

Making it Matter: Understanding the Impact of the Right to Housing

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1. Introduction

We are experiencing a global housing crisis. An estimated 100 million people now suffer the burning indignity of homelessness; 1.6 billion lack access to adequate housing and basic services; and roughly 15 million are forcibly evicted each year from their homes due to slum clearance, rising rents, gentrification, crushing interest rates, and the criminalisation of homelessness. The brutality of armed conflict – not least in Sudan, Gaza, and Ukraine – and ongoing colonisation of indigenous ancestral lands has added to the 116 million who are internally displaced. Climate change appears also to be making its mark. Approximately 20 million were displaced in 2023 due to extreme weather events. This is now, the present. The future looks worse. Many live daily with the fear of eviction and displacement, and deep inter-generational inequities in the Global North and South present younger people with the prospect of never attaining a stable home.

What is our global response to this crisis? It seems to be a mix of denial, paralysis, and reactivity. A *denial* of the extent of the housing crisis and its deleterious impact, particularly for the most vulnerable and disadvantaged, but also the middle class. A *paralysis*, in which we acknowledge suffering, but allow housing policy to be nothing more than a press release, a promise of a new housing minister or body, or the recycling of the argument that more jobs will fix the problem, or mere pleas to stop internal displacement and ethnic cleansing. Or a *reactivity* in which we frantically search for new solutions, which may be quick releases of land for development, temporary rent relief or regulation, or the globally ubiquitous promise of building ‘50,000 new homes’ – and all, curiously, with little acknowledgement that the factors that brought us here have been sown over the last half century or more,¹ and that we have been unresponsive to the complex adaptive systems that determine housing outcomes.² The result is that this global crisis threatens to be long-lasting. It is estimated that up to 3 billion will soon lack access to adequate housing.³

These reactions are remarkable when we consider the centripetal force of a home. It is the anchor that creates *space* for rest, food, water, care, and quiet dignity; enables us *relationally* to connect with family, community, education, employment, and nature; and provides us with a *temporal* stability to plan beyond tomorrow and preserve culture and traditions. It is thus no surprise that housing is often articulated as a human right. It emerged in legal consciousness after the housing crises of the Great Depression and the brutal displacements of WWII.⁴ After its inclusion in the 1948 Universal Declaration of Human Rights, states have ratified a host of international instruments that recognise various housing rights and provide and require different accountability mechanisms.⁵

¹ Thomas Hale, *Long Problems: Climate Change and the Challenge of Governing Across Time* (Princeton University Press 2024).

² Scott E Page, ‘What sociologists should know about complexity’ (2015) 41 Annual Review of Sociology 21-41.

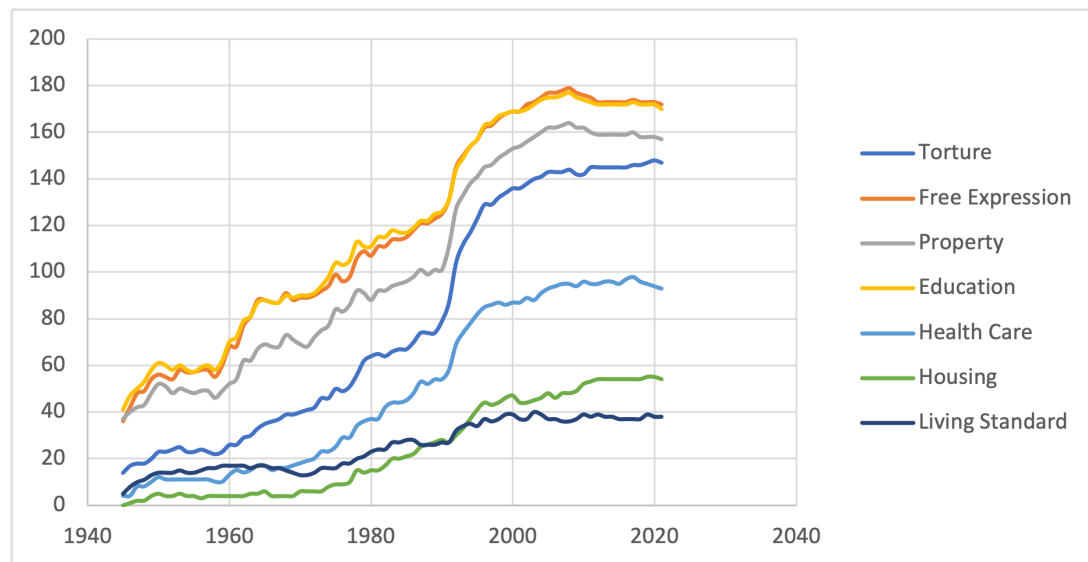
³ UN, *UN expert urges action to end global affordable housing crisis*, Press Release, 20 October 2023.

⁴ James Walter and Carolyn Holbrook, ‘Housing in a federation: from wicked problem to complexity cascade?’ (2015) Australian journal of public administration 74 (4) 448-66; Samuel Moyn, *Not enough* (Harvard University Press 2018).

⁵ Jessie Hohmann, *The right to housing: Law, concepts, possibilities* (Bloomsbury Publishing 2013).

Moreover, housing has been recognised explicitly in 55 national constitutions throughout the world (see Figure 1).⁶ In the context of ongoing housing crises, social movements and political parties are exploring further domestic recognition of the right in countries as diverse as Poland, Australia, New Zealand, Ghana, the United Kingdom, and Ireland.⁷ Moreover, in many countries, the right to housing has been mobilised in political campaigns, legislative innovation, new policies, better coordination, community action, and litigation in courts.⁸

Figure 1 Constitutional Recognition of Selected Rights: 1945-2021



Yet, if the right to housing is to be part of the solution, and not just a confirmation that we have a serious problem, we need to ask two fundamental questions. The first is whether the ‘rights turn’ in the housing field *has made a difference* and under what conditions. Clear-eyed engagement with the global housing crisis requires that we are equally open to the reality of what has (and has not) worked. We cannot be trapped in a ‘hollow hope’.⁹ The second is to ask which rights-inflected solutions *can make a difference*. Housing systems are a messy reality. With their complex interrelationship with economic and regulatory systems, enmeshment in the ideological core of politics and movements of global capital, vulnerability to demographic and environmental change, and the need for strong national-local coordination, any rights intervention is liable to flail and fail. Thus, the human rights movement must also avoid reactivity. Can we be responsive and identify, test, and forge paths for long-term transformation?

⁶ Malcolm Langford, ‘Constitutionalisation of Economic and Social Rights’ in Malcolm Langford and Katherine G Young (eds), *Oxford Handbook on Economic and Social Rights* (Oxford University Press 2025).

⁷ Alicja Ptak, “‘Housing is a right, not a commodity’: Polish opposition proposes interest-free mortgages”, *notes from Poland*, (28 February 2023) <<https://notesfrompoland.com/2023/02/28/housing-is-a-right-not-a-commodity-polish-opposition-proposes-interest-free-mortgages/>> accessed 29 May 2025.

⁸ See, e.g., Joe Willis, *Contesting World Order? Socioeconomic Rights and Global Justice Movements* (Cambridge University Press 2017); and discussion, analysis, and literature, in section 3.

⁹ Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press 1991).

The answers to these two questions have not been subjected to significant research. Despite one and a half decades of impressive human rights impact research,¹⁰ the field remains seminal in the area of housing rights. We know surprisingly little.

