

THE ROLE OF COURTS IN MAKING THE RIGHT TO HOUSING A REALITY THROUGHOUT EUROPE: LESSONS FROM FRANCE AND THE NETHERLANDS

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“Support for victims of housing rights violations in defining and asserting their rights at a personal and group level is critical. Access to decent housing is a precondition for the exercise of other fundamental rights and for full participation in society.”¹

INTRODUCTION

On May 30, 2008, for the first time, a court upheld DALO, (“*droit au logement opposable*” or “roughly translated, ‘the inalienable right to housing that a court cannot deny you’”²), a French law enacted in March 2007.³ The court ruled that in order for the state to meet its obligation to protect the right to housing, families must not merely have a place to stay for the night but an adequate home.⁴ On March 3, 2008, Namizata Fofana’s housing application was denied.⁵ The mediation committee ruled that her need for housing was not urgent because she currently had a place to live.⁶ Madame Fofana, a 26 year-old mother of

¹ Comm’r Hum. Rts for the Council of Europe., *Housing Rights: The Duty to Ensure Housing for All*, CommDH/IssuePaper (2008) 1 at 6 (Apr. 25, 2008), available at <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1370422&SecMode=1&DocId=1317422&Usage=2>.

² THE BRUSSELS JOURNAL, *Want Housing? Come to France*, June 11, 2008, <http://www.brusselsjournal.com/node/3333>.

³ WESTERN VOICES WORLD NEWS, *DALO Goes Into Effect*, June 10, 2008, <http://www.wvnnews.net/story.php?id=4910>; Marie Loison, *The Implementation of an Enforceable Right to Housing in France*, EUR. J. OF HOMELESSNESS, Dec. 2007, at 185, 189 (explaining that DALO (Bill No. 2007-290) was published in the Official Journal on March 6, 2007).

⁴ See Loison, *supra* note 3, at 190 (“DALO will cover the 6 highest-priority categories of applicant, who will in future be able to claim housing: roofless people; tenants facing eviction with no prospect of housing; people in temporary accommodation; people placed in housing considered to be substandard or unfit; people with at least one dependent child living in housing not regarded as decent; people with a disability (or with a disabled dependent) whose housing is not regarded as decent(.).”).

⁵ WESTERN VOICES WORLD NEWS, *supra* note 3

⁶ *Id.*

two and legal immigrant from Cote d'Ivoire, was living in a shelter.⁷ However, she only had permission to live in that shelter for a total of 21 months.⁸ On June 9, 2008, she and her two children would be forced to leave the shelter, and without governmental assistance, would end up on the streets.⁹ Madame Fofana appealed the administrative decision to the courts. The courts overturned the decision based on DALO, which recognizes a legally enforceable right to housing.¹⁰ Without the courts, Madame Fofana and her children would have had nowhere to turn. While France purports to support an inalienable right to housing, in this case, the government's practices did not reflect the ideals it had established in its statutes and international agreements. Judicial action was necessary to make this right a reality for the Fofana family.

While the right to housing has been recognized throughout Europe in international and regional human rights agreements, to have real significance it must be enforced nationally. This note argues that all Member States of the European Union ("EU") should give their national courts the authority to recognize the right to housing. It will examine France and the Netherlands as examples of countries that have created a justiciable right to housing specific to their culture and needs. Other Member States can also accomplish this by passing legislation to allow individuals to bring private actions in the judicial system challenging the status of their housing. By enforcing the right to housing in courts, there can be a justiciable remedy that may be upheld throughout Europe.

Part I of this note begins by looking at the international treaties and conventions that recognize the right to housing. This note outlines the definition of the "right to housing" in the international context and explains why it is an important human right. It then examines what enforcement exists at the international level and why the international community cannot adequately enforce the right to housing. Part II will explore how the right to housing is enforced at the national level in France and the Netherlands. It will study the legal structures in France and the Netherlands that have been established to create a justiciable right to housing and will look at the successes and shortcomings in each country. Finally, Part III concludes that while France and the Netherlands

⁷ *Id.*; *Droit au Logement Opposable: La Justice Fait Face à sa Première Saisine*, LE MONDE, May 20, 2008, http://www.lemonde.fr/societe/article/2008/05/15/droit-au-logement-opposable-la-justice-fait-face-a-sa-premiere-saisine_1045641_3224.html.

⁸ *Droit au Logement Opposable: La Justice Fait Face à sa Première Saisine*, *supra* note 7.

⁹ *Id.*; *Logement: Une Mère Mal-Logée Obtient d'être Prioritaire*, LA-CROIX, June 9, 2008.

¹⁰ *Droit au Logement Opposable: La Justice Fait Face à sa Première Saisine*, *supra* note 7.

have adopted legal structures that may be specific to their society and culture, the success of these structures demonstrate that it is possible to create a legally enforceable right to housing throughout Europe. In order to make the right to housing meaningful throughout the region, all European countries should attempt to protect their residents' right to housing while accounting for their respective cultures and needs.

I. RIGHT TO HOUSING IN INTERNATIONAL LAW

The right to housing has been recognized internationally in six prominent treaties: the Universal Declaration of Human Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; and the Convention Relating to the Status of Refugees.¹¹ Worldwide, nearly every country has signed the Universal Declaration of Human Rights ("UDHR"), recognizing Article 25, which states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including. . .housing."¹² The UDHR was signed in 1948 and provides the framework for the basic human rights that continue to be recognized in subsequent international agreements. While these treaties are recognized as having the force of law, they depend on national implementation and enforcement of these rights to actualize their purpose.

The right to housing has also been adopted on a regional level in Europe.¹³ The Council of Europe extended this right through the European Social Charter, the Revised Charter, and the European Convention for the Protection of Human Rights and Fundamental

¹¹ IRISH SEC., AMNESTY INT'L, COMPILATION OF PROVISIONS ON RIGHT TO HOUSING IN INTERNATIONAL HUMAN RIGHTS LAW, http://www.amnesty.ie/amnesty/upload/images/amnesty_ie/research%20and%20legal/Compilation%20of%20Right%20to%20Housing.pdf (last visited Apr. 20, 2010).

¹² Universal Declaration of Human Rights, G.A. Res. 217A, art. 25, U.N. GAOR, 3d Sess., 183rd plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>.

¹³ PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN 268 (1998). Council of Europe, European Social Charter art. 31 (revised), available at http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp; See also Christophe Golay and Melik Ozden, *The Right to Housing* (2007), available at <http://www.cetim.ch/en/documents/bro7-log-an.pdf>.

Freedoms.¹⁴ The EU has also acknowledged this right in many of its rules and regulations.¹⁵ Additionally, the Council of Europe Commissioner on Human Rights, Thomas Hammarberg, has stated it is critical to support victims of housing rights violations, because access to housing is a precondition for exercising all other fundamental rights.¹⁶

Through these international agreements, every person worldwide has an explicit right to housing. Chester Hartman explains the situation:

“Without exception, every government has explicitly recognized that adequate housing is a right under international law. Though on the surface a favorable situation, such legal recognition at the international level has rarely been transformed into effective domestic legislative and policy measures seeking to apply and implement—in good faith—international obligations relevant to housing rights. . . . No government could realistically proclaim that housing rights exist as much in fact as they do in law.”¹⁷

In reality the right to housing remains a mere textual ideal with no real timeframe to meet the stated objective of providing housing for all people. In spite of housing being a well-documented human right in international law, the United Nations estimates that worldwide there are over 100 million homeless people and over 1 billion inadequately housed.¹⁸ The most cited reason for why people are homeless is the lack of affordable housing in their various countries.¹⁹ This raises two important issues. First, what is the right to housing? Second, how does the international community expect this right to be realized?

