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DISSERTATION TITLE

The potential impact of the right to housing addressing vertical inequalities in a neoliberal context

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## Table of content

<b>Abstract</b> .....	4
<b>Chapter 1: Introduction</b> .....	5
<b>Chapter 2: Vertical inequalities: influences and effects</b> .....	8
2.1 Definitions.....	8
2.2 What is wrong with socio-economic inequalities?.....	8
2.3 The right to adequate housing perspective.....	10
2.3.1 Homelessness.....	11
2.3.2 Affordability.....	11
2.3.3 Location.....	12
2.4 Neo-liberalism, inequality and financialisation of housing.....	15
<b>Chapter 3: The odds of human rights in addressing socio-economic inequalities</b> .....	18
3.1 A critique.....	18
3.2 A response from the human rights movement.....	19
3.2.1 The right to equality under International Human Rights Law.....	20
<b>Chapter 4: The right to the city: A reinforcement device</b> .....	22
4.1 The limitations of the right to housing.....	22
4.2 Strengthening the framework of the right to housing.....	23
<b>Chapter 5: The right to adequate housing: the equality dimensions</b> .....	27
5.1 Obligation to respect.....	27
5.2 Obligation to protect.....	29
5.3 Obligation to fulfil.....	31
Conclusions.....	35
Bibliography.....	37

## **Abstract**

This dissertation seeks to explore the potentiality of the right to adequate housing addressing vertical inequalities in a neoliberal context. I begin with a brief explanation of vertical inequalities and their relationship with the neoliberal order in which they are embedded, and move on to discuss derivative and intrinsic reasons to be concerned about them. Regarding the latter, I particularly focus on the adverse effects of socio-economic inequalities on the right to adequate housing, which in turn amplify the perverse impacts of inequality in a wide range of human rights. Afterwards, I look at the state of the debate on whether or not the human rights movement has decidedly addressed these kind of inequalities and then present which are the standards that the human rights framework may offer with special focus on the right to equality. Afterwards, I explore some shortcomings and opportunities to reinvigorate and refresh the framework of the right to housing; and finally, I offer different ways in which the right to housing, as a substantive right or in relation with the right to equality, can serve to combat socio-economic inequalities in practice.

## Chapter 1. Introduction



Fig 1. Favela Paraisópolis, Sao Paulo, Brazil. Photograph: Tuca Vieira. Used with author permission.

In 2004, Brazilian photographer Tuca Viera took this photo in Sao Paulo, Brazil, to illustrate one of the most pressing issues of our times, socio-economic inequalities. On the left, the *favela* of Paraisópolis, one of the biggest *favelas* in Sao Paulo. It does not have regular access to clean water, electricity, basic services, and security of tenure. On the right, divided by a wall, a luxury housing complex on the district of Morumbi, one of the wealthier districts of Sao Paulo. As stated by the author of the picture, "[t]he absurdity of the image imposes an unacceptable feeling of defeat on us: how do we allow things to reach this point?"<sup>1</sup>

While this photo was taken in the Brazilian context, it also serves to reflect on the obscene levels of socio-economic inequalities worldwide, which have increased in almost all regions, and it are projected to be on the rise.<sup>2</sup>

According to World Inequality Lab, in terms of incomes, the 1% wealthiest people on earth earned twice as much as the poorest 50% people in the world.<sup>3</sup> Across regions, income inequalities have increased in almost all regions of the globe, but differ in speed and scale. For example, the top 10% richest

<sup>1</sup> Available at: <<https://www.tucavieira.com.br/A-foto-da-favela-de-Paraisopolis>> accessed 10 May 2019.

<sup>2</sup> World Inequality Lab, 'World Inequality Report' (2018) 9 <<https://wir2018.wid.world/>> accessed 19 May 2019.

<sup>3</sup> Ibid, 7.

individuals earned 47% of the national income in the USA and Canada, 46% in Russia, and 37% in Europe.<sup>4</sup>

When it comes to wealth inequality, results are wider, since they include not only income but also other financial and real assets. Globally, the top 1% of adults in the world obtain 47% of global wealth, and the poorest 50% collectively earn less than 1% of global wealth.<sup>5</sup> According to Oxfam, while the fortune of billionaires in the world rose by USD 900 billion in 2018, the wealth of the poorest 50% (3.8 billion people) decreased by 11%.<sup>6</sup> In other words, while billionaires' fortunes increase by 2.5 billion a day, half of the world's population must survive with fewer than 5 dollars a day.<sup>7</sup>

In addition, vertical inequalities also represent an unequal distribution of housing outcomes. According to UN-Habitat, 72% of the urban population in the Sub-Saharan Africa live in informal settlements, while in Europe the percentage rates are below 7%.<sup>8</sup> Furthermore, when it comes to differences in neighbourhoods within countries, results are at plain sight. For example, whereas in Cairo between 25% and 35% of the population live in slums without access to basic services, there is an increasing trend to build rich and exclusive neighbourhoods within the city. These represent the Beverly Hills version of luxurious complexes where "inhabitants can keep their distance from the sight and severity of poverty and the violence and political Islam, which is seemingly permeating the localities".<sup>9</sup> In addition, disparities are also represented in terms of geographical location of housing. For instance, in general, squatters' settlements are geographically located in places, which are environmentally hazardous, health threatening, and in areas that are at high risk from the adverse effects of climate change, in comparison to those who can afford to live on higher grounds and security.<sup>10</sup>

However, as I will argue, despite a wide range of human rights being affected by these kind of inequalities, which are driven by neo-liberal policies, the human rights community has traditionally invoked economic, social and cultural rights (ESCR) to address poverty through the 'minimum core' rather than tackling socio-economic inequalities and calling for a more equal distribution of resources. In other words, making an analogy with figure 1, ESCR has focused its work on improving the material living conditions of Parasiapolis families, rather than establishing any ceiling in the gap between Parasiapolis families and those of the luxury complex of Morumbi. In fact, Alston recognises that the human rights movement has neglected issues of vertical inequalities in its advocacy and analytical work.<sup>11</sup> However, progressive analysis on the right to equality under international human rights law (IHRL) offers a set of possibilities to consider the legal standards that the right to equality might impose

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<sup>4</sup> Ibid, 9.

<sup>5</sup> Credit Suisse, 'Global Wealth Report' (2018) 9 <<https://www.credit-suisse.com/corporate/en/research/research-institute/global-wealth-report.html>> accessed 19 May 2019.

<sup>6</sup> Oxfam International, 'Reward Work, Not Wealth' (2018) <<https://www.oxfam.org/en/research/reward-work-not-wealth>> accessed 19 May 2019.

<sup>7</sup> Ibid.

<sup>8</sup> United Nations Human Settlements Programme (ed), *The Challenge of Slums: Global Report on Human Settlements, 2003* (Earthscan Publications 2003).

<sup>9</sup> Mike Davis, *Planet of Slums* (Verso 2007) 115.

<sup>10</sup> Ibid, 121.

<sup>11</sup> UNGA, 'Annual Report of the Special Rapporteur on Extreme Poverty and Human Rights', Philip Alston, UN Doc. A/HRC/29/31, 2015, par 3.

on economic and social rights –including the right to housing- in order to achieve greater levels of socio-economic equality.

In this context, considering the importance of the enjoyment of the right to housing for the whole social fabric, this dissertation seeks to answer which is the potential impact of the right to housing addressing vertical inequalities in the neoliberal context. In order to do so, this dissertation proceeds as follows:

Chapter 2 begins with a brief explanation of the meaning of vertical and horizontal inequalities. Drawing from economic, urban and geographic studies, the chapter moves on to the effects of socio-economic inequalities in a wide range of human rights, with special focus on the right to housing –as envisaged in IHRL- and the effects on housing segregation. The chapter will also outline the role of the neoliberal project in the creation and exacerbation of those inequalities.

Chapter 3 will analyse the main debates on the relationship between socio-economic inequalities and human rights. On the one hand, it will present some criticism that the human rights community has received for not engaging more decidedly with vertical inequalities. On the other hand, it will outline the main responses from the human rights movement and some paths, which have been offered in order to redress its shortcomings. On this point, special emphasis is given to progressive interpretations of the right to equality, which have opened new avenues for considering social rights as equality devices.

Chapter 4 explores the limitations and opportunities that the framework of the right to housing offers to address socio-economic inequalities. Regarding the latter, I consider the indivisibility and interdependence of all human rights to reinforce the content and scope of the right to housing through the right to the city.

In addition, based on the requirement of the right to equality explained in chapter 3 and the meaning of the right to housing given in chapter 4, chapter 5 considers the tripartite obligation of the states (respect, protect and fulfil) to propose different paths by which the right to housing, as a substantive right or in relation with the right to equality, could contribute to fighting socio-economic inequalities under international human rights law.

## Chapter 2: Vertical inequalities: influences and effects

### 2.1 Definitions

To begin with, it is important to specify some concepts to set the meaning of vertical inequality. On the one hand, economic inequality refers to disparities in the distribution of income or wealth among households or individuals in a given society.<sup>12</sup> Economic inequality is generally measured by the Gini coefficient, reflecting a single index, which ranges between zero (perfect equality) and 100 percent (perfect inequality).<sup>13</sup> On the other hand, social inequalities refer to the unequal distribution of social outcomes such as health, education or housing among individuals in a certain country.<sup>14</sup> Thus, vertical inequalities encompass both economic and social inequalities and reflect an unequal distribution of social outcomes, power, wealth or income among individuals or households in a society.<sup>15</sup> In this sense, vertical inequality is synonymous of socio-economic inequality.

In addition, vertical inequality is different from horizontal inequality, which is related to disparities among different socially defined groups (e.g. religion, gender, ethnicity or race).<sup>16</sup> Hence, while vertical inequalities are primarily concerned with *what* is being distributed, horizontal inequalities take into account among *whom* those relevant differences are distributed.<sup>17</sup> However, despite its differences, both types of inequalities may intersect in practice, which explains why some historically discriminated groups are those who suffer the greatest socio-economic deprivations as well.<sup>18</sup> For example, in many South-American countries, extreme poverty has been declining for the past 30 years; however, poverty has remained static for racial and ethnic minorities and disproportionately affects them.<sup>19</sup>

Thus, are there reasons to be concerned about these disparities? Which are the effects of socio-economic inequality in terms of the enjoyment of human rights, if any? The next section seeks to answer these questions with special focus on the right to housing.

### 2.2 What is wrong with socio-economic inequalities?

On the one hand, laissez-faire arguments suggest that economic inequalities are not as bad as believed. In fact, from a public policy perspective, efforts must be directed towards economic growth since it leads to greater levels of wellbeing of the whole population.

Here, it is argued that if there is economic growth, it does not matter how unequal is a given society, since the generated wealth eventually will trickle down to those at the bottom of the income

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<sup>12</sup> UNGA, Annual Report of the Special Rapporteur on Extreme Poverty and Human Rights on his mission to the United State of America, Phillip Alston, UN Doc. A/HRC/38/33/Add.1, 2015, par 10.

<sup>13</sup> Anthony B. Atkinson, *Inequality, What Can Be Done?* (Cambridge, Massachusetts, Harvard University Press, 2015) 17.

<sup>14</sup> Supra (n 12) par 5-6.

<sup>15</sup> Balakrishnan and R Heintz, J. "How inequality threatens all human rights," Open Global Rights "Economic Inequality: can human rights make a difference?" (2015). Available at: <<https://www.opendemocracy.net/openglobalrights/radhika-balakrishnan-james-heintz/how-inequality-threatens-all-human-rights>> accessed 10 May 2019. In this dissertation, socio-economic inequalities refer to inequalities within countries, rather than between countries.

<sup>16</sup> Ibid.