In this chapter, I address both questions, with a slight emphasis on the first. Gaining an understanding of the impact of the right to housing (i.e., ‘does it matter?’) is central to understanding the potential impact of new action repertoires (i.e., ‘making it matter’). And to answer both questions, close attention needs to be paid to methodology.

The chapter proceeds in three phases: asking how do we measure the impact of housing rights; then what do we know about the impact of housing rights; and finally, how can one identify the potential impact of any strategy based on the right to housing. In doing so, the focus will primarily on interventions of a national character, rather than those that address international or transnational concerns such as armed conflict and climate change.

2. How do we measure impact?

How do we measure the impact of the right to housing? It requires consideration of five issues: the *phenomenon* to be studied; the potential *explanations*; the *baseline* for the evaluation of impact; the *point in time* in which we make that evaluation; and the *methods* we use. Let us take each in turn.

2.1 Phenomenon

The concept of impact is highly multivalent. It is a phenomenon that extends clearly beyond mere compliance with a judicial order, law, new policy, or international treaty, but its manifestation can be diverse. Impact may be greater than compliance, or even less – if it is ‘zeroed out’ by other actions or developments.¹¹ For example, the positive effects of compliance with a court order for tenants may be cancelled out by political backlash and regulatory change in tenancy law. Or there might be ‘winning by losing’; in which policy gains are achieved through legal action despite a loss in court.¹² Impact is thus an analytical category, an assemblage of all the effects – positive and negative, intended and unintended – that may result from an intervention based on the right to housing or a broader set of housing rights.¹³

Impact is also multi-dimensional. It can be material, political, and symbolic. Each of these is important – as successful housing policy is usually multidimensional.¹⁴ Material impacts may

¹⁰ See, e.g., Sandra Botero and Daniel M Brinks, ‘The Politics of Judicial Impact in Social and Economic Rights Cases’ in Langford and Young (n 6); Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009); Rosalind Dixon, ‘Dynamic, Regressive, or Obstructionist Courts? What Kinds of Hopes for Judicial Review?’ (2024) *Law & Social Inquiry* 1-16.

¹¹ César Rodríguez Garavito, ‘Beyond Enforcement: Assessing and Enhancing Judicial Impact’ in Malcolm Langford, César Rodríguez Garavito and Julietta Rossi (ed), *Making it Stick: Compliance with Social Rights Judgments in Comparative Perspective* (Cambridge University Press 2017) 75.

¹² Jackie Dugard and Malcolm Langford, ‘Art or Science? Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism’ (2011) 26 (3) *South African Journal on Human Rights* 39-64.

¹³ E.g., protection of the home, privacy, family, and even the right to property (e.g., that protects underlying social and collective interests).

¹⁴ César Rodríguez Garavito, ‘Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America’ (2011) 89 *Texas Law Review* 1669-98; Malcolm Langford, ‘Introduction: Civil Society and Rights in Context’ in Malcolm Langford and others (eds), *Symbols or Substance? The Role and Impact of Socio-Economic Rights Strategies in South Africa* (Cambridge University Press 2014) 1-32; Sandra Botero and Daniel Brinks, ‘The Politics of Judicial Impact in Social and Economic Rights Cases’ in Malcolm Langford and others (eds), *Symbols or Substance? The Role and Impact of Socio-Economic Rights Strategies in South Africa* (Cambridge University Press 2014).

include new policy, jurisprudence, or concrete improvements in access to housing.¹⁵ Political impacts may be the empowerment of vulnerable community groups and social movements, the creation of political pressure on authorities, or space for dialogue.¹⁶ For example, marginalised communities have often discovered that mere legal action against eviction facilitates contact and negotiation with local authorities.¹⁷ Symbolic impacts may be a change in discourse (e.g., about certain groups and their rights)¹⁸ or structures of affect and belief in a society (e.g., the degree of public trust in the state, democracy, rule of law, and respect for their social rights).¹⁹

Thus, the phenomenon of impact is multivalent and multidimensional; and while material impacts might be privileged naturally in the short term, political and symbolic impacts may be more important in the long term. Care should be taken to ensure that choices over focus are transparent and justified.

2.2 Explanation

Explanation is central in any impact analysis. Assessing whether there has been impact is always an exercise in causation: that X has led to Y. It is not an optional theoretical ‘add-on’. Foregrounding explanation in research design provides especially an important corrective against a common problem in the field: the conflation of correlation and causation. When presented with data, we are almost hardwired to look for confirmatory understandings of our preferred explanations, rather than motivated to test and prod causes.²⁰ Moreover, a genuine focus on explanatory theory often opens our eyes to a broader array of impacts, whether positive, negative, direct, or indirects. Deductive hypothesis-driven frameworks for explanation require us to specify clearly what we are measuring, while inductive exploratory frameworks allow us to investigate potential and under-identified impacts.

Several explanatory theories always deserve consideration. Some are more hopeful in orientation. Impact may be driven through the *coercive* power of law and rights.²¹ In this classical conception, law’s capacity to produce and enforce sanctions engenders change. Thus, in the field of social rights, the use of fines and threats of imprisonment by courts have sometimes been crucial in ensuring compliance.²² Or it may be the law’s *persuasive* power rather than its coercive power. UN bodies, courts or civil society organisations may be convincing about housing rights – inflecting the calculus of our practical reason and action.²³

¹⁵ See generally on material impacts, Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (n 9).

¹⁶ Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (The University of Chicago Press 1994).

¹⁷ Malcolm Langford and Steve Kahanovitz, ‘South Africa: Rethinking Enforcement Narratives’ in Malcolm Langford, César Rodríguez Garavito and Julieta Rossi (eds) (n 11) 315-50.

¹⁸ Vincent Vecera, ‘The Supreme Court and the Social Conception of Abortion’ (2014) 48 (2) *Law & Society Review* 345-75; César Rodríguez-Garavito and Diana Rodríguez-Franco, *Radical deprivation on trial* (Cambridge University Press 2015)

¹⁹ David Vitale, ‘The relational impact of social rights judgments: a trust-based analysis’ (2022) 42 (3) *Legal Studies* 408-24.

²⁰ Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable* (Random House 2010).

²¹ Ekow N. Yankah, ‘The Force Of Law: The Role of Coercion in Legal Norms ’ (2008) 42 *University of Richmond Law Review* 1195-255.

²² In Argentina, Bergallo found that a quarter of sampled right to health judgments were only implemented only after courts imposed fines on defendant health insurers, providers, and authorities. P Bergallo, ‘Argentina: Achieving Fairness Despite "Routinization"?’ in Alicia Ely Yamin and Siri Gloppen (eds), *Litigating Health Rights: Can Courts Bring More Justice to Health?* (Harvard University Press 2011) 43-75. But see its limits in: Langford and Kahanovitz (n 17).

²³ Joseph Raz, ‘Law, Authority and Morality ’ in Joseph Raz (ed), *Ethics in the Public Domain* (Oxford University Press 1994). For a concrete example, see Gary Marks and Paula McDonnell, ‘New Politics? The Mabo Debate and Public Opinion on Native Title in Australia ’ (1996) 8 (1) *International journal of public opinion research* 31-50.

