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The International Human Right to Adequate Housing: An Economic Approach

Sahar Segal *

Abstract

International law recognizes a right to adequate housing. Affordability is one component of this right, and it is increasingly unrealized in highly concentrated cities in advanced economies. The prevailing approach to the right to adequate housing is the human rights approach, which favors government involvement in the market to reduce housing prices, for example, via rent-control regulations and policies that limit the use of housing as primarily an investment.

This Comment notes that this approach misses the critical fact that governments are already involved in the housing market through the imposition of zoning laws. It suggests that an economic approach, which sees lack of affordability as a problem of supply and demand, is better suited to identifying obstacles to and solutions for the realization of the affordability component of the right to adequate housing. This Comment calls on the U.N. to recognize this approach and use its resources to support states' implementation of solutions that either decrease housing demand, for example, by restricting foreign residential real estate investment, or increase housing supply, for example, by reforming zoning regulations.

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I. INTERNATIONAL LAW AND HOUSING COSTS

International law recognizes a right to adequate housing (“the Right”). The first international instrument to recognize the Right is the nonbinding Universal Declaration of Human Rights (1948).¹ The binding International Covenant on Economic, Social and Cultural Rights (ICESCR) has the broadest language and is ratified by most states (169 parties, 71 signatories), stating: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”² Affordability of housing is one component of this right.³

The U.N. Habitat III conference report on the U.N. Economic Commission for Europe (E.C.E.) region (which encompasses Canada and the U.S.; the European continent; Turkey; Israel; the Caucasus and Central Asia)⁴ states that advanced economies are struggling to realize the affordability component of this right:

Lack of affordability of housing, especially for vulnerable groups, is a critical matter, leading to problems of accessibility to adequate housing, and increased spatial segregation in cities. Even though the region is a prosperous part of the world, homelessness and informal settlements are issues. The housing sector needs to respond to these changes, securing new sites for providing housing.⁵

Although every U.N. member state has ratified at least one “soft law” instrument that acknowledges the Right, and most have ratified a legally binding international instrument acknowledging it,⁶ housing has become increasingly unaffordable across advanced economies.

¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 25 § 1 (Dec. 10, 1948) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”).

² International Covenant on Economic, Social and Cultural Rights art. 11 § 1, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

³ G.A. Res. 70/1, ¶ 11.1., Transforming Our World: The 2030 Agenda for Sustainable Development, (Oct. 21, 2015).

⁴ U.N. Conference on Housing and Sustainable Urb. Dev. (Habitat III), *Regional Report on Housing and Urban Development in the Economic Commission for Europe Region: Towards a City-Focused, People-Centred and Integrated Approach to the New Urban Agenda*, ¶¶ 32–34 and Fig. 1, U.N. Doc A/CONF.226/10 (Dec. 21, 2016) [hereinafter ECE Report].

⁵ *Id.* at ¶ 10.

⁶ U.N. Habitat & Off. of the U.N. High Comm’r for Hum. Rts., *The Right to Adequate Housing: Fact Sheet No. 21/Rev. 1*, at 1 [hereinafter Adequate Housing Fact Sheet]; *see infra* Section II. The United States has not ratified any legally binding instruments recognizing this right.

Three distinct trends in the past two decades are main contributors to increasing lack of housing affordability in urban areas of advanced economies. The first trend is the agglomeration of individuals into megacities⁷ and super-cities⁸ like the Northeast corridor in the U.S. The second is the increase in investment in residential real estate across the globe by ultra high-net worth individuals and financial organizations.⁹ The third is the implementation and maintenance of restrictive zoning laws in high-cost cities and their suburbs.¹⁰ These phenomena have led to a steep rise in housing costs in highly sought-after locations,¹¹ even those that are not hubs of international residential real estate investment.¹²

Rising housing costs—which include both purchase price and rent—are concerning for several reasons. First, the increasing unaffordability of large cities makes it difficult for those from economically stagnant locations to seek opportunity by moving. Indeed, interstate mobility in the U.S. has been falling for decades.¹³ This lack of mobility is a macroeconomic problem that has negative impacts on overall economic growth, as people are unable to move to where their skills are most useful.¹⁴ High housing costs can also disincentivize high-skill immigration and incentivize outward migration.¹⁵ Second, lack of affordability leads to greater economic insecurity and instability, as people spend a greater share of their income on housing.¹⁶ The rise in rent prices has led to increased rent

⁷ I define megacities as cities or urban agglomerations with a population of 10 million or greater. Urban agglomerations are the extent of the contiguous urban area. See U.N. Dep't of Econ. and Soc. Affs. Population Div., *The World's Cities in 2018: Data Booklet*, U.N. Doc. ST/ESA/SER.A/417 [hereinafter *The World's Cities in 2018*].

⁸ Defined as “clusters of thriving cities in close proximity to one another.” ECE Report, *supra* note 4, at ¶ 2.

⁹ Special Rapporteur on Adequate Housing, Rep. 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, ¶ 118, U.N. Doc. A/HRC/37/53 (Jan. 15, 2018) [hereinafter A/HRC/37/53].

¹⁰ See, for example, Edward L. Glaeser et al., *Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, 48 J.L. & ECON. 331 (2005); Kirdan Lees, *Quantifying the Costs of Land Use Regulation: Evidence from New Zealand*, 53 N.Z. ECON. PAPERS, no. 3, 2019.

¹¹ See International Monetary Fund, *Global House Price Index* (Aug. 30, 2018), <http://perma.cc/X4R5-UQ3B>.

¹² See, for example, Turner Center for Housing Innovation, U.C. Berkeley, *Housing in Sweden: An Overview* (Nov. 2017).

¹³ David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78, 81 (2017).

¹⁴ *Id.* at 83.

¹⁵ New Zealand Productivity Commission, *Housing Affordability Inquiry*, 22 (2012).

¹⁶ Melanie Brebner, *Auckland's Housing Affordability Problem*, 13 N.Z. J. ENVTL. L. 207, 211 (2014).

burdens, and in turn, to greater homelessness and housing insecurity.¹⁷ Third, housing restrictions and lack of affordability also contribute to urban sprawl and transportation pollution, and thus to climate change.¹⁸

The prevailing approach to the realization of the Right is the human rights approach. This approach is a conceptual framework for development and policy that is based on international human rights standards and works to promote and protect human rights. It aims to ensure that the means to realizing human rights are themselves human rights-oriented—for example, that policies are participatory, accountable, and compliant with the rule of law. One element of this approach is that policies should “prioritize those most in need.”¹⁹

While this approach is valuable in many ways, it is ill-suited to realizing housing affordability, which is primarily a problem of mismatch between supply and demand. Looking at housing affordability from an economic perspective makes it possible to identify solutions that help people at all income levels, not only those most in need. Economic literature shows that housing prices respond to the forces of supply and demand.²⁰ While acknowledging the complexity of the housing market, it is generally accurate that as supply increases or demand decreases, housing prices decrease.²¹ This benefits renters and people interested in purchasing homes regardless of their income or wealth.

An economic approach to the right to adequate housing is a necessary addition to the human rights approach for two reasons. First, it can identify some violations of the Right that the human rights approach cannot. Second, it can offer additional and more effective solutions for the realization of the affordability, security of tenure, and location components of the Right.

Section II of this Comment provides an in-depth discussion of the international right to adequate housing and of the human rights approach. It then introduces the economic approach. Next, Section III describes the housing affordability crisis in large urban centers in advanced economies, and identifies

¹⁷ Thomas Byrne & Dennis P. Culhane, *The Right to Housing: An Effective Means for Addressing Homelessness?*, 14 U. PA. J.L. & SOC. CHANGE 379, 390 (2011); see, for example, Marcia Rosen and Wendy Sullivan, Symposium, *From Urban Renewal and Displacement to Economic Inclusion: San Francisco Affordable Housing Policy 1978–2014*, 25 STAN. L. & POL'Y REV. 121 (2014).

¹⁸ ECE Report *supra* note 4, at ¶ 4; Brebner *supra* note 16, at 238.

¹⁹ A/HRC/37/53, *supra* note 9, at 7.

²⁰ See, for example, Laurent Gobillon & Florence Goffette-Nagot, *Introduction: Housing Economics and Urban Policies*, 130 ANNALS ECON. & STAT. 35 (2018).

²¹ See, for example, Brian Asquith et al., *Panel Paper, Does Luxury Housing Construction Increase Rents in Gentrifying Areas?* (Nov. 10, 2018) (arguing that increased construction in gentrifying areas lowers rents despite induced demand); Andrea J. Boyack, *Property and the Challenge of Housing Affordability: Limiting the Collective Right to Exclude*, 44 FORDHAM URB. L.J. 451, 469 (2017) (“Excluding additional housing units or certain types of housing from a neighborhood limits the supply of housing, and caps on supply protect prices from the inevitable market-based decrease that would result from making more units available in a given location.”).

three contributing factors: urbanization, foreign investment, and restrictive zoning regimes. It concludes by showing that the economic approach enables legal thinkers to identify restrictive zoning regimes, which are in place in a wide array of cities in advanced economies, as violations of the Right.

Sections IV and V show that the economic approach can identify solutions to the affordability crisis that the human rights approach misses. Section IV presents two demand-side solutions: lowering demand by restricting foreign investment in residential real estate and implementing vacancy taxes. Section V presents a supply-side solution: increasing supply by reforming restrictive zoning regulations. Section VI discusses possible next steps to be taken by the U.N. to promote the realization of the affordability component of the Right.

II. THE INTERNATIONAL RIGHT TO ADEQUATE HOUSING

This Section first describes the components of the international right to adequate housing. It then presents the prevailing human rights approach to its realization and proposes the addition of an economic approach. The economic approach is not in conflict with the principles enumerated by the human rights approach, but rather adds an additional perspective that can identify problems and solutions missed by the human rights approach.

Most states have ratified at least one international treaty that recognizes the human right to adequate housing.²² The first international instrument to recognize the right is the (nonbinding) Universal Declaration of Human Rights (1948).²³ ICESCR (169 parties) clearly recognizes the right: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right.”²⁴ The Right is also found in several other international instruments: The Convention Relating to the Status of Refugees (1951) (146 parties),²⁵ the International Convention on the

²² Adequate Housing Fact Sheet, *supra* note 6, at 1.

²³ Universal Declaration of Human Rights, *supra* note 1, at art. 25 § 1. (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”).

²⁴ ICESCR, *supra* note 2, at art. 11 § 1.

²⁵ Convention Relating to the Status of Refugees art. 21, *opened for signature* July 28, 1951, 189 U.N.T.S. 137:

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Elimination of All Forms of Racial Discrimination (1965) (179 parties),²⁶ the Convention on the Elimination of All Forms of Discrimination Against Women (1979) (189 parties),²⁷ the Convention on the Rights of the Child (1989) (196 parties),²⁸ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (54 parties),²⁹ and the Convention on the Rights of Persons with Disabilities (2006) (177 parties).³⁰

The human rights enforcement mechanisms of the U.N. are almost exclusively monitoring bodies such as Committee on Economic, Social, and Cultural Rights (CESCR), which monitors parties' fulfillment of the obligations under ICESCR.³¹ CESCR hears individual complaints regarding denial of rights on the basis of race or ethnicity, if the individual's state has allowed it to do so.³² The Optional Protocol to ICESCR (OP-ICESCR) allows CESCR to hear complaints from individuals about ICESCR violations if all national remedies have been exhausted.³³ However, it has been ratified by only twenty-four states.³⁴

²⁶ International Convention on the Elimination of All Forms of Racial Discrimination art. 5, *adopted* Mar. 7, 1966, 660 U.N.T.S. 195 (“States Parties undertake to prohibit and to eliminate racial discrimination . . . in the enjoyment of the following rights: . . . The right to housing.”).

²⁷ Convention on the Elimination of All Forms of Discrimination Against Women art. 14, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (“States Parties shall . . . ensure to [rural] women the right: . . . To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”).

²⁸ Convention on the Rights of the Child art. 27, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (“States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”).

²⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 43, *adopted* Dec. 18, 1990, 2220 U.N.T.S. 3 (“Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: . . . Access to housing, including social housing schemes, and protection against exploitation in respect of rents.”).

³⁰ Convention on the Rights of Persons with Disabilities art. 28, *adopted* Dec. 13, 2006, 2515 U.N.T.S. 3:

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

³¹ ESCR-NET, *Human Rights Enforcement Mechanisms of the United Nations*, <http://perma.cc/UHS4-EE7B>.

³² *Id.*

³³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 3 ¶ 1, *opened for signature* Sept. 24, 2009, Doc. A/63/435 [hereinafter OP-ICESCR].

