to be a characteristic of the global South and thus a developing rather than developed country problem, informality, homelessness, and inadequate living conditions can also be hallmarks of Northern cities. The unaffordability of housing has reached crisis levels in many of major cities such as London, Dublin, and San Francisco. Ballooning housing costs not only prevent people from having access to the city, these costs also force people out of the city and can serve to drastically reshape cities in physical, social, cultural, and political terms.

The right to adequate housing in its present orientation does not serve to resolve the debates and tensions that have been under study in this research. Rather, it serves to expose them by providing a normative standard against which real-life situations and hardships must be judged. In this respect, the right as currently interpreted by courts and by the CESCR comes up short. It fails to reflect socio-relational implications and to account for the importance of community as a means of enhancing ourselves, our autonomy, and our ultimate flourishing. Housing, in reality, is a crucial process through which individuals and communities build up and through which they hold on to their cultural identities and histories.

Gentrification carries the risk of changing the entire character of cities, forcing out groups of vulnerable populations, and often with an undeniable correlation to not only economic status, but racial and ethnic identity as well. In this respect, gentrification can have a negative relationship with the preservation of cultural practices in the urban environment, where particularly minority cultural expression risks marginalization and eradication, and where the promotion of cultural diversity and tolerance is arguably weakened through a homogenization of the population. Further, the pressure on cities to be globally competitive undermines city efforts to emphasize public goods and services. This has been a critique of the urban political economy for some time. But now, and as various scholars have shown, the international institutional discourse of good governance includes and fosters an ever-expanding terrain of urban competitiveness.² Thus, every physical corner and social specter of city space and life holds the potential for capital enrichment. This is exemplified through the commercialization of heritage as observed in the favelas of Brazil or through hyper-tourism at historical sites in European cities.

International institutions, norms, and processes have globalized markets and supported the commodification of housing and land in both urban and rural spheres. The city has become increasingly inaccessible as a result, and urban community is suffering. At the same time, notions of sustainability appear to be incomplete at best and totally misunderstood at worse.

² See, e.g., NEIL BRENNER, *CRITIQUE OF URBANIZATION: SELECTED ESSAYS* 118 (2016).

There is a noticeable pattern of using environmental and ecological protection as a pretext for housing displacement. Even when the cases do not represent clear cut tensions – as they do with informal settlements located in natural parks in India, for instance – there are still inclinations to frame sustainability predominantly around notions of environmentally-friendly lifestyles. These are certainly worthwhile and necessary imperatives, but their implementation requires nuance and sensitivity. In urban neighborhoods, the desire to encourage walking and cycling can be used as a mechanism to shape specific environments which promote commercial interests, and which are in fact designed to exclude. In the example of NoMA in Washington, DC, for example, attention seemed focused not on eradicating homelessness but on eradicating the homeless.

Sustainability must include solidarity, a social commitment to collective action and responsibility. There are signs that this understanding is emerging naturally and emphatically from the strains of deprivation. Social movements and protests against the unaffordability of housing, as described in Berlin for instance, show a determination to keep cities oriented towards people and not just global capital. Similarly, protests against mass tourism in Barcelona and Dublin show a recognition from the people of a specified housing right, that of a right to housing in *the* city. They are not content to be displaced to other Spanish or Irish cities, they want to live in a specific city with which they hold a history, identity, culture, and community.

The Office of the Special Rapporteur on Adequate Housing has pushed hard for many years to promote the right to housing. In addition to engaging with states, the Special Rapporteur's interaction with local governments and with private corporations, such as Blackstone, is promising both as a means of shifting the narrative around housing from its commodity phrasing and also from the perspective of awakening collective duties to ensure the right to housing in the city. This work alerts individuals, governments, business, and many other players to the complexity of what is at stake.