<sup>17</sup> Supra (n 12) par 7.

<sup>18</sup> UNESCO, World social science report, 2016: Challenging inequalities; pathways to a just world, chapter 8: Naila Kabeer, Leaving no one behind': the challenge of intersecting inequalities, 57.

<sup>19</sup> Ibid.



distribution.<sup>20</sup> Hence, what is critical is the creation of economic policies that benefit the rich (who generate the wealth), so that the absolute size of the pie increases as much as possible, to the point where eventually low-income families can obtain a larger slice of it.<sup>21</sup>

However, reliable evidence collected by economists in recent decades shows quite the opposite. First, the data shows that in the last 40 years, the wealth created globally has not benefited everyone equally, but instead the rich are getting richer and middle-class and poor-income families have impoverished their economic position.<sup>22</sup> Second, studies carried out by OECD<sup>23</sup> and the FMI demonstrate that income inequality is “destructive” to economic growth, since it produces political instability that is counterproductive for investments.<sup>24</sup>

On the other hand, it has been suggested that socio-economic inequalities matter for the whole wellbeing of the social fabric. Here, it is said that there are two main reasons to be concerned about vertical inequalities: direct and instrumental.

Direct reasons appeal to the “intrinsic” value of equality. Equality is valuable by itself regardless external factors.<sup>25</sup> One of the defenders of this idea is Amartya Sen, who in his paper “Equality of What” advocates for an equalitarian distribution of capabilities because –among others reasons- is equal in itself.<sup>26</sup> Moreover, empirical studies carried out by the World Bank have argued that equality is an intrinsic value for people because vertical inequality produces a sense of injustice.<sup>27</sup> Thus, the need to articulate the intrinsic worth of equality as a social norm and inequality as a total injustice that must be remedied has been advocated.<sup>28</sup>

Instrumental reasons are related to the consequences of inequalities in terms of values, which are different to equality itself.<sup>29</sup> Accordingly, those values could be better achieved if socio-economic inequalities are reduced.<sup>30</sup> On this view, objections to inequalities arise due their consequences on material deprivation and suffering, liberty and dignity.<sup>31</sup> That is to say, “it is objectionable because it undermines a person’s sense of self-worth and self-respect and diminishes the capacity for an independent agency”.<sup>32</sup>

In this context, the evidence of the harmful effects of vertical inequalities in the enjoyment of human rights of individuals and communities is overwhelming. As Wilkinson and Pickett observe, more unequal

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<sup>20</sup> David R. Henderson, ‘Income inequality isn’t the problem’. Article by the Hoover Institute, Available at: <<https://www.hoover.org/research/income-inequality-isnt-problem>> accessed 22 June 2019.

<sup>21</sup> Joseph E. Stiglitz, *The Price of Inequality: How Today’s Divided Society Endangers Our Future* (Norton & Co 2012) 21.

<sup>22</sup> Thomas Piketty, *Capital in the Twenty-First Century* (The Belknap Press of Harvard University Press 2014); Branko Milanović, *Global Inequality: A New Approach for the Age of Globalization* (First Harvard University Press paperback edition, The Belknap Press of Harvard University Press 2018).

<sup>23</sup> Federico Cingano, *Trends in Income Inequality and Its Impact on Economic Growth*, vol 163 (OECD Publishing 2014).

<sup>24</sup> Andrew Berg and Jonathan Ostry, ‘Inequality and Unsustainable Growth: Two Sides of the Same Coin?’ (2017) 65 IMF Econ Rev 792, 4.

<sup>25</sup> Charles R Beitz, ‘Does Global Inequality Matter?’ (2001) 32 *Metaphilosophy* 95, 97.

<sup>26</sup> *Ibid.*

<sup>27</sup> Tamar Manuelyan Atinc and others, ‘World Development Report: Equity and Development’ (The World Bank 2005) 32204 82.

<sup>28</sup> Sakiko Fukuda-Parr, ‘It’s about values: human rights norms and tolerance for inequality’, in Open Global Rights blog “Economic Inequality: can human rights make a difference?” (2015). Available at: <<https://www.opendemocracy.net/en/openglobalrights-openpage/it-s-about-values-human-rights-norms-and-tolerance-for-inequality/>> accessed 07 June 2019

<sup>29</sup> *Supra* (n 25).

<sup>30</sup> *Ibid.*, 98.

<sup>31</sup> *Ibid.*, 99-106.

<sup>32</sup> *Ibid.*, 104.

societies are detrimental for the enjoyment of both civil and political rights (CP) and economic social and cultural rights (ESCR), since they produce higher levels of physical and mental health problems<sup>33</sup>, poorer educational performance<sup>34</sup>, violence and higher homicide rates<sup>35</sup>, and distrust within the community<sup>36</sup>. Moreover, unequal societies present lower levels of distribution of political power, which tends to benefit the wealthiest individuals and undermine the rights to political participation of the poorest.<sup>37</sup> Furthermore, economic inequality creates political instability and has contributed to the rise of populism worldwide.<sup>38</sup>

### 2.3 The right to adequate housing perspective

Despite the fact that the indicators mentioned above on health, education and political participation are crucial to assess the effects of inequality on the enjoyment of human rights, in general, research does not consider a central aspect in the life of individuals and communities, the right to housing. In fact, although housing inequalities are the spatial and visual expression of income, wealth and power disparities among individuals, the human rights community has paid little attention to the consequences of socio-economic inequalities on the enjoyment of the right to housing.

The right to adequate housing, as part of the right to an adequate standard of living is recognised in article 25 of the Universal Declaration of Human Rights (UDHR)<sup>39</sup>, it is enshrined in article 11 International Covenant on Economic, Social and Cultural Rights (ICESCR), stating that “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>40</sup>

Because the ICESCR does not contain a detailed explanation of the content of the right to housing or which are the state's obligations in this regard, the Committee on Economic, Social and Cultural Rights (CESCR) adopted the General Comment N<sup>o</sup>4<sup>41</sup> and the General Comment N<sup>o</sup>7<sup>42</sup>, which interpret the content and nature of the right to adequate housing under International Human Rights Law. In addition, the CESCR has also developed the content, scope and boundaries of the right to housing through the

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<sup>33</sup> Richard G Wilkinson and Kate Pickett, *The Spirit Level: Why More Equal Societies Almost Always Do Better* (Allen Lane 2009) 63–73.

<sup>34</sup> *Ibid.*, 103-19.

<sup>35</sup> *Ibid.*, 129-45.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Thomas Picketty, 'Brahmin Left vs Merchant Right: Rising Inequality and the Changing Structure of Political Conflict (Evidence from France, Britain and the US, 1948-2017)' [2018] World Inequality Lab.

<sup>39</sup> Universal Declaration of Human Rights, adopted 10 December 1948, GA/217, article 25 “Everyone has the right to a standard of living adequate for the health and well-being of himself and 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.”

<sup>40</sup> International Covenant of Economic, Social and Cultural Rights, adopted 16 December 1966, entered into force 23 March 1976 (ICESCR), article 11.

<sup>41</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment 4: The Right to Adequate Housing (Art 11(1) of the Covenant)', UN doc E/1992/23, December 1991 (General Comment 4).

<sup>42</sup> UN CESCR, 'General Comment 7: The Right to Adequate Housing (Art 11(1): Forced Evictions)', UN doc E/1998/22, May 1997 (General Comment 7).

Concluding Observations on the states, which is a procedure to assess the implementation of the ICESCR by a given state.<sup>43</sup>

The CESCR points out that the right to adequate housing cannot be narrowly or restrictedly interpreted just as shelter or a physical structure over a person's head, but must be understood in a broader sense as "the right to live somewhere in security, peace and dignity."<sup>44</sup> In addition, for the right to adequate housing to be appropriate it must contain seven elements a) legal security of tenure; b) availability of services, materials, facilities and infrastructure; c) affordability; d) habitability; e) accessibility; f) location; and g) cultural adequacy.<sup>45</sup>

In the next paragraphs, drawing upon economics, urban and geography studies, I will consider which are the effects of socio-economic inequalities in the enjoyment of the right to housing, considering three indicators: homelessness, affordability and location.

### **2.3.1 Homelessness**

Homelessness is one of the greater violations of the right to housing, and according to the CESCR any state in which a significant group of people is deprived of shelter or basic housing is in breach of the Covenant.<sup>46</sup>

It has been argued that the causes of homelessness are not just individual circumstances related to drug/alcohol abuse, mental illness or lack of family networks, -which are typically attributed to "personal failures"- but strongly linked to structural patterns such as income inequality and housing price increases.<sup>47</sup> Some studies have shown that very low-income individuals decide be homeless not because they prefer a "street lifestyle", but because otherwise, it is not possible to afford other essential needs.<sup>48</sup> In other words, between a poor standard housing located in a segregated area that represents a higher income proportion, and the homelessness option, which represents zero housing consumption, they prefer the latter.<sup>49</sup> In short, the broader the income gap between the rich and the poor, the more the number of homeless people in cities, who are exposed to discrimination, criminalisation and deprivation.<sup>50</sup>

### **2.3.2 Affordability**

Generally speaking, housing affordability means that household expenditure related to housing should not compromise the attainment of other individuals' essential needs.<sup>51</sup> Even though the specific measure to assess when housing is affordable (house price to income-ratio) differs between countries,

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<sup>43</sup> Michael O'flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies' (2006) 6 Human Rights Law Review 27, 47–52.

<sup>44</sup> Supra (n 41), par 7.

<sup>45</sup> Ibid, par 8.

<sup>46</sup> UN CESCR, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 1990, par 10.

<sup>47</sup> John M. Quigley and Steven Raphael, The Economic of homelessness, European Journal of Housing Policy 1(3), 2001, 323–336.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Housing Rights Watch, 'Criminalisation of Homelessness in Europe' (2013).

<sup>51</sup> Supra (n 41) par 3.

a common accepted standard is that housing cost should not represent more than 30% of total household expenditures.<sup>52</sup>

Evidence shows that economic inequality jeopardises housing affordability since it increases housing prices –especially at rental levels- and diminishes income disposal for those at the bottom, who must spend a higher amount of their income on housing.<sup>53</sup> Despite this trend on average hitting households in developing countries worse than in developed countries, low-income families of both are disproportionately affected on equal terms.<sup>54</sup> For instance, in South-America the data shows that housing costs for a very modest dwelling represents 49 percent of monthly income of a low-income household in Venezuela, 104 percent in Bolivia and 164 percent in Suriname.<sup>55</sup> In Europe, evidence shows that housing cost for low-income families represent 41 percent of household incomes, in comparison to 22,5 percent of Europe’s overall population.<sup>56</sup>

### 2.3.3 Location

According to General Comment 4, housing must be located in a place near “access to employment options, health-care services, schools, childcare centres and other social facilities”.<sup>57</sup>

A number of studies have documented that rising economic inequality affects housing location, producing greater levels of residential segregation in cities, which in turn reinforce patterns of injustice and severely affect the enjoyment of human rights.<sup>58</sup> In this section, I will explain the way in which both processes occur.

Residential segregation has been defined as unequal geographic separation of people of different income levels within a specific area.<sup>59</sup> Thus, for a residential segregation process to occur, it is necessary for the group of individuals to be centralised, distributed unevenly in comparison to other groups, and strongly concentrated in a defined area.<sup>60</sup>

In this process, housing segregation acts as a mirror of income inequality, so when one standard deviation rises in income inequality, 0.4-0.9 standard deviation increases in residential segregation, and most interesting not only of poverty but affluence as well.<sup>61</sup> In other words, it is not just about the segregation of poor people in significant poor areas (ghettos), but the segregation of the rich in separated areas (enclaves or citadels).<sup>62</sup> One of the reasons that explain this spatial separation is that

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<sup>52</sup> Chris Paris, ‘International Perspectives on Planning and Affordable Housing’ (2007) 22 *Housing Studies* 1, 2.