A. THE RIGHT TO HOUSING DEFINED

To understand the meaning of the phrase “the right to housing”, it is necessary to look at how it has been interpreted by international

¹⁴ Comm’r Hum. Rts., *supra* note 1, at 8.

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 6.

¹⁷ Chester Hartman, *The Case for a Right to Housing*, 9 HOUS. POL’Y DEBATE 223, 229 (1998) available at <http://ppc.uiowa.edu/uploaded/Hartman%20—%20Case%20for%20a%20Right%20to%20Housing.pdf> (citing SCOTT LECKIE, TOWARDS AN INTERNATIONAL CONVENTION ON HOUSING RIGHTS: OPTIONS AT HABITAT II 14-15 (1994)).

¹⁸ U.N. Comm. on Econ., Soc. and Cultural Rts. [CESCR], *The Right to Adequate Housing (Art.11 (1))*: General Comment 4, ¶ 4, U.N. Doc. E/1992/23 (Dec. 13, 1991), available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument).

¹⁹ DEP’T OF CMTYS. & LOC. GOV’T, AN INTERNATIONAL REVIEW OF HOMELESSNESS AND SOCIAL HOUSING POLICY 53-54 (2007), available at <http://www.communities.gov.uk/documents/housing/pdf/reviewhomelessness.pdf>.

bodies. The International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 11 provides, “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”²⁰ Nearly 150 countries have ratified the ICESCR recognizing the right to housing.²¹ The United Nations Office of the High Commissioner on Human Rights has provided comments further explaining the right to housing recognized within the ICESCR and the steps Member States are obligated to take individually to implement the right to housing at the national level.²²

General Comment 4 to the ICESCR interprets Article 11 broadly.²³ It states that the right to housing has broad meaning beyond “the shelter provided by merely having a roof over one’s head;” it is “the right to live somewhere in security, peace and dignity.”²⁴ The ICESCR provides that the rights in the Covenant are derived from “the inherent dignity of the human person.”²⁵ Therefore, the Office of the High Commissioner argues that the right to housing should be interpreted to mean that all persons, regardless of income or access to economic resources, are entitled to housing.²⁶ The Office of the High Commissioner further posits that all people must have access to adequate housing so that they can live with dignity.²⁷ Ultimately, international human rights law defines the right to housing to mean that all people, no matter their socioeconomic status, are entitled to a home that is secure, peaceful, dignified and adequate.

Considering the number of people who lack a home or live in inadequate housing, it seems unlikely that the international community would agree to declare housing a “right” especially on such a broad scale.²⁸ In reality, this right is often simply considered a goal. However,

²⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 11 (Jan. 3, 1976) [hereinafter ICESCR], available at <http://www2.ohchr.org/english/law/pdf/cescr.pdf>.

²¹ Only 41 countries have not ratified or signed the ICESCR. U.N. Non-Governmental Liaison Service, Extracts from Human Development Balance Sheet (GB93), <http://www.un-ngls.org/orf/documents/text/go.between/ExtractsHD.htm> (last visited Feb. 12, 2010).

²² CESCR, *supra* note 18, ¶ 8.

²³ *Id.* ¶ 7.

²⁴ *Id.*

²⁵ ICESCR, *supra* note 20 at pmb1.

²⁶ CESCR, *supra* note 18, ¶ 6.

²⁷ *Id.* ¶ 7.

²⁸ *See id.* ¶¶ 4-5.

this was not how the ICESCR intended for the rights to be recognized. Article 2 of the ICESCR establishes specific steps that States party to the Covenant agreed to implement to enforce the right to housing domestically. Every Member State must take steps within their means to realize the rights listed in the ICESCR, in particular by adopting national legislation.²⁹

The UN Committee on Economic, Social and Cultural Rights and the European Committee on Social Rights have applied the limitation, “to the maximum of its available resources” to the enforcement of the right to housing.³⁰ However, each state must meet minimum core obligations, and continue to progress in providing housing.³¹ Commissioner Hammarberg stated, “any retrogression in housing rights would constitute a human rights violation.”³² This demands that countries at the very least maintain the status quo.³³

Most countries have implemented the right to housing through policy, funding the programs when possible, but failing to provide legal enforcement of the right to housing.³⁴ While not every country can afford to make housing a right, in Europe the resources exist to make housing a reality for all people. Although the market increasingly controls housing prices and supply, governments still have an obligation to protect individuals’ right to housing.³⁵ Europe has successfully funded other social welfare programs such as healthcare and education, and therefore could also allot resources to meet the housing needs of its residents.³⁶

²⁹ “Each State Party to the present Covenant undertakes to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. The States’ Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” ICESCR, *supra* note 20 at art. 2.

³⁰ CESCR, *supra* note 18, ¶ 14; See also Thomas Hammarberg, *Social Rights and the Implementation of Housing Rights*, HOMELESS IN EUR., Autumn 2008, at 5, http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf.

³¹ CESCR, *supra* note 18, ¶¶ 12-13.

³² Hammarberg, *supra* note 30.

³³ *Id.*

³⁴ Comm’n Hum. Rts., *supra* note 1, at 6.

³⁵ Hammarberg, *supra* note 30.

³⁶ See MARK KLEINMAN, HOUSING, WELFARE AND THE STATE IN EUROPE 1 (Edward Elgar ed., 1996).

B. WHY THE RIGHT TO HOUSING?

European governments have adopted international instruments recognizing the right to housing, but many have failed to address the right to housing at the national level.³⁷ However, by recognizing housing as an international right, each state has agreed that the right to housing is more than mere rhetoric. Human rights arise from the idea that people have responsibilities to others and further articulate the ethical values that should direct society.³⁸ Additionally, international law, through the adoption of human rights, has recognized the need to “hold governments accountable to certain ethical norms of behavior.”³⁹

Governments have acknowledged that they have a duty to ensure that all citizens have adequate housing by signing and ratifying the international treaties such as the ICESCR. As a right, each and every person is entitled to housing. Housing plays a central role in society and it has a severe effect on individuals when it is denied. Access to adequate housing is critical to upholding the right to human dignity, because people cannot be left in situations where they have nothing and they lack any recourse or assistance.⁴⁰ By ratifying the ICESCR, UDHR and regional agreements, governments have accepted the duty to provide the right to housing, and further, the dignified housing that every human deserves.