Or it may be the law's *cultural* power. For instance, *non*-compliance may invite stigmatisation; or law, in its expressive role, may change social meanings of acceptable behaviour, acculturating new norms.²⁴

Against these hopeful theories of law and human rights, sit their strategic, realist, and critical cousins. A *strategic* approach posits that impact arises when it is in the net interests of targeted actors to respond to a judgment or its latent potential. These interests may be economic, political, ideological, and affective factors, may tip the balance in favour of compliance or non-compliance or a range of action of other actions.²⁵ Thus, for instance, in the face of a court order requiring the cessation of an eviction, it may be politically expedient for a government to comply with or ignore the decision, or to leverage the judgment to introduce a new housing policy or mount a backlash against courts.²⁶ The actions of a respondent are thus determined by a rational calculus concerning costs and benefits.

An even less hopeful approach is *realism*. It is based on the presumption that law, rights, and courts are chronically weak social forces, mere 'epiphenomena or surface manifestations of deeper forces operating in society'.²⁷ Social change only occurs when 'the balance of these deeper forces shifts'.²⁸ Rosenberg argues that the leading civil rights judgment from the US Supreme Court, *Brown v Board of Education* (1954), was not responsible for progress on school desegregation; rather it was 'growing civil rights pressure from the 1930s, economic changes, the Cold War, population shifts, electoral concerns, the increase in mass communication'; the Court simply 'reflected that pressure; it did not create it'.²⁹ In addition law, and especially courts, have a tendency to embrace minimalism and deferentialism.³⁰ Moreover, many judges and rights bodies lack access or openness to techniques that could help them resolve the complex problems that arise in seeking to advance housing rights³¹ or ensure cooperation and coordination between actors.³²

Finally, critical perspectives suggest that the turn to, and faith in, human rights law may have a *disempowering* effect. State-centric, duty-oriented, and legalised or ahistoricised conceptions of justice may clash sharply with more open-ended and agent-driven collective or experimental notions of participation and action. Neocosmos puts it this way: 'citizenship, from an emancipatory perspective, is not about subjects bearing rights conferred by the state, as in human rights discourse' but rather about people who become 'agents through engagement as militants/activists and not politicians'.³³ Moreover, the initial positive impact of housing rights

²⁴ Ryan Goodman and Derek Jinks, 'Incomplete Internalization and Compliance with Human Rights Law' (2008) 19 (4) European Journal of International Law 725-48.

²⁵ Daniel Brinks, 'Solving the problem of (non)compliance in SE rights litigation' in Malcolm Langford, Cesar Garavito-Rodriguez and Julietta Rossi (eds) (n 11); Simmons (n 10).

²⁶ Andi Dobrushin and Theodoros Alexandridis, 'International housing rights and domestic prejudice: the case of Roma and Travellers' in Malcolm Langford, Cesar Garavito-Rodriguez and Julietta Rossi (eds) (n 11), Ch. 13.

²⁷ Oran R Young, 'Inferences and Indices: Evaluating the Effectiveness of International Environmental Regimes' (2001) 1 (1) Global Environmental Politics 99-120, 117.

²⁸ Ibid. 118.

²⁹ Rosenberg (n 9) 169.

³⁰ Marius Pieterse, 'Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited' (2007) 29 (3) Human Rights Quarterly 796-822.

³¹ Malcolm Langford, *Judging Complex Cases* (Forthcoming 2026).

³² Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge University Press 2014); Bruce Wilson and Olman A. Rodriguez, 'Understanding Compliance with Economic Social and Cultural Rights Decisions in Costa Rica' in Malcolm Langford, Cesar Garavito-Rodriguez and Julietta Rossi (eds) (n 11) ch. 4.

³³ Michael Neocosmos, 'Civil Society, Citizenship and the Politics of the (Im)possible: Rethinking Militancy in Africa Today' (2009) 1 (2) Interface: A Journal for and About Social Movements 263-334, 276:

may worsen the agency of individuals and movements. A new housing body or court victory may lull relevant actors into a sense of complacency about follow-up, celebrating the ‘illusion of change’.³⁴

To put it mildly, explanations and predictions of the impact of the right to housing are deeply varied and can be challenging to navigate. Nonetheless, they provide a rich resource for impact research and should be kept in mind in research design, analysis, and interpretation.

2.3 Baseline

The next element concerns the baseline. Impact is a comparative phenomenon. It requires a reference point against which change is measured. Yet, there is no clear consensus in social sciences on what this is. The baseline may be historical, counterfactual, or anticipated.

A *historical baseline* measures whether there has been improvement since the relevant housing rights intervention. It is called sometimes a ‘before and after’ approach, or a ‘no regime counter-factual’. While it is the simplest baseline to measure, it has a tendency towards overestimating the degree of impact. This is because it lacks some methodological rigour. A historical baseline risks conflating causation and correlation. This is because the change might have occurred regardless of the intervention, an equifinality due to other factors. It also ignores the possibility that an alternative non-rights-based strategy (e.g., a market-based policy or pure civil disobedience) might have achieved greater improvements. Although, to be sure, sometimes other alternatives might be limited. For instance, imminent eviction threats may mean that a rights-based strategy is the only one that is realistically available. The closure of ‘political opportunity structures’ leaves only ‘legal opportunity structures’.³⁵

A *counterfactual baseline* incorporates an assessment of alternative strategies or ‘regimes’. It is the gold standard in research, but is highly challenging to implement. Randomised controlled experiments in social policy are uncommon and can be unethical or unlawful. Nonetheless, counterfactuals may emerge naturally, such that one can compare near-identical situations or control sufficiently for any variation. Regression analysis³⁶ and process tracing methods³⁷ are common tools here – the ‘silver’ standards in impact research. The result is that one can compare the impact of the adoption and non-adoption of a human rights strategy.³⁸ Alternatively, one is able to test the impact of different rights-based approaches in an experimental setting, e.g., with citizens or government officials.³⁹ While such approaches may struggle with external validity, they can provide insight on causal mechanisms due to their strong emphasis on internal validity.

Finally, an *anticipatory baseline* measures impacts against an expectation of effect. It is sometimes called the ‘ideal expectations model’. On its face, this allows a seemingly objective

³⁴ Rosenberg, (n 9) 428.

³⁵ Chris Hilson, ‘New social movements: the role of legal opportunity’ (2002) 9 (2) *Journal of European Public Policy* 238-255.

³⁶ Emilie M Hafner-Burton and James Ron, ‘Seeing double: Human rights impact through qualitative and quantitative eyes’ (2009) 61 (2) *World Politics* 360-401.

³⁷ David Collier, ‘Understanding process tracing’ (2011) 44 (4) *PS: political science & politics* 823-30.

³⁸ See, e.g., Christopher Berry, ‘The Impact of School Finance Judgments on State Fiscal Policy’ in Martin R. West and Paul E. Peterson (eds), *School Money Trials: The Legal Pursuit of Educational Adequacy* (Brookings Institution 2007) 213-40; Simmons (n 10).

³⁹ See, e.g., Vanessa Baird and Debra Javeline, ‘The persuasive power of Russian courts’ (2007) 60 (3) *Political Research Quarterly* 429-442.

assessment: the promise of a rights strategy is measured against its eventual outcome.⁴⁰ However, the method has a tendency to under-estimation of impact. This is for two challenges.⁴¹ First, the expectation may not be reasonable. It may not account for the relevant constraints that any other strategy would encounter. Second, the expectation may not be acceptable. There may be legal, sociological, or normative disagreement over its content. For instance, we might want to use international or constitutional legal standards as an anticipatory baseline for measuring the expected effects of a rights-based intervention. However, there are commonly different views on the legal scope of housing rights in any standard – from minimalist to maximalist versions.⁴² The same applies to normative and sociological standards concerning the utility of human rights.⁴³ There is a disagreement as to what is the goal. Is it improvement in the bare minimum of housing or is it transformative housing justice? And if so, whose voices should be listened to when making that assessment? Thus, anticipatory approaches are prone to more modest findings of impact and struggle with epistemic contestation.

