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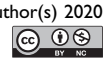
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Facing financialization in the housing sector: A human right to adequate housing for all

Ingrid Leijten
Department of Constitutional and Administrative Law, Leiden University Faculty of Law, Leiden, the Netherlands

Kaisa de Bel
LLM student International Criminal Law, University of Amsterdam, Amsterdam, the Netherlands

Abstract

Housing is increasingly seen as a vehicle for wealth accumulation rather than a social good. 'Financialization' of housing refers to the expanding and dominant role of financial markets and corporations in the field of housing, leading to unaffordable and insufficient housing and discrimination. Although clearly linked to the right to adequate housing, financialization and its effects are not often viewed from a human rights perspective. This article fleshes out this important link by illuminating the standards set in relation to the right to adequate housing enshrined in Article 11(1) ICESCR. It is shown that recently, human rights bodies have confronted the issue of financialization more directly, translating general requirements to this particular issue. Moreover, efforts at UN level are mirrored in initiatives at the local level, signalling the beginning of a shift towards a paradigm that complies with human rights. The financialization of housing and the response of human rights also allow for addressing a more general issue, namely the potential of majority protection in times of human rights backlash. In this regard, it is worth emphasising that human rights such as the right to adequate housing protect not only the extreme poor. In the context of financialization, this may contribute to better housing conditions as well as reconnect people to their human rights.

Keywords

Right to adequate housing, financialization, human rights, human rights backlash, majority protection

Corresponding authors:
Kaisa de Bel, LLB, BSc, LLM student International Criminal Law, University of Amsterdam, 1012 WX Amsterdam, the Netherlands.
E-mail: Kaisa_de_bel@hotmail.com

Ingrid Leijten, LLM, MA, Department of Constitutional and Administrative Law, Leiden University Faculty of Law, 2311 ES Leiden, the Netherlands.
E-mail: a.e.m.leijten@law.leidenuniv.nl

1. INTRODUCTION

Housing is increasingly seen as 'a vehicle for wealth and investment rather than a social good'.[1] The 'financialization' of housing is omnipresent and has had detrimental effects on low and middle income households. Everywhere in the world, people are dealing with a lack of adequate housing.[2] They cannot find an affordable place to live that meets their needs; that provides privacy and facilities and is close to work and education opportunities. Young adults cannot afford a home of their own, women are disproportionately affected by housing insecurity, and homelessness continues to persist even in the most affluent States. Housing options that are adequate, appear scarce, while mass migration makes solutions seem even more out of reach.[3]

In times of financialization, it is easy to lose sight of the fact that '(h)ousing is a right, not a commodity'.[4] Although not topping the list of social rights, the right to housing is increasingly recognized as such.[5] It can be found in many international documents and national constitutions. According to Article 25(1) of the Universal Declaration on Human Rights ('UDHR'), '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 other lack of livelihood in circumstances beyond his control'. This is mirrored in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights ('ICESCR'): 'the States Parties [. . .] recognize the right of everyone to an adequate standard of living for himself and his family, including adequate [. . .] housing'. In more precise terms, the (Revised) European Social Charter, for example, requires States to take measures 'to promote access to housing of an adequate standard'; 'prevent and reduce homelessness with a view to its gradual elimination', and 'make the price of housing accessible to those without adequate resources'.[6] Similarly, the Constitution of South Africa guarantees 'the right to have access to adequate housing', meaning '[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right'. In this regard, '[n]o one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions'.[7]

It follows that the right to housing cannot be equalled to the right to have a roof over one's head. At first glance, it entails more and less at the same time. On the one hand, 'adequate' housing implies a certain standard of housing that includes facilities, like energy and sanitation, is

1. See the homepage 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 <https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx> accessed 15 January 2020.
2. See, for example, UN General Assembly, 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 (A/HRC/34/51, 18 January 2017).
3. See, for example, David Robinson, 'New immigrants and migrants in social housing in Britain: discursive themes and lived realities' (2009) 38 Policy and Politics 57.
4. See the homepage of the SR (n 1).
5. Courtney Jung, Ran Hirschl and Evan Rosevear, 'Economic and Social Rights in National Constitutions' (2014) 62 American Journal of Comparative Law 1043.
6. Article 31 (R)ESC.
7. Article 26 Constitution of the Republic of South Africa, 1996.

affordable and culturally adequate.[8] On the other hand, having a right to *access to* adequate housing is not the same as a claim to housing itself, and requirements of progressive realization suggest the right to housing is subject to the means a State has at its disposal. The existence of multiple, partly overlapping housing rights norms, that are elaborated on in a range of documents and practices, including court judgments, committee decisions, reporting cycles etc. does not necessarily make the right to housing more transparent. What exactly can be expected from governments when it comes to housing?

This question is crucially relevant in times of financialization. 'Financializaiton' (or 'commodification') is the term used for '[t]he expanding role and unprecedented dominance of financial markets and corporations in the housing sector'.[9] Financial institutions and markets are sustained by governments while foreclosures and evictions resulting from, for example, prohibitive rents, as well as inadequate housing have a large impact on the individuals concerned. A focus on capital and investors, just like austerity measures involving reducing social housing programmes and (further) privatization, are severing housing from its social function. Financialization detaches housing from a human rights discourse including rights-based entitlements governments must secure.

A different concern, that does not specifically involve the right to housing, is that human rights are under attack and fail to be seen as rights of everyone. They are regularly portrayed as rights belonging to small minorities – wrongly focusing on (undocumented) migrants, detainees and terrorists.[10] The so-called 'populist backlash' against human rights is endangering the system.[11] Populist leaders and governments may use anti-rights rhetoric that appeals to large numbers of concerned citizens, fuelling their scepticism towards the aims of human rights protection as well as these rights themselves. This development requires various responses, but in any case an effort to 'reconnect' human rights to those who can rely on them. A fundamental characteristic of human rights and fundamental rights protection more generally, is their anti-majoritarian function, that is, the fact that they protect marginalized individuals and minority groups against the power of the (legislative) majority. This should not, however, close our eyes to the fact that the rights of majorities are not always that well guaranteed either.[12] The lack of adequate housing for a great number of people clearly illustrates this. Not every individual will be personally confronted with censored speech, the banning of religious practices or the impossibility to vote. In our lifetimes, however, many of us will incur a housing problem: be it the lack of an affordable dorm room, the impossibility of obtaining a social housing flat, the inadequateness of a rented place, accessibility problems in case of a disability or old age, or obstacles in securing a roof over one's head in the first place. Even though it is sometimes argued that social rights should primarily address the needs

8. CESCR, General Comment No. 4: The Right to Adequate Housing (article 11(1) of the Covenant) (E/1992/23, 13 December 1991) para 8.
9. Report SR 2017 (n 2), para 1.
10. See, for example, Zeid Ra'ad Al Hussein, 'Is International Human Rights Law Under Threat?' (BIICL Annual Grotius Lecture, 26 July 2017) <https://www.biicl.org/documents/1680_is_international_human_rights_law_under_threat_speech_260617.pdf?showdocument=> accessed 15 January 2020; Philip Alston, 'The Populist Challenge to Human Rights' (2017) 9 Journal of Human Rights Practice 1, 6.
11. ibid.
12. Samuel Moyn, 'On Human Rights and Majority Politics: Felix Frankfurter's Democratic Theory' (20 January 2019), available at SSRN <https://ssrn.com/abstract=3319515> accessed 15 January 2020; David Landau and Rosalind Dixon, 'Constitutional Non-Transformation. Socioeconomic Rights beyond the poor' in Katharine G. Young (ed.), *The Future of Economic and Social Rights* (CUP 2019) 110.

of the poorest, the right to housing is able to exemplify that human rights are important for all of us. When (financial) housing policy is tackled as a human rights issue, this may benefit those facing dire housing situations, but also contribute to a better image of human rights altogether.