³⁴ *Id.*

A. Components of the Right

According to CESCR, the Right includes seven elements: legal security of tenure; availability of services; affordability; habitability; accessibility; location; and cultural adequacy.³⁵ This Comment focuses on the rights to affordability, security of tenure, and location. These are the primary housing problems in advanced economies.³⁶

Affordability means that the cost of housing must not threaten or compromise the occupants' enjoyment of other human rights.³⁷ Security of tenure means legal protection from homelessness or forced eviction.³⁸ Location means that "housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centers and other social facilities."³⁹

Security of tenure requires adequate notice before eviction,⁴⁰ but does not ban eviction generally. People who are forcibly evicted must have a right to legal process⁴¹ and legal aid,⁴² and must be compensated for their financial loss.⁴³ Government officials must also be present at the time of eviction.⁴⁴

These three components are interrelated. As housing becomes less affordable, more people are at risk of eviction because they cannot afford housing. Research suggests that "simple economic principles governing the availability and pricing of housing and the growth in demand for the lowest-quality housing explain a large portion of the variation in homelessness among U.S. metropolitan housing markets."⁴⁵ Small changes to the availability of affordable rental housing

³⁵ U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing, ¶ 8, U.N. Doc. E/1992/23 (1991) [hereinafter General Comment No. 4].

³⁶ This is not to say that the other problems do not exist—*see, for example*, the unsafe levels of lead in tap water in Flint, Michigan, which is a failure of habitability. U.N. Human Rights Council, Thirty-Third Session: Agenda Items 3, 4, 7, 9 and 10, at 11, U.N. Doc. A/HRC/33/32 (Sept. 9, 2016).

³⁷ Adequate Housing Fact Sheet, *supra* note 6, at 4; General Comment No. 4, *supra* note 35, at ¶ 8(c).

³⁸ Adequate Housing Fact Sheet, *supra* note 6, at 4; General Comment No. 4, *supra* note 35, at ¶ 8(a).

³⁹ Adequate Housing Fact Sheet, *supra* note 6, at 4; *see also* General Comment no. 4, *supra* note 35, at ¶ 8(f).

⁴⁰ Human Rights Council, Implementation of General Assembly Res. 60/251 of Mar. 2006, Entitled "Human Rights Council": Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, ¶ 37, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007) [hereinafter Special Rapporteur].

⁴¹ *Id.*

⁴² *Id.* at ¶ 59.

⁴³ *Id.* at ¶ 60.

⁴⁴ *Id.* at ¶ 45.

⁴⁵ John M. Quigley, Steven Raphael & Eugene Smolensky, *Homelessness in America, Homelessness in California*, 83 REV. ECON. AND STAT. 37, 37 (Feb. 2001).

can substantially reduce homelessness.⁴⁶ Additionally, as housing in cities becomes less affordable, people must relocate or remain in peripheral areas with less access to services.⁴⁷

The U.N. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (henceforth, “the Special Rapporteur”) also recognizes the interrelatedness of these components:

States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate . . . and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction.⁴⁸

She thus states that it is insufficient to only create legal processes for the eviction process; states must also address the underlying causes of eviction, such as lack of affordability, in order to minimize their occurrence.

The Right does not require states to build housing for their entire population or to provide free housing for the homeless.⁴⁹ Under ICESCR, states have an obligation to “promote and facilitate access to and provide housing or assistance where needed.”⁵⁰ The Right “implies that retrogressive measures are prohibited unless there are strong justifications for them. A State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resources.”⁵¹ To illustrate, a retrogressive measure might be the maintenance of Central Park in New York City; the justification for it would be that green spaces are necessary to the wellbeing of people living in cities.

The Right requires governments to create conditions in which homelessness can be minimized and give priority to the housing needs of the homeless.⁵²

⁴⁶ *Id.*

⁴⁷ Hum. Rts. Council, Rep. 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, ¶ 4, U.N. Doc. A/HRC/34/51 (Jan. 18, 2017) [hereinafter A/HRC/34/51].

⁴⁸ Special Rapporteur, *supra* note 40, at ¶ 30.

⁴⁹ U.N. Habitat & Off. of the U.N. High Comm’r for Hum. Rts., Programme Document: United Nations Housing Right Programme (First Phase): “Contributions to the Full and Progressive Realization of the Human Right to Adequate Housing,” ¶ 32 (May 31, 2004); *see also*, Juli Ponce, *Affordable Housing, Zoning and the International Covenant on Economic, Social and Cultural Rights: Some Lessons from the Spanish and South African Experiences*, 1 J. COMP. L. & POL’Y 95, 100 (2017).

⁵⁰ A/HRC/37/53, *supra* note 9, at ¶ 21.

⁵¹ Ponce, *supra* note 49, at 100.

⁵² *See* General Comment No. 4, *supra* note 35, at ¶¶ 11–12. The definition of homelessness is unsettled in international law. The narrow definition of homelessness is “rooflessness”; broader definitions consider adequacy of dwelling, risk of becoming homeless, and past experience of homelessness. Adequate Housing Fact Sheet, *supra* note 6, at 22. The U.N. Statistics Division defines homelessness

Addressing housing affordability more broadly would create conditions for minimizing, though not eliminating, homelessness.

The right to adequate housing is subject to progressive realization.⁵³ That is, a State's compliance with its obligations is assessed in the light of the resources available to it.⁵⁴ Even so, "[a] lack of resources cannot justify inaction or indefinite postponement of measures."⁵⁵ Within the framework of progressive realization, states have an immediate obligation to take concrete steps to fulfill the right to adequate housing ("the obligation to fulfill").⁵⁶ The obligation to fulfill "requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing."⁵⁷ As the obligation to fulfill is assessed relative to countries' available resources, it is difficult to define in universal terms.⁵⁸

The Right obligates states and all levels of government to create favorable conditions for the realization of the Right, and "the Covenant clearly requires that each State party take whatever steps are necessary" for achieving the full realization of the Right.⁵⁹ It also obligates states to dismantle barriers to its realization, whether they be economic, legislative, administrative, or otherwise.⁶⁰ Thus, state governments are obligated to dismantle municipal regulations that violate the right to adequate housing, though this has not been discussed much in the relevant literature.

Through their ratification of relevant human rights treaties, states are obligated to promote the realization of the Right at the national level. Local and regional governments are also bound by this Right.⁶¹ This is crucial, as localities cannot evade their responsibility for inhibiting the realization of the Right; they

as rooflessness. U.N. DEP'T OF ECON. AND SOC. AFFAIRS, STAT. DIV., PRINCIPLES AND RECOMMENDATIONS FOR POPULATION AND HOUSING CENSUSES REV. 2, at 101, U.N. DOC. ST/ESA/STAT/SER.M/67/Rev.2, U.N. Sales No. E.07.XVII.8 (2008).

⁵³ Adequate Housing Fact Sheet, *supra* note 6, at 30; ICESCR, *supra* note 2, art. 2(1). U.N. Declaration, The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, ¶ 39 (2003).

⁵⁴ OHCHR, *Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet 33*, at 13, , <http://perma.cc/N8UY-VJVX>.

⁵⁵ *Id.* at 14.

⁵⁶ Adequate Housing Fact Sheet, *supra* note 6, at 33; A/HRC/37/53, *supra* note 9, at ¶ 21.

⁵⁷ Adequate Housing Fact Sheet, *supra* note 6, at 33.

⁵⁸ A/HRC/37/53, *supra* note 9, at ¶ 21.

⁵⁹ General Comment No. 4, *supra* note 35, at ¶ 12.

⁶⁰ Adequate Housing Fact Sheet, *supra* note 6, at 33–34.

⁶¹ Hum. Rts. Council, Rep. 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, ¶¶ 5–6, U.N. Doc. A/HRC/28/62 (Dec. 22, 2014) [hereinafter A/HRC/28/62].

themselves are bound by it, and national governments are required to intervene if local governments are violating the Right.

Affordability is a positive right, and thus difficult to enforce in a judicial setting. Even states that include the right to housing in their legal codes⁶² or constitutions⁶³ do not include the right to affordability. Positive right aspects of the right to housing have been difficult to enforce, even in the presence of enforcement mechanisms.⁶⁴ For example, under OP-ICESCR, CESCR has only heard cases regarding foreclosure and eviction.⁶⁵

B. The Human Rights Approach

The human rights approach is a conceptual framework for development and policy that is based on international human rights standards and works to promote and protect human rights. Under this approach, policies are rooted in the rights and obligations established by international law.⁶⁶

The human rights approach has several core principles. First is the universality and inalienability of human rights—no person can choose to give up her rights. Second is the indivisibility of human rights from one another—no right is *a priori* more important than another. Third is the interrelatedness of different human rights—for example, it is difficult to achieve adequate education without adequate food. Fourth is the equality of human beings. Fifth is the participation and inclusion of persons in processes that impact their rights. The sixth principle is the accountability and rule of law of governments, policies, and programs.⁶⁷

These principles are all important; a policy that flouts the rule of law in order to realize a human right is at best deeply flawed and at worst violates human rights. Human rights must be respected, but the human rights approach is not the only approach that respects human rights. The economic approach can respect the

⁶² Some European-wide documents establish a legal right to housing, for example, the 2000 European Charter of Fundamental Rights. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, art. 34, ¶ 3, 2000 O.J. (C 364).

⁶³ The Constitution of the Republic of South Africa, art. 26 (1996).

⁶⁴ Byrne & Culhane, *supra* note 17, at 379, 384–85 (arguing that enforcement is only one issue, using France as an example it highlights additional challenges including the availability of housing and number of procedural issues).

⁶⁵ U.N. Hum. Rts. Off. of the High Comm’r, Committee on Econ., Soc., and Cultural Rts., Juris. Database, <http://perma.cc/8L9H-9N3A>; U.N. Hum. Rts. Off. of the High Comm’r, Committee on Econ., Soc., and Cultural Rts., Table of Pending Cases, <http://perma.cc/AD6D-G2U3>.

⁶⁶ Off. of the U.N. High Comm’r for Hum. Rts, Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation, 15, U.N. Doc. HR/PUB/06/8 (2006) [hereinafter HR/PUB/06/8].

⁶⁷ *Id.* at 36.

principles outlined by the human rights approach while better solving the housing crisis described in this Comment.

The Special Rapporteur, who both shapes and reflects the U.N.’s position on these matters, states that housing strategies should be human-rights based.⁶⁸ She lays out several principles for creating housing strategies: that they be based in law and legal standards; prioritize those most in need; be comprehensive; have rights-based community participation; provide sufficient budgeting and just taxation schemes; provide for human rights-based goals and monitoring; provide for accountability and monitoring; provide for access to remedies when violations are found; train private actors in human rights obligations; and implement international cooperation and assistance.⁶⁹

One “essential” element of the human rights approach is the focus on “marginalized, disadvantaged, and excluded groups”⁷⁰ or “prioritiz[ation of] those most in need.”⁷¹ As will be shown below, this element is uniquely ill-suited to the affordability component of the Right. Lack of affordability in advanced economies is primarily a problem of supply and demand—the demand for housing in large cities has increased, but the supply has not, for reasons described below.

An approach that focuses only on the marginalized identifies the problems of homelessness and housing insecurity. When looking only at these problems, the solution then seems to be increased construction of social housing,⁷² and perhaps rent-control regulations. These are both policies that target and help the most disadvantaged. They create housing units that have below-market rent, and often state that only people below a certain income threshold may reside in those units. Such policies help low-income populations, which is an important goal. But as this Comment will show, a much larger proportion of the population is cost-burdened with respect to housing. An approach that takes a market-wide perspective helps both the homeless and housing-insecure and the mortgage- and rent-burdened middle classes.

C. An Economic Approach

The housing market has been studied extensively from an economic perspective.⁷³ While various factors affect the cost of housing, it is undisputed that

⁶⁸ A/HRC/37/53, *supra* note 9, at ¶ 9, *see also* Special Rapporteur, *supra* note 40, at ¶ 33(e).

⁶⁹ Special Rapporteur, *supra* note 40, *passim*.

⁷⁰ HR/PUB/06/8, *supra* note 66, at 37.

⁷¹ A/HRC/37/53, *supra* note 9, at 7 ¶ B.

⁷² “Social housing” is often called “affordable housing” in the U.S. The term “social housing” is used in this Comment, and affordable housing refers broadly to housing affordable to the middle classes.

⁷³ *See, for example*, Gobillon & Goffette-Nagot, *supra* note 20, at 35.

the law of supply and demand affects the housing market.⁷⁴ As will be shown below, increased housing costs in cities in advanced economies are in large part a result of increased demand and insufficient increase in supply.⁷⁵ Since, as this Comment shows, the lack of affordable housing is a result of economic forces, it is necessary to take an economic approach to the Right.