The upshot is that the choice of baseline is perhaps the most consequentialist choice in impact analysis. It often determines whether any or significant impact has occurred, whether the pejorative glass is ‘half-full’ or ‘half-empty’. Pragmatically, in my view, a synthetic and interpretive approach is often warranted. The incommensurability of different methodological approaches should be met with attempts to put them in dialogue.⁴⁴ In other words, each baseline is mobilised to shed helpful light on the nature and degree of impact.

2.4 Time period

Impact assessment is also affected by the time period for the analysis. Gready has remarked that a dark side of impact ‘evaluation culture’ is its tendency towards short-termism.⁴⁵ The use of a longer period may allow identification of key impacts that take time to materialise or identify. Indeed, many, but certainly not all, human rights strategies, have a long horizon in mind. Human rights rarely arrive as a quick-fix solution; even if they are often framed as such. Yet, there is a risk that we bookend too sharply the period for our analysis of impacts. As we shall see, the initial and widespread analyses of the impact of the most famous housing rights case, *Grootboom*, suffered greatly from short-termism. Thus, careful consideration should be made of the relevant time period, which should be informed by the relevant explanatory theories (see 2.2).

Nonetheless, an overly long period for analysis risks the introduction of even more confounding factors that need to be controlled for or process traced. There can be a tension between the choice of time period and baseline (see 2.3). There can be no general rule for

⁴⁰ It is the model employed in Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* See discussion in Malcolm Feeley, ‘Hollow Hopes, Flypaper, and Metaphors, Review of ‘The Hollow Hope: Can Courts Bring About Social Change? by Gerald N. Rosenberg’ (1992) 17 (4) *Law & Social Inquiry* 745-60.

⁴¹ Langford, ‘Introduction: Civil Society and Rights in Context’ in n (14).

⁴² Katherine Young, ‘The Minimum Core of Economic and Social Rights: A Concept in Search of Content’ (2008) 33 *Yale Journal of International Law* 113-75.

⁴³ Cf. Moyn and Kathryn Sikkink, *Evidence for hope: Making human rights work in the 21st century* (Princeton University Press 2018).

⁴⁴ On such pragmatism in mixed methods, see Kira Tait and Whitney K Taylor, ‘The Possibility of Rights Claims-Making in Court: Looking Back on Twenty-Five Years of Social Rights Constitutionalism in South Africa’ (2022) *Law & Social Inquiry* 1-30; Malcolm Langford, ‘Mixed methods in human rights research’ in Bård Andreassen, Hans-Otto Sano and Claire Methven O’Brien (eds), *Research Methods in Human Rights* (Edward Elgar Publishing 2024) 292-320.

⁴⁵ Paul Gready, ‘Reasons to Be Cautious about Evidence and Evaluation: Rights-based Approaches to Development and the Emerging Culture of Evaluation’ (2009) 1 (3) *Journal of Human Rights Practice* 380-401.

selecting a time period. A rule of thumb is thus to be generally cautious about making strong conclusions when a time period is short; a humility that should be extended to long-time periods when the methodology does not take account of multiple causal factors.

2.5 Methods

The fifth and final methodological consideration concerns methods. Different empirical techniques – from quantitative and qualitative to computational – are needed to gain a full picture.

Arguably, any deeper and systematic understanding of impact almost always requires mixed methods, at both the data collection and analytical stages.⁴⁶ Each has its own affordances. *Quantitative methods* can establish broad patterns of impact, enable probabilistic generalisation for explanation, and may avoid bias in interpretation through more transparent data collection and analysis techniques.⁴⁷ This is especially so with the use of regression analysis. *Qualitative* and *legal* methods can capture socially complex phenomena, identify new and multiple causal paths⁴⁸ and help explain individual and non-conformist cases; e.g. the idea of necessary and sufficient conditions. Many of these qualitative methods come powerfully together in the framework of process tracing that permits graduated causal reasoning.⁴⁹

Computational methods are the new kid on the block. They are powerful in expanding the scope of accessible data, permitting statistical analysis of text, and identifying hidden causal factors through the inductive logic of machine learning.⁵⁰ In the context of impact research, the most common use so far is quantitative text and network analysis, tracing the influence of different strategies (political campaigns, litigation, ideas) on law, adjudication, and monitoring; or the influence of international law on national law.⁵¹ With the rise of machine learning in work on human rights implementation and legal technology,⁵² we can also expect that these methods will be soon used to estimate and identify likely impacts.

⁴⁶ Mario Small, 'How to conduct a mixed methods study: Recent trends in a rapidly growing literature' (2011) 37 *Annual review of sociology* 57-86.

⁴⁷ Malcolm Langford and Sakiko Fukuda-Parr, 'The Turn to Metrics' (2012) 30 (3) *Nordic Journal of Human Rights* 222-38; AnnJanette Rosga and Meg Satterthwaite, 'The Trust in Indicators: Measuring Human Rights' (2009) 27 (2) *Berkeley Journal of International Law* 253-315; Todd Landman, 'Measuring Human Rights: Principles, Practice and Policy' (2004) 26 (4) *Human Rights Quarterly* 906-31.

⁴⁸ James Mahoney and Gary2006 Goertz, 'A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research' (2006)14 *Political Analysis* 227-249.

⁴⁹ Collier, (n 37). There are four classic tests: straw-in-the-wind, hoop, smoking-gun, and doubly decisive. 'If a given hypothesis passes a straw-in-the-wind test, it only slightly weakens rival hypotheses; with hoop tests it somewhat weakens them; with smoking-gun tests it substantially weakens them; and with doubly decisive tests passing eliminates them—of course, with the usual caveat that the definitive elimination of a hypothesis is often hard to achieve in social science' (p. 825).

⁵⁰ Wolfgang Alschner, *Investment arbitration and state-driven reform: new treaties, old outcomes* (Oxford University Press 2022); Runar Hilleren Lie and Malcolm Langford, 'The Computational Turn in International Law' (2024) 93 (1) *Nordic Journal of International Law* 38-67.

⁵¹ David S Law, 'The global language of human rights: a computational linguistic analysis' (2018) 12 (1) *The Law & Ethics of Human Rights* 111-50; Biandri Joubert, *Sanitary and phytosanitary measures as barriers to trade: A South African perspective* (PhD Dissertation, University of Oslo and North-Western University 2022); Kevin T Greene, Baekkwon Park and Michael Colaresi, 'Machine learning human rights and wrongs: How the successes and failures of supervised learning algorithms can inform the debate about information effects' (2019) 27 (2) *Political Analysis* 223-30.

⁵² See, e.g. Masha Medvedeva, Michel Vols and Martijn Wieling, 'Using machine learning to predict decisions of the European Court of Human Rights' (2020) 28 *Artificial Intelligence and Law* 237-66; Malcolm Langford, Daniel Behn and Runar Lie, 'Computational stylometry: predicting the authorship of investment arbitration awards', *Computational Legal Studies* (Edward Elgar Publishing 2020) 53-76.

Yet, even when the empirics are in place, developing an understanding of impact is not always simple. When multiple methods are deployed, they may not be commensurable – just like baseline methodologies.⁵³ While it may be possible to scientifically ‘triangulate’ the results,⁵⁴ in many cases, it will require pragmatism and synthetic reading. Moreover, not all methods may be feasible. Any research design may require hard choices, including the learning of new methods and theories, interdisciplinary collaboration, or delimitation.