<sup>53</sup> Caroline Dewilde and Bram Lancee, ‘Income Inequality and Access to Housing in Europe’ (2013) 29 *European Sociological Review* 1189.

<sup>54</sup> UN-Habitat, ‘Affordable Land and Housing in Latin America and the Caribbean’ (2011) chapter 4.

<sup>55</sup> *Ibid.*

<sup>56</sup> Alice Pittini, ‘Housing Affordability in the UE: Current Situation and Recent Trends’ (2012) *European Social Housing Observatory* 3.

<sup>57</sup> *Supra* (41), par 8, f).

<sup>58</sup> Tara Watson, ‘Inequality and the Measurement of Residential Segregation by Income in American Neighborhoods’ (2009) 55 *Review of Income and Wealth* 820.

<sup>59</sup> *Ibid.*

<sup>60</sup> Douglas Massey and Nancy Denton, ‘The Dimensions of Residential Segregation’ (1988) 67 *Social Forces* 281, 283.

<sup>61</sup> *Supra* (n 58) 842.

<sup>62</sup> Douglas Massey, ‘The Age of Extremes: Concentrated Affluence and Poverty in the Twenty-First Century’ (1996) 33 *Demography* 395.

the income gap has a direct influence over housing costs and residential standards, which precludes low-income individuals from living close to high-income ones.<sup>63</sup>

Importantly, housing segregation presents different dimensions of concern, from a human rights perspective. Here, I will highlight two of them.

First, according to Young, segregation must be seen as a patent injustice since it (i) jeopardises the principle of equality of opportunity by which people have the right to choose where they want to live; (ii) creates and reproduces disadvantages for low-income families, which enjoy a poorer quality of life; and (iii) makes difficult the odds of political communication between members of society, which is a necessary condition to redress the unjust effects of segregation.<sup>64</sup>

For Young, the strict geographical separation between the worst-off and the well-off precludes different groups to see the benefits and privileges that segregation creates and reproduces. In this context, the segregation is invisible in the eyes of those who experience it, which contributes to the most privileged not even feeling, seeing or understanding the injustice that segregation produces.<sup>65</sup>



Fig 2. Masiphumelele Community, Cape Town, South Africa. Photograph: Johnny Miller/Unequal Scenes. Used with author permission.

Figure 2 shown above clearly captures the way in which socio-economic inequality and housing segregation create social and spatial differences between the rich and the poor, which become a “cognitive border”, so they do not see each other: they grow up in different neighbourhoods, attend different schools, develop relationships in their own networks, and then, become part of a segmented

<sup>63</sup> Supra (n 58). 822.

<sup>64</sup> Iris Marion Young, ‘Residential Segregation and Differentiated Citizenship’ (1999) 3 *Citizenship Studies* 237, 239–43.

<sup>65</sup> *Ibid*, 242.

labour market.<sup>66</sup> In other words, housing segregation creates a great divide between the have and have-nots at different scales, which represent the spatial injustice within the city.

Second, it has been argued that residential segregation concentrates poverty, and significantly affects the enjoyment of a wide range of human rights.

To begin with, increasing income inequality linked with housing segregation inevitably leads to the concentration of low-income families in poor neighbourhoods.<sup>67</sup> Put in a different way, the geographical organisation of poverty –reinforced by racial and housing discrimination- fosters the creation of poverty in low-income families and reproduces it for future generations in specific ghettos.<sup>68</sup> Using data from the 2014 Census in the USA, research has shown the sudden increase of low-income families living in extremely poor neighbourhoods, especially after the "great recession."<sup>69</sup> For example, in 2000 almost 3 million poor people lived in disadvantaged neighbourhoods, though between 2009 and 2014 the percentage rose to 6.3 million people living in neighbourhoods with more than 40% of poverty rate.<sup>70</sup> Consequently, the social outcomes of those families living in such places are dramatically affected.

In addition, people who live in segregated poor neighbourhoods suffer greater violent and property crime rates.<sup>71</sup> It is estimated that economic inequality in relation to neighbourhood segregation increases the likelihood of resident suffering a violent crime such as rape, aggravated assault or murder more than four times in relation to high-income families.<sup>72</sup>

Furthermore, educational outcomes of low-income children and young students are disproportionately affected by housing segregation.<sup>73</sup> This means that the quality and location of the neighborhoods is determinant for children's educational advantages or disadvantages. Consequently, children who grow up in segregated neighborhoods have lower rates of school graduation<sup>74</sup>, academic achievement<sup>75</sup>. More importantly, it compromises young people and children's wellbeing and their chances to succeed in life (social mobility), which is extremely difficult to correct later on in life.<sup>76</sup>

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<sup>66</sup> Jonathan JB Mijs, 'The Paradox of Inequality: Income Inequality and Belief in Meritocracy Go Hand in Hand' [2019] *Socio-Economic Review* 6.

<sup>67</sup> Douglas S Massey and Mary J Fischer, 'How Segregation Concentrates Poverty' (2000) 23 *Ethnic and Racial Studies* 670, 671.

<sup>68</sup> Paul A Jargowsky, 'Concentration of Poverty in the New Millennium: Changes in the Prevalence, Composition, and Location of High-Poverty Neighborhoods' (The Century Foundation and Rutgers 2013) 1–10.

<sup>69</sup> Elizabeth Kneebone and Natalie Holmes, 'U.S. Concentrated Poverty in the Wake of the Great Recession' (*Brookings*, 31 March 2016) Available at: <<https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>> accessed 14 August 2019.

<sup>70</sup> *Ibid.*

<sup>71</sup> Songman Kang, 'Inequality and Crime Revisited: Effects of Local Inequality and Economic Segregation on Crime' (2016) 29 *Journal of Population Economics* 593.

<sup>72</sup> *Ibid.*, 616-7.

<sup>73</sup> Lincoln Quillian, 'Does Segregation Create Winners and Losers? Residential Segregation and Inequality in Educational Attainment' (2014) 61 *Social Problems* 402, 402–4.

<sup>74</sup> Geoffrey T Wodtke, David J Harding and Felix Elwert, 'Neighborhood Effects in Temporal Perspective: The Impact of Long-Term Exposure to Concentrated Disadvantage on High School Graduation' (2011) 76 *American Sociological Review* 713.

<sup>75</sup> Eric A Hanushek and others, 'Does Peer Ability Affect Student Achievement?' (2003) 18 *Journal of Applied Econometrics* 527.

<sup>76</sup> Tama Leventhal and Jeanne Brooks-Gunn, 'The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes' (2000) 126 *Psychological Bulletin* 309.

Moreover, a mountain of evidence highlights the intrinsic relation between housing segregation and health outcomes.<sup>77</sup> People exposed to segregated poor neighbourhoods suffer greater levels of infant mortality rates<sup>78</sup>, tuberculosis<sup>79</sup>, premature birth<sup>80</sup>, obesity and mental health problems.<sup>81</sup> In addition, segregated communities suffer from negative health outcomes due to a greater exposure to environmental risks, such as industrial toxins or dangerous waste pollution.<sup>82</sup>

Finally, studies have shown that living in segregated neighbourhoods has adverse effects on other social indicators, such as adult employment<sup>83</sup>, family composition, economic security, demonstrating that such exposure to negative social outcomes widen income inequalities and exacerbates its negative effects, which are then passed onto future generations.<sup>84</sup>

In short, when socio-economic inequalities affect the enjoyment of the right to housing through segregation, it amplifies its effect on a wide range of social outcomes, compromising the equality of opportunities and precluding political communication. Consequently, housing segregation puts at risk democracy as a “political commitment to universal emancipation”.<sup>85</sup>

Next section will explain that socio-economic inequality and the effects it produces are not a fixed reality like gravity, but has been a political choice<sup>86</sup> by which states around the world have established an ideology that creates and perpetuates it; this is neo-liberalism. Subsequently, I will explain the role of housing in this context

## **2.4 Neo-liberalism, inequality and financialisation of housing**

Neo-liberalism has been defined as a “theory of political economic practice that proposes that human wellbeing can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong property rights, free market and free trade”.<sup>87</sup> In its “bureaucratic face”, the neo-liberal policies refer to a set of measures that aim to take the state out of the provision of social goods such as housing, education and health, and replace it with market competition, promoting financial liberalisation, privatisation, deregulation of the economy and minimal taxation.<sup>88</sup>

However, neoliberalism has not only influenced the economic activities of the states, but has also established a particular way of interpreting and living the world.<sup>89</sup> The implementation of this ideology

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<sup>77</sup> Marcia Gibson and others, ‘Housing and Health Inequalities: A Synthesis of Systematic Reviews of Interventions Aimed at Different Pathways Linking Housing and Health’ (2011) 17 *Health & Place* 175.

<sup>78</sup> Thomas A. Laveist, Darrell Gaskin and Antonio J. Trujillo, ‘Segregated Spaces, Risky Places: The Effects of Racial Segregation on Health Inequalities’ (2011) 18.

<sup>79</sup> *Ibid.*, 21.

<sup>80</sup> *Ibid.*, 22.

<sup>81</sup> *Ibid.*, 24-5.

<sup>82</sup> *Supra* (n 78) 4.

<sup>83</sup> David M Cutler and Edward L Glaeser, ‘Are Ghettos Good or Bad?’ (1997) 112 *The Quarterly Journal of Economics* 827.

<sup>84</sup> *Supra* (n 78) 26.

<sup>85</sup> Michael E Goodhart, *Democracy as Human Rights: Freedom and Equality in the Age of Globalization* (Routledge 2005) 135.

<sup>86</sup> Joseph Stiglitz, ‘Inequality is a choice’, article available at: <<https://opinionator.blogs.nytimes.com/2013/10/13/inequality-is-a-choice/>> accessed 15 May 2019.

<sup>87</sup> David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2005) 3.

<sup>88</sup> Stephanie Lee Mudge, ‘What Is Neo-Liberalism?’ [2008] *Socio-Economic Review*, 2008, Vol. 6(4) 718–9.

<sup>89</sup> *Supra* (n 87).

started off as a “shock experiment” carried out by Milton Friedman and the “Chicago Boys” –with Pinochet’s vein- in Chile in the earliest 1970s<sup>90</sup>, which was later followed in the 1980s by Ronald Reagan in the USA and Margaret Thatcher in the UK.<sup>91</sup> Then, it rapidly spread to other regions such as Asia, Europe, Africa, Oceania and America.<sup>92</sup>

Moreover, this doctrine has not only been applied by many states over the last decades, but has also been widely supported and applied in practice by international organisations such as the International Monetary Fund (IMF) and the World Bank,<sup>93</sup> who in several occasions have conditioned loans to developing countries subject to the application of neo-liberal policies.<sup>94</sup>

It is worth recalling that socio-economic inequalities and neo-liberalism are indivisible in theory and practice, since inequality is a requirement of neo-liberal thinking, and as such, neo-liberal policies produce greater levels of inequality. The following statement made by Hayek clearly points out that socio-economic inequality is a *de facto* requirement of neo-liberalism:

*“The rapid economic advance that we have come to expect seems in a large measure to be the result of this inequality and to be impossible without it. Progress at such a fast rate cannot proceed on a uniform front, but must take place in echelon fashion, with some far ahead of the rest.”*<sup>95</sup>

Indeed, one of the main mechanisms by which neo-liberal policies have increased socio-economic inequality in developed and developing countries is through financialisation of housing.