In the light of this, this article aims to answer the following question: what are the standards set in relation to the right to housing that are relevant to the issue of financialization, and how does the link between both reflect on the importance of human rights for everyone? To this end, the human right to housing is illuminated in an effort to clarify what it means in times of financialization. In doing so, this article focuses on the context of UN human rights mechanisms and the ICESCR in particular. After an introduction to the housing standards set in the UN context, as well as the phenomenon of financialization, it continues by fleshing out the human rights dimension of this issue by identifying more specific standards. This is followed by several examples of (local) policies and actions that appear sensitive to the rights-dimension of housing. Finally, the article returns to the populist backlash against human rights and the void housing rights might fill.

2. THE HUMAN RIGHT TO ADEQUATE HOUSING: UN STANDARD SETTING

After first being recognised in the UDHR, the right to housing has been reaffirmed in numerous international human rights instruments, such as human rights treaties, UN resolutions and other international declarations on housing rights.[13] The key legal framework is provided by Article 11(1) ICESCR, and although listed as one of the component elements of the right to an adequate standard of living, Article 11(1) ICESCR has been interpreted as also proclaiming the right to adequate housing as a distinctive right on its own.[14]

The UN Committee on Economic, Social and Cultural Rights ('CESCR') set out to clarify the content of Article 11(1) ICESCR in its General Comment no. 4 on the right to adequate housing and General Comment no. 7 on forced evictions. Unlike the ICESCR itself, these are not legally binding, but they provide an authoritative interpretation of the rights provided in the ICESCR and are therefore a good starting point for outlining the content of the right to housing. Although dating from 1991 and 1997, the Comments continue to provide the baseline for how the right to adequate housing is to be understood.[15]

It becomes clear from General Comment no. 4 that the right to housing should not be interpreted narrowly. At its core, it means the right 'to live somewhere in security, peace and dignity'. [16] It follows, as noted earlier, that it is not a right to merely have a roof over one's head, rather it requires housing to be *adequate*. The CESCR identified seven aspects that need to be considered for an adequate standard of housing. First, there has to be some degree of security of tenure which guarantees occupants legal protection against forced evictions, harassment and other threats.

13. See, for example, Convention on the Elimination of All Forms of Racial Discrimination (1965) Article 5(e)(iii); Convention on the Elimination of All Forms of Discrimination against Women (1972) Article 14(2); Convention on the Rights of the Child (1989) Article 27(3); Declaration on Social Progress and Development, UNGA Res 2542 (XXIV) (11 December 1969) Article 10; ILO Recommendation R115: Workers' Housing Recommendation (Recommendation Concerning Workers' Housing) (Forty-fifth Conference Session 7 June 1961).
14. CESCR, General Comment No. 4 (n 8) para 1.
15. This is also evident from the references to both General Comments in the CESCR's (recent) concluding observations, available via <https://www.ohchr.org/EN/HRBodies/CESCR/pages/cescrindex.aspx> accessed 15 January 2020.
16. ibid para 7.

Second, an adequate house must have certain facilities for health and security, such as safe drinking water, energy for cooking and adequate sanitation. Third, housing should be affordable to the extent that its costs do not threaten or compromise the occupant's other basic needs and rights. A house should also be habitable in that it provides adequate space and protects occupants against the weather and other threats to health. Furthermore, housing should be accessible to those entitled to it, and disadvantaged groups such as the elderly, children, persons with medical problems and people living in disaster-prone areas should be ensured some degree of priority consideration. The location of a house is also important, as it should be in a non-polluted and safe area which allows access to employment options and social facilities. Finally, a house must be culturally adequate so that it allows occupants to express their cultural identity.[17]

Security of tenure is especially important for guaranteeing the right to adequate housing. The CESCR 'views many component elements of the right to adequate housing as being at least consistent with the provision of domestic remedies', such as legal appeals against planned evictions and complaint procedures against landlords concerning discrimination or housing conditions.[18] In line with this, forced evictions are considered as a prima facie violation of the right to adequate housing.[19] The term 'forced evictions' that is central to General Comment no. 7, refers to the removal of persons from their homes against their will, without the provision of and access to (legal) protection.[20] In cases where an eviction is justifiable, for example because a tenant fails to pay rent or damages the property, it should always be in accordance with the principles of reasonableness and proportionality.[21] Additionally, specific procedural safeguards should always go alongside the eviction, including genuine prior consultation, a reasonable notice and availability and the provision of legal remedies.[22] Moreover, the (justifiable) eviction should not render the former occupant homeless or vulnerable to the violation of other human rights, which may require that adequate alternative housing be offered.[23]

Last but not least, like every other human right, the right to adequate housing applies to everyone. This means that the human rights principles of equality and non-discrimination are fundamental components of the right to housing. Article 2(2) ICESCR stipulates that all rights in the Covenant should be exercised without discrimination. In line with this, all individuals and families are entitled to equal access to both adequate housing and to protection against violations of the right, regardless of race, sex, economic status or other discriminatory grounds.[24]

The fact that the right to adequate housing is defined broadly and applies in a non-discriminatory fashion, does not mean that everyone is entitled to a house in the sense that this can be demanded on the spot. Taking into account the economic circumstances and the capacity of the State, the full realization of most economic and social rights can only be achieved progressively. Therefore, the principal obligation imposed on States under Article 2(1) of the ICESCR is to take steps, to the maximum of its available resources, towards the progressive realization of the

17. ibid para 8.
18. ibid para 17.
19. ibid para 18.
20. CESCR, General Comment No. 7: The Right to Adequate Housing (Article 11(1) of the Covenant): Forced Evictions (E/1998/22, 20 May 1997) para 3.
21. ibid para 14.
22. ibid para 15.
23. ibid para 16.
24. CESCR, General Comment No. 4 (n 8) para 6.

rights enshrined in the Covenant. States thus do not have an immediate obligation to ensure housing for everyone.[25]

Nevertheless, they have a fundamental duty to respect, protect and fulfil human rights, and a failure to do so constitutes a violation of these rights.[26] First, States have a negative obligation to respect the right to housing by refraining from taking any measures that prevent the enjoyment of the right. For example, carrying out forced evictions or denying security of tenure to particular groups would violate the obligation to respect the right to housing. Second, States have the obligation to protect people against third parties interfering with their rights. This could involve providing legal protections against privately-enforced evictions and adopting legislation to ensure that private actors comply with the standards of the human right to adequate housing. Finally, States have the positive obligation to fulfil the right to housing by taking appropriate legislative, administrative, budgetary, judicial or other measures towards the full realization of the right.[27] It might vary from State to State what measures are best suited to protect and fulfil the right to housing. Thus, States have some margin of appreciation. But the CESCR has pointed out that it will almost always require the adoption of a national housing strategy that allocates responsibility and sets a budget and a timetable.[28]