Individuals who lack housing are often forced to seek shelter wherever they can find it. Across Europe, there are many “squatters,” or homeless people who find “illegal” shelter in abandoned buildings.⁴¹ Individuals forced to find shelter in such precarious situations are criminalized and subject to unsafe living conditions.⁴² Because abandoned buildings are not maintained, squatters living there often dwell in unsanitary and unsafe conditions.⁴³ Those who do not find

³⁷ Comm’r Hum. Rts., *supra* note 1, at 6.

³⁸ See LAUREN, *supra* note 13, at 1-2.

³⁹ *Id.* at 2.

⁴⁰ Albie Sachs, *Enforcement of Social and Economic Rights*, 22 AM. U. INT’L L. REV. 673, 680-81 (2007).

⁴¹ Comm’r Hum. Rts., *supra* note 1, at 5. See also, e.g., *Paris Police Move Squatters Out*, BBC NEWS, Sept. 2, 2005, <http://news.bbc.co.uk/2/hi/europe/4208018.stm> (last visited Feb. 13, 2010).

⁴² See, e.g., *Paris Police Move Squatters Out*, *supra* note 41.

⁴³ See, e.g., *id.* See, e.g., Kristyn Hartman, *Squatters Take Up Residence in Foreclosed Homes*, CHICAGO TRIB., Dec. 20, 2009,

<http://cbs2chicago.com/local/squatters.foreclosure.homes.2.1382417.html>; See also World Health Org., *Intersectoral Action for Health* 104-108 (1986) available at [whqlibdoc.who.int/publications/1986/9241560967_\(chp4\).pdf](http://whqlibdoc.who.int/publications/1986/9241560967_(chp4).pdf); See Marianne Kjellén, *Health*

shelter are forced to stay on the streets, where they are often exposed to the harsh elements.⁴⁴ An individual needs adequate housing for shelter from harsh weather, to receive clean water, to be free from toxic elements (such as lead), and to maintain hygiene.⁴⁵

Housing is a basic need that is closely intertwined with public health concerns. Studies have found that adequate housing helps individuals maintain good health;⁴⁶ therefore, governments should realize that public housing is key to the promotion of public health. A Danish study found that homeless people have a mortality rate 3.8 times that of those who have adequate housing.⁴⁷ This poses a major concern for governments that want to control outbreaks of disease and lower medical costs.

The right to housing is also important because it is most frequently denied in European countries to ethnic minorities, women, and children.⁴⁸ The right to housing recognizes that people should not be denied housing due to systemic barriers that keep minorities and disenfranchised individuals from being able to afford basic necessities.⁴⁹ While some people will refuse to work if guaranteed housing, there will also be the women who have three children, work a regular job, and still cannot afford housing.⁵⁰ Due to systemic barriers, many people can never earn enough to afford the basic costs of housing, food, and other essentials. By recognizing the right to housing, States acknowledge that this is unacceptable.

and Environment (2001), available at <http://www.oecd.org/dataoecd/48/8/35233164.pdf>; United Nations Cyber School Bus, *Global Report on Human Settlements*, <http://www.un.org/cyberschoolbus/habitat/background/bg2.asp> (last visited May 19, 2010).

⁴⁴ World Health Org., *supra* note 43, at 104-108; *see also* Kjellén, *supra* note 43; United Nations Cyber School Bus, *supra* note 43.

⁴⁵ Marcus Powlowski, *Making Public Health Motivated Evictions Consistent with the Right to Housing*, 9 QUINNIPIAC HEALTH L. J. 271, 280-81 (2006).

⁴⁶ *See id.* at 281-83.

⁴⁷ *Id.* at 289.

⁴⁸ Ioannis Dimitrakopoulos, *Housing Rights in the European Union*, HOMELESS IN EUR., Autumn 2008, at 12, http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf; U.N. High Comm'r for Hum. Rts., Sub-Comm. on Prevention of Discrimination & Prot. of Minorities, *Women and the Right to Adequate Housing and to Land and Property*, Res. 1997/19 (Aug. 27, 1997), available at http://www.unhabitat.org/downloads/docs/1378_44801_WR8.htm.

⁴⁹ ICESCR, *supra* note 20 at art. 2.

⁵⁰ The case of Namizata Fofana demonstrates the unique situations in which someone and their family becomes homeless. *Droit au logement opposable: premier recours*, L'EXPRESS.FR, May 15, 2008, http://www.lexpress.fr/actualite/societe/droit-au-logement-opposable-premier-recours_501813.html.

While the international community typically views housing as a socioeconomic right, it also encompasses the civil and political right to approach a court and seek redress when the right is violated.⁵¹ Many countries have argued that it is not possible to provide housing to every European citizen because they lack the financial resources.⁵² However, signing an international agreement, enacting a law, or making a constitutional right alone clearly does not fix the problem. The national laws and enforcement of the right in the Netherlands and France show that it is possible to enforce the right to housing in the national courts without overwhelming the judicial system. A right by its very nature is supposed to be enforced by the courts. By allowing the courts to do their job by interpreting and applying meaning to the right of housing, they can ensure that this right is upheld for all people.

C. INTERNATIONAL ENFORCEMENT OF THE RIGHT TO HOUSING

While the right to housing has been recognized repeatedly by the international community, like many international laws and rights, it has not been widely enforced.⁵³ The United Nations does not have a court to hear individual complaints for violations of human rights.⁵⁴ This is largely because, as Hatem Kotrane, Independent Expert to the Committee on Economic, Social and Cultural Rights, explained, “States — particularly the poorest States — cannot be held solely responsible for the difficulties they encounter in meeting the vital needs of their populations. . . . How. . . are the provisions of the Covenant to be translated into clearly defined commitments so that individual breaches

⁵¹ See, e.g., Ralph Wolf, *Participation in the Right of Access to Adequate Housing*, 14 TULSA J. COMP. & INT'L L. 269, 282 (2007).

⁵² In South-Eastern Europe, governments have argued that they cannot provide better or more housing due to a lack of resources. ISKRA DANDOLOVA, EXECUTIVE SUMMARY OF THE REPORT ON POLICY ISSUES ON SOCIAL HOUSING IN SOUTH-EASTERN EUROPE, 5 (Apr. 23-24, 2003), available at <http://web.archive.org/web/20070715170801/http://www.seerecon.org/housing/documents/c20030621/policyissues.pdf>.

⁵³ Comm'r Hum. Rts., *supra* note 1, at 7-8.

⁵⁴ An individual can file a complaint and request that the UN committee in charge of enforcing the right monitors the situation, but the UN can often not provide remedies that would benefit the individual. Additionally, UN enforcement bodies require an exhaustion of domestic remedies before they will take a case. Stop Violence Against Women, Enforcement Mechanisms in the United Nations, http://www.stopvaw.org/Enforcement_Mechanisms_In_The_United_Nations.html (last visited Feb. 13, 2010).

of them can give rise to remedies . . . ?”⁵⁵ Although the Committee has recognized the need to create a justiciable right, Kotrane had misgivings about adjudicating violations of the ICESCR except in situations involving “gross, unmistakable violations” of the rights in the Covenant.⁵⁶

Regionally, there is greater enforcement of the right to housing. The Council of Europe has given the European Court of Human Rights authority to adjudicate violations of the European Convention on Human Rights (ECHR).⁵⁷ In egregious cases of poor housing, the Court has recognized an implicit right to housing under the ECHR.⁵⁸

In the case of *Moldovan and Others v. Romania*, the European Court found that the petitioners’ living conditions were so horrible that they interfered with human dignity.⁵⁹ Due to the destruction of their homes by government officials, the petitioners, which included children and the elderly, were subjected to live in “inhuman conditions in cellars, hen houses, and stables.”⁶⁰

Additionally, the Court found that the racially discriminatory manner by which their grievances were handled violated the ECHR.⁶¹ Specifically, the Court found that by failing to compensate citizens for the homes destroyed by government officials, the Romanian government violated both Article 3 of the ECHR which provides that no one shall be

⁵⁵ Michael J. Dennis and David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should there be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?* 98 AM. J. INT’L L. 462, 470 (July 2004).