The economic approach presented in this Comment focuses not on the most disadvantaged but on the market as a whole. It identifies the problem of lack of affordability as one of a mismatch between supply and demand, and identifies the reasons for inadequate supply or increased demand. This approach supports solutions that increase supply or decrease demand.

The housing market is complex, and different locations experience demand for different types of housing. One location might experience demand for studio apartments, while another experiences demand for four-bedroom units. In practice, therefore, the implementation of the economic approach varies by location. The economic approach assumes that developers and policymakers are familiar with the nature of the demand in the locations in which they are operating. This approach suggests that the market can help mitigate the problem of housing unaffordability.

The Special Rapporteur has not taken the economic approach, instead identifying the market as a problem and government involvement as a solution:

The assumption, bolstered by neo-liberalism, that States should simply allow markets to work according to their own rules, subject only to the requirement that private actors “do no harm” and avoid explicit violations of human rights, is simply not in accordance with the important obligation to fulfil the right to adequate housing “by all appropriate means, including legislative measures.”⁷⁶

The European Court of Human Rights has also stated that states may need to intervene in markets when market forces cause housing to become unaffordable.⁷⁷

⁷⁴ *Id.*

⁷⁵ See Section III-A.

⁷⁶ Special Rapporteur on the Right to Adequate Housing, *Statement during the Interactive Dialogue at the Human Rights Council* (March 1, 2017), <http://perma.cc/43M5-8SX8>.

⁷⁷ See, *James and Others v. U.K.*, 8 Eur. Ct. H.R. 123, ¶ 47 (1986)

[M]odern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. The margin of appreciation is wide enough to cover legislation aimed at securing greater social justice in the sphere of people’s homes, even where such legislation interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large.

See also *Mellacher and Others v. Austria*, 12 Eur. Ct. H.R. 391 (1989) (holding that rent control laws are permissible under Art. 1 Protocol 1).

These bodies both miss that government is already deeply enmeshed in the housing market through zoning regulations.⁷⁸ Such regulations prevent the construction of new housing by making construction unaffordable, time-consuming, and even by categorically prohibiting certain types of construction.⁷⁹ The Special Rapporteur on adequate housing recognizes that rising housing costs are an underlying cause of forced evictions,⁸⁰ and asserts that States must take preventive measures to avoid evictions.⁸¹ However, today, local governments are active creators of this underlying cause,⁸² and are the governing bodies most intransigently opposed to zoning reform.⁸³ Governments are not following a “do no harm” principle—rather, they are causing harm.

Since the problem of lack of affordability is rooted in a mismatch between supply and demand, any solution that increases supply or decreases demand should be welcomed, and solutions that do the reverse should be rejected. For example, legislation limiting foreign investment decreases the demand for housing.⁸⁴ Zoning reform enables increases in housing supply. Rent control, on the other hand, decreases the supply of housing on the free market, thus increasing the rent of non-rent-controlled housing.⁸⁵ Thus, rent control is not a solution to the overall problem of housing affordability.

It should be noted that reforms that decrease demand or increase supply are not full solutions to homelessness and housing insecurity. States should also ensure that there is sufficient social housing to meet demand, and take steps to mitigate the many causes of homelessness.⁸⁶ Lack of housing affordability and homelessness are issues that are partially overlapping, and both issues should be addressed in parallel.

Any solution to the lack of housing affordability should be based in legal standards, be cognizant of the rights of all actors, and provide for accountability processes and remedies, as required by the human rights approach. However, the

⁷⁸ See Section III-D.

⁷⁹ See Section III-D.

⁸⁰ A/HRC/34/51, *supra* note 47, at ¶ 5.

⁸¹ *Id.* at ¶ 77(e).

⁸² A/HRC/28/62, *supra* note 61, at ¶ 6.

⁸³ See, for example, Jenny Schuetz, *The Renters Strike Back*, BROOKINGS (Sept. 27, 2018), <http://perma.cc/Z25F-FGA9>.

⁸⁴ See, for example, Stephanie Kahn, *Looking to Australia to Overhaul U.S. Foreign Investment in Real Estate*, 42 BROOK. J. INT'L L. 925 (2017) (arguing that Australia's regulation of foreign investments in real estate limited the foreign demand for property and allowed Australian citizens to buy at a fair price).

⁸⁵ See generally, Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741 (1988).

⁸⁶ See, for example, Tracey Ross, *No Place Like Home: Addressing Poverty and Homelessness in the United States*, CTR. FOR AM. PROGRESS, 3–6 (2013).

framing of prioritizing those most in need results in a distorted picture of the current housing crisis. When looking at those most in need in isolation, it appears that the solution is rent control or increased construction of social housing. But when looking at the full picture of the housing market, as the economic approach does, it is clear that the problem is overall lack of housing.⁸⁷ Due to the laws of supply and demand, increasing construction of all kinds of housing would increase the total supply of housing and lower prices at all housing price points. It is possible that more social housing is needed in many cities, and the economic approach does not conflict with this assessment; housing construction will not eliminate the need for social housing. However, additional construction would help the home-secure, many of whom are paying too much in housing costs, the home-insecure, who alternate between being housed and homeless because housing costs are too high, and likely some of the homeless population as well.

III. OBSTACLES TO THE REALIZATION OF THE AFFORDABILITY COMPONENT OF THE RIGHT TO ADEQUATE HOUSING

The economic approach can identify violations of the Right that the human rights approach misses. To identify the violations, this Section will first describe the housing landscape in advanced economies, including urbanization, investment, and zoning trends that have contributed and continue to contribute to increased lack of affordability. To do so, this Section will use as examples the cities of Melbourne, Sydney, Auckland, London, Toronto, Vancouver, and New York City. These cities are some of the most expensive in the world,⁸⁸ and they have comparatively high rates of foreign residential real estate investment.⁸⁹ They are not all megacities.⁹⁰ This Section will show that the economic approach to housing affordability makes it possible to recognize that restrictive zoning regimes

⁸⁷ It is worth noting that, as the Special Rapporteur noted, increasing the availability of credit to low-income individuals is not the correct solution to high housing costs. Not only does it fail to address the underlying problem, but the Great Recession of 2008 proved that this is a risky and dangerous policy as well. Rep. of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, submitted by special procedures to the 67th Session of the General Assembly, ¶¶ 28, 64, U.N. Doc. A/67/286 (Aug. 10, 2012).

⁸⁸ Demographia, 15th Annual Demographia International Housing Affordability Survey: 2019: Rating Middle-Income Housing Affordability 12 (2019) [hereinafter Demographia Survey 2019].

⁸⁹ Newmark Grubb Knight Frank, *Global Cities: The 2017 Report, The Future of Real Estate in the World's Leading Cities*, 46–47 (2017) (The top three are Manhattan (#1), London (#2), and Sydney (#4)).

⁹⁰ The populations of Canada (37 million), Australia (25 million), and New Zealand (4.8 million) are likely too small to support the title of megacity. Regardless, these cities are the largest in their respective countries and are experiencing rapid agglomeration. See *The World's Cities in 2018*, *supra* note 7, Annex Table: The World's Cities with 1 Million Inhabitants or More in 2018, 10–29. For country populations, see WORLD POPULATION REVIEW, <http://perma.cc/HDU2-QLCH>.

violate the Right, and suggests a method for determining whether such violations have occurred.

A. Housing Affordability

Since the global recession of 2008, there has been increased attention to housing unaffordability in megacities in advanced economies.⁹¹ A 2015 study on the E.C.E. region showed that at least 100 million low- and middle-income people in the region spend more than 40 percent of their income on accommodation, limiting their resources for other basic needs.⁹²

The E.C.E. report reports that “[s]ocial and spatial inequality within and among the cities in the region has been growing, making high-quality urban areas affordable only to the most affluent,”⁹³ and that “[l]ack of affordability of housing . . . is a critical matter, leading to problems of accessibility to adequate housing, and increased spatial segregation in cities[.] . . . [H]omelessness and informal settlements are issues. . . . The total stock of social housing in advanced economies has been reduced.”⁹⁴

A concrete example of these interrelated phenomena and their human rights and economic effects is California, which has two major metropolitan areas—Los Angeles and the San Jose-San Francisco-Oakland area. Both these areas have highly restrictive zoning regulations.

Since 2010, Median Multiples⁹⁵ in the six major California markets have increased at 7.6 times the rate of US liberally regulated major markets. . . . California has the highest poverty rate in the United States, adjusted for housing costs. California also has the highest rate of homelessness in the United States. . . . The state continues to be a leader in net domestic migration losses, having shed 550,000 more residents than moved in since 2010, with the rate of exodus increasing. In 2017, California's net domestic migration loss was three times than [sic] of 2011. There is also a significant outflow of business investment.⁹⁶

⁹¹ ECE Report, *supra* note 4, at ¶¶ 135, 139–41.

⁹² *Id.* at ¶ 136.

⁹³ *Id.* at ¶ 27.

⁹⁴ *Id.* at ¶¶ 10–11.

⁹⁵ The ratio of median house price to median household income, a commonly used measure of housing affordability. Demographia, 14th Annual Demographia International Housing Affordability Survey: 2018: Rating Middle-Income Housing Affordability 26 (2018) [hereinafter Demographia Survey 2018] (footnotes omitted).

⁹⁶ *Id.*

Homelessness is a human rights problem,⁹⁷ and outflow of residents and business investment is economically disadvantageous. Rising housing costs, driven by agglomeration and restrictive zoning regulations, lead to human rights concerns and prevent cities from meeting their economic potential.

Housing affordability is measured by the relationship between household income and the cost of housing, either rented or owned.⁹⁸ Rental housing is generally considered affordable if rent is less than 30 percent of household income: a household is “rent-burdened” if it spends 30 percent or more of its pretax income on rent.⁹⁹ Housing affordability for ownership purposes is generally measured by the median multiple, that is, the ratio of median house price to median household income.¹⁰⁰ Demographia, an organization that measures middle-income housing affordability, considers housing prices to be affordable if the median multiple is 3 and under, moderately unaffordable if it is between 3.1 and 4, seriously unaffordable if it is between 4.1 and 5, and severely unaffordable if it is 5.1 or above.¹⁰¹ This Comment uses these numbers as measures of affordability.

The most expensive major housing markets, measured by the median multiple, are (in order) Hong Kong, Vancouver, Sydney, Melbourne, San Jose (California), Los Angeles, Auckland, San Francisco, Honolulu, London, and Toronto.¹⁰² The tables contained in the Appendix provide metrics of housing affordability in selected cities and their urban agglomerations (that is, suburbs). Where a number refers to city limits only, this is noted. The tables show that housing stock increase lags behind population increase, leading to the conclusion that the imbalance between demand and supply has contributed to an increase in housing costs.¹⁰³ Given the median multiples of these cities, they should be building new dwellings faster than their population growth in order to bring down housing costs.

⁹⁷ A/HRC/34/51, *supra* note 47, at ¶¶ 11–12.

⁹⁸ Brebner, *supra* note 16, at 208–09.

⁹⁹ See, for example, *id.* at 210–11; THE PEW CHARITABLE TRUST, *American Families Face a Growing Rent Burden*, 4 (2018); HUD, Affordable Housing, <http://perma.cc/C5SX-UYLU> (defining people paying more than 30% of their income on housing as cost-burdened).

¹⁰⁰ See, for example, Demographia Survey 2018, *supra* note 96, at 1. This metric is imperfect because it leaves out interest rates and other factors that impact housing affordability. However, it is useful and widely used, and its simplicity is appealing, so it is used throughout. It is recommended by the World Bank. See Steve Mayo & William Stephens, *The World Bank, The Housing Indicators Program* (1992), <http://perma.cc/NU36-GHED>.

¹⁰¹ Demographia Survey 2018, *supra* note 95, at 2. Thus, a city with a median house price of \$500,000 and median household income of \$100,000 has a median multiple of 5.

¹⁰² Demographia Survey 2019, *supra* note 88, at 11.

¹⁰³ See PAUL REEVES, AN INTRODUCTION TO SOCIAL HOUSING 13–16 (2005).

The housing affordability crisis has not gone unnoticed by those affected by it. In 2006, protesters set up tents in central Paris to call attention to homelessness and housing unaffordability in the city.¹⁰⁴ In 2011, protesters did the same in Tel Aviv.¹⁰⁵ There were street protests in Berlin, Munich,¹⁰⁶ and Dublin¹⁰⁷ in 2018 regarding rising housing costs. Yet governments have been slow to respond.