The financialisation of housing has been defined as a process by which housing is dominated by the private market and financial agents at different levels and scales, involving the restructuring of real estate capital.<sup>96</sup> According to Raquel Rolnik, this process is founded in the neo-liberal idea of implementing policies directed to replace the role of the state on the housing sector by private and financial actors at a large scale, aiming to accomplish the return of financial profits, thus stripping housing of its social function.<sup>97</sup> Rooted in the global financial crisis of 2007-2008, this process has been fostered by the process of globalisation and deregulation of housing, resulting in the commodification of housing, meaning that housing is now being treated just as a commodity that can be traded in the market and has become a form of wealth accumulation rather than a human right.<sup>98</sup>

It is worth recalling that this process has been rapidly spreading across the world as the hegemonic model of housing policy based on granting subsidies and mortgage loans to finance “homeownership”,

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<sup>90</sup> Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Penguin 2008).

<sup>91</sup> Diane Elson, ‘Gender Justice, Human Rights, and Neo-Liberal Economic Policies’, ch 3, 5-6, in Maxine Molyneux and Shahra Razav, *Gender Justice, Development, and Rights* (Oxford University Press 2002).

<sup>92</sup> Ibid.

<sup>93</sup> See in UNGA, ‘Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on the role of the International Monetary Fund (IMF) in relation to social protection’, UN doc. A/HRC/38/33, 8 May 2018; UNGA, ‘Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on the World Bank and human rights’, UN doc. A/70/274, 4 August 2015.

<sup>94</sup> Ibid.

<sup>95</sup> Friedrich A. von Hayek, ‘The Constitution of Liberty’ (London; New York: Routledge 2006) 39.

<sup>96</sup> Manuel Aalbers, *The Financialization of Housing: A Political Economy Approach* (Routledge, Taylor & Francis Group 2016) 2–4.

<sup>97</sup> Raquel Rolnik, ‘Late Neoliberalism: The Financialization of Homeownership and Housing Rights’ (2013) 37 *International Journal of Urban and Regional Research* 1058.

<sup>98</sup> UNGA, ‘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’, Leilani Farah, UN doc. A/HRC/34/51, 18 January 2017, par 1.



becoming a fundamental tool to fuel the financial flow and wealth accumulation.<sup>99</sup> A key milestone in this process was the launch of the world bank's report "Housing: enable market to work", which explains the importance of housing as a financial asset and recommends to the states the adoption of neo-liberal policies for its provision.<sup>100</sup>

Moreover, the world is currently experiencing a "new wave of housing finance" related to the control of rental housing by transnational companies and corporate landlords, who own apartments and houses as financial assets to rent at a large scale.<sup>101</sup> According to the former Special Rapporteur, this is not an absolutely new process in the history of cities; however, what is new is the scale and speed in which it has advanced.<sup>102</sup>

Importantly, the process of financialisation of housing has substantially contributed to greater levels of socio-economic inequalities worldwide.<sup>103</sup> Housing has become an asset to invest and make money, those who can pay for well-located homes in the city increase their wealth and those who cannot afford to pay for it become poorer.<sup>104</sup> Indeed, the most recent researches carried out in the USA, has found that from 1950 onwards housing represents the greater proportion of households' wealth in comparison to other kind of assets.<sup>105</sup> As Albouy and Zabek point out, "[housing] accounts for much of the overall capital stock and is the principal asset for most Americans with savings."<sup>106</sup>

Similarly, according to data of the World Inequality Lab 2018, since housing prices have significantly increased during the last decades, today housing represents, to a great extent, one of the main elements of individual's wealth in China, Russia, France, UK, among others countries.<sup>107</sup> For this reason, housing has been defined as "both driver and consequence of economic inequality".<sup>108</sup>

With especial focus on the right to housing, this chapter has shown how socio-economic inequality conducted by the neo-liberal model, seriously affects the human rights of the most disadvantaged sectors of the population, producing greater levels of deprivation and suffering on an unprecedented scale. Nonetheless, despite these adverse effects, the role of human rights in tackling socio-economic inequality has been highly contested and the debate in this regard is on the rise. In the next chapter, I will review part of this debate presenting different positions that may inform it, and then I will move onto the possibilities that the right to equality, under international human rights, law may offer to address vertical inequalities in relation to the right to housing.

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<sup>99</sup> Raquel Rolnik, *Urban Warfare: Housing Under the Empire of Finance* (Verso 2019) 11–23.

<sup>100</sup> *Ibid.*, 20.

<sup>101</sup> *Ibid.*, 265-81.

<sup>102</sup> *Ibid.*, 266.

<sup>103</sup> New Economics Foundation, 'Inequality and Financialisation' (*New Economics Foundation*, 2014). Available at: <<https://neweconomics.org/2014/12/inequality-and-financialisation>> accessed 21 June 2019.

<sup>104</sup> *Supra* (n 98), par 34.

<sup>105</sup> Matthew Rognlie, 'Deciphering the Fall and Rise in the Net Capital Share: Accumulation or Scarcity?' (2015) 2015 Brookings Papers on Economic Activity 1, 3.

<sup>106</sup> David Albouy and Mike Zabek, 'Housing Inequality' [2016] NBER Working Paper Series 2.

<sup>107</sup> *Supra* (n 2).

<sup>108</sup> Richard Florida, 'How Housing Inequality Fuels Economic Inequality' (*CityLab*), Available at: <<https://www.citylab.com/equity/2018/04/is-housing-inequality-the-main-driver-of-economic-inequality/557984/>> accessed 21 June 2019.

## **Chapter 3. The odds of human rights in addressing socio-economic inequalities**

### **3.1 A critique**

One of the most provocative critiques against the capacity of human rights in addressing socio-economic inequalities, has been made by the Yale historian Samuel Moyn. He argues that human rights have been traditionally more concerned with sufficiency rather than equality; that is, with the guarantee of minimum provisions rather than an equal distribution of material resources.<sup>109</sup> In addition, he points out that there are no standards in the Universal Declaration of Human Rights to combating socio-economic inequality,<sup>110</sup> consequently, “human rights even perfectly realized human rights, are compatible with inequality, even radical inequality”.<sup>111</sup> Aryhe Neier, the former founder of Human Rights Watch, has a similar stance; he declared that the human rights movement is ineffective in addressing vertical inequalities and that it is an issue that remains outside the human rights field.<sup>112</sup>

Moreover, presenting a critical view of the effects of neoliberal economics on inequalities around the world, Moyn points out that “human rights moved from an idiom of national social justice to a powerless companion of global neoliberalism”<sup>113</sup> and that “neoliberalism has changed the world, while the human rights movement has posed no threat to it”.<sup>114</sup> To summarise, Moyn stresses that the human rights movement is not doing enough to address and renew tactics on socio-economic inequality in a neoliberal world.

Similarly, David Kennedy suggests that the way in which the human rights movement tends to lead with problems and solutions is too narrow to intend to modify the current global economy.<sup>115</sup> Human rights concerns about “participation and procedure” have tolerated socio-economic inequalities as soon as rights are formally recognised through legislation and institutional framework.<sup>116</sup> Additionally, Douzinas maintains that the golden era of human rights has coincided with the rise of economic neoliberalism, where instead of challenging it, human rights have become an instrument for its operations.<sup>117</sup>

It is worth noting that one of the tools through which human rights have decidedly address sufficiency is by the establishment of the “minimum core obligations”, aiming to “ensure the satisfaction of at very least, minimum essential levels of each rights”.<sup>118</sup> This minimum core content has been defined as an “absolute minimum entitlement in the absence of which a state party is to be considered to be in violation of its obligations”<sup>119</sup> and has been a cornerstone in the fight against poverty and the enjoyment of the

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<sup>109</sup> Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (The Belknap Press of Harvard University Press 2018) 3.

<sup>110</sup> *Ibid*, 210.

<sup>111</sup> *Ibid*, 1, 213.

<sup>112</sup> Open Society Foundations, ‘Is the Human Rights Movement in Crisis?’ (2018) Available at: <<https://www.opensocietyfoundations.org/events/human-rights-movement-crisis>> accessed 15 August 2019.

<sup>113</sup> *Ibid*, 180.

<sup>114</sup> *Ibid*, 216.

<sup>115</sup> David Kennedy, ‘International Human Rights Movement: Part of the Problem?’ (2002) *Harvard Human Rights Journal* 101, 109.

<sup>116</sup> *Ibid*.

<sup>117</sup> Costas Douzinas, ‘The Paradoxes of Human Rights’ (2013), 20 *Constellations: An International Journal of Critical and Democratic Theory* 51, 51.

<sup>118</sup> *Supra* (n 46) par 10.

<sup>119</sup> Philip Alston, ‘Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights’ (1987) 9 *Human Rights Quarterly* 332, 351.

rights associated with an adequate standard of living established under article 11 of the ICESCR. However, a serious commitment to tackling vertical inequalities has been consistently missing.

A number of scholars argue in this vein. Gillian MacNaughton points out that the minimum threshold approach has been focused on reducing poverty within and between countries rather than reducing the levels of economic and social inequality.<sup>120</sup> Audrey Chapman highlights that if states implement the minimum core through effective plans and strategies, the material welfare levels of the most disadvantaged groups would clearly increase; however, they would not obtain an equal status because the minimum content does not advocate for redistribution of resources.<sup>121</sup> In addition, explaining the CESCR approach, Margot Solomon states that “the Committee has not transitioned from a focus on poverty and the idea of universal basic rights to one more sensitive to demands of global equality (...) On the threshold model, whether rights have been fulfilled can be ascertained merely by looking at the circumstances of any one person without needing to refer to the situation of anyone else.”<sup>122</sup>

In fact, a recent study proves her right. A research carried out by the Global Initiative for Economic, Social and Cultural Rights in partnership with Science Po Law School of Paris<sup>123</sup>, analysed 10,800 concluding observations of the UN treaty bodies (CESCR, CRC, CEDAW, CERD, CPRD, CCPR) between 2008 and 2018, to find whether or not they address vertical inequalities in their concerns and recommendations. The study found that the core of the work of the Committee is focused on horizontal inequalities rather than vertical inequalities; in fact, only 201 recommendations (5.3%) tackled socio-economic inequalities, which represents a minimum interest by the Committee in imposing well-defined obligations on the states aiming to achieve a more egalitarian distribution of income, wealth and social outcomes.

In this context, I concur that traditionally human rights have dealt more with sufficiency rather than the distribution of income, wealth and social goods. However, one thing is to say that the analysis on socio-economic inequality has been missed within the human rights community, but a very different thing is to say that under IHRL there is no framework at all or that it is ill-equipped to address socio-economic inequalities. Indeed, the fundamental role of human rights is to face and tackle different manifestations of “systematic and significant human suffering” so that all human beings can lead a life in conditions of dignity and equality. This dissertation has evidenced that human suffering goes beyond conditions of material deprivation, but is significantly linked to the unequal distributions of resources and social goods. Hence, there is no doubt that human rights must and could do more to fight vertical inequalities.

### **3.2 A response from the human rights movement**

Responding to the critics mentioned above, the Center of Economic, Social and Cultural Rights (CESCR) has given a detailed explanation on the relationship between human rights and economic

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<sup>120</sup> Gillian MacNaughton, ‘Beyond a Minimum Threshold’, in *The State of Economic and Social Human Rights: A Global Overview* (ed. Lanse Minckler, Cambridge University Press 2013) 284.

<sup>121</sup> Audrey R Chapman, ‘The Social Determinants of Health, Health Equity, and Human Rights’ (2010) 12 *Health and Human Rights* 17, 24.

<sup>122</sup> Margot E Salomon, ‘Why Should It Matter That Others Have More? Poverty, Inequality, and the Potential of International Human Rights Law’ (2011) 37 *Review of International Studies* 2137, 2143–4.