Even though the obligations of States are subject to progressive realization depending on the available resources, the CESCR has made it clear that this should not be misinterpreted as a justification for non-compliance. The obligation under Article 2(1) ICESCR is a fundamental duty to take all appropriate measures to move 'as expeditiously and effectively as possible' towards the full realization of the right to housing.[29] This means that States have the burden of proof to demonstrate that they are making measurable progress towards the full realization of the right to housing.[30] They must take steps that are 'deliberate, targeted and concrete' to move towards the realization of the right.[31] Deliberate regressive steps have to be justified with reference to the available resources and the other rights in the Covenant.[32] More specifically, a general decline in housing stock and conditions, which is directly attributable to policy and legislative decisions by State Parties, and in the absence of accompanying compensatory measures, is inconsistent with the obligations under the Covenant.[33] Even in the context of economic hardship, austerity measures should always be temporary, necessary, proportionate and non-discriminatory. In times of crisis, States have a special duty to design their measures and policies in a way that mitigates inequalities and must ensure that the rights of the disadvantaged and marginalized are not disproportionately affected.[34]

25. See OHCHR & UN Habitat, 'The Right to Adequate Housing, Factsheet no. 21/Rev. 1' <https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf> accessed 15 January 2020.
26. CESCR, 'The Maastricht Guidelines on Violations of Economic, Social and Economic Rights' (E/C.12/2000/13, 2 October 2000) para 6.
27. ibid.
28. CESCR, General Comment No. 4 (n 8) para 12.
29. CESCR, General Comment No. 3: The Nature of States Parties' Obligations (Article 2, Para. 1, of the Covenant) (E/1991/23, 14 December 1990) para. 9.
30. CESCR 'Maastricht Guidelines' (n 26) para 8.
31. CESCR, General Comment No. 3 (n 29) para 2.
32. ibid para 9.
33. CESCR, General Comment No. 4 (n 8) para 11.
34. Letter from CESCR Chairperson to State Parties on Austerity Measures, (CESCR/48th/SP/MAB/SW, 16 May 2012) <https://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf> accessed 15 January 2020.

Furthermore, some obligations are not subject to progressive realization. The Committee refers to the 'immediate obligations' of States regardless of their available resources. Apart from the obligation to abstain from certain practices that interfere with the right to housing, States must immediately guarantee that the right to housing is exercised on the basis of non-discrimination, and give due priority to groups living in unfavourable conditions.[35] Moreover, States have the immediate obligation to effectively monitor the housing situation to ascertain the extent of homelessness and inadequate housing.[36] Finally, States have the immediate obligation to confer some level of security of tenure and to provide legal protection against forced evictions.[37]

With its statements and General Comments, the CESCR has provided guidance on what the right to housing entails. However, the breadth of the right and the leeway of States in adopting measures to promote and fulfil the right to housing make it hard to determine which measures and elements deserve priority, which represent long-term policy goals and which are mere suggestions for courses of action.[38] The relatively new individual complaint procedure under the Optional Protocol to the Covenant has the potential to shed further light on this. In fact, quite a few of the cases that have been dealt with thus far, concern the right to adequate housing and some moreover address the issue of financialization. Yet before moving on to a discussion of the link between the right to housing and financialization, it is worth outlining the latter phenomenon in some more detail.

3. THE RIGHT TO ADEQUATE HOUSING IN TIMES OF FINANCIALIZATION

3.1. Financialization of Housing

Housing has the primary social function of providing a home to people. In addition, home ownership has always had the function of providing economic security, as it provides a safe haven for savings and wealth accumulation.[39] For much of history, housing has been governed by the market. Over the past decades, however, global financial actors have become increasingly dominant on this market. This trend, which can be referred to as the 'financialization of housing', is arguably transforming the primary function of a house from a place to live to a commodity for investment and quick profit.[40]

This trend is part of a broader phenomenon characterised as the 'financialization of contemporary capitalism', in which the growing financial sector now dominates economic activity and wealth accumulation.[41] On the housing market, financialization has had two major effects. First, the mortgage market turned housing into a tradeable debt on the global financial market. This occurred through the securitization of mortgages, that is, the packaging of mortgage debt into tradable financial products, which are then sold to third-party investors.[42] This allows for global

35. CESCR, General Comment No. 4 (n 8) para 10.
36. ibid para 13.
37. ibid para 8(a).
38. See Jessie Hohmann, *The right to housing: law, concepts and possibilities* (Hart Publishing 2013).
39. Ray Forrest, 'The ongoing financialisation of home ownership – new times, new contexts' (2015) 15(1) International Journal of Housing Policy 1.
40. Report SR 2017 (n 2), para 1.
41. John B Foster, 'The financialization of Capitalism' (2007) 58(11) Monthly Review 1.
42. Manuel B Aalbers, 'The variegated Financialization of Housing' (2017) 41(4) International Journal of Urban and Regional Research 542.

capital to be invested in housing. The advent of mortgage-backed securities stems from the deregulation and liberalization of the financial system and mortgage market in the 1980s and 1990s by State governments.[43] Rooted in neo-liberal ideologies, these liberalization policies were part of a new housing strategy that relied on private market solutions. In the United States and many European countries, this strategy included the withdrawal of public housing funding, followed by the privatization of public housing and the simultaneous promotion of homeownership through finance policies. In order to attract additional lenders to the mortgage market, these States allowed for the process of securitization through their deregulation policies.[44] Eventually, what was meant to facilitate the production of housing and promote access to homeownership, also became a tool for profitmaking.[45]

Although mortgages make homeownership accessible to families who otherwise would not be able to buy a home, these relaxed mortgage policies made various financial actors increasingly powerful while also expanding the debt taken on by individual households. The potential negative consequences of this process were demonstrated by the 2008 global financial crisis. The securitization process significantly contributed to a global housing and finance bubble, while at the same time so-called 'subprime mortgages' were granted to moderate-income households that normally would be ineligible for a mortgage.[46] Once the bubble burst, millions of households were affected through the foreclosure of their homes, resulting in evictions of families and sometimes homelessness. In the US, more than 13 million households lost their homes in the period between 2006 and 2010. This ended in more than 9 million evictions, affecting about 30 million people.[47] A European example is Spain, with 500.000 foreclosures resulting in over 300.000 evictions between 2008 and 2013.[48] It is notable that these mortgage defaults were not as significant in countries with stricter banking regulations and lending standards. The housing crisis was much less severe in Canada for example, where the mortgage market was tightly regulated.[49]

The second major effect of the financialization of housing is the increasing significance of residential real estate as an asset of investment and wealth accumulation. The vast amount of residential properties subject to foreclosures in the aftermath of the financial crisis created an opportunity for investors to cheaply purchase them. By the end of 2017, the estimated value of the world's real estate reached a new high of 280 trillion US dollars, with residential property representing the largest share (220 trillion US dollars).[50] This makes residential real estate the biggest

43. Raquel Rolnik, 'Late Neoliberalism: The Financialization of Homeownership and Housing Rights' (2013) 37(3) International Journal of Urban and Regional Research 1058.
44. ibid.
45. Peter Marcuse and David J Madden, *In defense of housing* (Verso Books 2016).
46. Rolnik (n 43) 1062.
47. Saskia Sassen, 'Finance as Capability: Good, Bad, Dangerous' (Arcade: A Digital Salon 2014) <https://arcade.stanford.edu/occasion/finance-capability-good-bad-dangerous> accessed 15 January 2020.
48. Report SR 2017 (n 2), para 5.
49. Michael D. Bordo, Angela Redish & Hugh Rockoff, 'Why didn't Canada have a banking crisis in 2008 (or in 1930, or 1907, or . . .)?' (2014) 68(1) The Economic History Review 218; James Macgee, 'Why didn't Canada's Housing Market Go Bust?' (*Economic Commentary*, 2009) <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/economic-commentary-archives/2009-economic-commentaries/ec-20090909-why-didnt-canadas-housing-market-go-bust.aspx> accessed 15 January 2020.
50. Savills World Research, '8 things to know about global real estate value' (*Savills: impacts*, 2017) <https://www.savills.com/impacts/market-trends/8-things-you-need-to-know-about-the-value-of-global-real-estate.html> accessed 15 January 2020.