B. Factor One: Agglomeration

Modern urbanization, which includes movement from small and mid-sized cities to large cities, has been occurring in many advanced economies for the past three decades, a trend known as agglomeration.¹⁰⁸ The changing nature of the modern economy is one of the primary drivers of agglomeration:

The principal driver of city economies in the region since [1996] is the combined effect of the knowledge economy and the digital revolution. The former concerns the production and trading of knowledge through universities, spin-off companies, and the like. By and large, these institutions and their supporting “ecosystems” are an important part of agglomeration economies and they are concentrated in cities. The digital economy has seen explosive growth over the past 20 years, and it has underlined and accelerated the importance of the knowledge economy. These aspects of economy – knowledge and digital production, trading, consumption and their agglomeration – have replaced manufacturing and industry as the primary forces of economic development, and they have permanently morphed the service sector as the principal driver of the economy of the [E.C.E.] region’s cities. These economic forces concentrate and strengthen the importance of cities and clusters thereof, and provide the economic imperative . . . to [migrate to cities].¹⁰⁹

The most recent U.N. conference on cities, Habitat III, which was held in 2016, identified the trend in the E.C.E. region of “the agglomeration into super-cities . . . such as the metropolitan region[] from Boston to Washington.”¹¹⁰ It

¹⁰⁴ Byrne & Culhane, *supra* note 17, at 379.

¹⁰⁵ Harriet Sherwood, *Israeli Protests: 430,000 Take to Streets to Demand Social Justice*, THE GUARDIAN (Sept. 4, 2011), <http://perma.cc/TM76-FZ9H>.

¹⁰⁶ Notker Oberhäuser, *Germany’s Soaring Housing Prices Spark Calls for Reform*, DEUTSCHE WELLE (Sept. 21, 2018), <http://perma.cc/E7HB-XYZK>.

¹⁰⁷ Feargus O’Sullivan, *Dublin’s Housing Crisis Reaches a Boiling Point*, CITYLAB (Sept. 14, 2018), <http://perma.cc/HTB7-P7FF>.

¹⁰⁸ Country-specific agglomeration data is available at U.N. Dep’t of Economic and Social Affairs, Population Div., *World Urbanization Prospects: The 2018 Revision*, 55–60, U.N. Doc. ST/ESA/SER.A/420 (2019). This trend is not limited to advanced economies; Lagos, Nigeria, has grown from a city of 1.4 million in 1970 to a megacity of 13.5 million today. See *Lagos Population 2018*, WORLD POPULATION REVIEW (Dec. 7, 2018), <http://perma.cc/NSA4-DG6K>.

¹⁰⁹ ECE Report, *supra* note 4, at ¶ 89.

¹¹⁰ *Id.* at ¶ 2.

noted a concomitant “countervailing trend towards shrinking cities within less successful and more remote regions.”¹¹¹ As a result, in many countries in this region there is a geographic mismatch between the supply of housing and demand for it.¹¹²

C. Factor Two: Foreign Investment

Foreign investment in residential units that are left empty for occasional use concerns many city residents because of its impact on housing prices and rent. Residences that are left vacant decrease housing supply, and under general economic principles this decreased supply may lead to increased housing costs.¹¹³ An example of this phenomenon is present in New York City, which in 2017 had 74,945 vacant units not available for sale or rent because they were held by their owners for “occasional, seasonal, or recreational use.”¹¹⁴ This is 2.1 percent of the city’s total housing stock,¹¹⁵ which is unavailable as housing for city residents. Nationally, around 1.5 percent of homes were vacant and held off the market for occasional use in 2018.¹¹⁶ This includes homes in locations that are seasonal by nature, unlike New York City.

The Special Rapporteur recognizes the status of real estate as an investment as problematic in her 2017 report:

Housing and commercial real estate have become the “commodity of choice” for corporate finance and the pace at which financial corporations and funds are taking over housing and real estate in many cities is staggering. The value of global real estate is about US\$217 trillion, nearly 60 per cent of the value of all global assets, with residential real estate comprising 75 per cent of the total. In the course of one year, from mid-2013 to mid-2014, corporate buying of larger properties in the top 100 recipient global cities rose from US\$600 billion to US\$1 trillion. Housing is at the centre of an historic structural transformation in global investment and the economies of the industrialized world with profound consequences for those in need of adequate housing.¹¹⁷

¹¹¹ *Id.* at ¶ 3.

¹¹² *See, for example*, HOUSING IN SWEDEN: AN OVERVIEW, *supra* note 12, at 10.

¹¹³ Jim Chappelow, *The Law of Supply and Demand*, INVESTOPEDIA (Sept. 29, 2019), <http://perma.cc/B3J6-J7H7>.

¹¹⁴ E. Gaumer, *Selected Initial Findings of the 2017 New York City Housing and Vacancy Survey*, N.Y.C. Dep’t of Housing Preservation and Dev., 1 (2017) [hereinafter HVS 2017] at 17 (Table 8).

¹¹⁵ *Id.* at 9 (Table 1), 17 (Table 8).

¹¹⁶ *Current Population Survey (CPS) and Housing Vacancy Survey (HVS)*, U.S. CENSUS BUREAU (Apr. 4, 2019), <http://perma.cc/8PJN-LPMX>.

¹¹⁷ A/HRC/34/51, *supra* note 47, at ¶ 3.

This transformation in the nature of housing, particularly in cities, is occurring at the same time as a major wave of agglomeration into megacities and super-cities.

As of 2018, there are over 42 million High Net Worth Individuals (HNWIs) (net worth greater than \$1 million) globally,¹¹⁸ and 225,810 Ultra-HNWIs (UHNWIs) (net worth greater than \$30 million) globally.¹¹⁹ An increasing number of these individuals are diversifying their portfolios by purchasing overseas real estate. For example, 74.2 percent of China's HNWIs have invested or are considering investing overseas.¹²⁰ Of those Chinese HNWIs who have completed an investment, 40.6 percent have invested in overseas real estate.¹²¹ UHNWIs across the globe are highly interested in purchasing residential real estate for personal use and investment¹²² and are less interested in other types of real estate.¹²³

Globally, in 2019, UHNWIs own 3.63 homes on average (up from 2.9 in 2015).¹²⁴ 42 percent own a home outside their main country of residence.¹²⁵ The distribution of these non-primary homes is uneven across the globe, with the most common second home locations located in Europe, the U.S., and Australia.¹²⁶

Data regarding nonresident foreign buyers of U.S. homes is unclear. One survey shows that from April 2018 to March 2019, nonresident foreign buyers accounted for 2 percent of existing home purchases, down from 3.3 percent

¹¹⁸ ANTHONY SHORROCKS ET AL., CREDIT SUISSE RESEARCH INSTITUTE, GLOBAL WEALTH DATABOOK 2018 119 (2018).

¹¹⁹ VINCENT WHITE ET AL., WEALTH-X, WORLD ULTRA WEALTH REPORT 2018 26 (2018).

¹²⁰ Yiran Zheng, *High Net Worth Individuals are Investing Overseas: Report*, CHINADAILY.COM.CN (Apr. 15, 2018), <http://perma.cc/RJ3L-4KPQ>.

¹²¹ *Id.*

¹²² KNIGHT FRANK, THE WEALTH REPORT 2015 47–51, 69 (2015). When asked whether their UHNWI clients were “becoming more interested” in investing in residential real estate, 100% responded affirmatively regarding clients in Africa, 84% for clients in Asia, 69% for clients in Australasia, 82% for clients in Europe, 77% for clients in Latin America, 85% for clients in the Middle East, 75% for clients in North America, and 100% for clients in Russia/CIS. *Id.* at 69.

¹²³ *Id.* at 69; KNIGHT FRANK, THE WEALTH REPORT 2017 64 (2017).

¹²⁴ KNIGHT FRANK, THE WEALTH REPORT 2019 90 (2019); KNIGHT FRANK, THE WEALTH REPORT 2015 68 (2015). On average, UHNWIs in Africa own 3.4 homes (up from 2.5 in 2015); UHNWIs in Asia own 3.92 homes (up from 3.3 in 2015); UHNWIs in Australasia own 2.71 homes (up from 2.3 in 2015); UHNWIs in Europe own 3.35 homes (up from 2.6 in 2015); UHNWIs in Latin America own 4.71 homes (up from 3 in 2015); UHNWIs in the Middle East own 4.63 homes (up from 3.8 in 2015); UHNWIs in North America own 3.17 homes (up from 2.9 in 2015); and UHNWIs in Russia/CIS own 3.13 homes (up from 3 in 2015). *Id.*

¹²⁵ KNIGHT FRANK, THE WEALTH REPORT 2019 90 (2019).

¹²⁶ *Id.* at 90.

during the previous twelve months.¹²⁷ Another survey shows that these numbers are 1.4 percent and 1.9 percent.¹²⁸ Nearly half of properties purchased by non-resident foreign buyers every year since 2009 are located in suburban areas, while only 25-30 percent are located in central urban areas.¹²⁹

Estimates of foreign investment in London vary widely. It is clear, though, that a significant proportion of homes in the Kensington & Chelsea, City of London, and Westminster neighborhoods are second homes—both of foreign investors and of U.K. residents or citizens.¹³⁰ One estimate shows that “[o]verseas buyers account for roughly half of all residential transactions in central London.”¹³¹ This estimate may be too high. In 2013–2014, Savills estimated that one third of high-end ‘Prime London’ market buyers are from overseas.¹³² The majority of international buyers (62.5 percent) are buying property as their main residence.¹³³ In a 2013 report, Knight Frank estimated that 49 percent of Prime London sales worth over £1 million were to foreign nationals, but that a smaller proportion (28 percent) of sales were to people not resident in the UK.¹³⁴ University of York researchers report that 13 percent of new-build properties sold in London between 2014 and 2016 were bought by overseas buyers. The proportion rose from 10.5 percent in 2014 to 17.9 percent in 2016.¹³⁵ They found variation within London: overseas buyers accounted for 36 percent of sales in ‘prime’ boroughs (the City of London, Westminster, and Kensington & Chelsea) compared to 16.2 percent in the rest of inner London and 5.7 percent in outer London.¹³⁶ The researchers also looked at the distribution across price bands, and

¹²⁷ See NAT'L ASS'N OF REALTORS, PROFILE OF INTERNATIONAL TRANSACTIONS IN U.S. RESIDENTIAL REAL ESTATE 2019 11 (2019), <http://perma.cc/Y3FQ-54NQ>.

¹²⁸ *Id.*

¹²⁹ *Id.* at 21.

¹³⁰ See Jonathan Bourne, *Empty Homes: Mapping the Extent and Value of Low-Use Domestic Property in England and Wales*, 5 PALGRAVE COMMUNICATIONS (Feb. 13, 2019), <http://perma.cc/T2LK-YMAK>. See also Sarah Knapton, *£123 Billion of Property is Barely Used in Britain as Experts Call for Empty Home Tax*, THE TELEGRAPH (Feb. 13, 2019), <http://perma.cc/KEH4-8HC9>.

¹³¹ Nishant Kumar, *London Luxury Homes Face New Hit as U.K. Plans Foreign Buyer Tax*, BLOOMBERG (Sept. 30, 2018), <http://perma.cc/282T-KDLU>.

¹³² Sophie Chick, *Spotlight: Prime London Residential Market*, SAVILLS WORLD RESEARCH 6 (Sept. 2014).

¹³³ Wendy Wilson & Cassie Barton, *Foreign Investment in UK Residential Property*, 1 (House of Commons Library Briefing Paper No. 07723, July 17, 2017).

¹³⁴ KNIGHT FRANK, INTERNATIONAL BUYERS IN LONDON 2 (2013), <http://perma.cc/5M2H-NRCD>.

¹³⁵ ALISON WALLACE, DAVID RHODES & RICHARD WEBBER, UNIVERSITY OF YORK CENTRE FOR HOUSING POLICY, OVERSEAS INVESTORS IN LONDON'S NEW BUILD HOUSING MARKET 7 (2017).

¹³⁶ *Id.* at 8.

found that overseas buyers are under-represented in the lower price bands and over-represented in higher price bands.¹³⁷

There is some evidence that foreign investment increases housing prices.¹³⁸ As this Section showed, a significant proportion of foreign purchases are non-owner-occupied, that is, they are non-primary homes. The extent to which restrictions on non-owner-occupied purchases and other policies that discourage vacancy can reduce prices varies by city, since each city's housing market is different.

D. Factor Three: Zoning Regulations

Zoning regulations have a significant impact on housing prices in the cities discussed throughout this Comment. Few cities with restrictive zoning regulations have sufficiently increased their housing stock. On the contrary, many retain zoning regulations that limit construction and thus increase housing prices, such as height restrictions.¹³⁹

There is a significant body of research showing that zoning and land use regulations increase the housing prices of major cities around the globe. For example, Reserve Bank of Australia researchers estimate that “as of 2016, zoning raised detached house prices 73 percent above marginal costs in Sydney, 69 percent in Melbourne, 42 percent in Brisbane, and 54 percent in Perth.”¹⁴⁰ Regarding apartments, they estimate that “zoning restrictions added AU\$120,000 to the cost of apartments in Melbourne and AU\$110,000 in Brisbane” and “AU\$400,000 to apartments in Sydney.”¹⁴¹ These figures represent the zoning “premium.”