3. What do we know?

Turning from research design to the evidence, what can we discern from scholarship about whether housing rights matter. The discussion is divided according to four different forms of housing rights ‘interventions’: treaties and constitutions; courts and other accountability mechanisms; legislation and policy; and direct action and self-help.

3.1 Treaties and constitutions

Early studies of the influence of international human rights treaties and constitutional rights revealed little or contradictory evidence of impact.⁵⁵ Hafner-Burton and Ron observed the paradox that qualitative and quantitative researchers came to radically divergent conclusions over the effects of human rights treaties.⁵⁶ Qualitative researchers tend to be more positive, and quantitative researchers were mostly negative – with the difference partly attributable to the choice of baselines. Historical baselines were common amongst the former, and counterfactual baselines common amongst the latter.

Later studies have provided a more nuanced picture. With regression analysis and country case studies, Beth Simmons found that ratification of international human rights treaties, including complaint mechanisms, works most by affecting domestic politics, and that this effect is most significant in transitional middle-income countries.⁵⁷ Simmons and Strezhnev also argue that it is difficult to find any negative effects of ratification of treaties.⁵⁸ In relation to constitutional rights, Veersteeg and Chilton find that organisational rights – such as religious freedom and trade union organisation – are particularly effective, while individual rights less so.⁵⁹ Collective rights enable groups to overcome collective action and coordination problems. Alternatively, Schiel, Wilson and me – like Simmons – tested closely whether the impact of constitutional rights was mediated by different background conditions. For instance, we found that constitutional recognition of the right to water was effective when combined with rule of law protections.⁶⁰ Likewise, research on both treaty ratification and constitutional recognition tends to identify civil society engagement as a key necessary and mediating factor.⁶¹

⁵³ Derek Beach and Jonas Gejl Kaas, ‘The great divides: incommensurability, the impossibility of mixed-methodology, and what to do about it’ (2020) 22 (2) *International Studies Review* 214-35

⁵⁴ Florian G Kern, ‘The trials and tribulations of applied triangulation: Weighing different data sources’ (2018) 12 (2) *Journal of Mixed Methods Research* 166-81; Tait and Taylor (n 44); Langford (n 44).

⁵⁵ Emilie Hafner Burton and James Ron, ‘Human Rights Institutions: Rhetoric and Efficacy’ (2007) 4 (4) *Journal of Peace Research* 379-83; Amy Mäkinen, ‘Rights, review, and spending: Policy outcomes with judicially enforceable rights’ (2001) 39 *European Journal of Political Research* 23–52.

⁵⁶ Hafner-Burton and Ron, ‘Seeing double: Human rights impact through qualitative and quantitative eyes’.

⁵⁷ Simmons, (n 10). Beth Simmons, ‘Should States Ratify? Process and Consequences of the Optional Protocol to the ICESCR’ (2009) 27 (1) *Nordic Journal of Human Rights* 64-81.

⁵⁸ Beth A Simmons and Anton Strezhnev, ‘Human rights and human welfare: Looking for a ‘dark side’ to international human rights law’ (2018) *The Future of Human Rights* 60-87

⁵⁹ Adam Chilton and Mila Versteeg, *How constitutional rights matter* (Oxford University Press 2020).

⁶⁰ Rebecca Schiel, Malcolm Langford and Bruce M Wilson, ‘Does it Matter: Constitutionalisation, Democratic Governance, and the Human Right to Water’ (2020) 12 (2) *Water* 350-69.

⁶¹ Eric Neumayer, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) 49 (6) *Journal of Conflict Resolution* 925-53.

Nonetheless, despite these advances, it is notable how rare it is to find studies addressing the singular impact of the recognition of the right to housing (beyond water) in treaties and constitutions; and this book provides an important contribution to this gap in the literature.

3.2 Courts and other accountability mechanisms

Research on the impact of court judgments and other accountability mechanisms is more common. The evictions judgment, *Olga Tellis v Bombay Municipal Corporation* (1985) in India was the first to be dissected.⁶² On one hand, its reasoning had a remarkable jurisprudential and symbolic effect across the world. It helped demonstrate how housing rights could be made justiciable – contrary to prevailing legal opinion. On the other hand, it had no direct material impact. Authorities in Mumbai simply proceeded with the widespread evictions of pavement dwellers in the midst of winter. The Supreme Court’s recommendation to provide alternative accommodation was ignored: there was no political cost.

This dualistic way of understanding of the impact of housing rights judgments soon re-appeared in the analysis of the most famous judgment on housing rights, the South African Constitutional Court’s decision in *Grootboom* in 2000. Multiple scholars concluded that despite the judgment’s considerable broad and indirect contributions – such as national eviction and social rights jurisprudence, the lobbying for the ICESCR complaint mechanism, and the global debate on the justiciability of social rights – it had failed to contribute materially to housing rights.⁶³ Irene Grootboom died tragically without a home in 2008. However, this scholarship was based on a single and misunderstood newspaper article.⁶⁴ Conducting fieldwork, I discovered that 90 per cent of the 1600-strong community received housing – and that this was due to the judgment.⁶⁵ In the words of process tracing, there was a ‘smoking gun’. The reason why journalists and scholars had missed this was that construction had been delayed as other communities in the area were assessed as being in greater need (and were prioritised), while a corruption case slowed the building of half the community’s houses, including Mrs Grootboom’s. But her house was built and is now a community centre.

Moreover, after studying seven similar eviction threats in South Africa that ended in litigation, I could examine more broadly the role of courts in protecting urban settlements. Measured against a series of impact indicators – from protection from forced eviction to provision of permanent housing to community empowerment and policy change – considerable variance in impact was the key finding. Some communities were able to leverage litigation to achieve remarkable material and political gains, while others were brutally evicted. Moreover, the key determinants of this variance were also fairly visible. The relative power of community

⁶² S. Muralidhar, ‘India: The Expectations and Challenges of Judicial Enforcement of Social Rights’ in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2008) 102-24.

⁶³ John Berger, ‘Litigating for Social Justice in Post-apartheid South Africa: A Focus on Health and Education’ in Varun Gauri and Daniel Brinks (ed), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2008) 38-99; Ran Hirschl and Evan Rosevear, ‘Constitutional Law Meets Comparative Politics: Socio-Economic Rights and Political Realities’ in Tom Campbell, K.D. Ewing and Adam Tomkins (eds), *The Legal Protection of Human Rights — Sceptical Essays* (Oxford University Press 2012); Alicia Ely Yamin and Siri Gloppen, *Litigating Health Rights: Can Courts Bring More Justice to Health?* (Harvard University Press 2011); Adam Chilton and Mila Versteeg, ‘Rights without resources: the impact of constitutional social rights on social spending’ (2017) 60 (4) *The Journal of Law and Economics* 713-48.

⁶⁴ Pearlle Joubert, “Grootboom dies homeless and penniless” *Mail & Guardian* (8 August) <<http://www.mg.co.za/article/2008-08-08-grootboom-dies-homeless-and-penniless>>.

⁶⁵ Malcolm Langford, ‘Housing Rights Litigation: *Grootboom* and Beyond’ in M. Langford, B. Cousins, J. Dugard and T. Madlingozi, *Socio-Economic Rights in South Africa: Symbols or Substance?* (Cambridge University Press, 2014), pp. 187-225.

organisations, their alliances with lawyers and other professionals, and the responsiveness of judges in making thoughtful or creative orders were central factors.