These are, appropriately, contested political issues. Hardworking, law-abiding citizens who struggled to afford to buy their homes do not take kindly to the notion of illegal squatters being compensated when they are displaced. Taxpayers have not always seen clear virtues in public housing spending, and when they do, have displayed a preference to avoid proximity to low-income public housing. No one seems to quite know what to do about the homelessness crisis in US cities. The gain of these struggles is that they are struggles. They are conflicts and tensions and that dilemma provides an opening for human rights-oriented resolution. Further, the plight of inadequate housing in the city is no longer uniquely experienced by the urban poor or the rurally displaced, but rather is now also quite sharply felt by the middle class. This presents a significant opening and has firmly readied this issue for political mobilization, and

as a matter of collective responsibility. The middle class characteristically bears a strong relationship with the state, and “is often the harbinger of change”, demanding voice and accountability as a matter of right,³ and in this way, can prove a powerful strategic vehicle towards addressing these issues. Local government intervention in the private market in Berlin and limits on competition with respect to Airbnb apartments in various European cities are indicative of this political power. But there are, of course, unmistakable dangers here. The politicization of rights must also be supplemented by the authoritative role of the courts in vindicating rights-claims, and this is especially heightened with respect to the protection of vulnerable groups. These groups face neglect and underrepresentation in even democratic regimes and are at increased risk for exclusion and marginalization in the city. But the courts must take care to avoid timid and overly procedural interpretations of the right to housing. They should strive to fill the right with content and to help it evolve to respond to contemporary challenges and realities. The inevitable way to do so is to begin the work of protecting the right to housing in the city.

6.3 Future Research

Many of the examples discussed in this study could be expanded upon in future research projects. The examples of planning in Rwanda as well as Singapore’s Ethnic Housing Policy could be taken up more fully by international legal scholars interested in investigating the more complex approaches to rights and the importance of communitarian perspectives and authoritarian approaches. Similarly, the global competitive pressures on cities are evolving and dynamic. Further research into the ways technology and the sharing economy impact housing and community in cities is needed and there is broad scope for interdisciplinary approaches in this area. Finally, the thematic case study of mega-sporting events is especially salient for understanding urban governance and neoliberal globalization, as well as for investigating the intersections and relationships between varying levels of government and housing responsibility. It is worth monitoring closely the preparations for the 2024 Olympics in Paris given the IOC’s partnership with Airbnb. Similarly, the 2028 Olympics in Los Angeles should be studied given both the heavy sustainability agenda put forward by the city and the city’s current challenge with homelessness.

Undoubtedly, cities deal with some of the most pressing challenges of our time and also with deliberating and deciding how to respond to them. There is great potential in this area and the need for future research is urgent even though outside the scope of this particular study. For

³ WORLD BANK REPORT, INCLUSION MATTERS: THE FOUNDATION FOR SHARED PROSPERITY 103 (2013).

example, public health concerns such as the outbreak of infectious diseases in the wake of the so-called “anti-vax” movement may require cities to decide who should be allowed to live there and under what conditions. Further, concerns around climate change and migration have particular and obvious resonance for housing and cities.⁴ Environmental migrants add to the complexity of population growth and, accordingly, to questions of housing and community.⁵ In many cases, people are also moving into and not just from urban areas that are susceptible to climate stress, and this is particularly the case in low-income countries.⁶ Perhaps the most extreme example of the connection between environmental catastrophe and cities is the prospect of floating cities – or seasteads. These futuristic projects which envision living spaces on the seas conceive of the ocean as humanity’s next possible frontier and as a solution to rising sea levels and the related displacements. But as Surabhi Ranganathan has cautioned, seasteading may be an entrepreneurial drive with familiar capitalist accumulative tropes, in this case capitalism coopting planetary disaster and extracting wealth from new commons, all the while seeking less state regulation and more tax breaks.⁷ She sees the seasteading movement as potentially serving solely to insulate the rich from global crises and to underscore their own human global mobility rather than any real potential housing solution for the climate refugee masses.⁸ It is interesting to note that in spite of (or perhaps because of) the important critiques around this new purported venture, UN-Habitat has endorsed studies into the prospect of floating cities.⁹ These global trends should be some of the most important questions for the

⁴ In Dhaka, Bangladesh, it has been reported that up to seventy percent of the slums’ residents moved there due to environmental challenges. Tim McDonnell, *Climate change creates a new migration crisis for Bangladesh*, NATIONAL GEOGRAPHIC, Jan. 24, 2019, <https://www.nationalgeographic.com/environment/2019/01/climate-change-drives-migration-crisis-in-bangladesh-from-dhaka-sundabans/>.