Zoning and other regulations add an estimated 56 percent (NZ\$530,790) to the cost of housing in Auckland and 48 percent to the cost of housing in Wellington (NZ\$302,678).¹⁴² In 2012, the government of New Zealand conducted

¹³⁷ *Id.* at 12.

¹³⁸ See, for example, Gabriel Bruneau, Maxime Leboeuf & Guillaume Nolin, *Canada's International Investment Position: Benefits and Potential Vulnerabilities*, BANK OF CAN. FIN. SYS. REV. 43 (June 2017); Hassan Fereidouni Gholipour, Usama Al-mulali & Miswan Abdul Hakim Mohammed, *Foreign Investments in Real Estate, Economic Growth and Property Prices: Evidence from OECD Countries*, 17(1) J. ECON. POL'Y REFORM (2014). But see C. Tsuriel Somerville, Long Wang & Yang Yang, *Using Purchase Restrictions to Cool Housing Markets: A Within-Market Analysis*, J. URB. ECON. (forthcoming 2019), <http://perma.cc/KT7V-DEPK>.

¹³⁹ See Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply*, 5B HANDBOOK OF REGIONAL AND URB. ECON. 1289 (2015) (collecting and summarizing sources).

¹⁴⁰ Ross Kendall & Peter Tulip, *The Effect of Zoning on Housing Prices*, 10–11 (Econ. Res. Dep't, Res. Bank of Austl., Res. Discussion Paper 2018-03, 2018).

¹⁴¹ *Id.* at 20–21.

¹⁴² Lees, *supra* note 10, at 17–18.

a study and concluded that “[a] planning system that is unresponsive to growth is a key driver of escalating land prices.”¹⁴³

In Auckland, residential buildings in areas zoned for terrace housing and apartment buildings, which is the highest-intensity residential zoning, are limited to a height of 16 meters (five to six stories).¹⁴⁴ Only a small fraction of the Auckland metropolitan area is zoned for this intensity.¹⁴⁵ These zoning restrictions artificially limit the number of housing units in the city, contributing to rising housing costs.

It has been estimated that in 2001, the cost of housing in Manhattan was 150 percent higher than it would have been without restrictive zoning regulations.¹⁴⁶ As prices have continued to increase, it is unlikely that this ratio has decreased.

These effects are staggering. In Sydney and Melbourne, detached housing prices are 70 percent higher than they would be absent zoning regulations. In Auckland, all housing is more than 1.5 times more expensive than it would be absent zoning regulations. The same is true in Manhattan. In a free market, urbanization would lead to increased housing prices, which would, in turn, lead to increased housing construction and lowered housing prices. However, due to restrictive zoning regulations, the third step of the process is not taking place. Instead, prices are increasing and there is no exit valve to release the upward pressure on housing costs. This is an international crisis affecting middle-income and low-income persons.

America’s cities generally have the lowest densities in the world.¹⁴⁷ Unlike most other countries, zoning is controlled by local governments.¹⁴⁸ Almost all U.S. zoning laws have height requirements, use restrictions, minimum lot sizes, and parking requirements.¹⁴⁹ A 2018 study by the National Multifamily Housing Council shows that regulation from all levels of government contributes to an average of 32.1 percent of multifamily development costs in the U.S.¹⁵⁰ Research shows that in the U.S., areas with restrictive zoning regulations have greater

¹⁴³ Press Release, New Zealand Government, Government Response to the Productivity Commission’s Report on Using Land for Housing 2 (Aug. 2016) (on file with the Chicago Journal of International Law).

¹⁴⁴ Auckland Council, Auckland Unitary Plan, H6.6.5 (Oct. 24, 2019), <http://perma.cc/7QFJ-8NRL>.

¹⁴⁵ See Auckland Unitary Plan Geomaps, <http://perma.cc/EB93-93LK>.

¹⁴⁶ Glaeser, *supra* note 10, at 350.

¹⁴⁷ WILLIAM A. FISCHEL, ZONING RULES!: THE ECONOMICS OF LAND USE REGULATION 10–11 (2015).

¹⁴⁸ *Id.* at 28, 33.

¹⁴⁹ *Id.* at 31–32.

¹⁵⁰ NAT’L ASSOC. OF HOME BUILDERS & NAT’L MULTIFAMILY HOUSING COUNCIL, REGULATION: OVER 30 PERCENT OF THE COST OF A MULTIFAMILY DEVELOPMENT 8–9 (2018).

income inequality than less regulated areas do.¹⁵¹ This has contributed to income inequality in the U.S. more broadly.¹⁵² There is a broad consensus among housing developers, non-governmental organizations (NGOs), and government committees that there is an insufficient supply of housing in cities to meet demand, and that it is largely attributable to restrictive zoning regulations.¹⁵³

E. The Economic Approach: Zoning and Violation of the Right to Adequate Housing

Given the impact of zoning regulations, it is perhaps surprising that it has not been asked whether zoning regulations violate the Right. The economic approach, which looks at the housing market as a whole, enables legal thinkers to identify this question as one worth asking. The U.N. has not explicitly discussed zoning and land use regulations as causes of rising housing costs or asked whether certain land use regimes violate the Right. It has primarily discussed city planning and land use as means for improving housing conditions, especially as regards to preventing and responding to climate change.¹⁵⁴ The question of whether zoning regulations violate the affordability or security of tenure components of the Right is not a major subject of academic debate.¹⁵⁵ Thus, there is no real guidance on whether certain zoning regimes violate the Right.

The Right “implies that retrogressive measures are prohibited unless there are strong justifications for them. A State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resources.”¹⁵⁶ An example of a justified measure is regulation that allows for or requires open-air spaces such as

¹⁵¹ See, for example, Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?*, 102 J. URBAN ECON. 76 (2017).

¹⁵² *Id.* at 79.

¹⁵³ See *The Cost of Regulation on Affordable Multifamily Dev.: Hearing Before the Subcomm. on Housing and Ins. of the H. Comm. on Fin. Servs.*, 115th Cong. *passim* (2018) (statement of Sue Ansel, Chairwoman of the National Multifamily Housing Council and Chief Executive Officer of Gables Residential).

¹⁵⁴ See, for example, U.N. Conf. on Housing and Sustainable Urb. Dev. (Habitat III), *New Urban Agenda*, ¶¶ 72, 86, U.N. Doc. A/RES/71/256 (2017); UN-HABITAT, INTERNATIONAL GUIDELINES ON URBAN AND TERRITORIAL PLANNING 1 (2015).

¹⁵⁵ There exists discussion on whether it violates the non-discrimination component of the Right. See Adequate Housing Fact Sheet, *supra* note 6, at 10. There is also an article arguing that zoning violates various rights to health, since zoning causes health disparities. See Travis Bergmann & Partho P. Sengupta, *Zoning as a Human Rights Violation: Is Zoning Associated with Increased Health-Risk and Health Care Disparity?*, 6 PRIMARY HEALTH CARE 226 (2016).

¹⁵⁶ Ponce, *supra* note 49, at 100.

parks.¹⁵⁷ The Right does not require that every available space be used to construct housing.

A zoning regime that does not allow for any new housing construction likely violates the right to adequate housing. There is an obligation to create favorable conditions for realization of the Right, and there is likely no “strong justification” for the retrogressive measure of prohibiting all new construction.

In practice, though, zoning regulations do not prohibit all new construction. The level of detail inherent in all zoning regimes makes them very difficult to analyze.¹⁵⁸ Height restrictions, minimum parking requirements, minimum lot sizes, and many other regulations contribute to the zoning premium. It is complicated and unrealistic to examine all the specific regulations in zoning regimes to determine if they violate the Right.

Instead, it would be easier to assess whether a zoning regime violates the Right by examining the extent to which it increases housing costs. This zoning “premium” has been measured by academics, and it is an easy concept to understand. Using this metric, it is possible to circumvent questions such as whether height restrictions violate the Right, or whether a three-story limit violates the Right but a ten-story limit does not. Assessing violation based on a zoning regime’s impact rather than on its components is both easier to measure and likely less controversial. Measuring a violation through the zoning premium also enables violating localities to decide which zoning regulations to change, should they choose to take action.

Identifying which zoning premium violates the Right is outside the scope of this Comment. Ideally, the U.N. or other international body would examine this issue in greater depth and provide an answer to this question with a clear justification and standards based on an economic analysis.

Another possible metric to measure violation of the Right is the median multiple. However, it is an inferior metric to the zoning premium. As more housing is constructed, it is possible that the median income will drop as more people are able to afford to move to a city. Thus, the median multiple might stay the same even as housing prices drop. Since the median multiple captures two figures—income and house price—it is inferior to the zoning premium, which captures only one figure.

The economic approach enables legal thinkers to identify restrictive zoning regulations as potential violations of the Right. The human rights approach, on the other hand, struggles to do so, since zoning regulations do not violate a person’s rights or any principles of the human rights approach. An approach that

¹⁵⁷ The emerging “right to the city,” which can be seen in the International Guidelines for Urban and Territorial Planning, indicates this. *See* INTERNATIONAL GUIDELINES ON URBAN AND TERRITORIAL PLANNING, *supra* note 154, at 21.

¹⁵⁸ FISCHER, *supra* note 147, at 31.

looks at housing from a higher-level, market-oriented position, like the economic approach, makes it possible to see that zoning regulations, in their totality, can result in a violation of the Right.

IV. DECREASING DEMAND: RESTRICTING FOREIGN INVESTMENT IN RESIDENTIAL REAL ESTATE AND TAXING OCCASIONAL-USE RESIDENCES

This Section presents two related solutions to lack of housing affordability: limiting demand by restricting foreign investment in residential real estate and implementing vacancy taxes. These solutions are consonant with the economic approach rather than the human rights approach for several reasons. First, they use the market framework, and use legislation to impact incentives and lower demand. Second, unlike the human rights approach, these solutions do not focus on the most disadvantaged, as they target demand for units that are at the higher end of the market.¹⁵⁹ Third, subjects of this legislation—foreign investors—do not participate in the legislative process, contrary to the human rights requirement that policy and legislation be participatory.

It is noteworthy that the economic approach is not synonymous with a *laissez-faire* approach. It is consonant with the Special Rapporteur's statement that:

The assumption, bolstered by neo-liberalism, that States should simply allow markets to work according to their own rules, subject only to the requirement that private actors 'do no harm' and do not violate the rights of others, is simply not in accordance with the important obligation to fulfil the right to adequate housing by all appropriate means, including legislative measures.¹⁶⁰

Restricting foreign investment and implementing vacancy taxes are legislative measures that shape market incentives. They are not actions that "simply allow markets to work;" rather, they intervene in the housing market.

As described in Section IV-A, these solutions have been in place in Australia and the United Kingdom for several years and have recently been implemented in New Zealand, Vancouver, Toronto, and Washington, D.C., in large part due to popular political pressure. Due both to the recency of much of this legislation and to the tumultuous nature of the global housing market over the past decade, it is difficult to assess the success of these efforts in slowing housing prices. There is evidence that foreign investment increases housing prices,¹⁶¹ though a study of the Chinese housing market suggests that restricting non-owner-occupied purchases

¹⁵⁹ See *supra* Section III-C for a description of units purchased by foreign investors.

¹⁶⁰ A/HRC/34/51, *supra* note 47, at ¶¶ 1, 4, 14.

¹⁶¹ See, for example, Bruneau et al., *supra* note 138; Gholipour et al., *supra* note 138.

reduces activity levels but does not reduce housing prices.¹⁶² More research is needed to produce reliable conclusions about the effectiveness of such legislation, and it is to be expected that effectiveness varies by city, since each city's housing market is different. Regardless, restrictions on foreign investment reflect one economic approach to housing affordability: use of legislation to decrease demand.

This Section will first describe policies designed to limit foreign investment and occasional use of residences and their effectiveness. It will conclude with an assessment of the effectiveness of these policies and discuss the value of the economic approach.

A. Restrictions on Foreign Investment and their Impact

Certain countries and cities have responded aggressively to foreign investment. Some have prohibited foreign residents from purchasing residential real estate and raised taxes on purchases by foreign entities. Some have instituted vacancy taxes on vacant residences and raised taxes on purchases of second homes, regardless of owner residency.

These laws are often the result of popular pressure to limit foreign investment, since it is seen as a significant contributor of rising housing costs. In London, for example, both citizens and think tanks pressured the government to restrict foreign investment.¹⁶³ New Zealand voters were concerned about land sales to foreign buyers as well.¹⁶⁴ In Vancouver, 84 percent of residents blamed foreign buyers for the housing crunch in their city.¹⁶⁵ As discussed above, there is some evidence that foreign investment contributes to rising housing costs, but it is not clear-cut and varies by city.