To be sure, this is not to say that court judgments have catalysed a transformation in South African housing policy. Far from it. The number living in informal settlements has only expanded, low-income housing policies have faltered, and evictions and police brutality in settlements continue. Moreover, the South African Constitutional Court closed off essentially opportunities for further positive rights claims in their highly deferential decision in the *Mazibuko* right to water case.⁶⁶ Nonetheless, most commentators agree that the housing situation would have been much worse without the *Grootboom* judgment and its judicial offspring. An eviction tsunami was avoided.

When we examine similar research from around the world, similar patterns tend to emerge. Moreover, studies suggest that the impact of socioeconomic rights strategies may not be so different from those based on civil and political rights.⁶⁷ Effectiveness varies from case to case, place to place, and time to time.⁶⁸ Litigation's impact is, though, usually highly contingent on the degree of social mobilisation (before, during, and after the case) and legally on the relevant provisions, judicial receptivity to housing rights, and judicial willingness to impose coercive or experimental remedies. In complex cases, experimental remedies – such as delayed declarations and rolling regimes of reporting back to the court – provide space and time for governments and others to participate in the design and pace of solutions, with evidence that it often increases the chance of success.⁶⁹

As Rodriguez shows in Colombia,⁷⁰ a comprehensive and highly detailed order by the Constitutional Court on prison reform in 1999⁷¹ went unimplemented, and overpopulation in prison increased instead by 50 per cent.⁷² However, in a 2004 case concerning 6 million IDPs in the armed conflict, and covering a wide array of human rights, the Court took an experimental approach. It issued just three orders: the state must (1) develop indicators (2) increase the budget and (3) report back each year.⁷³ It was a lighter and responsive touch but created an ongoing participatory remedial process that generated significant impact.⁷⁴

However, it is not just a question of social movements and courts, impact is also dependent on the views and actions of the public, politicians, and bureaucrats. In many housing rights cases,

⁶⁶ Jackie Dugard, Malcolm Langford and Edward Anderson, 'Determining Progress on Access to Water and Sanitation: Law and Political Economy in South Africa' in Malcolm Langford and Anna Russell (eds), *The Right to Water: Theory, Practice and Prospects* (Cambridge University Press 2014) ; Lucy A. Williams, 'The Role of Courts in the Quantitative Implementation of Social and Economic Rights: A Comparative Study' (2010) (3) Constitutional Court Review 141-99.

⁶⁷ Başak Çali and Anne Koch, 'Lessons Learnt from Implementation of Civil and Political Rights Judgments' in Malcolm Langford, Cesar Garavito-Rodriguez and Julietta Rossi (eds) (n 11); Anne Hellum and Henriette Aasen (eds), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press 2015).

⁶⁸ Varun Gauri and Daniel Brinks, *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2008)

⁶⁹ César Rodríguez Garavito and Diana Rodríguez-Franco, *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South* (Cambridge University Press 2016).

⁷⁰ Rodríguez-Garavito, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America'

⁷¹ *Prison Conditions Case T-153/98* (Constitutional Court of Colombia)

⁷² Wally Broderick, "Prisons: Chronicle of a brutality foretold" *The Bogotá Post* (27 July) <<https://thebogotapost.com/prisons-chronicle-of-a-brutality-foretold/7068/>>

⁷³ *IDPs Case T-025* (Constitutional Court of Colombia)

⁷⁴ César Rodríguez-Garavito and Diana Rodríguez-Franco, *Courts and Social Change in the Global South: The Impact of Judicial Activism on Constitutional Innovation and Socio-Economic Rights* (Cambridge University Press 2015).

the popularity of the affected group can be decisive. International and national courts, such as the ECtHR, have struggled with high levels of non-compliance in housing rights concerning racial discrimination, for example, Roma and Travellers in Europe and indigenous peoples in Africa.⁷⁵ Likewise, the relative engagement of bureaucrats and politicians is decisive.⁷⁶ In some cases, they have become rights champions, not only following up court orders but identifying and facilitating long-term pathways to change, and challenging deep-rooted structures of exclusion, discrimination, and power asymmetry in the housing field, but it is equally possible to find as many or more examples of such actors thwarting deeper change.

Nonetheless, there is also a concern that litigation can increase, rather than decrease, inequality. If courts foreground the making of individual orders, it can privilege those with better access to courts – the middle class.⁷⁷ There are now over 200 articles examining the potential distributive inequality of health rights litigation in Latin America – with mixed conclusions.⁷⁸ In the case of housing and education rights, litigation tends generally to be more pro-poor, although there are exceptions (e.g., housing rights in India) and sometimes it advances both (e.g., the Colombian Constitutional Court decisions on protecting social housing schemes with subsidised interest as well as informal settlements).⁷⁹ Indeed, some argue that litigation that positively impacts both the poor and middle class can build cross-class solidarity, which is often essential in building sustainable social welfare policies, not least in housing.⁸⁰

Moving from courts to other types of accountability mechanism variance is again the message.⁸¹ This applies to both national and international bodies, although the latter tends to experience lower compliance rates when we look at human rights in general.⁸² For example, a 2014 report into the influence of the special procedures found that less than 4% of complaints made to them resulted in states considering substantive steps to address violations.⁸³ At the same time, Ullmann and von Staden found 19-39% compliance with decisions of the UN

⁷⁵ Dobrushin and Alexandridis (n 26).

⁷⁶ Charles Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalist State* (University of Chicago Press 2009);

⁷⁷ Marc Galanter, 'Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change' in R. Cover and Owen Fiss (eds), *The Structure of Procedure* (Foundation Press 1969) .

⁷⁸ Octavio Luiz Motta Ferraz, 'The Right to Health in the Courts of Brazil: Worsening Health Inequities?' (2009) 11 (2) *Health and Human Rights* 33-45; César Rodríguez Garavito, 'The Judicialization of Health Care: Symptoms, Diagnosis, and Prescriptions' in Randall Peerenboom and Tom Ginsberg (eds), *Law and Development of Middle-Income Countries: Avoiding the Middle-Income Trap* (Cambridge University Press 2014) 246-69.

⁷⁹ Rodrigo Uprimny Yepes, 'Should Courts enforce social rights? The Experience of the Colombian Constitutional Court' in Fons Coomans (ed), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Intersentia and Maastricht Centre for Human Rights 2006) 355-88; Manuel José Cepeda-Espinosa, 'Judicial Activism in a Violent Context: The Origin, Role, and Impact of the Colombian Constitutional Court' (2004) 3 (4) *Washington University Global Studies Law Review* 529-699.

⁸⁰ Malcolm Langford, 'Judicial Politics and Social Rights' in Katherine Young (ed), *The Future of Economic and Social Rights* (Cambridge University Press 2019) 66-109; Rosalind Dixon and David Landau, 'Constitutional Non-Transformation? Socioeconomic Rights beyond the Poor' in Katherine Young (ed), *The Future of Economic and Social Rights* (Cambridge University Press 2019) 110-34.

⁸¹ See, e.g., Jasper Krommendijk, 'Finnish Exceptionalism at Play? The Effectiveness of the Recommendations of UN Human Rights Treaty Bodies in Finland' (2014) 32 (1) *Nordic Journal of Human Rights* 18-43; Vivek Bhatt and Jacqueline Mowbray, 'International mechanisms', in Langford and Young (n 6).

⁸² Langford, Rodríguez-Garavito and Rossi (n 11).