<sup>123</sup> Science Po Law School of Paris and GI-ESCR, ‘Economic Inequality and Human Rights’ (2019).

inequalities. The CESCR offers four different paths through which human rights can tackle socio-economic inequalities. First, there is a conceptual task in which the aim is to understand the relationship between human rights and socio-economic inequalities, the way in which they interact and the evidence of the harmful effects of inequalities on human rights. Second, through the articulation of the normative foundation of IHRL to address socio-economic inequalities, such as the principle of non discrimination; the obligation to use the maximum available resources and the enactment of redistributive policies; the enactment of policy interventions to tackle the determinants and causes of economic inequalities; and the respect for extraterritorial human rights obligations. Third, by strengthening the human rights accountability mechanisms to face socio-economic inequalities as a result of human rights violations. Finally, through the creation of interdisciplinary analysis tools to engage more broadly with the dynamics between socio-economic inequalities and human rights, and facing them through innovative strategies.<sup>124</sup>

Furthermore, Philip Alston, the current UN Special Rapporteur for Extreme Poverty and human rights, has defined as a “patent no sense” the statement that suggests that human rights have nothing to say about socio-economic inequality or that even perfectly realised human rights are compatible with inequality.<sup>125</sup> On the contrary, a real commitment with human rights requires formal and substantive equality to be taken seriously, ensuring social protection, considering civil and political and social rights on equal footing, considering issues of redistribution of resources, designing policies and programmes to reduce it, and reinvigorating the legal framework of the right to equality.<sup>126</sup>

Regarding this latter challenge, an extensive and progressive interpretation of the right to equality and non-discrimination under International Human Rights Law is absolutely necessary for achieving the task of overcoming socio-economic inequalities through a human rights lens.

### **3.2.1 The right to equality under International Human Rights Law**

The right to equality and non-discrimination are crucial concepts in international human rights law and are enshrined in many instruments. At the normative level, the key disposition could be found in the Universal Declaration of Human Rights “All human beings are born free and equal in dignity and rights.”<sup>127</sup> Others provisions can be found in the International Covenant on Civil and Political Rights;<sup>128</sup> the International Covenant on Economic Social and Cultural Rights,<sup>129</sup> and other human rights treaties such as CEDAW, CERD, CRC. Because of its relevance, the Vienna Declaration stated that it is a “fundamental rule in international law” in order to overcome the most urgent challenges of our time.<sup>130</sup>

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<sup>124</sup> Ignacio Saliz and Gabi Oré Aguilar, ‘Tackling inequality as injustice: four challenges for the human rights agenda’ in Open Global Rights debate “Economic Inequality: can human rights make a difference?” (2016), Available at: <<http://www.cesr.org/tackling-inequality-injustice-four-challenges-human-rights-agenda>> accessed 21 July 2019

<sup>125</sup> Phillip Alston, ‘Extreme Inequality as the Antithesis of Human Rights’ in Open Global Rights debate “Economic Inequality: can human rights make a difference?” (2015) Available at: <<https://www.openglobalrights.org/extreme-inequality-as-the-antithesis-of-human-rights/>> accessed 21 July 2019.

<sup>126</sup> Ibid.

<sup>127</sup> Supra (n 39)

<sup>128</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976 (ICCPR), articles 2, 3 and 26.

<sup>129</sup> International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entered into force 23 March 1976 (ICESCR), articles 2(2) and 3.

<sup>130</sup> Vienna Declaration and Programme of Action, UN Doc A/CONF.157/23, 12 July 1993, par 15.

However, in the human rights field these principles have been more related to formal equality and legal status rather than equality in socio-economic status.<sup>131</sup>

Notably, a greater contribution to the normative content of the right to equality and non-discrimination under IHRL has been made by Gillian MacNaughton who has advanced new frontiers on the linkage between the right to equality and social rights in order to address vertical inequalities.

She explains that the dimensions of the right to equality are twofold. On the one side, it has a positive dimension (one-to-one equality), which requires an equal treatment for all human being unless proper justifications are provided.<sup>132</sup> On the other hand, it contains a negative dimension (bloc equality) commonly known as 'non-discrimination', which precludes different treatment based on certain prohibited grounds.<sup>133</sup> In her analysis, the difference is clear. While any single inequality must be justified under the one-to-one individual dimension, almost all inequalities are allowed under the non-discrimination dimension, and only those inequalities that are based on prohibited categories must be justified.<sup>134</sup>

She notes that although both concepts are different in nature they have been wrongly interpreted by human rights scholars and the UN Treaty bodies over the last decades, who have combined the two concepts (equality and non-discrimination) under the principle of non-discrimination, and therefore, the positive right to equality under IHRL has vanished.<sup>135</sup> In fact, she highlights that "the Committee on Economic, Social and Cultural Rights has adopted the same understanding of non-discrimination and equality as the Human Rights Committee and the CEDAW and ICERD Committees, namely that both principles [formal and substantive equality] refer to bloc equality" reducing its potential impact combating socio-economic inequalities.<sup>136</sup>

Furthermore, using some rules of treaty interpretations MacNaughton proposes three different ways by which IHRL recognises a right to economic and social equality, and thereby directly addresses vertical inequalities.

First, the non-discrimination provision enshrined in the Bill of Rights enlists 'property' as one of the grounds of discrimination, which refers to socio-economic status. In fact, the Spanish translation of 'property' in the Bill of Rights does not mean 'propiedad' or 'patrimonio' but 'posición económica', which means 'socio-economic status'. Consequently, IHRL precludes "wealth-based distinction" in the distribution of social outcomes, such as health, education and housing.<sup>137</sup> Second, the Bill of rights contains multiple equality provisions –different to non-discrimination- such as those laid down in article

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<sup>131</sup> Supra (n 121) 24. On this point, MacNaughton explains that the best way to understand 'one-to-one equality' is in the principle one person one vote, which is equal to the vote of another fellow human being. By contrast, 'bloc equality' may require equality between groups but not within them. For instance, "bloc equality might require equality in the rate of men and women entering medical school".

<sup>132</sup> Gillian MacNaughton, 'Untangling Equality and Non-Discrimination to Promote the Right to Health Care for All' (2009) 11(2) Health and Human Rights 47, 47–8. On this point, MacNaughton explains that the best way to understand 'one-to-one equality' is in the principle one person one vote, which is equal to the vote of another fellow human being. By contrast, 'bloc equality' may require equality between groups but not within them."

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid,49.

<sup>136</sup> Ibid, 50.

<sup>137</sup> Ibid, 49.

2 and 7 UDHR, and article 26 ICCPR, that imply more than bloc equality and apply not only to civil and political rights but to social rights as well.<sup>138</sup> Third, just as vertical equality means a crucial dimension of all civil and political rights: all economic and social rights must consider vertical equality as a substantive element in its conceptualisation, moving beyond the minimum core analysis.<sup>139</sup> In short, the human rights framework actually demands some level of economic and social equality for the whole range of human rights.

In addition, according to article 28 UDHR “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” and considering that socio-economic inequalities directly interfere and shape this social order envisaged in the UDHR, she suggests that the right to economic and social equality is a key component of the right to a social order recognised in it.<sup>140</sup> Based on this analysis, James Heintz argues “there is an implicit obligation within the human rights framework for government to consider the impact of inequality on the realization of rights and, where inequality interferes with the realization of rights, to move toward a more just distribution of income and wealth.”<sup>141</sup>

This legal framework offers a set of possibilities to consider the legal standards that the right to equality might impose on the right to housing in order to achieve greater levels of socio-economic equality. In other words, it calls to renew strategies and challenge the unequal distribution of income, wealth and social outcomes through the development of the social and economic equality dimensions of each economic and social right, including the right to housing.

However, before considering which are the equality dimensions of the right to housing, it is necessary to reinforce and refresh the framework of the right housing with the view of engaging more broadly with socio-economic inequalities. For this purpose, the next chapter will explain how the right to the city can reinvigorate the right to housing, expanding its possibilities, content and scope.

#### **Chapter 4. The right to the city: A reinforcement device**

In chapter 2, I explained the general framework of the right to housing and stressed that it should not be narrowly interpreted; on the contrary, it should be understood in a broader sense. This broader meaning of the right present some shortcomings but also some opportunities that are relevant to consider whether or not it can be a useful tool in addressing socio-economic inequalities.

##### **4.1 The limitations of the right to housing**

To begin with, when it comes to assessing the role of the right to housing, dealing with structural causes of human rights violations, such as socio-economic inequalities, is important in order to consider some of its shortcomings.

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<sup>138</sup> Ibid, 50-2.

<sup>139</sup> Gillian Macnaughton, 'Vertical Inequalities: Are the SDGs and Human Rights up to the Challenges?' (2017) 21 *The International Journal of Human Rights* 1050, 1065.

<sup>140</sup> *Supra* (n 120) 294-5.

<sup>141</sup> James Heintz, 'Inequality, Neoliberalism, and Human Rights', *Economic and Social Rights in a Neoliberal World* (Cambridge University Press 2018) 39.

Generally speaking, human rights –including the right to housing- have been criticised for not connecting with structural patterns that prevent the enjoyment of human rights for all. In other words, for dealing with the consequences and not with the roots of people’s suffering. Andrew Fagan has called this process "gentrification of human rights", which means a "widespread displacement of what was an underdeveloped human rights-based engagement with deprivation, inequality, and social marginalisation".<sup>142</sup> When it comes to the right to housing, Jessie Hohmann puts the focus on issues of definition and legal certainty. She emphasises that the vagueness in the legal interpretations of the right to housing provided by the human rights treaty bodies and courts across the globe, prevent this right from deeply engaging with the underlying causes of material deprivation, suffering and marginalisation of millions of people worldwide.<sup>143</sup> Further, she explains that although the right to housing is part of the right to an adequate standard of living -as envisaged in the UDHR and ICESCR- there is little contribution on how it may help in fulfilling the adequacy of living standards or how to relate the material conditions of dwellings with “human goods, needs and desires that constitute a fulfilled and adequate human life.”<sup>144</sup>

This analysis is particularly relevant when it comes to the role of the right to housing in the context of greater levels of socio-economic inequalities at levels never seen before. Perhaps, due to this conceptual unclearness, the interpretative human rights bodies have not yet delved into issues of vertical inequalities –including issues of land distribution and ownership- and identified them as underlying causes of violations of the right to housing.<sup>145</sup> Indeed, in the Concluding Observations of the CESCR, the Committee has focused its work more in horizontal inequalities rather than vertical inequalities<sup>146</sup>, limiting its odds at achieving a more equal distribution of housing outcomes and closing the gaps between the have and have-nots.

Nonetheless, despite this weakness, it also represents an opportunity for scholars and practitioners “to reimagine the right and bring historically neglected harms, individuals, or peoples within its ambit.”<sup>147</sup> That is to say, there is an opportunity for the human rights movement to refresh the content and scope of the right to housing with the view of engaging with socio-economic inequalities in more meaningful ways. In this context, considering the principle of indivisibility and interdependence of all human rights, the right to the city has a pivotal role in “de-gentrifying”<sup>148</sup> the right to housing; that is, to transform it in the "key political idiom of social justice".<sup>149</sup>

#### **4.2 Strengthening the framework of the right to housing**

In the General Comment N<sup>o</sup>4, the Committee establishes that “the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments”. Here, the Committee relates the right to housing to the right to

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<sup>142</sup> A Fagan, 'The Gentrification of Human Rights' (2019) 41 Human Rights Quarterly 283, 295–6.

<sup>143</sup> Jessie Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart Publishing 2013) 121–8.

<sup>144</sup> *Ibid*, 134.

<sup>145</sup> *Ibid*, 135.

<sup>146</sup> *Supra* (n 123)

<sup>147</sup> *Ibid*, 127.