⁵⁶ *Id.*

⁵⁷ Comm’r Hum. Rts., *supra* note 1, at 9-10.

⁵⁸ *Moldovan and Others v. Romania*, App. Nos. 41138/98 and 64320/01, Eur. Ct. H.R. (June 3, 2003).

⁵⁹ In 1993 a riot occurred in Hădăreni, Romania in response to the death of a non-Roma who was involved in a bar fight with 3 Romas. Venting their anger against the entire Roma population, a crowd began to burn all Roma homes in the town. It was alleged that the police were the leading instigators of the attacks. In all 13 homes and vast amounts of personal property were destroyed by the mob. The government allocated money to rebuild the homes, but only four homes were rebuilt as of 2003, and the victims had received no financial compensation. Those homes that were rebuilt were poorly constructed and largely uninhabitable. *See generally* *Moldovan and Others v. Romania* (No. 2), App. Nos. 41138/98 and 64320/01, Eur. Ct. H.R. (July 12, 2005).

⁶⁰ *Id.* ¶ 103.

⁶¹ The entire judicial process was tainted by racial comments made by public officials ranging from the police to the mayor. Although overwhelming evidence was presented incriminating the police and their involvement in the riot, the military prosecutor refused to prosecute the police officers. *Id.* ¶¶ 102-107. The ECHR ruled that procedures and justice were ignored because of the ethnicity of the victims and this amounted to discrimination. *Id.* ¶¶ 111-113.

subjected to degrading treatment and Article 8 which provides that everyone has the right to respect for his home.⁶²

While this is a groundbreaking decision in terms of recognizing and enforcing the right to housing, the case only recognized the most severe cases of inadequate housing.⁶³ Therefore, the precedent created only applies to the most egregious cases of inadequate housing in Europe. The Court failed to define a standard of housing that the Romanian government (and other countries) would have to meet to fulfill its obligations under the ECHR.⁶⁴ The Court's remedies were also limited. It ruled that the state of Romania had to pay damages to each of the petitioners, but it was unable to create any systemic change within the country.⁶⁵ Romanian citizens, as individuals, still must appeal violations of the right to housing to the European Court of Human Rights.⁶⁶ Their ability to petition the Court provides them only limited protection, as the Court has jurisdiction over the entire European Union, can only hear cases after all domestic legal avenues have been exhausted, and has an overwhelming case load.⁶⁷

The Council of Europe has also given authority to the European Committee of Social Rights (ECSR) to adjudicate violations of the European Social Charter and the Revised Charter in all Member States.⁶⁸ In 2005, the European Federation of National Organizations Working with the Homeless (FEANTSA) filed a complaint against France for its violations of the right to housing under the Charter and Revised

⁶² *Id.* ¶¶ 102-114.

⁶³ The circumstances did not deal with individuals who lacked housing for personal reasons. In *Moldovan v. Romania* the court ruled that the government had a positive duty to replace the housing because of government officials direct involvement in the destruction of the victims' housing. *Id.* ¶¶ 103-107.

⁶⁴ *See generally id.*

⁶⁵ *Id.* ¶ 141-153.

⁶⁶ *See* European Court of Human Rights, *European Court of Human Rights: Questions and Answers*, http://www.echr.coe.int/NR/ronlyres/37C26BF0-EE46-437E-B810-EA900D18D49B/0/ENG_QR.pdf (last visited May 19, 2010) (explaining the procedure for seeking recourse for a violation of a right in the ECHR at the European Court of Human Rights).

⁶⁷ *Id.*; *See Profile: European Court of Human Rights*, BBC NEWS, Jan. 15, 2010, http://news.bbc.co.uk/2/hi/europe/country_profiles/4789300.stm; *See also* Council of Europe, European Court of Human Rights, http://www.coe.int/t/dc/files/themes/cedh/default_EN.asp (last visited May 19, 2010) (arguing that with more than 103,000 cases pending before the European Court of Human Rights at the end of 2007, the Court is in danger of collapsing).

⁶⁸ Council of Europe, European Social Charter, http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp (last visited Feb. 12, 2010).

Charter.⁶⁹ Article 31 of the European Social Charter provides the most explicit right to housing within Europe. It states that everyone has the right to housing and that each country needs to take steps to provide adequate housing, reduce homelessness, and provide housing to those who cannot afford it.⁷⁰

In *FEANTSA v. France*, the ECSR found that France violated Article 31 by not making sufficient progress toward eradicating substandard housing, failing to pass legislation to prevent evictions, having an insufficient supply of social housing, and having a poor social housing allocation system.⁷¹ The decision in *FEANTSA v. France* is significant because ECSR ruled that to meet the obligations under Article 31 a State need not necessarily show “results,” but must at least take “a practical and effective, rather than purely theoretical” approach to meeting them.⁷²

While both the European Court of Human Rights and the ECSR are effective, more enforcement is needed at the national level. The international organizations and courts only have the jurisdiction to hear complaints against European States as a whole about large-scale violations.⁷³ National courts must have the ability to hear housing rights cases. The next section discusses how states adjudicate this right at the national level, and specifically analyzes how the Netherlands and France have taken steps toward making housing an enforceable right.

⁶⁹ FEANTSA v. France, Complaint No. 39/2006, Eur. Comm. on Soc. Rts. (Mar. 19, 2007) available at http://www.feantsa.org/files/housing_rights/Instruments_and_mechanisms_relating_to_the_right_to_housing/Collective%20complaints/Report%20FEANTSA%20to%20CM.pdf

⁷⁰ Article 31 Part I holds, “Everyone has the right to housing.” Article 31 Part II states, “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. To promote access to housing of an adequate standard; 2. To prevent and reduce homelessness with a view to its gradual elimination; 3. To make the price of housing accessible to those without adequate resource.” Eur. Soc. Charter art. 31 (revised), available at <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/English.pdf>.

⁷¹ FEANTSA v. France, *supra* note 69, at 41.

⁷² Padraic Kenna, *International Instruments on Housing Rights*, HOMELESS IN EUR., Autumn 2008, at 4, http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf

⁷³ See, e.g., Council of Europe, European Committee of Social Rights (ECSR), http://www.coe.int/t/dghl/monitoring/socialcharter/ECSR/ECSRdefault_en.asp (last visited Feb. 13, 2010); Human Rights Education Associates, *European Human Rights System*, http://www.hrea.org/index.php?base_id=143 (last visited Feb. 27, 2009).