1. Some cities and states prohibit foreign residents from purchasing residential real estate.

Australia and New Zealand both prohibit foreign residents from purchasing residential real estate. Australia passed the Foreign Acquisitions and Takeovers Act in 1975, which, as amended, requires foreign purchasing of residential units

¹⁶² Somerville et al., *supra* note 138.

¹⁶³ Toby Helm, *Stop Rich Overseas Investors from Buying up U.K. Homes, Report Urges*, THE GUARDIAN (Feb. 1, 2014), <http://perma.cc/P8WQ-8US3>.

¹⁶⁴ N.Z. *Land on the Block: Are the Politicians Listening?*, NZ HERALD (Aug. 27, 2014), <http://perma.cc/4J94-BA56>.

¹⁶⁵ Joannah Connolly, *Poll: 84% Blame Foreign Buyers for Metro Vancouver Housing Crunch*, VANCOUVER COURIER (Aug. 2, 2018), <http://perma.cc/8X5Z-JWYF>.

to be approved by the Foreign Investments Review Board.¹⁶⁶ Purchases of newly-built dwellings and of land appropriate for residential dwelling development are generally approved.¹⁶⁷

New Zealand passed the Overseas Investment Amendment Bill in August 2018 (amending the Overseas Investment Act of 2005) to prohibit foreign persons and entities from purchasing residential real estate without government approval.¹⁶⁸ Overseas investments are approved if they pass the “benefit to New Zealand test.”¹⁶⁹ In the residential context, approval is given to developers who plan to construct more housing units and/or rent out units they propose to purchase, and to purchasers who reside primarily in New Zealand.¹⁷⁰

Foreign purchases in Australia have increased sharply since 2010,¹⁷¹ so it is unclear whether the Act has had great effect. It seems that the Act has primarily spurred the construction of new housing, which foreign residents are almost always permitted to purchase.¹⁷²

2. Some cities and states tax “second home” purchases and residential real estate purchases by foreign entities.

The United Kingdom enacted the Stamp Duty Land Tax (SDLT) in 2003, which taxes land transactions in proportion to the purchase price of the property.¹⁷³ In 2016, the SDLT was reformed to add a 3 percent surcharge for buyers of second homes.¹⁷⁴ The Annual Tax on Enveloped Dwellings (ATED) was introduced in 2013, and taxes all dwellings valued at GB£ 500,000 or above that are owned by non-natural persons.¹⁷⁵ In 2013, the U.K. also raised the SDLT tax on purchases by non-natural persons by 15 percent. Since 2013, on sale or gift of a residential property by a natural or non-natural foreign person, the seller must

¹⁶⁶ *Foreign Acquisitions and Takeovers Act 1975* (Cth) (Austl.). See also Austl. Gov’t, Foreign Inv. Rev. Board, *Residential Real Estate*, <http://perma.cc/7FLJ-6PVM>.

¹⁶⁷ AUSTL. GOV’T, FOREIGN INV. REV. BOARD, GUIDANCE NOTE 3: RESIDENTIAL REAL ESTATE - FOREIGN NON-RESIDENTS 2–3 (July 1, 2017).

¹⁶⁸ Overseas Investment Amendment Act 2018 (N.Z.).

¹⁶⁹ *Id.* s 16A.

¹⁷⁰ *Id.* sch 2 cl 19.

¹⁷¹ Michael Yardney, *Foreign buyers of Australian Property—How Many Are There?*, PROPERTYUPDATE.COM.AU (Dec. 19, 2017), <http://perma.cc/E4N3-VSF7>.

¹⁷² *Id.*

¹⁷³ See Finance Act 2003, c. 14, §§ 42–43 (Eng.).

¹⁷⁴ See Stamp Duty Land Tax Act 2015, c. 1. See also *Stamp Duty Land Tax: Residential Property Rates*, GOV.UK <http://perma.cc/MD5U-AY8E>.

¹⁷⁵ See Finance Act 2013, c. 29, § 94. See also *HM Revenue & Customs, Guidance: Annual Tax on Enveloped Dwellings*, GOV.UK <http://perma.cc/Y5DE-MH3F>.

pay a capital gains tax (CGT) of 18–28 percent.¹⁷⁶ Foreign residents may claim relief from the CGT by residing in the property for at least 90 days in a tax year.¹⁷⁷

In 2010, 12 percent of U.K. homes and 26 percent of London homes had overseas owners.¹⁷⁸ By 2017, the numbers had dropped to 5 percent and 11 percent, respectively.¹⁷⁹ The number of long-term empty homes (that is, vacant for six months or more) in London has halved between 2006 and 2018, from approximately 40,000 to 20,000.¹⁸⁰ Notably, almost 15,000 homes became occupied between 2010 and 2012.¹⁸¹ The decrease in long-term empty homes may be related to the implementation of higher taxes on vacant and second homes in 2003. However, the decrease may also be related to the emergence from the Great Recession, which may have led to the renovation of dilapidated homes.

British Columbia, in August 2016, and Ontario, in April 2017, established a 15 percent tax in Vancouver and Toronto, respectively, on residential acquisitions by foreign residents (a “foreign home buyer tax”).¹⁸² The Toronto tax does not

¹⁷⁶ *Guidance: Capital Gains Tax Rates and Allowances*, GOV.UK, (June 4, 2018), <http://perma.cc/2QHW-RUMP>.

¹⁷⁷ *Tax if you Live Abroad and Sell your UK Home*, GOV.UK, <http://perma.cc/2R57-5Z55>.

¹⁷⁸ Karen Gilchrist, *Foreign Landlords Shun U.K. Property Market After Tax Hikes*, CNBC (July 17, 2017), <http://perma.cc/JPV5-6QN5>.

¹⁷⁹ *Id.*

¹⁸⁰ Ministry of Housing, *Communities & Local Gov't, Data Table 615: Long-term Vacant Dwellings by Local Authority District, England*, from 2004 (last updated May 24, 2019). (There is no correlation between the number of long-term empty homes in London neighborhoods and home prices, though, true to common perception, Kensington & Chelsea has the highest number of empty homes (1,399 homes in 2017), with Camden coming in third. *Id.* These are two of the three most expensive areas in London. 48,435 of homes in London are second homes, with the greatest numbers in Kensington & Chelsea (8,989) and Camden (7,389). NATIONAL HOUSING FED'N, HOME TRUTHS 2017/18: THE HOUSING MARKET IN LONDON (2018). However, the neighborhood with the second-highest number of empty homes, Croydon, has an average property value approximately 200,000 GBP below the median London property value. Statista, *Housing Issues in the United Kingdom*, 55 (2018). Though approximately 20,000 London homes are long-term empty, that number is only 0.56% of total London homes. *Id.* at 54, 59. While the recent London School of Economics and University of York reports (both commissioned by London Mayor Sadiq Khan) found little evidence that homes owned by overseas buyers were left entirely empty, they note that such homes are less likely to be occupied full time and that occupation may sometimes be limited to only a few weeks per year. See Wilson & Barton, *supra* note 133, at 3; KATH SCANLON ET AL., LSE LONDON, THE ROLE OF OVERSEAS INVESTORS IN THE LONDON NEW-BUILD RESIDENTIAL MARKET, FINAL REPORT FOR HOMES FOR LONDON (2017); WALLACE ET AL., UNIVERSITY OF YORK CENTRE FOR HOUSING POL'Y, OVERSEAS INVESTORS IN LONDON'S NEW BUILD HOUSING MARKET (2017).

¹⁸¹ MINISTRY OF HOUSING, LONG-TERM VACANT DWELLINGS BY LOCAL AUTHORITY DISTRICT, *supra* note 180.

¹⁸² For British Columbia, see Property Transfer Act, R.S.B.C. 1996, c 378 P. 2.02; For Toronto, see Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit), codified at S.O. 2017, c. 17 (amending the Land Transfer Tax Act, R.S.O. 1990, c. L.6, to establish a Non-Resident Speculation Tax).

apply to acquisitions of multi-residential rental apartment buildings with more than six units, showing that it targets individuals buying for investment diversification or personal use rather than developers. Housing prices in Vancouver have continued to rise since the implementation of the tax.¹⁸³

3. Some cities and states have recently passed vacancy taxes.

Vancouver established a vacancy tax in November 2016 (which took effect in 2018) on residential units that are vacant for more than half of the year.¹⁸⁴ The city estimated that there were 10,800 vacant units, though this figure is disputed.¹⁸⁵ Primary market vacancy rates in areas subject to the tax increased by 0.1 percent since implementation, whereas they increased by 0.2 percent in areas not subject to the tax.¹⁸⁶ Thus, it appears that it did not have an immediate effect on vacancy rates. Toronto is currently researching the effects of such a tax and may implement one as well.

Australia amended its Foreign Acquisitions and Takeovers Act in 2017 to assess a vacancy fee on foreign-owned vacant residential units: “A vacancy fee is payable by a foreign person for any dwelling on residential land, for any year (called a vacancy year), if the dwelling is residentially occupied for less than 183 days in the year.”¹⁸⁷ The effects of this tax are still unknown.

Most U.S. jurisdictions do not have higher property taxes for vacant residential property. However, since 2016, Washington, D.C. has taxed residential property at 0.85 percent and vacant residential property at 5 percent with the goal of decreasing the number of intentionally vacant units.¹⁸⁸ This tax has raised revenue, but its effect on vacancy is unknown, especially as it appears that some owners are attempting to avoid the effects of the tax by misreporting information.¹⁸⁹

¹⁸³ Erica Alini, *The Vancouver Foreign Homebuyer Tax is One Year Old. Here's What Canada Can Learn From It*, GLOBAL NEWS (Aug. 1, 2017), <http://perma.cc/SUJ7-FLM7>.

¹⁸⁴ A By-Law to Impose and Collect a Vacancy Tax, By-Law No. 11674 § 2 (2016)..

¹⁸⁵ Frances Bula, *Vancouver's Empty-Homes Tax to Rake in \$30 Million in First Year; Many Properties Exempted*, THE GLOBE AND MAIL (Apr. 23, 2018), <http://perma.cc/UQ6L-NPCG>.

¹⁸⁶ Karin Larsen, *Empty Homes Tax Not Helping Rental Crisis, Generating Millions More for Vancouver: Report*, CBC NEWS (Nov. 29, 2018), <http://perma.cc/2B3E-Y2VF>.

¹⁸⁷ Foreign Acquisitions and Takeovers Act 1975 (Cth. pt 6A, div 1, para 115A).

¹⁸⁸ *Real Property Tax Rates*, D.C. OFFICE OF TAX AND REVENUE, <http://perma.cc/PK5Y-BBEB>.

¹⁸⁹ Elaine S. Povich, *Can Extra Taxes on Vacant Land Cure City Blight?*, PEW STATELINE (Mar. 7, 2017), <http://perma.cc/3DTF-R3CX>.

B. Decreasing Demand and the Human Rights Approach

The legislative techniques described in Section III-A have had mixed success in decreasing foreign investment. It may be that in some locations taxes are too low, that they allow for loopholes, or that vacancy taxes rely too heavily on voluntary reporting of vacancy by homeowners. It is likely that states and localities will continue to amend these laws to increase their effectiveness. The U.K. has done so over the past decade, and the rate of foreign ownership and vacant properties in London has indeed decreased.

The Special Rapporteur has written about foreign investment as a problem,¹⁹⁰ and has suggested that to combat the financialization of housing (that is, the use of housing as primarily an investment), “[s]trategies must affirm the social function of land and housing and adopt measures to curb speculation, stop the production of unneeded luxury housing and prevent the privatization of public land.”¹⁹¹ However, “[a] human rights-based approach focuses on the realization of the rights of the excluded and marginalized populations.”¹⁹² Limiting the production of luxury housing is not a solution that focuses on excluded and marginalized populations.

The Special Rapporteur realizes that the solution to housing affordability must address housing at all income levels, but this is in tension with the human rights approach. In this sense, the human rights approach is ill-suited to responding to the housing affordability crisis.

The economic approach does not prioritize marginalized populations, and thus there is no tension between realizing the right and enacting policies that help the middle and upper middle classes. The approach also lends specificity to the terms used by the Special Rapporteur. One way of “stop[ping] the production of unneeded luxury housing” is by lowering demand for it through taxation. The economic approach thus provides a more effective framework for considering the affordability crisis.

V. INCREASING SUPPLY: REFORMING RESTRICTIVE ZONING REGULATIONS

This Section presents a second solution to lack of housing affordability: increasing supply by reforming restrictive zoning regulations. The economic approach enables legal thinkers to see that zoning is a major contributor to

¹⁹⁰ See A/HRC/34/51, *supra* note 47, at ¶ 3.