<sup>148</sup> *Supra* (n 142) 304-8

<sup>149</sup> *Ibid*, 307.

privacy and family life, freedom of expression, association, and freedom of residence, among others.<sup>150</sup> This means that the right to adequate housing is not recognised as a separate human right without connection to all others human rights, but is identified as playing a key role in supporting a good life for all without discrimination and in conditions of equality.<sup>151</sup> Clearly, this statement reflects the universality, interdependence and indivisibility of all human rights, recognised in the Vienna Declaration on the Programme of Action “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>152</sup> In this vein, human rights interact, are connected and reinforce the realisation of one another<sup>153</sup>, and function in an “indivisible structure in which the value of each right is significantly augmented by the presence of many others.”<sup>154</sup>

In this context, to assess the impact of the right to housing in terms of tackling socio-economic inequalities, it could be useful to consider it in a broader context, interconnected and reinforced by the transformative character of the right to the city.

The right to the city was first conceptualised by Henri Lefebvre in 1960 in his famous work “the right to the city”, which embodies a “cry and a demand” of “those who inhabit the city” to transform the city and urban life and challenge the unequal distribution of power and urban resources in our societies.<sup>155</sup> In this view, the right to the city entails a profound shift in the relation between individuals and urban spaces and is a call to “de-alienate” or appropriate those spaces by those who live in the city.<sup>156</sup>

Importantly, this process of appropriation should be seen as a collective effort rather than an individual one. According to David Harvey, “the right 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.”<sup>157</sup>

Even though the right to the city has had broad recognition within academic literature, especially between urban theorists<sup>158</sup>, it has also had a progressive development in the political and legal arena. As such, it has been recognised –among other instruments- in the Brazilian Law through the “City

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<sup>150</sup> Supra (n 41) par 9.

<sup>151</sup> Supra (n 143)

<sup>152</sup> Vienna Declaration and Programme of Action, UN doc A/CONF.157/23, July 1993, par 5. These principles are also recognised in other human rights instruments, such as UDHR, article 28; Declaration on the Right to Development; and the preamble of ICESCR and International Covenant on Civil and Political Rights (ICCPR), which highlight the importance of “(...) the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights.”

<sup>153</sup> United Nation Development Program, ‘Human Development Report’ (2000), 77. Available at: [http://hdr.undp.org/sites/default/files/reports/261/hdr\\_2000\\_en.pdf](http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf). See also, Sandra Fredman, *The Structure of Positive Duties* (Oxford University Press 2008) 66–8.

<sup>154</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (2nd ed., Cornell University Press 2003) 10.

<sup>155</sup> Henri Lefebvre, *Writings on Cities* (Blackwell 1996) 158–9.

<sup>156</sup> Mark Purcell, ‘Possible Worlds: Henri Lefebvre and the Right to the City’ (2014) 36 *Journal of Urban Affairs* 141, 149.

<sup>157</sup> David Harvey, ‘The right to the city’, (2008) *New Left Review* 23–49, 23. Available at:

<https://newleftreview.org/issues/1153/articles/david-harvey-the-right-to-the-city.pdf>

<sup>158</sup> Henri Lefebvre, *The production of space* (Blackwell 1991); Peter Marcuse, ‘From Critical Urban Theory to the Right to the City’ (2009) 13 *City* 185; Neil Brenner, Peter Marcuse and Margit Mayer, *Cities for People, Not for Profit: Critical Urban Theory and the Right to the City* (Routledge 2012); David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (Paperback edition, Verso 2013).



Statute”<sup>159</sup>; the European Charter for Human Rights in the City (2000); the World Charter for the Right to the City (2005); and ultimately, in the New Urban Agenda (2016).<sup>160</sup>

The New Urban Agenda (NUA) was adopted at the United Nations Conference (Habitat III) in Quito, Ecuador, October 2016, and it was approved by the United Nations General Assembly at its 68th plenary meeting of 71th session in December 2016.<sup>161</sup> In addition, the New Urban Agenda is guided by the principles of the UN Charter and is founded in International Human Rights Law.<sup>162</sup> Accordingly, one could argue that it is legally relevant for the purposes of international law and with the potential to influence the conduct of states.<sup>163</sup>

As I will show below, the right to the city recognised in the New Urban agenda is not only about improving the material conditions in which people live, but in its core, there is also a genuine interest in achieving a more equal distribution of resources and social goods such as health, education and housing. In other words, the commitments of the New Urban Agenda are not just related to ending poverty for those who inhabit the city, but also to tackling vertical inequality in a commodified urban life by achieving spatial justice and equity and reducing the gap between the rich and the poor.<sup>164</sup> This holistic comprehension of the New Urban Agenda is compatible with its shared vision of “cities for all” and “no one left behind”.

By way of example, paragraph 11 calls for “*the equal use and enjoyment of cities and human settlements (...) 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*”. Paragraph 13 expressly notes the importance of fully implementing the right to adequate housing as a part of the right to an adequate standard of living, which encompasses an “*equal access for all to public goods and quality services in areas such as food security and nutrition, health, education, infrastructure, mobility and transportation, energy, air quality and livelihoods.*” Notably here, the New Urban Agenda recognises the right to housing as a platform to the right to the city through an equal access to it, enhancing the element of “location” enshrined in General Comment N°4, which demands access to public goods without egalitarian considerations.<sup>165</sup>

Similarly, the NUA also requires its parties to share the benefits of urbanisation in an egalitarian fashion between the rich and the poor;<sup>166</sup> to promote an equal access for all to economic resources and opportunities that the city offers;<sup>167</sup> and to strengthen the spatial dimension of the right to housing “with

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<sup>159</sup> Federal Law N°10.257, 10 June 2001.

<sup>160</sup> The New Urban Agenda adopts the following concept for the right to the city “The right to the city is thus 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”, in Habitat III Policy Papers: The Right to the City and Cities for All (New York: United Nations, 2017). Available at <http://habitat3.org/wp-content/uploads/Habitat%20III%20Policy%20Paper%201.pdf>

<sup>161</sup> UN General Assembly Resolution, A/RES/71/256, *New Urban Agenda*, 23 December 2016.

<sup>162</sup> *Ibid*, par 12.

<sup>163</sup> ICJ, Separate opinion of judge Lauterpacht in voting procedure on questions related to reports and petitions concerning the territory of South-West Africa advisory opinion of June 7th, 1955, 122. Available at: <https://www.icj-cij.org/files/case-related/24/024-19550607-ADV-01-03-EN.pdf>

<sup>164</sup> *Supra* (n 161) par 5; *Supra* (n 160).

<sup>165</sup> *Supra* (n 41), par 8, f).

<sup>166</sup> *Supra* (n 161) par 27.

<sup>167</sup> *Ibid*, par 14, b).

the rest of the urban fabric and the surrounding functional areas”<sup>168</sup> with the view of ending segregation and residential disparities between the well-off and the worse-off.<sup>169</sup> That is to say, the Right to the City as envisaged in the New Urban Agenda, entails the notion of “spatial justice” as the equitable distribution among all people to resources and opportunities that cities offer<sup>170</sup>, which can be a useful tool to illuminate the content and the scope of the right to housing in the challenging task of addressing vertical inequalities.

Notably, in India all these standards and norms have entered the legal domain of the right to housing in a landmark decision issued by the Delhi High Court of India in the recent case *Ajay Maken vs Union of India*<sup>171</sup>. The trial started in 2015 by the political leader Ajay Maken when he challenged the forced eviction of 5000 slum dwellers in the location of Shakur Basti, Delhi. In his plea, Maken claimed that the eviction was carried out in violation of the law, and consequently, one six-month old child died and many women, men, and children were made homeless, forced to live in the open, losing their belongings, and had no alternative accommodation.<sup>172</sup>

Considering the facts of the case, the socio-economic inequalities experienced by people living in slums in India, and national and international human rights standards, the Court ruled that the forced eviction carried out by the local authorities was unlawful and ordered authorities to ‘cease viewing the JJ dwellers therein as illegal encroachers’ and to proceed to rehabilitation according to the law and policy.<sup>173</sup>

The Delhi High Court determined that the right to adequate housing is not limited to a roof over the head and four walls, but it is a multidimensional right which includes “the right to livelihood, right to health, right to education and right to food (..) right to clean drinking water, sewerage and transport facilities.”<sup>174</sup> In this sense, Judges S Muralidhar and Vibhu Bakhru stated that the right to housing is the “right to access several facets that preserve the capability of a person to enjoy the freedom to live in the city”.<sup>175</sup> As such, the right to the city –as recognised in international law- is “an integral part of the right to adequate housing.”<sup>176</sup> Therefore, the Court is on the view that the right to the city comes to extend and deepen the content, elements and limits of the right to adequate housing in several dimensions.<sup>177</sup>

This understanding of the right to housing offered by the Delhi High Court provides new possibilities to the right in terms of approaching the underlying causes of misery, deprivation and suffering of millions of people who are excluded from enjoying the right to housing –and interrelated rights- in conditions of dignity and equality within cities. The right to adequate housing, considered in this way, is not

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<sup>168</sup> Ibid, par 32.

<sup>169</sup> Ibid, par 33.

<sup>170</sup> Edward W. Soja, *Seeking Spatial Justice* (University of Minnesota Press 2010) 32.

<sup>171</sup> *Ajay Maken vs Union of India* (2019) W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17.

<sup>172</sup> Ibid, par 3-9

<sup>173</sup> Ibid, par 143.

<sup>174</sup> Ibid, par 103.

<sup>175</sup> Ibid, par 142.

<sup>176</sup> Ibid, par 81.

<sup>177</sup> Ibid, par 83.

constrained to securing some minimum provisions for the urban poor, nor to maintaining the status-quo conducted by patterns of segregation and spatial disparities, nor to be silent about the unequal distribution of power and resources which shape the urban landscape, but to distributing “the benefits and costs of housing”<sup>178</sup> in an equitable fashion, and ensuring that all people who inhabit the city have access to the social and economic resources that it offers, regardless of socio-economic status. In other words, the right to adequate housing viewed in this way can also contribute to addressing vertical inequalities.

Building upon the meaning of the right to adequate housing given in this chapter and the requirements of the right to equality explained in chapter 4, in the next chapter will explore the social and economic dimensions of the right to housing, which may contribute to overcoming the unequal distribution of income, wealth and social outcomes from a human rights perspective.

## **Chapter 5. The right to adequate housing: the equality dimensions**

As for all human rights, international human rights law imposes legally binding obligations on the states parties to respect, protect and fulfil the right to housing. The obligation to respect requires the states to refrain from taking any action that may result in a violation of the right to housing.<sup>179</sup> The obligation to protect requires the states to take action in order to prevent the violation of the right to housing by third parties.<sup>180</sup> Finally, the obligation to fulfil it requires the states to take positive actions to ensure the enjoyment of the right to housing.<sup>181</sup> Despite the fact that CESCR does not recognise this tripartite obligations in General Comment 4 and 7, it has been widely accepted by the work of the CESCR in its Concluding Observations, by the Special Rapporteurs on the Right to Housing and other UN treaty bodies.

It is worth recalling that while the typology of tripartite obligations is not always clearly differentiable and in practice is interconnected and overlapping with each other, it provides a useful guideline to analyse different ways in which states must comply with their human rights obligations.<sup>182</sup> Accordingly, I will use this tripartite typology to explore some paths, which may contribute to address vertical inequalities from the perspective of the right to housing in relation to the right to equality.

### **5.1 Obligation to respect**

Under the obligation to respect, states must refrain from creating or maintaining housing systems, which increase socio-economic inequalities and exclude the poor segments of society from an equal enjoyment of their housing needs.