⁸³ Marc Limon and Ted Piccone, *Human Rights Special Procedures: Determinants of Influence: Understanding and Strengthening the Effectiveness of the UN's Independent Human Rights Experts* (Brookings Institute Report, March 2014), 31. This contrasts with findings

human rights treaty bodies.⁸⁴ There is also considerable variation in the receptivity of states. Quantitative evaluations suggest that democracies, and especially new democracies, are likely to be ‘more transparent about shortcomings, more thorough in proposing measures to address deficiencies and more responsive to committee concerns’.⁸⁵

Turning to housing rights, the Universal Periodic Review has had concrete impact in specific countries on diverse issues.⁸⁶ In the USA, it was used creatively to generate a national and international focus on endemic homelessness.⁸⁷ Amongst the UN treaty bodies, the UN Committee on Economic, Social and Cultural Rights helped halt evictions in the Dominican Republic and the Philippines.⁸⁸ Domestically, national human rights institutions in countries as diverse as Norway and Kenya have focused on evictions, but the competence of these bodies tends to be very heavily weighted towards civil and political rights, and their competence is deeply legal.⁸⁹

3.3 Legislation and policy

Turning to legislation and policy, it is often difficult to categorise what is a ‘human rights-based’ intervention. A law or policy can reflect different housing policy paradigms. However, a rights-based approach could be expected to result in clearer and enforceable entitlements, a focus on discrimination and participation, or stronger accountability mechanisms.⁹⁰ Quantitative studies show that entitlement-based laws backed by strong accountability mechanisms can be particularly effective.⁹¹ This is apparent in the showcase housing rights legislation in the field: the Scottish Homelessness Act. It operationalised the progressive realisation of the right to housing in Scotland with judicially enforceable rights. Its impact? It is somewhat contested, but most reviews indicate that the ‘Scottish approach still compares favourably internationally’, even if there are challenges with political commitment, implementation, and the quality of accountability mechanisms.⁹²

This mixed conclusion also reflects the South African situation. For example, the spectacular development of evictions jurisprudence in South Africa is largely backed by rights-based and specific legislation – Prevention of Illegal Eviction from and Unlawful Occupation of Property Act (PIE).⁹³ Yet, specific positive rights in the ESTA legislation (Extension of Security of

⁸⁴ Andreas J. Ullmann and Andreas von Staden, ‘A Room Full of ‘Views’: Introducing a New Dataset to Explore Compliance with the Decisions of the UN Human Rights Treaty Bodies’ Individual Complaints Procedures,” *Journal of Conflict Resolution* 68. No. 2-3 (2024): 543.

⁸⁵ Cosette Creamer and Beth Simmons, ‘Ratification, Reporting and Rights: Quality of Participation in the Convention Against Torture’ (2015) 37 (3) *Human Rights Quarterly* 579-608, 607.

⁸⁶ Michael White, ‘Addressing Human Rights Protection Gaps: Can the Universal Periodic Review Process Live Up to Its Promise?’ in James Gomez and Robin Ramcharan (eds), *The Universal Periodic Review of Southeast Asia* (Springer 2018)

⁸⁷ Eric S Tars and Deodonne Bhattarai, ‘Opening the door to the human right to housing: The universal periodic review and strategic federal advocacy for a rights-based approach to housing’ (2011) 45 *Clearinghouse Rev* 197

⁸⁸ Malcolm Langford (ed), *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Centre on Housing Rights & Evictions 2003).

⁸⁹ NCHR, *Criminalisation of Homelessness in Oslo: An Investigation* (Norwegian National Institution for Human Rights 2015).

⁹⁰ Jean Dreze and Amartya Sen, *Hunger and public action* (Oxford University Press 1991); UN OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development* (United Nations 2006).

⁹¹ Jody Heymann and others, ‘Data-Based Accountability Mechanisms for Human Rights: Testing a New Methodology’ (2012) 30 (3) *Nordic Journal of Human Rights* 279-96.

⁹² Isobel Anderson, ‘Delivering the Right to Housing? Why Scotland Still Needs an ‘Ending Homelessness’ Action Plan’ (2019) 13 (2) *European Journal of Homelessness* 131-59. See also the chapter in this volume on the Act’s impact.

⁹³ Marie Huchzermeyer, ‘Housing Rights in South Africa: Invasions, Evictions, the Media, and the Courts in the Cases of Grootboom, Alexandra, and Bredell’ (2003) 14 (1) *Urban Forum* 80-107.

Tenure Act), to help farm tenants gain secure tenure on farming properties, has been spectacularly unsuccessful. Mass evictions in rural areas have instead been the result. Clear entitlements, backed by courts, are thus not necessarily always a panacea.

3.4 Direct action and self-help

Housing rights have also stood at the heart of direct action by social movements and communities. Rarely do local uses of rights fully mirror constitutional or international standards. Rights discourse and tropes are mobilised when it suits. Many social movements also prefer highly noninstitutional and disruptive action repertoires,⁹⁴ turning only to more institutionalised tactics if these repertoires lose their newsworthy or mobilising novelty or are subject to state control.⁹⁵ Banik argues that legalistic human rights approaches to development are less effective in rural Africa because literacy is lower and the state is less present.⁹⁶

In the case of housing, direct action – punctuated by a vision or discourse of housing rights – has taken diverse legal and illegal forms – and far beyond marches and political mobilisation. It has included lying down before bulldozers to prevent eviction, roadblocks, and sit-ins in municipal offices over the lack of public services.⁹⁷ It has included rent strikes and community housing of undocumented migrants, the development of housing cooperatives, and cross-family schemes to provide independent community housing for children with disabilities. Rather creatively, in Pakistan, informal settlements paid for water services when they didn't exist to show a form of tenure. Failures in court cases on evictions in Kenya have been met by communities clapping in court and announcing to the media outside a victory. In many of these forms of direct action, actors were guided by the idea that housing is a basic human right that trumps existing law and policy – a form of social constitutionalism.

What has been their impact? Surprisingly, many are successful, at least in the short term. They raise the human and political price of state action or draw on creative human endeavour to provide temporary solutions. However, the extent to which they generate effects at scale and over time varies. While some action has prompted policy change, dialogue, and state financial support, it requires social movements and/or elites to scale up these types of victories.

4. How do we design?

This brief tour of the scholarship on the impact of housing rights (which is extended in this volume) leads to the final question: In light of what we know about impact, how should we think about designing a strategy to improve housing rights? When we speak about considering 'potential impact', what could that mean? How do we make housing rights matter? I conclude with three thoughts on this.

First, it is important to begin with the *end in mind*. There is a risk that in a particular context the particular assemblage of human rights tools is unsuitable – as the 'policy mobility' literature

⁹⁴ Sidney Tarrow, *The New Transnational Activism* (Cambridge University Press 2005).

⁹⁵ Tshepo Madlingozi, 'Post-Apartheid Social Movements and Legal Mobilisation' in Malcolm Langford and others (eds), *Symbols or Substance? The Role and Impact of Socio-Economic Rights Strategies in South Africa* (Cambridge University Press 2014) 92-130; Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy and Social Change* (Yale University Press 1974).