asset class in the world, highlighting its important role in economies worldwide. Of particular significance is the massive amount of money spent by private investors such as (foreign) corporations and private equity funds on the purchasing of homes with the purpose of making a profit. In 2015 alone, 443 billion dollars of capital was raised for international real estate investment, with residential properties accounting for the biggest share.[51] From 2013 to 2014, the foreign corporate buying of properties grew by 248% in Amsterdam, by 180% in Madrid and by 160.8% in Beijing.[52] This practice does not seem to be declining. In 2018, the share of investor purchases of homes in the US climbed to an all-time high of 11.3%, as opposed to 6% in 2000.[53] There is now a global market for residential properties for purposes other than primary residence. The purpose of these investments is to re-sell the property with profit, sometimes after destroying them to rebuild and individually sell luxury apartments in tall buildings. Alternatively, properties are turned into rental apartments or are refurbished to profit from (increased) rents. Other examples include housing investments for the purpose of using the property as a second home, office space or hotel accommodation.[54] For example, Airbnb turns existing housing stock that would otherwise be used for long-term housing into short-term hotel accommodation, which simultaneously affects local housing prices and rent levels.

The financialization of housing is increasingly considered controversial. Despite the enormous amounts of money pouring into the housing sector, there is a growing and global shortage of affordable housing. Profit-driven financial actors respond to global capital rather than to local housing needs, and therefore tend to invest in expensive luxury housing rather than affordable housing for low- and middle-income households.[55] At the same time, financial actors drive up housing prices and rent levels, requiring people to spend growing proportions of their income on housing. Today, housing in cities with the most economic opportunities, such as New York, Hong Kong, London and Sydney, is unaffordable for the people who would most benefit from these opportunities.[56]

Increasing housing costs have a disproportionate effect on low-income households. In 2017, 38% of poor households in the EU (as opposed to 10,4% of all EU households) spent more than 40% of their income on housing costs, leaving limited money for them to spend on basic necessities of life.[57] Housing cost overburden can result in foreclosures, evictions, and eventually, particularly in combination with austerity policies and a lack of social housing, homelessness. While homelessness is on the rise, the number of vacant homes in Europe (11 million) would be enough to house double the number of homeless people on the continent (4.1 million).[58]

51. Cushman and Wakefield, 'The Great wall of money' (*Cushman and Wakefield*, 2016) <http://www.cushmanwakefield.com/en/research-and-insight/2016/great-wall-of-money-2016/> accessed 15 January 2020.
52. Saskia Sassen, 'Who owns our cities – and why this urban takeover should concern us all' (*The Guardian*, 24 November 2015).
53. Corelogic, 'Special Report: Investor Home Buying' (*Corelogic*, 2019) <https://www.corelogic.com/blog/2019/06/special-report-investor-home-buying.aspx> accessed 15 January 2020.
54. John Doling & Richard Ronald, '"Not for housing' housing: Widening the Scope of housing Studies' (2019) 6(1) Critical Housing Analysis 22.
55. Report SR 2017 (n 2), para 31.
56. See Demographia, '15th Annual Demographia International Housing Affordability Survey: 2019' (*Dempgraphia*, 2019) <http://www.demographia.com/dhi.pdf> accessed 15 January 2020.
57. FEANTSA 'Fourth overview of housing exclusion in Europe 2019' (*FEANTSA*, 2019) <https://www.feantsa.org/en/report/2019/04/01/the-fourth-overview-of-housing-exclusion-in-europe-2019?bcParent=27> accessed 15 January 2020.
58. Rupert Neate 'Scandal of Europe's 11 m empty homes' (*The Guardian*, 23 February 2014). These high vacancy rates have also been linked to speculative investments by global financial actors. For this, see: FEANTSA, 'The

In light of the complex market and its multitude of actors, including banks, real estate developers, investment companies and private equity funds, accountability is limited. Nevertheless, States have an important role and can be seen as a driving force behind the financialization of housing. Governments have supported financialized structures through legislation, policies and strategies promoting privatization, marketization and deregulation. A prominent example is the policy response in the aftermath of the 2008 financial crisis. Many families were pushed into housing debt through the pre-crisis mortgage policies, but financial actors received more protection than those families when things went awry. While financial institutions were saved with expensive bailouts, many governments put austerity measures in place including substantial cuts to housing programs, further privatization of social housing and selling off massive amounts of housing and real estate assets to private equity funds. Other financialization enabling policies include tax advantages to attract (foreign) private investors and rewarding private investors with a 'golden visa', giving them permanent residence or citizenship in exchange for a minimum amount of investment in property.[59]

Overall, the increased role of financial actors in the housing market has a real impact on human lives. The financialization of housing has been linked to foreclosures, evictions, inadequate and unaffordable housing, with a discriminatory effect on lower-income households and other groups. This is where human rights standards become relevant. As discussed in the previous section, the right to adequate housing comes with various obligations for States. What this means exactly in the context of financialization, will be discussed next.

3.2. Human Rights as an Antidote?

There are obvious links between the right to housing and financialization, although the latter is not often considered from the standpoint of human rights.[60] More recently, however, human rights bodies have come to emphasise the connection between the human right to housing and the developments presented in the previous section. Labelling financialization as a human rights issue is combined with the clarification of obligations and recommendations for States and business enterprises in this context. In this section, the aim is to illuminate these as well as the 'paradigm shift' promoted by the Special Rapporteur on the right to adequate housing. This is not to say that a human rights perspective forms the solution for all the problems stemming from financialization, or even that there are no downsides to such an approach. In this respect, it must especially be noted that the work of the Special Rapporteur is to examine and monitor developments and report on these publicly, but does not lead to (quasi-legal) obligations for States and companies. In any case, however, linking financialization to rights rhetoric, allows for taking serious the housing interests of the individuals involved.

On multiple occasions, human rights authorities have identified the risks as well as inherently problematic features of financialization. A 2012 report by the then Special Rapporteur on the right to adequate housing, focuses on the impact of finance policies.[61] It is noted that from the 1970s

Financialisation of Housing and its Impact on Human Rights: Housing and Homelessness in the EU' (*FEANTSA*, 2017) < https://www.feantsa.org/en/feantsa-position/2017/03/01/the-financialisation-of-housing?bcParent=27> accessed 15 January 2020.