Although IHRL does not express any preference for a particular economic model for the full enjoyment of human rights<sup>183</sup>, it establishes criteria, limits and standards that must be considered at the time of

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<sup>178</sup> David J Madden, *In Defense of Housing: The Politics of Crisis* (Verso 2016) 127.

<sup>179</sup> Daniel Moeckli and others, *International Human Rights Law*. (Third edition, Oxford University Press 2018) 97.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*, 98.

<sup>182</sup> *Ibid.*, 99.

<sup>183</sup> *Supra* (n 46) par. 8.

being adopted.<sup>184</sup> For instance, the former Special Rapporteur on the Right to Health, Paul Hunt, suggests that for an economic system or policy be in conformity with IHRL there must be "reliable evidence" that (a) the given system or policy enhances the enjoyment of human rights, including for poor people; and (b) the process by which it is designed and implemented is compatible with democratic principles and human rights.<sup>185</sup> In view of the evidence presented in this dissertation, housing neo-liberal systems clearly do not meet international human rights standards to fulfil the right to housing on equal conditions for all, and therefore states must abstain from maintaining them.

Indeed, some studies have found that housing regimes focus on market-oriented policies –in comparison to state-oriented policies- disproportionately impacting low-income households in indicators related to housing affordability, material housing conditions and quality and location of neighbourhoods,<sup>186</sup> therefore broadening the gap between the have and have-nots.

On this point, Raquel Rolnik notes "Housing finance policies...are inherently discriminatory against lower-income households, and at their best increase housing affordability for upper- and middle-income groups. Housing finance 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."<sup>187</sup> Thus, states have the obligation to refrain from reducing the whole housing system to a housing *finance* system and provide alternative forms of housing tenures according to the community requirements.<sup>188</sup>

Moreover, states must abstain from enacting housing policies which discriminate on prohibited grounds, such as race, ethnicity, religion, and most importantly, socio-economic status.<sup>189</sup> Hence, the use of 'exclusionary zoning' by public authorities to limit the access of poor households to their neighbourhoods based on economic position or any other prohibited ground is absolutely contrary to IHRL. By way of example, in the case *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* Justice Kennedy held that exclusionary zoning laws adversely affect low-income minorities by excluding them from equal access to high-income neighbourhoods, and therefore violate the Fair Housing Act, which prohibits discrimination in sales and rental of housing based on prohibited grounds.<sup>190</sup>

Additionally, the obligation to respect requires the states to refrain from carrying out forced evictions<sup>191</sup> without offering the affected community alternative accommodation in a well located area within the

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<sup>184</sup> Commission on Human Rights "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health -Report of the Special Rapporteur, Paul Hunt- Addendum-Mission to the World Trade Organization", 1 March 2004, E/CN.4/2004/49/Add.1

<sup>185</sup> Ibid, par 11.

<sup>186</sup> Michelle Norris and Nessa Winston, 'Home-Ownership, Housing Regimes and Income Inequalities in Western Europe: Home-Ownership in Western Europe' 21 *International Journal of Social Welfare* 127; Jim Kemeny, *From Public Housing to the Social Market Rental Policy Strategies in Comparative Perspective* (Routledge 1995).

<sup>187</sup> UNGA 'Report of the Special Rapporteur on the right to adequate housing' Raquel Rolnik, UN doc. A/67/286, 2012, par 65.

<sup>188</sup> Ibid.

<sup>189</sup> UNGA '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' Leilani Farah, UN doc. A/HRC/37/53, 2018, par 36.

<sup>190</sup> *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (2015) 135 S.Ct.2507.

<sup>191</sup> The CESCR defines forced evictions as "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", in *Supra* (n 42) par 3

city. In other words, states are prevented from evicting people without consideration of spatial justice elements.

In General Comment 4, the CESCR considers forced eviction “prima facie incompatible with the requirements of the Covenant.”<sup>192</sup> A number of studies have shown that evictions, when enacted in contravention of IHRL and the principles of reasonableness and proportionality, increase poverty, inequalities and spatial segregation between high and low-income families.<sup>193</sup> Therefore, when states evict people, they must consider alternative accommodations to ensure that people can access resources, social networks and secure their livelihoods.<sup>194</sup> For example, in the case *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd*<sup>195</sup>, the Constitutional Court of South Africa recalled in the right to housing in relation to the right to equality enshrined in articles 26 and 9 of the South African Constitution, respectively, to rule that the eviction of the community must be “just and equitable”<sup>196</sup> and that alternative accommodation must be provided “in a location as near as possible to the area where the property is situated”<sup>197</sup> so that the community can equally enjoy a space in the city with the resources and opportunities it offers.

## 5.2. Obligation to protect

Under the obligation to protect, states are obliged to enact laws to regulate the private rental market with the aim of preventing the prices of housing to continue rising. In this way, rents can remain affordable for median and low-income households. Here, ‘rent control’ regulations’ could be a useful tool for households to increase monetary resources for other essential needs and thus prevent the displacement of individuals and communities from their homes while avoiding housing segregation.<sup>198</sup>

Many cities around the World are working to achieve equity in this regard. For example, in June 2019 the Berlin Senate approved a law to freeze the price of rents for five years, with the exception of new buildings and already subsidised public dwellings.<sup>199</sup> Likewise, also in June 2019, New York passed a law bolstering rent regulations and strengthening the rights of tenants in order to secure affordable housing, protecting them against forced evictions and tackling inequality.<sup>200</sup> Similar measures to balance the power between landlords and tenants have been taken in Oregon state in USA<sup>201</sup> and Spain<sup>202</sup>.

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<sup>192</sup> Supra (n 41) par 18.

<sup>193</sup> Matthew Desmond, *Evicted: Poverty and Profit in the American City* (Penguin Books 2017).; UNGA ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’ Miloon Kothari, UN doc. A/HRC/4/18, annex I, 2007.

<sup>194</sup> Supra (n 143) 27.

<sup>195</sup> *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd* (2011) CCT 37/11 ZACC 33.

<sup>196</sup> *Ibid*, at 30.

<sup>197</sup> *Ibid*, at 104 (iv).

<sup>198</sup> Nicole Montojo, Stephen Barton and Eli Moore, ‘Opening the Door for Rent Control: Toward a Comprehensive Approach to Protecting California’s Renters’ [2018] Berkeley, CA: Haas Institute for a Fair and Inclusive Society. 36.

<sup>199</sup> Available at: <<https://www.tagesspiegel.de/berlin/mietendeckel-in-berlin-mieterhoehungen-in-letzter-minute-harsche-kritik-der-wirtschaft/24469712.html>> accessed 08 August 2019.

<sup>200</sup> Available at: <<https://www.nytimes.com/2019/06/11/nyregion/rent-protection-regulation.html>> accessed 08 August 2019.

<sup>201</sup> Available at: <https://www.nytimes.com/2019/02/26/us/oregon-rent-control.html>> accessed 08 August 2019.

<sup>202</sup> Available at: <[https://elpais.com/elpais/2019/03/04/inenglish/1551692513\\_394392.html](https://elpais.com/elpais/2019/03/04/inenglish/1551692513_394392.html)> accessed 08 August 2019.

Nonetheless, satisfactory results are not easily accomplished and the judiciary branch of states has also a key role to play. Just one month after passing the rent stabilisation law in New York, a group of landlords presented a law-suit to the U.S. District Court of the Eastern District of New York, asserting that it is unconstitutional and affects property rights. According to the law-suit “[t]hey [rent regulations] are arbitrary and irrational in violation of the Fourteenth Amendment’s Due Process Clause; they effect a physical taking of property in violation of the Constitution’s Takings Clause; and they constitute a regulatory taking of property in violation of the Takings Clause. The Rent Stabilisation Laws are therefore facially unconstitutional.”<sup>203</sup> Importantly here, Courts also have the obligation to protect the right to housing in relation to the right to equality and not favour landlords to the detriment of tenants who require a place to live in dignity.

Similarly, states must regulate real-estate market to prevent speculation and secure affordable housing for all those who inhabit the city.<sup>204</sup> On this point, the Special Rapporteur on the Right to Housing stresses “States are obliged under international human rights to ensure that private investors respond to the needs of residents for secure, affordable housing and do not cater only to the wealthy or purchase homes simply to leave them empty”.<sup>205</sup> Indeed, in March 2019, the UN Special Rapporteur on the right to adequate housing, and the Chairperson of the Working Group on business and human rights wrote a letter to Blackstone Group –the world’s largest investor in real estate- to advise that many of its policies and measures are incompatible with international human rights law, and call the states to regulate residential real estate investments so that housing can be accessible to all.<sup>206</sup>

There are many ways in which this obligation can be fulfilled by states. For instance, in June 2019, the Major of Barcelona, Ada Colau, used a law passed in 2016 to expropriate an empty flat which was left vacant by the BBVA with the purpose of providing affordable housing for those in need.<sup>207</sup> Moreover, Canada, Germany, Singapore, Austria, China, Thailand, and many others countries have established taxation and regulatory laws with the view of preventing speculation and achieving a more egalitarian distribution of wealth and affordable housing.<sup>208</sup>

Additionally, under the obligation to protect, states are required to ensure that private actors do not discriminate in the access to housing in any prohibited ground, including socio-economic status. For example, discrimination by income and race in housing programmes, policies and practices has been largely documented in the history of USA<sup>209</sup>, where in many cases landlords have rejected to rent to tenants using Housing Choice Vouchers (Section 8), arguing that they are poor and “often overcrowd

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<sup>203</sup> *Community Housing Improvement Program, the Rent Stabilization Association of NYC, and others v. City of New York* (2019), 1:19-cv-04087.

<sup>204</sup> Supra (n 98); CESCR, ‘on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities’, UN doc. E/C.12/GC/24, 2017, par 18.

<sup>205</sup> Ibid, par 15.

<sup>206</sup> Available at:

[https://www.ohchr.org/Documents/Issues/Housing/Financialization/OL\\_OTH\\_17\\_2019.pdf](https://www.ohchr.org/Documents/Issues/Housing/Financialization/OL_OTH_17_2019.pdf) accessed 09 August 2019.

<sup>207</sup> Available at:

<https://www.telegraph.co.uk/news/2019/06/24/barcelona-orders-first-expropriation-empty-flat-owned-bank/> accessed 09 August 2019.

<sup>208</sup> Supra (n 98) par 67-74.

<sup>209</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (1 edition, Liveright 2017).

apartments, damage property, and make too much noise.”<sup>210</sup> Clearly, this kind of stereotypes precludes socio-economic integration, exacerbates spatial disparities and exclude the poor from the election of their homes and neighbourhoods.

However, the real estate and financial market –even though highly regulated- will not address vertical inequalities on its own. For doing so, an active participation of the state in the provision and distribution of public housing and other housing policies intervention is crucial, with the aim of ensuring that all individuals can access the city without discrimination. Here, the right to housing in relation the right to equality can also play a role in informing those policies.

### 5.3 The obligation to fulfil

The obligation to fulfil requires the states to take positive actions “(...) by all appropriate means, including particularly the adoption of legislative measures”<sup>211</sup> for the enjoyment of the right to housing. The CESCR establishes that for the purpose of the Covenant the concept of ‘appropriateness’ should be understood in a broader sense, including different measures, such as “administrative, financial, educational and social measures”<sup>212</sup> among many others.

One of the most effective measures by which states can fulfil the right to housing is through its implementation in practice. According to Paul Hunt and others, it is also relevant to implement ESCR - including the right to housing- through “policies, plans and programmes and other operational interventions.”<sup>213</sup> This way forward is cornerstone in the enjoyment of the right to housing in conditions of equality since it shifts from “process-oriented discussions”<sup>214</sup> to specific policies aiming to produce greater equity in the distribution of housing outcomes within the urban context.<sup>215</sup>

In the following paragraphs, I will consider some paths through which the right to housing, in relation with the right to equality, can be implemented on the grounds of tackling socio-economic inequalities.