⁵ See, e.g., *Mongolia: A toxic warning to the world*, BBC NEWS, Mar. 24, 2019, <https://www.bbc.com/news/av/science-environment-47673327/mongolia-a-toxic-warning-to-the-world> (Climate change induced displacement of rural herders is forcing massive shifts from the traditional village lifestyle to the city in places such as Ulaanbaatar, Mongolia).

⁶ See, e.g., Richard Black et al., *Migration as Adaptation*, 478 NATURE 447, 448 (“In rapidly growing megacities, such as Dhaka and Lagos, that are located in delta and coastal floodplain regions in Africa or Asia, hundreds of millions more people may be at risk of flooding by 2060...Migrants stretch the capacity of existing infrastructure, especially in low-income countries, and new arrivals are frequently vulnerable. In Dakar, Senegal, for example, 40% of those who moved there between 1998 and 2008 live in areas of high flood risk.”).

⁷ Surabhi Ranganathan, 32 *Seasteads, land-grabs and international law*, LEIDEN J. INT’L L. 205-215 (2019).

⁸ *Id.* at 207. See also Surabhi Ranganathan, *Ocean Floor Grab: International Law and the Making of an Extractive Imaginary*, 30 EUR. J. INT’L L. 573 (2019) (discussing the “Ocean Spiral” project of the Shimizu Corporation of Japan which plans to build an ocean mini-city by 2030 to house 5,000 residents).

⁹ Press Release, United Nations, Deputy Secretary-General, *Sustainable Floating Cities Can Offer Solutions to Climate Change Threats Facing Urban Areas, Deputy Secretary-General Tells First High-Level Meeting*, Apr. 3, 2019; see also Ben Guarino, *As seas rise, the U.N. explores a bold plan: Floating cities*, WASH. POST, Apr. 5, 2019, https://www.washingtonpost.com/science/2019/04/05/seas-rise-un-explores-bold-plan-floating-cities/?utm_term=.3d501045c65c.