II. ENFORCING THE RIGHT TO HOUSING AT THE NATIONAL LEVEL

Housing must continue to be recognized and valued as a human right at the international level. For affordable housing to become a reality for all people, it must also be enforced at the national levels. Article 2 of the ICESCR recognized the need for action at the national level to make the right to housing a reality.⁷⁴ While international law can be powerful, individual governments recognize the need to implement and enforce human rights at the national level.⁷⁵ International agreements become binding as law when a defined number of States first agree to accept the law by their own free will and then agree to the obligations it contains.⁷⁶

The Office of the High Commissioner in their General Comments to Article 11 of the ICESCR identified steps that individual countries should take to implement the right to housing. First, the Office of the High Commissioner argued that national governments should provide legal security of tenure.⁷⁷ By legal security of tenure, they meant that people would have legal protection against forced eviction, harassment, and other threats.⁷⁸ The specific method of enforcing these legal protections was left to the States, but if the States followed the guidance of the Office of the High Commissioner, every State would offer the same basic protection.⁷⁹

Second, the High Commissioner argued that nations should implement the right to housing by ensuring affordability.⁸⁰ Affordability means that a person can still afford other basic necessities after paying for housing.⁸¹ States must subsidize the cost of housing when there is not adequate, affordable housing available to families of certain income levels.⁸² And in the most far-reaching step in making housing affordable, the Committee stated that States should protect tenants against

⁷⁴ ICESCR, *supra* note 20 at art. 2.

⁷⁵ LAUREN, *supra* note 13 at 257.

⁷⁶ *Id.*

⁷⁷ CESC, *supra* note 18 ¶ 8(a).

⁷⁸ *Id.*

⁷⁹ *Id.* ¶ 19.

⁸⁰ *Id.* ¶ 8(c).

⁸¹ *Id.* “The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual income on housing.” U.S. Dep’t of Hous. & Urb. Dev., *Affordable Housing*, <http://www.hud.gov/offices/cpd/affordablehousing/> (last visited Feb. 13, 2010).

⁸² CESC, *supra* note 18 ¶ 8(c).

unreasonable rent levels or rent increases.⁸³ As for legal remedies, the General Comment also suggested: court-issued injunctions stopping evictions or demolition of housing; financial compensation for illegal evictions; and, formal complaints against landlords acting illegally.⁸⁴

The next two sections look at how the right to housing has been enforced in Europe. Although there are other countries that have passed national laws recognizing the right to housing,⁸⁵ the Netherlands and France have had success at legally enforcing the right to housing in their court systems. The Netherlands has long-established housing laws and tribunals upholding a nationally recognized right to housing for all Dutch citizens.⁸⁶ In contrast, France is in the early stages of creating a justiciable right to housing; nevertheless, it has taken significant steps in a relatively short period of time.⁸⁷

A. THE NETHERLANDS

Although a rather small European country,⁸⁸ the Netherlands has one of the most impressive housing policies in Europe.⁸⁹ The Netherlands has a history of being a leader in providing the right to housing.⁹⁰ While many countries have recently adopted legislation to enforce the right to housing, the Netherlands adopted its first housing legislation creating social housing at the turn of the 20th century with the Housing Act of 1901.⁹¹ Additionally, the Netherlands was one of the first European

⁸³ *Id.*

⁸⁴ *Id.* ¶ 17.

⁸⁵ In particular, South Africa has taken action following the 2000 decision of its Constitutional Court in the *Grootboom* case. See Richard J. Goldstone, *Foreward*, in *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD* vii, x (Varun Gauri & Daniel M. Brinks eds., 2008).

⁸⁶ See generally ANDRE OUWEHAND & GELSKE VAN DAALEN, *DUTCH HOUSING ASSOCIATIONS: A MODEL FOR SOCIAL HOUSING* (2002).

⁸⁷ WESTERN VOICES WORLD NEWS, *supra* note 3.

⁸⁸ There were 15,848,000 inhabitants in the Netherlands in 2000. OUWEHAND & VAN DAALEN, *supra* note 86, at 3. The CIA World Factbook estimates the current population to be 16,715,999. CIA, *The World Factbook—Netherlands*, <https://www.cia.gov/library/publications/the-world-factbook/geos/nl.html> (last visited Feb. 15, 2010).

⁸⁹ OUWEHAND & VAN DAALEN, *supra* note 86, at 2.

⁹⁰ 36% of the total housing in the Netherlands is social housing. The next country is Denmark, which has only 19% social housing. *Id.*

⁹¹ SOCIAL HOUSING IN EUROPE 132-33 (Christine Whitehead & Kathleen Scanlon eds., July 2007), available at <http://www.lse.ac.uk/collections/LSELondon/pdf/SocialHousingInEurope.pdf>.

countries to include the right to housing in its Constitution.⁹² This section looks at the success the Netherlands has had in enforcing the right to housing and specifically at the legal mechanisms the government has used to enforce the right.

1. LEGAL ROOTS FOR DUTCH SOCIAL HOUSING

The Netherlands is a prosperous country with low unemployment, and its residents enjoy an average disposable income of 22,600 euros.⁹³ However, housing has always been a challenge for the country due to its high population density.⁹⁴ The Netherlands has 380 inhabitants per km², and the population is growing due to increased immigration.⁹⁵ To meet the need for housing, the Netherlands has built a large supply of social housing; over thirty percent of all housing in the country is social housing.⁹⁶ While social housing in many countries is created to meet the needs of the impoverished, in the Netherlands the middle class also occupies social housing units.⁹⁷ Social housing has roots in Dutch culture and is not stigmatized in the Netherlands as it is in other European countries.⁹⁸ Social housing in the Netherlands includes dwellings that are owned by housing associations, municipal owned housing associations, or non-profit agencies that build and manage the rental units for low and middle-income households.⁹⁹ These housing associations make the Netherlands' housing policy rather unique.¹⁰⁰ The housing associations are independent non-profit organizations that

⁹² Grondwet voor het Koninkrijk der Nederlanden (Constitution of the Kingdom of the Netherlands), GW. art. 22 cl. 2, *available in English at* http://www.servat.unibe.ch/icl/nl00000_.html.

⁹³ OUWEHAND & VAN DAALEN, *supra* note 86, at 3 (The Netherlands is "prosperous" as measured by their GNP of 355 billion euros.).

⁹⁴ *Id.* at 5.

⁹⁵ *Id.*; Paul Boelhouwer, Harry van der Heijden & Hugo Priemus, *The Netherlands*, in HOUSING POLICY IN EUROPE 84, 85 (Paul Balchin ed., 1996).

⁹⁶ The Netherlands has the largest percentage of social housing of any country in Europe. ECONOMIC COMMISSION FOR EUROPE, GUIDELINES ON SOCIAL HOUSING: PRINCIPLES AND EXAMPLES 15 (2006), http://www.unece.org/hlm/prgm/hmm/social%20housing/ECE_HBP_137%20Social%20Housing%20final.pdf; OUWEHAND & VAN DAALEN, *supra* note 86, at 2.