The basic requirement is that states must design and implement a housing system that enables all individuals to equal enjoy their housing needs without discrimination, including socio-economic status. In other words, states must produce and maintain a housing system that enhances material equality rather than exacerbates socio-economic inequalities. For doing so, it is crucial for the state to take back control of its role in the distribution and provision of housing as the primary duty bearer rather than transferring the responsibility to the private sector.<sup>216</sup>

In this context, the obligation to fulfil requires the state to enact social policies aiming to increase de availability of affordable housing for all, and for those facing housing segregation.<sup>217</sup> Notably, courts

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<sup>210</sup> Paula Beck, ‘Fighting Section 8 Discrimination: The Fair Housing Act’s New Frontier’ [1996] Harvard Civil Rights-Civil Liberties Law Review 155, 159.

<sup>211</sup> ICESCR, article 2, par 1.

<sup>212</sup> Supra (n 46) par 7.

<sup>213</sup> Paul Hunt and others, “Implementation of Economic, Social and Cultural Rights”, ch 30, in Scott Sheeran and Nigel S Rodley, *Routledge Handbook of International Human Rights Law* (Routledge, Taylor & Francis Group 2013).

<sup>214</sup> Susan S Fainstein, ‘The Just City’ (2013) 18 International Journal of Urban Sciences 1, 5.

<sup>215</sup> Ibid.

<sup>216</sup> Supra (n 187)

<sup>217</sup> Ibid, par 70-1.

across jurisdictions can play a key role in bolstering this process, and therefore closing the gap between the rich and the poor.

By way of example, in *Mount Laurel I* (1975)<sup>218</sup> and *II* (1983)<sup>219</sup>, which have been defined as “one of the most significant civil rights cases in the United States since *Brown v. Board of Education*”<sup>220</sup>, the Supreme Court of New Jersey recognised socio-economic status as a ground of discrimination under its Constitution and imposed an affirmative obligation on Municipalities to provide a realistic opportunity for the construction of housing for low and moderate income families under their jurisdictions. Affirmative actions can be enacted through a wide range of measures, including the construction of social housing by local governments, and the development of inclusionary zoning programmes to integrate low-income families into moderate and high-income housing projects.<sup>221</sup>

Notably, after *Mount Laurel*, more than “60.000 affordable housing units have been built”<sup>222</sup> for low and moderate income families, who claimed a decent place to live in the city. Importantly, one study found that the inclusion of affordable housing in *Mount Laurel* radically improved social outcomes of families in terms of mental health, levels of employment, social relations, access to resources and children’s educational achievements, which in turn can be translated into lower levels of poverty, economic inequality and segregation within metropolitan areas.<sup>223</sup>

Similarly, in *Hills v. Gautreaux*<sup>224</sup> the Supreme Court of USA held that housing policies in Chicago discriminated against poor Afro-Americans individuals who were concentrated into poor and segregated neighbourhoods. The court ordered the construction of new public housing complexes in high-income areas, and the delivery of vouchers to low-income residents to enable them move into better neighbourhoods. Consequently, after the judgement, five metropolitan areas in USA (1994) replicated the model and created the programme ‘Moving to opportunity’ (MTO), which allowed low-income families to use their vouchers in areas with lower levels of poverty with the aim of improving the quality of life of those who relocated

The latest research on the impact of the MTO provides compelling evidence about its positive outcomes. In 2015, economists Chetty and others found that children who moved from poor-income neighbourhoods to high-opportunity neighbourhoods, increased their annual income by 31% when adults<sup>225</sup>, which demonstrates that the place where children grow up has decisive consequences for accessing resources in the future. Bearing in mind these results, a group of researchers at Harvard, working with the Municipality of Seattle, created the programme called ‘Creating Moves to Opportunity’ with the goal of removing barriers that prevented low-income families from achieving social mobility

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<sup>218</sup> *Southern Burlington County NAACP v. Township of Mount Laurel*, (1975) 67 N.J. 151.

<sup>219</sup> *Southern Burlington County NAACP v. Township of Mount Laurel*, (1983) 92 N.J. 158.

<sup>220</sup> Fair Share Housing Center, ‘What Is the Mount Laurel Doctrine?’ Available at: <<http://fairsharehousing.org/mount-laurel-doctrine/>> accessed 10 August 2019.

<sup>221</sup> See Casey Dawkins, Jae Sik Jeon and Gerrit-Jan Knaap, ‘Creating and Preserving Affordable Homeownership Opportunities: Does Inclusionary Zoning Make Sense?’ (2017) 37 *Journal of Planning Education and Research* 444.

<sup>222</sup> *Supra* (n 225)

<sup>223</sup> Douglas S Massey, *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb* (University Press 2013) 6.

<sup>224</sup> *Hills v. Gautreaux*, (1976) 425 U.S. 284

<sup>225</sup> Raj Chetty, Nathaniel Hendren and Lawrence Katz, ‘The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment’ [2015] NBER Working Paper Series 21156, 2–3.



through the use of vouchers Section 8.<sup>226</sup> Here, it is important to consider that the obligation to fulfil the right to housing also requires the state to adopt positive measures to help individuals and communities enjoy the right to housing, providing information, technical support, and financial assistance.<sup>227</sup>

Notably, through non-expensive interventions, such as “customized search assistance, landlord engagement, and short-term financial assistance (...) The CMTO treatment increased the share of families who leased units in high-opportunity neighbourhoods (...) from 14.3% in the control group to 54.3% in the treatment group”.<sup>228</sup> The results of the experiment have been defined as “the largest effect (...) in a social science intervention”<sup>229</sup> with the potential of redefining affordable housing policies, reducing residential segregation and achieving greater social mobility.<sup>230</sup>

In short, the obligation to fulfil requires an active participation of the state in the provision of affordable and decent housing, so that all individuals, regardless of their socio-economic status can enjoy on equal footing the right to housing

It is worth noting that redistributive housing policies such as direct public provision, mobility and integration housing programmes are not the only solution to address socio-economic inequalities. The right to housing also demands the implementation of housing policies, which intervene in the community’s place of residence. For example, slum upgrading policies<sup>231</sup> in developing countries have proved to be a powerful tool to improve material living conditions, security of tenure, social and cultural capital, and access to opportunities of slum dwellers.<sup>232</sup> In other words, slum upgrading, when properly implemented can significantly contribute to tackling socio-economic inequalities within cities.<sup>233</sup>

Finally, regardless of the policy aimed at implementing the right to housing, it is crucial that it integrates the human rights standards and norms into them, which is also known as a ‘human rights-based approach’.<sup>234</sup> For doing so, states must consider the process by which those housing policies are carried out, ensuring real and effective participation and inclusion of individuals and communities; considering the poor at the centre of the policy; guaranteeing the principles of equality and non-discrimination, including socio-economic status; establishing targets, benchmarks and indicators, including goals, timeframes, budget and financing; and creating accountability and monitoring mechanism to ensure that they are accessible, transparent and effective.<sup>235</sup> In this regard, the obligation to develop human rights indicators and benchmarks aiming to analyse and measure the progressive realisation of the right

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<sup>226</sup> Available at: <<http://creatingmoves.org/>> accessed 10 August 2019.

<sup>227</sup> Supra (n 184)

<sup>228</sup> Raj Chetty and others, ‘Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice’ 88, 2–3. Available at: <[https://opportunityinsights.org/wp-content/uploads/2019/08/cmto\\_paper.pdf](https://opportunityinsights.org/wp-content/uploads/2019/08/cmto_paper.pdf)

<sup>229</sup> Available at:

<<https://www.vox.com/future-perfect/2019/8/4/20726427/raj-chetty-segregation-moving-opportunity-seattle-experiment>> accessed 20 August 2019.

<sup>230</sup> Supra (n 233) 5.

<sup>231</sup> Slum upgrading is defined by UN-Habitat as “physical, social, economic, organizational, and environmental improvements undertaken cooperatively and locally among citizens, community groups, businesses, and local authorities”, in supra (n 8) 165.

<sup>232</sup> UN-Habitat, ‘Housing and Slum Upgrading’. Available at: <<https://unhabitat.org/urban-themes/housing-slum-upgrading/>> accessed 20 August 2019.

<sup>233</sup> Ibid.

<sup>234</sup> Supra (n 213) 556.

<sup>235</sup> UN Office of the United Nations High Commissioner for Human Rights, ‘Principles and guidelines for a human rights approach to poverty reduction strategies’, UN doc. HR/PUB/06/12, 2006.

to housing in relation with the right to equality should be disaggregated by grounds of discrimination, including socio-economic status.

## Conclusions

This dissertation showed that socio-economic inequalities –exacerbated by neoliberal policies- pose a great threat for the enjoyment of human rights, including the right to housing. Indeed, housing segregation as a direct consequence of the unequal distribution of wealth, income and social outcomes, compromise the whole structure of social justice, solidarity and cooperation that a democratic system seeks to achieve.

However, despite these adverse effects, human rights have generally kept the focus on the development of the minimum core content and horizontal inequalities rather than vertical inequalities, which limits their emancipatory potential so that everyone can live a life in freedom, equality and dignity. Nonetheless, this does not mean that human rights do not possess any standards and norms to confront this challenge. In fact, progressive conceptions of the right to equality under international human rights law open the gate to considering the social and economic equality dimensions of all human rights, including economic, social and cultural rights. In this context, this dissertation argues that the right to housing –reinforced by the right to the city- can and should play a crucial role in addressing socio-economic inequalities, either in relation with the right to equality or as a substantive right. In order to do so, I explore the tripartite obligations of the states (respect, protect and fulfil) to offer different paths through which the right to housing can impose clear ceilings on the social and economic disparities between the have and the have-nots. For example, through prohibitions and regulations in the housing system, and the effective implementation of redistributive housing policies in practice, the right to housing can serve as a powerful tool to reduce vertical inequalities. Here, an active participation of the state is crucial in the implementation of a wide range of measures towards a more equitable distribution of housing outcomes, since it is simply not possible to achieve greater levels of economic and social equality if resting in the ability of the market to distribute them equally.

Nonetheless, this dissertation also presents some limitations. First, the potential impact of the right to housing was explored under international human rights law, supported by specific local case law; thus, all the paths which were offered to address socio-economic inequalities may not be replicable in all jurisdictions and all regional and local contexts. In addition, considering that vertical inequality is a complex problem with several particular facets in each country, what this dissertation proposes should be considered as a guideline to adapt its content for each country's reality. In other words, there is no silver bullet to reduce economic and social inequalities from the perspective of the right to housing, but this dissertation could serve to guide further discussions on this issue. Second, this dissertation does not seek nor achieves a comprehensive analysis on the relationship between neoliberalism, the right to housing, the right to the city and socio-economic inequality. All these complex and interrelated processes and phenomena have been widely studied and analysed by literature in different contexts; hence, the intention was to extract only those elements that served to support my position and answer the research question.

Finally, future work on the relationship between socio-economic inequalities and the right to housing should focus on fostering the framework of the right to housing in more meaningful and creative ways

by considering issues of equitable distribution of housing cost and benefits, and elements of spatial justice in different context and at different levels. Here, the work of the whole human rights community, including scholars, practitioners, courts across jurisdictions and specially, the UN treaty bodies is key to achieve this purpose. In order to do so, it is also relevant to converge disciplines between city planners, sociologist, economists and human rights advocates with the view of exploring paths that are more comprehensive for the implementation of the right to housing in practice, and thus achieve more egalitarian societies.

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