¹⁹¹ A/HRC/37/53, *supra* note 9, at ¶ 122.

¹⁹² HR/PUB/06/8, *supra* note 66, at 16.

increased housing prices and to identify zoning reform as one remedy for lack of affordability.

The Special Rapporteur states that, per the human rights approach, “[z]oning amendments and land use decisions should be subject to independent oversight to ensure transparency, accountability to communities and absence of corruption.”¹⁹³ However, as William Fischel of Dartmouth College and others show, communities in the U.S. and Canada often favor restrictive zoning regulations; the reason for this is the incentive to keep home values high, not corruption.¹⁹⁴ The human rights approach demands that solutions be community-centered and participatory, and does not have the tools to address situations where community participation contributes to the problem.

The economic approach is better equipped to address housing unaffordability, and zoning reform in the U.S. and Canada in particular. Outside the U.S. and Canada, many zoning decisions are made at national or sub-national levels, not at the local level. This Section therefore will focus on zoning reform in the U.S. and Canada.

This Section will first show that zoning reform can lower housing costs. It will then show that opposition to zoning reform and the construction of social housing comes from local communities. It will conclude that effective solutions for zoning reform pose a challenge to the human rights approach but not to the economic approach.

A. The Impacts of Zoning Reform

Research suggests that reforming zoning regulations to allow more construction would increase the supply of housing and lower housing costs. Zoning restrictions are identified by experts—academics, NGOs, and developers—as one of the primary causes of the shortage in multifamily housing.¹⁹⁵ For example, Erika Poethig of the Urban Institute stated that “removing barriers to multifamily development, such as exclusionary zoning, would increase supply and lower development costs.”¹⁹⁶ Lower development costs result in lower housing costs and rents.

This is not to say that such reforms are sufficient to solve the housing affordability crisis. First, many agree that more social housing or subsidies for low-

¹⁹³ A/HRC/37/53, *supra* note 9, at ¶ 124.

¹⁹⁴ FISCHEL, *supra* note 147, at 215–18.

¹⁹⁵ See, for example, *The Cost of Regulation on Affordable Multifamily Dev.: Hearing before the Subcomm. on Housing and Ins. of the H. Comm. on Fin. Servs.*, *supra* note 153, *passim*.

¹⁹⁶ *Id.* at 6.

income families are needed.¹⁹⁷ Second, local regulations interact with state and federal regulations and with local politics, such that local changes alone may be insufficient to increase supply. For example, it seems that recent upzoning in Chicago has not led to an increase in the number of newly permitted dwellings.¹⁹⁸ The housing market is complex, and zoning reform will have different outcomes in different markets.

There are different proposals for zoning reform, such as limiting community review, eliminating parking requirements, expediting approval for affordable housing, and establishing “density bonuses.”¹⁹⁹ The details of such reforms are outside the scope of this Comment. It is noteworthy, however, that some of them involve taking discretion out of the hands of local communities.

B. Opposition to Zoning Reform

Opposition to zoning reform often comes from local homeowners. Professor Fischel has written extensively about the incentive structure that leads to this. The “homevoter hypothesis” is that since homes are the most significant portion of most homeowners’ net worth, they strongly oppose decisions that might cause their home values to decrease.²⁰⁰ Fischel also argues that locations in the U.S. with stronger local government have more restrictive zoning regulations, because the more local the government, the more it is controlled by homeowners rather than developers (who support looser zoning regulations).²⁰¹ Susan Ansel, on behalf of the National Multifamily Housing Council, testified before Congress that:

[M]any localities have a development preference that works against multifamily housing production and ultimately worsens the country's affordability challenges. Multifamily development often faces stiff community resistance, competes with other forms of real estate that produce sales tax revenue desired by municipalities and is subject to increasing regulatory barriers at all levels of government.²⁰²

Concerns about reduced home values can overlap with discrimination against specific racial groups and the developmentally disabled. Guidelines issued by the province of Ontario call on municipalities to limit public meetings when

¹⁹⁷ *Id.* at 16.

¹⁹⁸ See Yonah Freemark, *Upzoning Chicago: Impacts of Zoning Reform on Property Values and Housing Construction*, URBAN AFFAIRS REV. (Jan. 29, 2019).

¹⁹⁹ *The Cost of Regulation on Affordable Multifamily Dev.: Hearing before the Subcomm. on Housing and Ins. of the H. Comm. on Fin. Servs.*, *supra* note 153, at 13–14.

²⁰⁰ FISCHEL, *supra* note 147, at 212–18. See also Lee Anne Fennell, Book Review, *Home Rule*, 112 YALE L.J. 617 (2002).

²⁰¹ FISCHEL, *supra* note 147, at 312–316, 327.

²⁰² *The Cost of Regulation on Affordable Multifamily Dev.: Hearing before the Subcomm. on Housing and Ins. of the H. Comm. on Fin. Servs.*, *supra* note 153, at 5.

they are not necessary to allow affordable or group-home development for this very reason:

[I]f zoning rules already allow the housing being considered (“as-of-right”), a meeting is not required. Yet many local councillors call meetings anyway, which often gives voice to discriminatory discussions. In these meetings, people wishing to live in the housing are subjected to hurtful comments and a level of negative scrutiny that none of their potential neighbours had to face when moving into the neighbourhood. These meetings also reinforce the incorrect assumption that neighbourhood residents have the right to approve who moves in next door, and often inflame, rather than calm, neighbourhood opposition to the housing. They also inflame the potential for human rights complaints [by targets of discriminatory comments].²⁰³

These guidelines also state that instituting additional code requirements for affordable housing, including “arbitrary caps on the number of residents allowed by project, ward, or municipality” is a technique often attempted by local citizens to exclude low-income residents.²⁰⁴

Local communities are often the cause of restrictive zoning regulations and rising housing costs, particularly in suburbs but increasingly in cities as well.²⁰⁵ States as diverse as California, Connecticut, and South Carolina have begun to recognize this, and have attempted to wrest control from localities. Increasing awareness of the housing crisis has led many states to introduce housing bills in 2018; some have succeeded and some have failed.²⁰⁶ The House Subcommittee on Housing and Insurance has held a hearing on this matter as well, indicating Congressional recognition of this problem.

C. Increasing Supply and the Human Rights Approach

The human rights approach states that “processes should be transparent and participatory.”²⁰⁷ This requirement creates a discomfort with policies that are designed to make processes less participatory. Thus, the human rights approach is ill-suited to deal with problems that are caused by community participation, such as restrictive zoning regulations.

²⁰³ ONTARIO HUMAN RIGHTS COMM’N, *IN THE ZONE: HOUSING, HUMAN RIGHTS AND MUNICIPAL PLANNING* 12 (2012).

²⁰⁴ *Id.* at 10.

²⁰⁵ FISCHER, *supra* note 147, at 312–316, 327.

²⁰⁶ See Teresa Wiltz, *In Shift, States Step in on Affordable Housing*, PEW STATELINE (Oct. 15, 2018), <http://perma.cc/LUX8-XPT7>. See also Roger Rudick, *Transit Housing Bill Dies in Committee*, STREETS BLOG SF (Apr. 18, 2018), <http://perma.cc/8PQQ-CCT5> (regarding California’s failed 2018 bill, S.B. 827).

²⁰⁷ HR/PUB/06/8, *supra* note 66, at 12.

This discomfort is perhaps what drives the Special Rapporteur to state that “[z]oning amendments and land use decisions should be subject to independent oversight to ensure transparency, accountability to communities and absence of corruption.”²⁰⁸ Zoning decisions are in fact quite accountable to communities and there is no evidence of unique corruption by zoning or planning boards. The economic approach has no need to present the reality of zoning in this light.

Carol Galante, a former Housing and Urban Development official and current professor of affordable housing and urban policy at the Turner Center for Housing Innovation at the University of California at Berkeley, stated regarding community zoning that “[s]ometimes you have to go to a higher authority. We had to do that in the civil rights movement.”²⁰⁹ The human rights approach does not lend itself well to situations that demand this.

The economic approach is less concerned with community participation. On the contrary, the field of economics is familiar with markets that perpetuate normatively bad outcomes and require external intervention to be corrected.²¹⁰ Community zoning, which creates restrictive zoning regulations that successfully inflate housing prices by limiting supply, is one such cycle. It would not be rational for homeowners to choose a strategy that might lower their home values when there exists a proven strategy for increasing or maintaining them. It is therefore consistent with the economic approach to state that other levels of government should intervene in local government decisions in order to make their decisions less participatory.

VI. NEXT STEPS: THE RIGHT TO ADEQUATE HOUSING

This Section discusses practical next steps that can follow from this Comment’s argument that the economic approach is better suited to the affordability (and thus, security of tenure and location) component of the Right. It suggests specific steps the U.N. and the Special Rapporteur can take in light of this Comment. First, they can adopt the economic approach with respect to the affordability component of the Right and support states’ attempts to institute reforms. Second, they can define “affordability,” a term that is currently poorly defined.

²⁰⁸ A/HRC/37/53, *supra* note 9, at ¶ 124.

²⁰⁹ Wiltz, *supra* note 206.

²¹⁰ See, for example, Stefania Albanesi & Claudia Olivetti, *Home Production, Market Production and the Gender Wage Gap: Incentives and Expectations*, 12 REV. ECON. DYNAMICS 80 (2009).

A. Adopting the Economic Approach and Supporting State Efforts

The U.N. should adopt the economic approach as a supplement to the human rights approach with respect to the affordability component of the right to adequate housing. Adopting this framework would give the Special Rapporteur an additional, useful framework with which to approach the Right.

For instance, adopting this approach might motivate the U.N. or the Special Rapporteur to study the effects of zoning regimes on housing prices, which would lead to a discussion of zoning regimes' capacity to violate the Right. Ideally, adopting the approach would result in concrete analysis of zoning regimes that violate the right to adequate housing. One way for international bodies to support states is for the Special Rapporteur and other relevant bodies to assess and state whether restrictive zoning regimes violate the Right.

Though the U.N. has no real ability to enforce the affordability component, it is an important source of research and international law analysis. Currently, the Special Rapporteur devotes great effort to combating the financialization of housing, that is, the use of housing "as a way to park excess capital."²¹¹ The Special Rapporteur can influence states' thinking on these issues due to her platform. Adopting the economic approach can therefore influence states' and cities' thinking on this matter.

Professor Daniel Hemel of the University of Chicago has argued that international law has greater impact when authority over one matter is fragmented across several domestic agencies.²¹² Zoning is fragmented across various legislative authorities. The U.N.'s informal influence can have an effect on local, regional, and national policy. Some U.S. states, for example, may choose to be bound by ICESCR on the matter of the Right, just as California and other states chose to abide by the Paris Agreement of 2016 when the U.S. announced its plans to leave the agreement.²¹³ Thus, there are several ways in which clear statements from international bodies might impact zoning reform at the state and local levels.

Additionally, clear statements about zoning and the application of soft pressure can give states and cities the political support they need to pass zoning reform, which can often be unpopular. A clear statement on this matter can give legislators the political support they need to overcome local opposition.

The U.N. can also help formulate best practices for zoning reform, both suggesting specific reforms and suggesting changes to the process by which

²¹¹ *The Shift*, U.N. SPECIAL RAPPORTEUR ON THE RIGHT TO HOUSING, <http://perma.cc/D56J-QSEH>.

²¹² Daniel Hemel, Comment, *Regulatory Consolidation and Cross-Border Coordination: Challenging the Conventional Wisdom*, 28 YALE J. ON REG. 213, 226 (2011).

²¹³ Evan Halper, *A California-Led Alliance of Cities and States Vows to Keep the Paris Climate Accord Intact*, L.A. TIMES (June 2, 2017), <http://perma.cc/SM99-UX32>.

zoning regulations are made. International bodies have a role to play in supporting state policy decisions, raising awareness, and formulating clear and detailed policy suggestions that are easy to adopt. Though lack of housing affordability is a local problem that does not lend itself well to intervention by international organizations, there is no need for each state to reinvent the wheel. International organizations can undertake research and analysis that will support states as they tackle this crisis.

The U.N. has already begun to develop a body of research regarding urban planning and, in particular, environmentally sustainable urban planning. For example, the Habitat III conference of 2016 resulted in a non-binding resolution, endorsed by the General Assembly in 2016, which “lays out standards and principles for the planning, construction, development, management, and improvement of urban areas.”²¹⁴ The International Guidelines on Urban and Territorial Planning suggests that local authorities should design and promote

[r]egulations that encourage social mixing and mixed land use, with a view to offering an attractive and affordable spectrum of services, housing and working opportunities for a wide range of the population.²¹⁵

More such resources can support states as they work to realize the right to adequate housing.