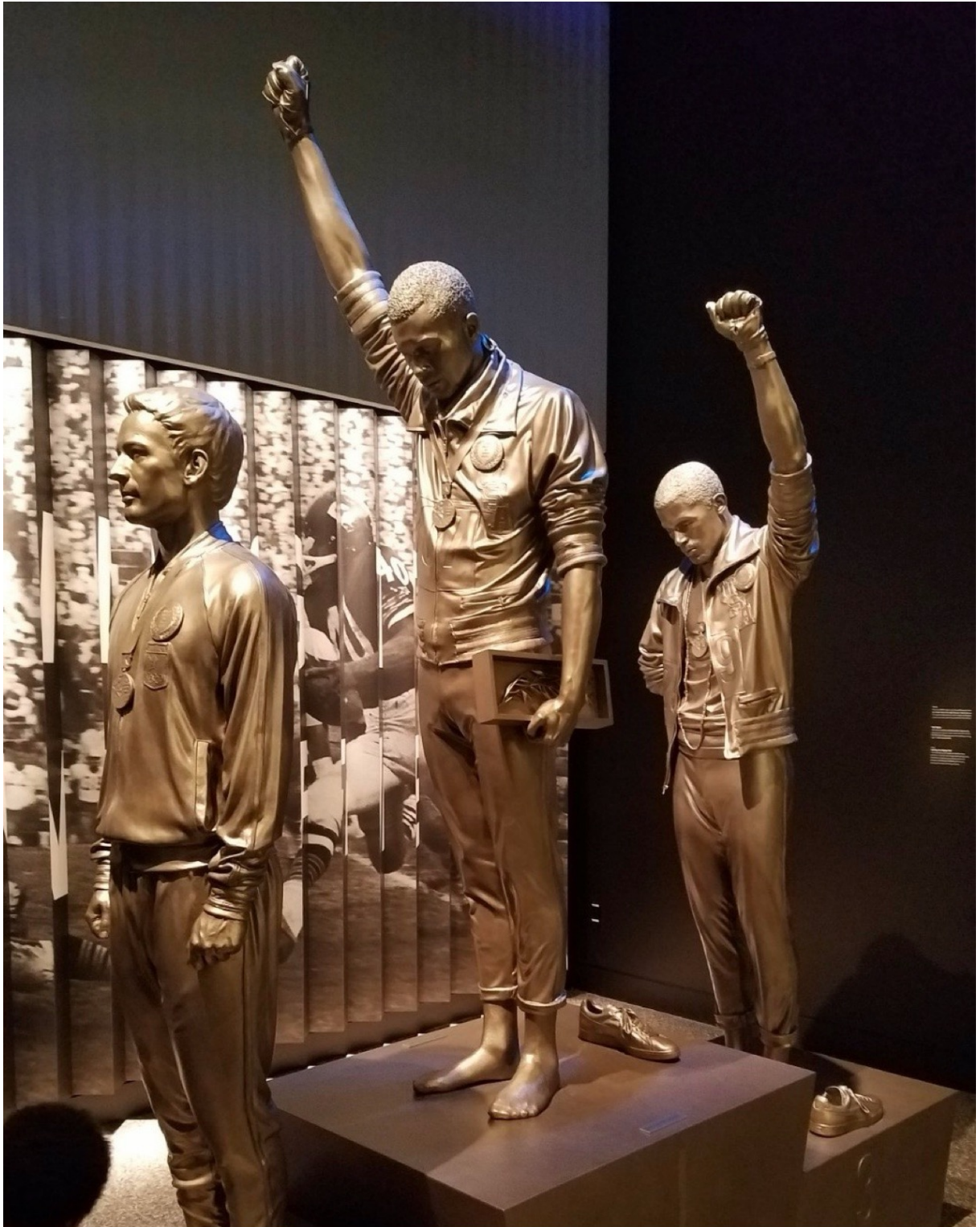
growing cities and international law discourse in the years ahead, and the intersections of housing and the environment require further inquiry.

Utopian as it may sound, a focus on housing and cities now, and the critical links to belonging and community, will prepare the urban environment for what is inevitably to come – greater and more intense challenges, such as those caused by climate migration which may likely require more open borders. This research project has aimed to make a contribution in terms of urging international scholars and practitioners to pay more attention to the growing importance of cities and, specifically, to begin by elevating the housing question.¹⁰

¹⁰ See Appendix 8.



Appendix 1: Grenfell Tower, London, UK. June 18, 2017.



Appendix 2: National Museum of African American History and Culture, Washington, DC, USA. Sept. 29, 2016.

Photo of UN Special Rapporteur on Adequate Housing, Leilani Farha, at a panel discussion during Habitat III wearing a t-shirt which reads: “Housing. It’s a human right.”, taken by the author in Quito, Ecuador, Oct. 17, 2016, removed for confidentiality reasons.

Appendix 3



Appendix 4: Underpass encampments in the NoMa neighborhood of Washington, DC, USA. Aug. 25, 2019.



Appendix 5: Ninth Session of the World Urban Forum, *Cities 2030, cities for all*. Kuala Lumpur, Malaysia. Feb. 10, 2018.



Appendix 6: Vidigal, Rio de Janeiro, Brazil. Jan.14, 2017.



Appendix 7: A building in Arlington, VA, USA, displays a banner reading: “Welcome our new neighbor Amazon” on one side and displays a banner with leasing information on the other. Aug. 9, 2019.



Appendix 8: The view from the top of the Vidigal favela, Rio de Janeiro, Brazil. Jan. 14, 2017.

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