59. Report SR 2017 (n 2), paras 19-23.
60. Report SR 2017 (n 2), para 7.
61. UN General Assembly, 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 (A/67/286, 10 August 2012).

onwards, 'a growing consensus was formed, according to which Governments should renounce their role as suppliers of affordable housing and become facilitators, supporting market demands rather than directly providing outcomes'.[62] Yet market-based housing finance has failed to promote access to affordable housing, especially for the poorest.[63] According to the report, targeting more affluent segments of society, mortgage financing in effect discriminates against low-income groups;[64] policies often 'redline' the poor, who are required to pay much higher prices for financial services, exposing them to financial risks inherent to global financial markets and indebtedness.[65] Leading to the conceptualisation of housing as an asset or commodity, housing finance policies emphasise (while often failing to secure) the affordability aspect of the right to housing, while neglecting the other elements highlighted in the CESCR's General Comment no. 4.[66] For the right to *adequate* housing, it is equally important that housing is located near educational and work opportunities and that there is security of tenure. All these issues are human rights issues, and they all are connected to financialization.[67]

Moreover, of particular relevance is a 2017 report that deals specifically with financialization.[68] Special Rapporteur Leilani Farha introduces this topic as referring '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'.[69] The report is considered timely in light of States' implementation of the UN Sustainable Development Goals: 'If the commitment in target 11.1 to ensure access for all to adequate, safe and affordable housing and basic services is to be achieved by 2030, it is essential to consider the role of international finance and financial actors in housing systems'.[70] The right to adequate housing is interconnected with the right to equality and non-discrimination and the right to life, while the absence of effective human rights monitoring and systems of accountability in the sphere of financial markets and the housing system is an important problem signalling how the role of human rights is underestimated.[71]

The problems stemming from financialization cannot be seen in isolation from the role of business enterprises and privatisation trends. The latter are extensively dealt with in a report by Philip Alston in his capacity as Special Rapporteur for extreme poverty and human rights.[72]

62. ibid para 3.
63. ibid para 12.
64. ibid para 22.
65. ibid para 65.
66. CESCR, General Comment No. 4 (n 8) para 8.
67. Report SR 2012 (n 61) paras 48, 57, 66.
68. Report SR 2017 (n 2).
69. ibid para 1.
70. ibid para 8. Target 11.1 of the 2015 Sustainable Development Goals (SDGs) reads: 'By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums'. See <https://sustainabledevelopment.un.org/sdg11> accessed 15 January 2020. Obviously, this target is closely intertwined with the issue of financialization. As our focus here lies on a human rights perspective, the SDGs will receive no further attention. See, on the gap between both, for example, Thomas Pogge and Minu Sengupta, 'Assessing the sustainable Development Goals from a Human Rights Perspective', Journal of International and Comparative Social Policy 2016, 83-97. The work of UN Habitat will, for the same reason, also not be discussed here. See <https://www.un.org/youthenvoy/2013/08/un-habitat-united-nations-human-settlements-programme/> accessed 15 January 2020.
71. Report SR 2017 (n 2) paras 11, 12.
72. UN General Assembly, Report of the Special Rapporteur on extreme poverty and human rights (A/73/396, 26 September 2018).

According to Alston, the 'redefinition of the public good in terms of freedom from government, combined with the ''liberation'' provided by corporate efficiency and profitability, raises fundamental questions from a human rights perspective'.[73] While profit is the overriding objective in privatisation, human rights considerations such as dignity, equality and non-discrimination, are inevitably sidelined.[74] Rights-holders are transformed into clients, and human rights standards are rarely included in privatisation agreements.[75] The report also mentions the issue of austerity, which leads States to retreat from direct service provision. It shows that, '[a]lthough it is often suggested that a fully human-rights-compliant regulatory regime can be transferred to the private sector', this is contradiction in terms.[76] Privatisation undermines democracy, preventing government supervision as well as public decision making on the allocation of public goods and services, such as housing. In fact, 'austerity policies closely linked to privatization have created fertile ground for the rise of populist, anti-human-rights politicians'.[77]

Given their expanding role, what can be required from companies in complying with human rights standards? The first go-to here of course are the UN Guiding Principles on Business and Human Rights.[78] The Principles start from the obligation of States to protect against human rights abuse by third parties, which requires 'taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication'.[79] This in turn means that 'States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human right throughout their operations'.[80] When they contract with businesses to provide services that may impact upon the enjoyment of human rights, adequate oversight is required for States to meet their human rights obligations.[81] According to the Guiding Principles, business enterprises themselves are also required to protect human rights, to avoid infringements and address adverse impacts.[82] They should have in place appropriate policies and processes to achieve this.[83] Although (the right to) housing is not expressly mentioned, it is thus clear that businesses involved in housing and housing markets should be mindful of human rights.[84]

On several occasions, responsibilities for companies are also mentioned elsewhere. First, in the UN Habitat and UNHCR Factsheet on the Right to Adequate Housing it is noted that the responsibility to respect all human rights, including the right to housing, is the basic expectation of

73. ibid para 3.
74. ibid para 82.
75. ibid paras 82, 83.
76. ibid para 84.
77. ibid para 86. See, on the relation between populist threats and human rights, the final section of this article.
78. OHCHR Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in its Resolution 17/4 of 16 June 2011.
79. ibid Guiding Principle 2.
80. ibid Guiding Principle 3.
81. ibid Guiding Principle 5.
82. ibid Guiding Principles 11, 13.
83. ibid Guiding Principle 15, see also Principles 16-24.
84. However, the Guiding Principles are not legally binding and their implementation has proven complicated. Efforts to create a new convention on Business and Human Rights at UN level are ongoing, yet this is not the place to discuss the pros and cons of this development and the implications for the right to housing. In the General Comment of the CESCR on this topic (CESCR, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24, 10 August 2017)), housing is only briefly mentioned and reference is made to the Report of the SR 2017 (n 2).

society towards businesses.[85] Besides, in her 2017 report, the Special Rapporteur on the right to adequate housing concludes that '(b)usiness and human rights guidelines should, on a priority basis, be developed specifically for financial actors operating in the housing system'.[86] The report in fact devotes an entire section to business enterprises, explaining how various (voluntary) initiatives on business and human rights, fail to focus on the responsibilities of financial corporations and private equity firms and the right to housing.[87] In an effort to fill this void, the Special Rapporteur and the Working Group on Business and Human Rights jointly sent letters to Blackstone Group, one of the largest real estate equity firms, and six countries (USA, Sweden, Spain, Ireland, Denmark and Czech Republic.) The letter to Blackstone condemns the effects of its business model that causes rent increases beyond the scope of household incomes, as well as increasing evictions and higher maintenance costs for tenants, disproportionately affecting African Americans.[88] The company is reminded that when performing a social function within the ambit of human rights protection, certain human rights obligations are assumed. These concern access to affordable housing and non-discrimination, while threats of eviction and evictions resulting in homelessness must be avoided.

But let us return to what human rights norms are – first and foremost – about: guiding the behaviour of States. The letters to the different countries leave no question about the specific obligations for governments that have witnessed and actively contributed to the commodification of housing. All of them are reminded of the fact that

> according to international human rights law, your Government is required to take progressive measures, to the maximum of available resources, to ensure access to adequate housing for all without discrimination. To address the issue of financialization and its impact on the enjoyment of the right to housing, your Government must develop policies and laws that include a full range of taxation, regulatory and planning measures in order to re-establish housing as a human right, promote an inclusive housing system, prevent speculation and limit the extraction of profits at the expense of tenants. This will require a transformation of the relationship between your Government and the financial sector, whereby human rights implementation becomes the overriding goal.[89]

Besides, the letters note that a failure to take steps towards returning housing to its core function as a social good 'can only be regarded as a retrogressive step and accordingly puts the State at odds with its obligations under international human rights law'.[90] Sometimes, in the context of the

85. See OHCHR & UN Habitat Factsheet (n 25), 37, referring to the United Nations Global Compact.
86. Report SR 2017 (n 2), para 66(d).
87. Report SR 2017 (n 2), paras 18, 19.
88. Letter from the Special Rapporteur and the Working Group on the issue of human rights and transnational corporations and other business enterprises addressed to Blackstone Group (22 March 2019) <https://www.ohchr.org/Documents/Issues/Housing/Financialization/OL_OTH_17_2019.pdf> accessed 15 January 2020.
89. Letters from the Special Rapporteur and the Working Group on the issue of human rights and transnational corporations and other business enterprises addressed to the Czech Republic, Denmark, Ireland, Spain, Sweden and the United States of America (22 March 2019) 4, <https://www.ohchr.org/EN/Issues/Housing/Pages/FinancializationHousing.aspx> accessed 15 January 2020. Note that for the USA, references to the ICESCR are omitted, as it is not a party to the Covenant.
90. ibid.