⁹⁷ OUWEHAND & VAN DAALEN, *supra* note 86, at 3-4.

⁹⁸ *Id.* at 2-3.

⁹⁹ *Id.* at 3.

¹⁰⁰ *Id.* at 4. However, some commentators have likened Dutch housing associations to British housing associations. Henk Visscher, Harry van der Heijden & Linda Sheridan, *Netherlands*, in HOUSING & URB. POL'Y STUD.: THE CONTROL PROMOTION OF HOUSING QUALITY IN EUROPE: PART I: COUNTRY MONOGRAPHS 121, 121 (Linda Sheridan ed., 2001).

operate within a legal framework set up by the government.¹⁰¹ Independent housing associations were incorporated into the Dutch housing laws over 100 years ago.¹⁰²

The Housing Act of 1901 created housing associations, and authorized the State to support them financially.¹⁰³ Although largely independent, the associations are funded and regulated by the State to ensure that they meet national housing needs and increase the supply of affordable housing.¹⁰⁴ Traditionally, the housing associations received government financing for the buildings themselves.¹⁰⁵ However, throughout the years, the associations have increasingly financed the buildings on their own; the government now provides individual subsidies to families that cannot afford the market rate rents.¹⁰⁶ To make housing affordable, the Dutch government subsidized the rent for approximately one-third of tenants in 2000.¹⁰⁷

The 1997 Housing Allowance Act (*Huursubsidiewet*) regulates housing allowances.¹⁰⁸ One million Dutch households receive a housing allowance.¹⁰⁹ The housing allowance is an entitlement program, meaning that all qualifying tenants who apply for the allowance receive it.¹¹⁰ Approximately seventy percent of all eligible tenants participate in the program.¹¹¹ Rent stabilization makes the program affordable for the Dutch government. Rents are set each year at the statutory limit by the Minister of Public Housing, therefore the government will never have to subsidize an unreasonable rent, as it would have to if the rents were liberalized.¹¹² On average each government subsidy is for 130 euros each month or about 40 percent of the average rent.¹¹³ The Dutch government

¹⁰¹ OUWEHAND & VAN DAALEN, *supra* note 86, at 4.

¹⁰² *Id.* at 26.

¹⁰³ *Id.* at 26-27.

¹⁰⁴ *Id.* at 27.

¹⁰⁵ *Id.* at 81-82.

¹⁰⁶ *Id.* at 82.

¹⁰⁷ *Id.* at 45.

¹⁰⁸ Hugo Priemus, *Dutch Housing Allowances: Social Housing at Risk*, 28 INT'L J. URB. & REG'L RES. 706, 706 (2004).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 707.

¹¹¹ Hugo Priemus, Peter A. Kemp & David P. Varady, *Housing Vouchers in the United States, Great Britain, and the Netherlands: Current Issues and Future Perspectives*, 16 HOUS. POL'Y DEBATE 575, 582 (2005).

¹¹² OUWEHAND & VAN DAALEN, *supra* note 86, at 42-43.; Priemus, *supra* note 111, at 709-711.

¹¹³ OUWEHAND & VAN DAALEN, *supra* note 86, at 45.

saves approximately 250 million euros each year due to rent stabilization.¹¹⁴

2. QUASI-JUDICIAL ENFORCEMENT OF THE RIGHT TO HOUSING

The Netherlands is not the only country that runs its housing allowances as an entitlement program. Denmark and Sweden also provide “near universal access to social housing.”¹¹⁵ However, in the Netherlands, tenants additionally have standing to challenge unreasonable rents through the Rent Tribunal Act.¹¹⁶

According to the Rent Tribunal Act (*Wet op de Huurcommissies*), if a tenant chooses not to accept the rent set by his landlord, the tenant can ask the Rent Tribunal to set the rent.¹¹⁷ The Rent Tribunal then considers the property’s size and quality, and allots housing points based on these factors.¹¹⁸ The number of points that a housing unit receives determines the reasonable rent that the Rent Tribunal sets for the unit.¹¹⁹ The Minister of Public Housing, guided by the statute, sets the maximum rent for each point value.¹²⁰ If the Rent Tribunal sets a reasonable rent that exceeds this maximum, it is automatically lowered to the statutory maximum.¹²¹

Additionally, the Rent Tribunal Act mandates that rent can only be increased for inflation once a year by an amount set by the Minister of Public Housing.¹²² The rent can be reduced mid-tenancy if a defect occurs to the unit that lowers the number of points the housing would receive and therefore lowers the reasonable rent.¹²³ While rent tribunals

¹¹⁴ Dutch housing associations have indicated that they would pay up to 250 million euros annually to the government to help cover additional public expenditures if rents are liberalized. Priemus, Kemp & Varady, *supra* note 111, at 592.

¹¹⁵ SOCIAL HOUSING IN EUROPE, *supra* note 91, at 19.

¹¹⁶ Dolf Rueb & Sharon Kaufmann, *The Netherlands*, 4, <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawNetherlands.pdf> (last visited Feb. 11, 2010); *See, e.g.*, *Uitvoeringswet huurprijzen woonruimte* (Implementation of Housing Rents) Nov. 21, 2002, available at http://wetten.overheid.nl/BWBR0014315/geldigheidsdatum_20-05-2010 (last visited May, 19 2010) (a copy of an Act passed on Nov. 21, 2002 that provides an explanation of rent tribunals).

¹¹⁷ Rueb & Kaufmann, *supra* note 116, at 4.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ OUWEHAND & VAN DAALEN, *supra* note 86, at 42.

¹²¹ Rueb & Kaufmann, *supra* note 116, at 4.

¹²² OUWEHAND & VAN DAALEN, *supra* note 86, at 42-43.

¹²³ Rueb & Kaufmann, *supra* note 116, at 30.

are not courts in the traditional sense, as adjudicatory bodies their decisions have the weight of law and are reviewable by the courts.¹²⁴

One problem with the Dutch model is the freedom of the housing associations to dictate the nation's housing policy. The housing associations receive government funds to supply large amounts of affordable housing, but the method of supplying this housing is not heavily regulated.¹²⁵ Recently, the Dutch Housing Minister has suggested limiting the housing associations' independence due to scandals among governors of the associations.¹²⁶ While the housing associations have increased the supply of affordable housing throughout the country, the Dutch government has learned the importance of holding them accountable for their actions, particularly the expenditure of government funds. Hopefully, the Housing Minister's proposals will curtail the corruption that has recently emerged from within the associations and improve the work they do for the country.¹²⁷

The Netherlands serves as one model for other countries seeking to make the right to housing justiciable. The Netherlands has taken steps within its economic resources to uphold the right to housing. First, the Housing Allowance Act provides a way that all those in need can get the financial assistance to find housing.¹²⁸ Second, the Rent Tribunal Act empowers citizens to challenge unreasonable rents.¹²⁹ These clearly articulated rights guarantee citizens affordable housing and make it possible for Dutch courts to interpret the right to housing broadly.¹³⁰

¹²⁴ TREVOR BUCK, EUROPEAN METHODS OF ADMINISTRATIVE LAW REDRESS: NETHERLANDS, NORWAY AND GERMANY 5-7 (Nov. 2004), available at http://www.dca.gov.uk/research/2004/2_2004.htm.