The U.N. can also begin adjudicating affordability matters via the ICESCR Optional Protocol, which allows individuals to file complaints with the Committee on Economic, Social, and Cultural Rights. That said, this is unlikely to be effective because it would require the U.N. to better define affordability and identify judicial remedies for violations of this component of the Right.²¹⁶ The U.K. and France have established a justiciable right to a home, but it appears that although such suits draw political attention to homelessness, they have been unsuccessful in tangibly increasing the construction of social housing in these states.²¹⁷ Thus, this possibility is unlikely to be very effective.

B. Defining “Affordability”

A major challenge to the realization of the affordability component is that “affordability” is poorly defined. Currently, the definition is that the cost of housing must not threaten or compromise the occupants’ enjoyment of other human rights.²¹⁸ The hesitation to strictly define this positive right is unsurprising. However, since it is standard practice to consider households spending greater

²¹⁴ U.N. Conf. on Housing and Sustainable Urb. Dev. (Habitat III), *supra* note 154, at iv.

²¹⁵ UN-HABITAT, *supra* note 154, at 15.

²¹⁶ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, *opened for signature* Sept. 24, 2009, U.N. Doc. A/63/435 (OP-ICESCR).

²¹⁷ Byrne & Culhane, *supra* note 17, at 383–86.

²¹⁸ Adequate Housing Fact Sheet, *supra* note 6, at 4; General Comment No. 4, *supra* note 35, at ¶ 8(c).

than 30 percent of their income on housing to be cost-burdened, there already exists a practical definition of unaffordability. All that remains is to enshrine it in international law.

Defining affordability concretely would encourage states to confront the fact that the affordability component is unrealized within their borders. Currently, states can avoid doing so because affordability is undefined, so it is impossible to articulate definitively that the component is unrealized. Acknowledging the violation of a human right is the first step to solving it.

Greater specificity is necessary if the Right is to be realized. This is true both in defining affordability and in identifying violations of the Right. Realizing positive rights in general can be quite difficult; the vague terms surrounding the Right only add to this difficulty.

VII. CONCLUSION

Lack of affordable housing is a crisis in large cities in advanced economies. This crisis impacts society at all levels. It affects individuals and families who cannot afford to live in the most productive cities. It affects national economies, since it inhibits the productivity of these states' largest and most productive cities. And it affects the globe, as this crisis contributes to urban sprawl and carbon emissions, and thus to climate change.

The U.N. recognizes that the international human right to adequate housing—in particular, the affordability, security of tenure, and location components—is unrealized in these localities. However, it has only given consideration to the human rights approach, which is incapable of solving this crisis and realizing this right. Housing is a market, and the high cost of housing is a market problem that will respond to market solutions.

The economic approach, which looks at housing affordability from a market perspective, is better suited than the human rights approach to identifying violations of the right and policies for realizing it. The reason for this is that lack of affordability is, fundamentally, a supply-and-demand problem. An approach that uses this framework is thus better able to address the conditions that lead to rising housing costs.

The solution to lack of affordability should not be only human-rights based but also economic, since the problem is rooted in a mismatch between supply and demand. Solutions that increase supply, such as zoning reform, or limit demand, such as legislation limiting foreign residential real estate investment and instituting vacancy taxes, should be welcomed. For example, the economic approach allows legal thinkers to see that restrictive zoning regulations violate the right to adequate housing. They are retrogressive measures that violate the requirement to create favorable conditions, and they have no strong justification. Municipalities are thus

obligated to reform their zoning regimes if they violate the Right, and if they refuse to do so, states are obligated to intervene.

The human rights approach is in tension with these solutions. Two components of this approach are the focus on the marginalized and the establishment of participatory, transparent processes. Zoning reform requires, in many cases, making zoning less participatory, which is in tension with that approach's focus on participatory processes. Limiting foreign investment and levying vacancy taxes targets the high-end market and does not help the marginalized. Though there may be a trickle-down effect from the increase in high-end housing stock, it is not significant enough to be considered a solution that helps the marginalized.

It should not be concerning that the solution to high housing costs is to make processes less participatory. First, these “participatory” processes by definition exclude important stakeholders, specifically, people who want to move to a locality but cannot afford to do so. In practice, they also exclude renters and public housing residents, who are less likely to join local planning boards. Community zoning and planning boards are thus not as participatory as they appear. Second, local interests are not the only interests that should be considered. In the United States, the emphasis on hyper-local control of residential patterns has contributed to residential segregation.²¹⁹ In all the cities discussed in this Comment, local control pushes people further from city centers due to lack of affordability. Thus, local control has impacts beyond the specific locality in which decisions are made. For these reasons, focusing on local, participatory processes is misguided in the housing context. These processes do not include all the stakeholders, and they impact people who do not participate these processes.

Nor should it be concerning that these solutions do not focus only on the marginalized. Kimberly Rosario, a teacher at Mission High School in San Francisco, makes approximately \$70,000 annually.²²⁰ She is not among the economically marginalized in society. And yet, she is forced to commute from Sacramento—over 100 miles—every day, because she cannot afford to live in San Francisco.²²¹ The rights of people like Rosario, who have advanced degrees, are middle-income, and are not economically marginalized, must also be taken seriously.

The human rights of all persons matter. An economic solution should not trample on individuals' human rights. However, the human rights *approach* is different from protecting human rights. The economic approach, unlike the

²¹⁹ See David Ray Papke, *Keeping the Underclass in Its Place: Zoning, the Poor, and Residential Segregation*, 41 URB. LAW. 787 (2009).

²²⁰ Heather Knight, *SF Teacher's Housing Nightmare: Waking at 3:30 a.m. to Drive from Sacramento Home*, SAN FRANCISCO CHRONICLE, (Oct. 29, 2019), <http://perma.cc/4QDH-LB7A>.

²²¹ *Id.*

human rights approach, can address the housing affordability crisis while also respecting human rights.

VIII. APPENDIX

	Auckland	Sydney	Melbourne
Median Multiple	9.0 ⁱ	11.7 ⁱⁱ	9.7 ⁱⁱⁱ
Rent-to-income		Ratio of average rent of a one-bedroom apartment to average income is 28%. ^{iv}	
Other		13% of households in the bottom 40% of income earners spend over 30% of their income on rent. ^v	9.7% of households in the bottom 40% of income earners spend over 30% of their income on rent. ^{vi}
Population increase 2010 to 2018;	2010: 1.335m ^{vii} 2019: 1.582m ^{viii}	2010: 4.166m ^{ix} 2019: 4.859m ^x	2010: 3.932m ^{xi} 2019: 4.870m ^{xii}
Percent increase	18.5%	16.6%	23.8%
Housing stock increase;	2013: 508,216 ^{xiii} 2018: 545,127 ^{xiv}	2011: 1.720m ^{xv} 2016: 1.856m ^{xvi}	2011: 1.636m ^{xvii} 2016: 1.832m ^{xviii}
Percent increase	7.3%	7.9%	12%

	London	NYC
Median Multiple	8.3 ^{xxix}	5.5 ^{xx}
Rent-to-income	35.3% ^{xxi}	52.5% of renters in the metropolitan area are rent burdened. ^{xxii}
Other	Average private rental costs in London are double those of the average of rental costs elsewhere in the U.K., ^{xxiii} but incomes are only 1.4 times higher. ^{xxiv}	Percent of income spent on a mortgage (median) is 27.7%. ^{xxv}
Population increase 2010 to 2018;	2010: 8.044m ^{xxvi} 2019: 9.177m ^{xxvii}	2010: 8.190m ^{xxviii} 2018: 8.399m ^{xxix}
Percent increase	14.1%	2.6%
Housing stock increase;	City Limits 2010: 3.336m ^{xxx} 2018: 3.556m ^{xxxi}	City Limits 2011: 3.352m ^{xxxii} 2017: 3.469m ^{xxxiii}
Percent increase	6.6%	3.5 %

	Vancouver	Toronto
Median Multiple	12.6 ^{xxxiv}	8.3 ^{xxxv}
Rent-to-income		Ratio of average rent of a one-bedroom apartment to average income is 30%. ^{xxxvi}
Population increase 2010 to 2018;	2010: 2.278m ^{xxxvii} 2019: 2.556m ^{xxxviii}	2010: 5.499m ^{xxxix} 2019: 6.139m ^{xl}
Percent increase	12.2%	11.6%
Housing stock increase;	City Limits 2011: 286,740 ^{xli} 2016: 309,418 ^{xlii}	2011: 2.079m ^{xliii} 2016: 2.235m ^{xliv}
Percent increase	8%	7.5%

i Demographia Survey 2019, *supra* note 88, at 2.

ii *Id.*

iii *Id.*

iv *How Much Does the World Spend on Rent?*, BARRATT HOMES LONDON (Jan. 2017), <http://perma.cc/66PW-J7A7>.

v Matt Wade, *Housing Stress in Sydney Hits New High*, THE SYDNEY MORNING HERALD (July 30, 2018), <http://perma.cc/9W2G-T97B>.

vi *Id.*

vii World Population Review, *Auckland Population 2019*, <http://perma.cc/XDS4-NA36>.

viii *Id.*

ix World Population Review, *Sydney Population 2019*, <http://perma.cc/5XQ8-2KN5>.

x *Id.*

xi World Population Review, *Melbourne Population 2019*, <http://perma.cc/3FTM-XVKH>.

xii *Id.*

xiii Statistics N.Z., 2018 Census, *Occupied dwellings, unoccupied dwellings, and dwellings under construction, for private and non-private dwellings, 2006, 2013, and 2018 Censuses* (RC, TA, SA2, DHB) (2018), <http://perma.cc/RN2U-K9U3> (follow hyperlink to live site; then select “Private dwellings, non-private dwellings” and select “private dwellings;” following this, select “Area” and select “Auckland Region”; select “View Data”).

xiv *Id.*

xv *Greater Sydney Dwelling Type*, .ID, <http://perma.cc/M6HU-K2LV>.

xvi *Id.*

xvii *Greater Melbourne Dwelling Type*, .ID, <http://perma.cc/D5W4-VVSB>.

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- xviii *Id.*
- xix Demographia Survey 2019, *supra* note 88, at 11.
- xx *Id.*
- xxi Statista, *Housing Issues in the United Kingdom*, 27 (2018); *see also* HomeLet, *HomeLet Rental Index*, 3 (Sept. 2018).
- xxii *Millions of Americans Burdened by Housing Costs in 2015*, JOINT CTR. FOR HOUSING STUD. OF HARV. U., <http://perma.cc/UZY4-3Q8D>.
- xxiii Statista, *supra* note xxi, at 20.
- xxiv *Id.* at 21.
- xxv Zillow, *Mortgage Payments Require Largest Share of Income Since 2009* (June 21, 2018) <http://perma.cc/GQ7H-LHAJ>.
- xxvi World Population Review, *London Population 2019*, <http://perma.cc/NCY4-TZDY>.
- xxvii *Id.*
- xxviii World Population Review, *New York City, New York Population 2019*, <http://perma.cc/49ZF-KBDT>.
- xxix *Id.*
- xxx Ministry of Housing, Communities & Local Government (MCHLG), *Total Number of Dwellings and Net Additional Dwellings, Borough*, LONDON DATASTORE, <http://perma.cc/3VRG-23T4>.
- xxxi *Id.*
- xxxii Moon Wha Lee, *Selected Initial Findings of the 2011 New York City Housing and Vacancy Survey*, N.Y.C. Dep't of Housing Preservation and Dev., 23 (2011) [hereinafter HVS 2011].
- xxxiii E. Gaumer, *Selected Initial Findings of the 2017 New York City Housing and Vacancy Survey*, N.Y.C. Dep't of Housing Preservation and Dev., 1 (2017) [hereinafter HVS 2017].
- xxxiv Demographia Survey 2019, *supra* note 88, at 11.
- xxxv *Id.*
- xxxvi *How Much Does the World Spend on Rent?*, *supra* note iv.
- xxxvii World Population Review, *Vancouver Population 2019*, <http://perma.cc/U9CQ-2KWK>.
- xxxviii *Id.*
- xxxix World Population Review, *Toronto Population 2019*, <http://perma.cc/J7N6-X9AT>.
- xl *Id.*
- xli CITY OF VANCOUVER, *Housing Characteristics Fact Sheet* (Apr. 30, 2017).
- xlii *Id.*
- xliii *Census Profile: Toronto (2011)*, STATISTICS CANADA (May 31, 2016), <http://perma.cc/RS6K-YVJU>.
- xliv *Census Profile, 2016 Census: Toronto [Census Metropolitan Area] (2016)*, STATISTICS CANADA (Apr. 24, 2018), <http://perma.cc/92SA-AXVJ>.