ICESCR, retrogressive steps are (temporarily) allowed, for example in times of crisis and austerity, yet these then have to meet various requirements, such as non-discrimination.[91]

The letters are a reminder of the fact that even in spheres determined by markets and (the interests of) big companies, the State's task should not be limited to ensuring business enterprises do their best to comply with human rights.[92] A broad range of measures is necessary, also, according to the Special Rapporteur, transforming markets as well as the relationship between State and market. States should establish laws and policies to ensure that housing related costs are proportionate to income levels – they may not threaten the satisfaction of other basic needs.[93] Legal and other frameworks should also be created to ensure security of tenure,[94] while it is necessary for States to review existing laws and policies related to foreclosure and indebtedness, to ensure compliance with the right to adequate housing and the obligation to prevent evictions resulting in homelessness.[95] Courts and other institutions, too, so the 2017 report of the Special Rapporteur continues, must be made to 'recognize and apply the paramountcy of human rights and interpret and apply domestic laws and policies related to housing and housing finance consistently with the right to adequate housing'.[96] In turn, this means that rights-holders must have an opportunity to be heard; that complaints procedures and access to effective remedies are provided.[97]

Moreover, States are required to monitor the impact of housing policies on the right to adequate housing.[98] When it becomes clear that a policy is detrimental to this right, policies should be adjusted and rectified.[99] Importantly, not least because this is an immediate obligation under the ICESCR, policies and practices may not be discriminatory; they should aim at bridging inequality gaps rather than benefitting already advantaged groups.[100]

States have an obligation to provide for housing in the form of, for example, social housing or low-rental units for low-income households.[101] The provision of housing is not a task that can be left to the market or to private institutions entirely or even to a large extent.[102] Already in 2012 the Special Rapporteur called for a paradigm shift, away from financialization and towards a human rights-based approach. The 2017 report on financialization, referring to the 2030 Agenda for Sustainable Development,[103] as well as the New Urban Agenda,[104] concludes that States need to redesign housing finance and investment markets. To this effect, an international high-level meeting of States and other stakeholders is suggested[105] and strategies developed should include a range of taxation, planning and regulatory measures, 'in order to re-establish housing as a social

91. Letter CESCR Chairperson 2012 (n 33).
92. Report SR 2017 (n 2), paras 12, 13.
93. Report SR 2012 (n 61), para 16.
94. ibid para 71(i).
95. Report SR 2017 (n 2), para 77(e).
96. ibid para 77(f).
97. ibid para 16.
98. ibid.
99. ibid para 19.
100. Report SR 2012 (n 61), para 71(d).
101. ibid para 18.
102. ibid para 71(h); see also Report SR 2018 (n 72) paras 22, 23.
103. UN General Assembly 2030 Agenda for Sustainable Development (A/RES/70/1, 25 September 2015).
104. UN Habitat III New Urban Agenda (A/RES/71/256, 2017)
105. Report SR 2017 (n 2), para 77(a).

good, promote an inclusive housing system and prevent speculation and excessive accumulation of wealth'.[106] At the time of writing, new Guidelines on the implementation of the right to adequate housing – a result of the work of the Special Rapporteur – are underway.[107] The Draft Guidelines that are currently available, refer to the issue of financialization not only in relation to the obligation of business enterprises, but also recommend that investments, development plans, privatization and public private partnerships in the field of housing be reviewed in the light of the right to housing.[108]

Sceptics may say that the efforts just presented mainly form a paper tiger. It is true that compared to the ICESCR's General Comments, that are not legally binding yet authoritative, and contribute to an integrated web of (non-)binding obligations and guidelines, the work of the Special Rapporteur is advisory at most. The level of detail and breadth of the recommendations of the Special Rapporteur cannot be transposed one-on-one to the interpretation of binding legal norms such as those enshrined in the ICESCR. Rather, they form a strong voice in favour of framing housing as a human rights issue and show the other side of the coin of financialization. Developments of a more legal nature however are visible as well. Since the entry into force of the Optional Protocol to the ICESCR in May 2013, the CESCR moreover has the ability to hear complaints from (groups of) individuals on alleged violations of economic, social and cultural rights in their own State. In 2017, it adopted views in the case of *Ben Djazia* et al. *v Spain*, concerning a Spanish family with two minor children that was left without shelter after they were evicted from their rental home when their private rental lease had expired, and after being repeatedly denied access to social housing.[109] This happened in the context of the financial crisis and a general decline in national housing stock. The Committee condemned the regional Spanish authorities for the sale of public housing stock to private investment companies at a time where there was increased need for social housing and found the Spanish authorities had violated of Article 11(1) read separately and in conjunction with Article 2(1) of the Covenant. This highlights that States are obliged to justify broader policy measures impacting on the right to housing, such as the sale of public housing stock and the use of tax revenue.

Not surprisingly, in the recent Concluding Observations of the CESCR concerning the report of Spain, this issue is addressed as well. The Committee recommends, amongst other things, to '[t]ake necessary measures to regulate the private housing market in order to improve the accessibility, availability and affordability of adequate housing for persons with low incomes'.[110] More generally, and in line with the findings above, Concluding Observations now regularly refer to the market and its effects on the unaffordability of housing. In the case of Denmark, concern is expressed regarding 'the shortage of affordable housing, which is exacerbated by the growing trend in property acquisition by private investors who, under the 1996 Act on Temporary Regulation of Housing Conditions, are authorized to increase rents up to the ''value of the rented

106. ibid para 77(b).
107. The Draft Guidelines on the implementation of the right to adequate housing are available via <https://www.ohchr.org/EN/Issues/Housing/Pages/GuidelinesImplementation.aspx> accessed 15 January 2020. The final Guidelines have been published in February 2020.
108. ibid 16-17.
109. *Ben Djazia et al v. Spain* Communication No 005/2015 (CESCR, 20 June 2017).
110. CESCR, Concluding observations on the sixth periodic report of Spain (E/C.12/ESP/CO/6, 29 March 2018) para 39(b).

dwelling"'.[111] Similar concerns are expressed regarding Germany,[112] yet the Committee's worries in this respect are not limited to European countries. In its Concluding Observations on Korea, it recommends that the State '[p]ut into place mechanisms to regulate rising housing costs in the private sector, including unreasonable housing costs, and provide for the renewal of rental contracts to encourage longer-term security of tenure for tenants',[113] and also in the Concluding Observations published in the last years on New Zealand,[114] Argentina[115] and Senegal[116] mention is made of increased rents and what should be done about this. Altogether, it can be said that today, through the work of the Committee and the Special Rapporteur, but also through efforts of national courts, other authorities as well as human rights institutions, the human rights dimension of financialization can no longer be ignored. In the remainder of this article, some examples are provided of where and how a human rights perspective is turned into action, and light is shed on the importance of this discussion for emphasizing 'majority rights'.