¹²⁵ OUWEHAND & VAN DAALEN, *supra* note 86, at 44.

¹²⁶ The former chief of the housing corporation Rochdale, Hubert Möllenkamp, is currently under criminal investigation for wrongfully awarding himself a higher retirement pay and using company money to pay for other personal expenses. Additionally, 130 of the housing corporations governors have held their posts longer than the maximum twelve-year term, and seven have held it for over 20 years. *Scandals Continue in Dutch Housing Corporations*, EXPATICA, June 13, 2009, http://www.expatica.com/nl/news/dutch-news/Scandals-continue-in-Dutch-housing-corporations_53541.html.

¹²⁷ *See id.*

¹²⁸ Priemus, *supra* note 108, at 706.

¹²⁹ Rueb & Kaufmann, *supra* note 116, at 4.

¹³⁰ *See id.*

B. FRANCE

The situation in France is more complicated than in the Netherlands. To begin with, France is significantly larger with 56.6 million inhabitants.¹³¹ However, the population density is much lower than the Netherlands, at only 108 people per km² in 2002.¹³² Additionally, France has only recently recognized the importance of enforcing the right to housing. In fact, France took these recent steps only after being reprimanded by the European Committee for Social Rights for violating the right to housing in the European Social Charter.¹³³ This section starts with the history of the housing laws in France that led to the adoption of DALO, the legislation that gave the courts authority to enforce the right to housing. It then looks at the specifics of DALO and why this legislation is significant.

1. BEFORE DALO: HOUSING IN FRANCE

In France, prior to the passage of DALO, the national government had minimal control over public housing.¹³⁴ Emphasis was placed on homeownership rather than rental housing; however, homeownership was not a possibility for the poorest individuals.¹³⁵ In 1993, the rented social housing sector only consisted of 17.1 percent of the housing stock in the country.¹³⁶ Additionally, over one percent of the entire population (627,000 individuals) was homeless due to the lack of affordable housing.¹³⁷ The government took limited actions to meet the demand of people who needed homes.¹³⁸

Padraic Kenna argues that the French had many laws prior to 2007 that purported to uphold the right to housing, but lacked meaningful

¹³¹ Barry Goodchild, Laurence Bertrand, Linda Sheridan & Sophie Rousseau, *France*, in HOUSING AND URBAN POLICY STUDIES: THE CONTROL AND PROMOTION OF HOUSING QUALITY IN EUROPE 29, 29 (L. Sheridan ed., 2001).

¹³² Encyclopedia of the Nations, France - Population, <http://www.nationsencyclopedia.com/Europe/France-POPULATION.html> (last visited Feb. 12, 2010).

¹³³ FEANTSA v. France, *supra* note 69, ¶ 42.

¹³⁴ Maurice Blanc & Laurence Bertrand, *France*, in HOUSING POLICY IN EUROPE. 125, 145 (Paul Bachin ed., 1996).

¹³⁵ *Id.* at 125-26.

¹³⁶ *Id.* at 126.

¹³⁷ *Id.* at 130.

¹³⁸ *Id.* (explaining that the government was "cautiously considering" their next actions).

enforcement.¹³⁹ In 1990, the French government passed the Act on the Implementation of the Right to Decent Housing (*Loi Besson*), which required local authorities to design a program that would meet the housing needs of disadvantaged persons.¹⁴⁰ However, the government failed to meet the requirements set in the Act.¹⁴¹ As of 1994, the government had only built 10,000 housing units, far short of the minimum 30,000 units per year the Act required within five years.¹⁴²

In 2005 FEANTSA (*la Fédération Européenne d'Associations Nationales Travaillant avec les Sans-Abri* or translated the European Federation of National Organizations Working with the Homeless) asked the European Social Committee to find France in violation of Article 31 of the Revised Social Charter.¹⁴³ FEANTSA argued that France failed to ensure that its residents had the right to housing and that it had made inadequate attempts to reduce the number of homeless people and had decreased its funding for social housing.¹⁴⁴ The Committee heard the complaint and decided that France had violated Article 31.¹⁴⁵ The Committee found France in violation of Article 31 for failing to provide an adequate supply of affordable housing, because of the sheer number of homeless living in the country,¹⁴⁶ and because of the conditions of public housing.¹⁴⁷ The Committee was responding only to violations that had occurred up to 2006 when the complaint was filed.¹⁴⁸ However, it acknowledged that since the complaint had been filed, France has made huge strides toward meeting its obligation to ensure that all its citizens have a meaningful right to housing.¹⁴⁹ Most importantly, the Committee lauded the new law, DALO, and its potential effect on the right to housing and the number of homeless individuals in France.¹⁵⁰

¹³⁹ Padraic Kenna & Marc Uhry, *How the Right to Housing Became Justiciable in France* 1, http://www.feantsa.org/files/housing_rights/art31final.doc (last visited Feb. 2, 2010).

¹⁴⁰ Blanc & Bertrand, *supra* note 134, at 130.

¹⁴¹ *Id.* at 131.

¹⁴² *Id.*

¹⁴³ FEANTSA v. France, *supra* note 69, ¶ 17; Habitat International Coalition, In Defense of Place and Livelihood, http://campaign.hic-net.org/eng_worldefforts.asp (last visited Feb. 2, 2010).

¹⁴⁴ FEANTSA v. France, *supra* note 69, ¶ 17.

¹⁴⁵ *Id.* ¶ 81.

¹⁴⁶ There are an estimated 100,000 homeless in France. *France Plans Legal Right to Housing*, AL JAZEERA, Jan. 4, 2007, <http://english.aljazeera.net/news/europe/2007/01/20085251262664633.html>.

¹⁴⁷ FEANTSA v. France, *supra* note 69, ¶¶ 78-81.

¹⁴⁸ *Id.* ¶ 1.

¹⁴⁹ *Id.* ¶ 140.

¹⁵⁰ *Id.*

In 2007, the French legislature responded to the then-ongoing *FEANTSA* proceedings and social activist protests by proposing a new bill that would ultimately become DALO.¹⁵¹ In the winter of 2007, homeless activist groups like Children of Don Quixote erected tents in Paris to call attention to the homelessness issue in the country and urge officials to respond.¹⁵² While the law is far from perfect, it was an attempt to respond to international criticism and national protests by mandating that the government live up to its promises regarding social housing.¹⁵³

2. AFTER DALO: HOUSING IN FRANCE

In May 2008, the French courts for the first time upheld the right to housing and overturned what they determined to be an unlawful denial of a housing application.¹⁵⁴ As a result of the decision, the Fofana family's application was accepted and they were granted permanent housing.¹⁵⁵ When the law was used to enforce Namizata Fofana's right to housing in May 2008, the Minister for Housing, Christine Boutin, commented that this legal decision demonstrated that the relevant new laws of March 2007 were working: "This is evidence that the law works, despite criticism that the right to sue for housing would turn out to be too complicated."¹⁵⁶ While Minister Boutin's reflection stemmed from only one case, the Fofana case demonstrates that violations of housing rights can be enforced in the French courts.