⁹⁶ Dan Banik, 'Support for Human Rights-Based Development: Reflections on the Malawian Experience' (2010) 14 (1) *The International Journal of Human Rights* 32-48

⁹⁷ Odindo Opiata, 'Litigation and Housing Rights in Kenya', in John Squires, Malcolm Langford, and Bret Thiele, *Road to a Remedy: Current Issues in Litigation of Economic, Social and Cultural Rights* (Sydney: UNSW Press and Australian Human Rights Centre, 2005): 155-166.

has demonstrated.⁹⁸ Indeed, neighbouring countries (and towns) can be remarkably different in their housing sector: think Norway vs Sweden, Kenya vs Uganda.⁹⁹ Thus, it is important to begin contextually and responsively rather than merely importing standard human rights models— a lesson that applies to any other paradigm, whether it be market-based, New Public Management-based, or social welfare-based strategies for housing.

Taking context seriously means listening to different voices on what is needed for housing rights, especially those who are its intended beneficiaries. There may be a consensus that housing rights are those enshrined in international or constitutional law – giving law a particular *expressive power*. Or it may be greater or less, minimalist or maximalist. Think about the right to minimum wage in Europe – championed by trade unions in Southern Europe but opposed by their counterparts in Northern Europe who achieve usually more through collective bargaining. Attention to context means mobilising the breadth of human rights, giving space for voice, *democratic power*, and a political constitutionalism. Interestingly, in one housing rights organisation in Canada, homeless individuals and organisations sit on the board and must approve any housing rights strategy.¹⁰⁰ Begin with the end in mind.

Second, we should ask *what has worked so far*. What is the evidence that a particular strategy has worked here or elsewhere? What is documented and researched? What is people's lived experience? What is transferable across borders and time? To be sure, it may be that such a consequentialist approach is not always appropriate. A housing rights strategy may be simply about drawing a moral line in the sand, regardless of its utility: 'When people see things and feel them and understand them as human rights issues, you claim them as rights.'¹⁰¹ However, if strategies are meant to catalyse long-term and sustainable change, some sort of evidence base is often needed. What is thus the best mix of human rights and non-human rights thinking in achieving a particular impact? Yes, there is evidence that rent regulation can work, but often only with a particular design (e.g. rent stabilisation) and under specific conditions.¹⁰²

For human rights lawyers, mobilising hard (and even soft) evidence for strategy choices is not part of the skill set inculcated in university training and even practice. One is drilled to think consequentially about second-order legal effects,¹⁰³ but little else in society, whether it is the impact of legislation, the causes of failed regulation, or the best approach to legal education. Yet, lawyers need to mobilise the wherewithal represent competent to think through the consequences with stakeholders and use existing research. Maybe the best option is not to litigate, but to lobby for legal and policy change. Or the reverse.

⁹⁸ Laura McMenzie, Ian R Cook and Mary Laing, 'Criminological policy mobilities and sex work: Understanding the movement of the 'Swedish model' to Northern Ireland' (2019) 59 (5) *The British Journal of Criminology* 1199-216.

⁹⁹ Ulf Torgersen, 'Housing: the Wobbly Pillar under the Welfare State' in B. Turner, J. Kemeny and L. Lundqvist (eds), *Between State and Market: Housing in the Post-Industrial Era* (Almqvist & Wiksell International 1987) 116-26.

¹⁰⁰ Bruce Porter, 'Claiming Adjudicative Space: Social Rights, Equality and Citizenship' in Gwen Brodsky Susan Boyd, Shelagh Day and Margot Young (ed), *Poverty: Rights, Social Citizenship and Legal Activism* (UBC Press 2007) .

¹⁰¹ Bruce Porter, 'The Crisis of ESC Rights and Strategies for Addressing It', in Squires, Langford and Thiele (n 97) 48-55.

¹⁰² Jordi Jofre-Monseny, Rodrigo Martínez-Mazza and Mariona Segú, 'Effectiveness and supply effects of high-coverage rent control policies' (2023) 101 *Regional Science and Urban Economics* 103916; Philipp Breidenbach, Lea Eilers and Jan Fries, 'Temporal dynamics of rent regulations—The case of the German rent control' (2022) 92 *Regional Science and Urban Economics* 103737.

¹⁰³ Eric Amsel, Rosanna Langer and Lynn Loutzenhiser, 'Do lawyers reason differently from psychologists? A comparative design for studying expertise' in Robert Sternberg and Peter Frensch (eds), *Complex problem solving: Principles and mechanisms* (Lawrence Erlbaum Associates, Inc. 1991) 223-50.

The final point to consider is the *complexity of the problem*. For simple housing rights problems, the solution can often involve overcoming some form of lethargy – mobilising actors and resources to address a particular obstacle or take a decisive step.¹⁰⁴ For complex problems – which have many and interdependent elements that are changing over time – there is a risk that any such concerted action will have little impact or, even worse, make things worse.¹⁰⁵

This is especially the case for interventions that engage with complex adaptive systems, which saturate much of the housing field. A complex adaptive system has been defined as including ‘diverse entities’, that ‘interact’ in an ‘interdependent’ manner, and thus ‘adapt or learn.’¹⁰⁶ Such systems are prime generators of uncertainty. Their common properties include emergence (where change is not attributable to individual elements), non-linearity with path-dependent stability through reinforcing feedback, and occasional volatility through refractive feedback patterns. In such cases, systems thinking is needed.¹⁰⁷ We need to imagine transformative incrementalism rather than quick fixes. To do this, we might identify different leverage points that are more likely to push the system in a healthy or desired direction.¹⁰⁸

Such a systems approach has been increasingly applied to fields such as homelessness. For example, empirical evidence in the US, United Kingdom, and Kenya suggests that it can be highly effective.¹⁰⁹ Using systems language, advocates have sought to convince officials to tighten eviction procedures for the poor to reduce the ‘flow’ in housing systems that increases the ‘stock’ of homelessness or even to assist the middle class to prevent an increase in housing prices for the poor in low-income and informal housing.¹¹⁰ In Finland, leverage points are also behind its widely touted success in reducing homelessness by an estimated 35%.¹¹¹ It is a ‘paradigm’ shift that puts ‘housing first’ and includes a simplification of the ‘rules’, which sought to create a staircase of options from rough sleeping to stable accommodation.

In conclusion, shedding critical light on the utility of the rights paradigm, and the conditions under which it is effective is the first step in understanding the potential impact of the right to housing. Combined with humility, it can enable us to better embrace uncertainty and explore more honestly what may work, making housing rights matter in practice.

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¹⁰⁴ Rosalind Dixon, *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age* (Oxford University Press 2023).

¹⁰⁵ Donella H Meadows, *Leverage points: Places to intervene in a system*, (1999).

¹⁰⁶ Page (n 2) 30-1; Kristof Van Assche and others, ‘The social, the ecological, and the adaptive. Von Bertalanffy’s general systems theory and the adaptive governance of social-ecological systems’ (2019) 36 (3) *Systems Research and Behavioral Science* 308-21.

¹⁰⁷ Thomas Ramovha, ‘The use of Systems Thinking for Housing Delivery in South Africa’ (2022) 5 (1) *Africa Journal of Public Sector Development and Governance* 43-64; Ray L Ison, ‘Systems thinking and practice for action research’ (2008) 2 *The Sage handbook of action research participative inquiry and practice* 139-58.

¹⁰⁸ Meadows, *Leverage points: Places to intervene in a system*.

¹⁰⁹ Breidenbach, Eilers and Fries (n 102).

¹¹⁰ COHRE (ed), *Listening to the Poor? Housing Rights in Nairobi, Kenya* (COHRE 2006).

¹¹¹ Marybeth Shinn and Jill Khadduri, ‘How Finland ended homelessness’, (2020) 22(2) *Cityscape*: 75-80.

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