4. A HUMAN RIGHT TO ADEQUATE HOUSING FOR ALL

4.1. Some Hopeful Examples

In a galvanizing speech, US Congresswoman Alexandria Ocasio-Cortez recently pointed out why US housing is 'barbarism'. When being asked about paying too much rent, her audience responded loudly; speaking from her own experience, Ocasio-Cortez calls living conditions inhumane and calls for a radical stop to commodification.[117] This is an issue that speaks to all, and a matter politics cannot turn a blind eye to. A paradigm shift might be hard to achieve, but in line with human rights efforts several developments are underway. Some examples are mentioned here. What these show is that there is great potential for especially local governments to change perspectives on housing policy, and that human rights rhetoric is helpful in this regard.

'The Shift' is a movement initiated by the Special Rapporteur on the right to housing together with United Cities and Local Governments ('UCLG') and the Office of the High Commissioner for Human Rights. It aims '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'.[118] By bringing together and supporting activities and initiatives, it wants to push for new housing strategies at different government levels in line with human rights, Agenda 2030 and the New Urban Agenda. In 2018, this human rights initiative has

111. CESCR, Concluding observations on the sixth periodic report of Denmark (E/C.12/DNK/CO/6, 18 October 2019) para 49.
112. CESCR, Concluding observations on the sixth periodic report of Germany (E/C.12/DEU/CO/6, 12 October 2018) para 54.
113. CESCR, Concluding observations on the fourth periodic report of Korea (E/C.12/KOR/CO/4, 6 October 2017) para 53(c).
114. CESCR, Concluding observations on the fourth periodic report of New Zealand (E/C.12/NZL/CO/4, 29 March 2018) para 39.
115. CESCR, Concluding observations on the fourth periodic report of Argentina (E/C.12/ARG/CO/4, 12 October 2018) para 47.
116. CESCR, Concluding observations on the third periodic report of Senegal (E/C.12/SEN/CO/3, 18 October 2019) para 30.
117. Now This, 'Alexandria Ocasio-Cortez Explains Why U.S. Housing Is "Barbarism"' (11 September 2019) <https://www.youtube.com/watch?v=F79mCbPcUDg> accessed 15 January 2020.
118. See the website of this initiative <http://www.unhousingrapp.org> accessed 15 January 2020.

led to a Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City, that by now has been signed by 37 partner cities and three metropolitan entities.[119] This Cities for Housing initiative identifies practical obstacles to realising the right to adequate housing related to commodification, deregulation, and a lack of national funding. On the basis of a common diagnosis, signatory cities (as well as organizations and individuals) commit to local actions and policies demanding a better regulation of the real estate market and increased funds to improve the public housing stock. They want to further alternative mixed public-private community-driven housing as well as urban planning that combines adequate housing with inclusive and sustainable neighbourhoods, while enhancing cooperation amongst municipalities that subscribe to these goals.

In the documentary 'Push', director Frederik Gertten follows Special Rapporteur Leilani Farha when she investigates forces shaping the housing problem.[120] The award-winning film is screened in cities around the world evoking discussion while reaching a broad audience. Besides providing a platform for debate, an increasing number of cities publicly commits itself to a housing as a human right strategy, proposing a role-back to financialization-permitting policies and practices. Montreal, recently, has presented new rules that will compel developers to build social and affordable housing, or otherwise contribute to a fund that will finance social housing.[121] Another Canadian city, Toronto, is planning to close a loophole now allowing landlords to evict tenants in rooming houses that they want to redevelop, by improving low-income tenants' protections from eviction.[122] In Barcelona, again a city facing a shortage of homes, a new law was recently put to use resulting in the expropriation of an 'empty' flat owned by a bank,[123] while Amsterdam has drawn up plans to ban the buy-to-let of new build homes on city land.[124] The mayor of Malmö, which has also joined The Shift, announced a change of perspective inspired by human rights, emphasizing the need for local governments to play a leading role in this regard.[125]

Also in Germany, interesting developments are taking place. In Munich, a so-called 'Mietenstopp' will bar increases in rent for 60.000 apartments for the coming five years.[126] In June 2019, the Berlin senate voted in favour of what are seen as radical rent laws that also cap rents for the

119. See <https://citiesforhousing.org> accessed 15 January 2020.
120. See <http://www.pushthefilm.com> accessed 15 January 2020.
121. See 'Montreal aims to boost affordable housing as rental market tightens' (*CBC News,* 12 June 2019) <https://www.cbc.ca/news/canada/montreal/montreal-affordable-social-housing-bylaw-rules-1.5172133?__vfz=medium%3Dsharebar> accessed 15 January 2020.
122. See David Nickle, 'Toronto council to consider new rules that would give rooming house tenants more protection' (*The Star*, 29 May 2019) <https://www.thestar.com/news/gta/2019/05/29/toronto-council-to-consider-new-rules-that-would-give-rooming-house-tenants-more-protection.html> accessed 15 January 2020.
123. See James Badcock 'Barcelona orders first expropriation of 'empty' flat owned by a bank' (*The Telegraph*, 24 June 2019,) <https://www.telegraph.co.uk/news/2019/06/24/barcelona-orders-first-expropriation-empty-flat-owned-bank/> accessed 15 January 2020.
124. See Senay Boztas, 'Buyer beware: Amsterdam seeks to ban buy-to-let on newbuild homes' (*The Guardian*, 18 March 2019) <https://www.theguardian.com/world/2019/mar/18/buyer-beware-amsterdam-seeks-to-ban-buy-to-let-on-new build-homes?CMP=Share_iOSApp_Other> accessed 15 January 2020.
125. See 'Housing crisis: Malmö's mayor on the need for a new perspective' (*Sveriges Radio*, 16 September 2019) <https://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=7299023> accessed 15 January 2020.
126. See Dominik Hutter, 'Mietenstopp für 60000 Wohnungen' (*Süddeutsche Zeitung*, 25 July 2019) <https://www.sueddeutsche.de/muenchen/muenchen-wohnen-mieten-mieterhoehung-bremse-1.4539674> accessed 15 January 2020.

coming five years.[127] The Berlin 'Mietendeckel' remains the topic of heated debate, even though in August 2019, the German Federal Constitutional Court ('FCC') considered the new rules constitutional and not in conflict with the fundamental right to property protection and equality.[128] In its judgment, the FCC emphasizes the social role of housing and the risks of gentrification, thereby clearing the path for measures that are sensitive to the right to adequate housing that not only is affordable, but includes security of tenure and is located in the vicinity of educational and work opportunities as well. Starting from these different examples, there is hope that the right to housing not only contributes to protection against homelessness, but plays an important role in improving housing conditions for all.

4.2. Human Rights Protecting 'Majorities'

As mentioned in the Introduction, human rights are often understood to protect the rights of minorities, that is, individuals or groups that in some way suffer from majority rule. In majoritarian democracies, after all, political majorities determine the content of legislation and the priorities of government action. The result may run counter to the interests of minorities, and it is then usually up to courts to restore the balance and ensure that these are not affected disproportionally. Or so the story goes. In this final section, in order to reflect on what it means for financialization of housing to be perceived as a human rights issue, it is indicated why the majority-minority distinction in relation to the protection of human rights is not that clear-cut. In social rights protection, moreover, the idea that these rights should primarily benefit the (extremely) poor rather than the (slightly) more well off as well, obscures the potential of a more inclusive view. Before explaining this, however, the dimension of the current human rights backlash is added.

Human rights are under threat worldwide. With 'human rights backlash' this article does not refer to the fact that many rights fail to be respected and the appalling consequences this entails. Rather, this term signals a growing distrust of rights and the institutions protecting them. Not least by populist leaders and nationalist movements, human rights are portrayed as 'talismans raised on behalf of minorities, including the most vulnerable and weak at the margins of the nation-state'.[129] This image erodes the achievements of human rights and the systems that have protected them over the past decades. They result in a turn away from human rights rhetoric – overshadowing one of the most auspicious achievements of our times with a general sense of disappointment. It is asked 'what do *your* human rights, do for *me*?', or assumed that human rights do not provide a solution to actual problems people face on a day-to-day basis.

Yet the question could also be asked what *our* human rights can do for *all of us*, as this provides a possible key to preventing erosion of human rights efforts and effects. Clarifying what human rights actually do and for whom, allows for reconnecting them to individuals and groups that have turned their backs on fought-hard systems of protection. Questioning the majority-minority

127. See Feargus O'Sullivan, 'Berlin Will Freeze Rents for Five Years' (*Citylab*, 19 June 2019) <https://www.citylab.com/equity/2019/06/berlin-rent-freeze-senate-vote-affordable-housing/592051/?utm_medium=social&utm_term=2019-06-19T16%3A52%3A10&utm_campaign=citylab&utm_content=edit-promo&utm_source=twitter> accessed 15 January 2020.

128. German Federal Constitutional Court 18 July 2019 1 BvL 1/18. The German press release can be found at <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2019/bvg19-056.html> accessed 15 January 2020.

129. Moyn (n 12) 4.

assumption related to rights theory is linked to this: rather than solely securing the interests of small minorities, human rights protect the interests of (cultural, economic and other) majorities, too. In fact, political decision-making resulting in laws and policies cannot automatically be deemed to be majority-friendly. Thus, courts, too, may step in to protect the rights of majorities whereas human rights activists and institutions play a necessary role in increasing the voice of all those not sufficiently heard in the political arena.

What does this mean for social rights, and the right to housing in times of financialization in particular? Landau and Dixon argue that whereas it is generally suggested that the main aim of social rights 'is to ameliorate poverty by raising up the economic status of the poorest members of society', this is nor should necessarily be the sole focus.[130] Explaining the emergence of social rights jurisprudence on behalf of higher-income groups, they show that what may appear as 'capture' is actually a form of pro-majoritarian review, that can moreover trickle down to the poorest. An example is the protection of minimum social benefits when international agreements forced countries to cut on social spending – which is considered to have furthered the financialization of housing as well. But:

> The argument extends beyond situations in which domestic political institutions are unable to act because of international political or economic pressure. It also applies to situations in which domestic legislative and executive actors are subject to 'blind spots' and 'burdens of inertia,' which make them consistently unresponsive to the demands for social protection, or redistribution, from a majority of voters. In many developed economies, rising levels of income inequality, and the 'compression' of the middle class, may also mean that blockages of this kind are increasingly likely in the context of legislation necessary to promote the realization of key social and economic rights.[131]

In the discussion on the backlash against human rights, it is argued that criticism is partly prompted by human rights (institutions) themselves. Proliferation of rights – both in number and in scope – is said to be part of problem.[132] Accordingly, recognising human rights in more and more policy fields with the effect that the room for democratic contestation is limited, requires caution. In line with this, the high level of social rights codification and increasing possibilities for judicial review,[133] could also be seen by some as proliferation in the pejorative sense of the term, drifting rights away from their 'natural' purpose with the effect that overall they are perceived as less inalienable and important.[134]

It is true that there is an increase in the number of rights and their scope, and that interpretations should not expand so as to no longer relate to the wording or purpose of the relevant norm. At the

130. Landau and Dixon (n 12).
131. ibid 122 (footnotes omitted). Corruption is one of the other reasons why majority protection may be illusory.
132. See John Tasioulas, 'Saving Human Rights from Human Rights Law' (2019) Vanderbilt Journal of Transnational Law 1167-1207; John Tasioulas, 'Are human rights taking over the space once occupied by politics?' (*NewStatesman*, 26 August 2019) <https://www.newstatesman.com/2019/08/are-human-rights-taking-over-space-once-occupied-politics> accessed 15 January 2020.
133. Jung et al (n 5).
134. Think of the recent launch of President Donald Trump's Commission on Unalienable Rights, which has been critically received, see for example 'Why Trump's new commission on unalienable rights is likely to upset the human rights community' (*The Washington Post*, 6 June 2019) <https://www.washingtonpost.com/politics/2019/06/06/this-is-why-trumps-new-commission-unalienable-rights-is-likely-upset-human-rights-community/> accessed 15 January 2020.

same time, a fear for overreach should not result in returning to a negative-positive dichotomy in the sense that only classical, negative rights protection that (presumably) leaves more room for politics, is deemed right. This would put in question the hard-fought consensus that social rights are as important as civil and political ones and that the two categories are interdependent. Social rights, not in the least the right to housing, are of central importance to living a dignified life. This involves more than having a roof over one's head – an awareness that rightly impacts on politics and democratic contestation.

Obligations stemming from the right to housing are not so much intended to limit space for democratic decision making as a reminder that certain things should be political rather than left to the market in the first place. Financialization or commodification has to do with a lack of political ownership of the social good housing essentially is, having detrimental effects on the very poor and lower and middle class groups alike. In this context, human rights actors are triggered to emphasise the need for a human rights based approach. Instead of signalling overreach, this can shed light on the situation of large numbers of individuals and benefit the image of human rights in a time when this is much needed. An important effort in this regard is also made by national human rights institutions, who tirelessly remind of the connection between our day-to-day problems and human rights.[135] The obligations and recommendations stemming from rights such as the right to housing have become manifold, and it is fair to ask whether human rights – and in particular social rights – sometime aspire too much. Still, it deserves to be further explored what the positive effect is of linking human rights to an issue that for many (literally) hits close to home. Rather than being at the periphery of the human rights spectrum, a right to adequate housing could play a central role, even if, or especially when, not only the needs of the most poor but also those of 'majorities' are at stake. This does not mean that recognising (justiciable) rights alone will do the trick – they must be part of a broader spectrum of laws, market regulations and other constellations ensuring social protection.[136]

5. CONCLUSION

Financialization is problematic from the perspective of human rights and the right to adequate housing in particular. The right to housing is enshrined in various human rights catalogues and at first glance may appear to provide only a very general starting point for combatting inappropriate housing situations, discrimination, evictions and homelessness resulting from financialization. In this article, it was shown that the right to adequate housing does provide concrete obligations and expectations, and that meanwhile human rights actors have translated these to the specific context of housing finance policies and the role of the State in relation to the market. Moreover, this has triggered practical initiatives such as 'The Shift' that send a hopeful message to those who care about adequate housing. This development was presented against the backdrop of the backlash against human rights, and it was argued that the right to adequate housing underlines the need for majority protection alongside minority protection, which in turn may reflect positively on the endeavours and achievements of human rights.

135. Report SR 2017 (n 2), para 1.

136. See Jeff King, 'The Future of Social Rights. Social Rights as Capstone' in Katharine G. Young (ed.), *The Future of Economic and Social Rights* (CUP 2019) 289 (arguing that social rights should be viewed as a capstone of a functioning and just welfare state, and not as its foundation stone).

Authors note

Ingrid Leijten is an Assistant Professor at the Department of Constitutional and Administrative Law, Leiden University Faculty of Law, the Netherlands (a.e.m.leijten@law.leidenuniv.nl); Kaisa de Bel is an LLM student International Criminal Law at the University of Amsterdam, the Netherlands (kaisa_de_bel@hotmail.com).

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ORCID iDs

Ingrid Leijten https://orcid.org/0000-0003-3020-0989
Kaisa de Bel https://orcid.org/0000-0002-3183-9023