DALO is modeled on Scotland's legislation that created a court-enforceable right to housing and which, prior to DALO, was recognized as the most far-reaching legislation of its type in Europe.¹⁵⁷ A major reason that the French law is compared to the Scottish law is that it

¹⁵¹ *French Bill Would Give Homeless the Legal Right to Permanent Housing*, INT'L HERALD TRIB. Feb. 15, 2007, available at <http://web.archive.org/web/20070318020249/http://www.iht.com/articles/ap/2007/02/15/europe/EU-GEN-France-Homeless.php>.

¹⁵² *Id.*

¹⁵³ *Id.* The founder of the Children of Don Quixote generally praised the government's new bill and said, "The difference with this new law is that the government has a legal obligation to fulfill its promises." *Id.*

¹⁵⁴ WESTERN VOICES WORLD NEWS, *supra* note 3; *Droit au Logement Opposable: La Justice Fait Face à sa Première Saisine*, *supra* note 7.

¹⁵⁵ WESTERN VOICES WORLD NEWS, *supra* note 3.

¹⁵⁶ Sheila Newman, *Homeless may now sue state in France & Europe: Test Case*, (WE) CAN DO BETTER, May 26, 2008, <http://candobetter.org/node/531>.

¹⁵⁷ John Ward Anderson, *Tent Cities Across France Stake Claims for the Homeless*, WASH. POST, Jan. 11, 2007, at A22.

grants the courts the ability to uphold the right to housing for individuals.¹⁵⁸ DALO gives individual citizens the right to sue the government on their own behalf if their right to housing is denied.¹⁵⁹

The French government adopted DALO with the intention that it would succeed and drafted it even though they were aware that implementing the new law would pose a significant challenge.¹⁶⁰ Specifically, DALO permits individuals to hold the national government accountable by suing the government if they fail to uphold the law.¹⁶¹ Prior to DALO's passage, the enforcement of housing laws was primarily left in the hands of local authorities and there was little accountability.¹⁶² As a result of DALO, the national government is responsible for creating consistency in housing policies and also holding the local authorities accountable.¹⁶³

Aware of the difficulties of implementing a nation-wide right to housing, the French government implemented DALO in stages.¹⁶⁴ The first stage began in 2008 and continues until 2012.¹⁶⁵ In these first five years, the government will extend the legal right to housing to all homeless and inadequately housed families and will allow individuals who have been denied this right to take the State to court.¹⁶⁶ The second stage will begin in 2012, and will extend the right to sue to all individuals who have been on the social housing waiting list for an abnormal amount of time.¹⁶⁷ To meet these goals, the legislation requires that the government increase the number of available public housing units by 120,000 by 2012.¹⁶⁸ Dominique de Villepin, the French prime minister, said that by 2012, the government wants to extend the right to

¹⁵⁸ *Id.*

¹⁵⁹ Bernard Lacharme, *Progress Report on the Right to Housing in France*, HOMELESS IN EUR., Autumn 2008, at 23, http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf.

¹⁶⁰ Anderson, *supra* note 157.

¹⁶¹ *Droit au Logement Opposable: La Justice Fait Face à sa Première Saisine*, *supra* note 7.

¹⁶² Blanc & Bertrand, *supra* note 134, at 145.

¹⁶³ *Droit au Logement Opposable: La Justice Fait Face à sa Première Saisine*, *supra* note 7.

¹⁶⁴ French Prime Minister, *The Legal Right to Housing: the Government Prepares a Draft Bill*, Jan. 3, 2007, http://www.archives.premier-ministre.gouv.fr/villepin/en/information/latest_news_97/the_legal_right_to_57500.html.

¹⁶⁵ FEANTSA, *France: Implementation of DALO reaches next step*, Dec. 19, 2008, http://www.feantsa.org/code/en/pg.asp?Page=7&pk_id_news=2442.

¹⁶⁶ Lacharme, *supra* note 159, at 23. Christophe Robert of the Abbe Pierre Foundation estimates that there are currently over 100,000 homeless in France and another 1.2 million people who have inadequate accommodations. Anderson, *supra* note 157.

¹⁶⁷ French Prime Minister, *supra* note 164.

¹⁶⁸ *Id.*

housing to all families.¹⁶⁹ Every person housed in unworthy or unsanitary conditions will be able to take legal action to have their rights enforced.¹⁷⁰

As of January 1, 2008, France allows those who are inadequately housed or homeless to file a petition with the government for redress under DALO.¹⁷¹ This petition requests a negotiated settlement from a mediation committee established in each local department responsible for housing.¹⁷² As of October 1st, 2008, any family identified as a “priority” by the committee may sue the French government if it failed to re-house them.¹⁷³

According to the national monitoring committee that is evaluating the implementation of DALO, an estimated 600,000 families could fall within the DALO priority criteria.¹⁷⁴ Boutin reported that as of December 19th, 2008, the government had received demands from only 50,600 families for housing in the first year DALO was in effect.¹⁷⁵ Bernard Lacharme, who serves as General Secretary of the Housing Committee in France (*Haut comité pour le logement des personnes défavorisées*), attributed the low number of applicants to lack of information about the new law.¹⁷⁶ Lodging an appeal is difficult and most social services are still largely uninformed about the law.¹⁷⁷ Hopefully, as social services learn the process, more families will be able to take advantage of the law.¹⁷⁸

According to the national monitoring committee on DALO, of the 50,600 applicants in the first year, only 3,374 applicants were actually granted housing or re-housing.¹⁷⁹ While this is disheartening, it is unclear if the other applicants had been officially denied, and if they were denied, whether it was because the applicants already had adequate housing and were ineligible for the program. Nonetheless, 3,374 people in France have reportedly experienced improved housing due to the

¹⁶⁹ *France Plans Legal Right to Housing*, *supra* note 146.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Lacharme, *supra* note 159, at 23.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ FEANTSA, *supra* note 165.

¹⁷⁶ Lacharme, *supra* note 159, at 23.

¹⁷⁷ *Id.*

¹⁷⁸ *See id.*

¹⁷⁹ FEANTSA, *supra* note 165.

enforcement of DALO.¹⁸⁰ In late September 2009, the French Ministry of Housing reported that forty-three percent of all households labeled a “priority” under DALO have already been relocated or accommodated.¹⁸¹ The government has stated that the main problem in accommodating all people labeled “priority” has been the location of new government-built housing.¹⁸² Sixty percent of the homes that have been built since DALO was enacted were built in neighborhoods where there was no need for new housing.¹⁸³ The government has promised to address this problem in 2010 by creating a more territorial approach and building new housing where it is needed.¹⁸⁴

Housing rights activists mostly praise the new French law, but it still has several shortfalls. Jean-Baptiste Legrand, founder of the Children of Don Quixote, the activist group whose pressure is largely attributed for the passage of DALO, urged officials to be more specific about how homeless people will claim their legal right to housing.¹⁸⁵ While Legrand criticized the bill before its official passage, this lack of information about how homeless exercise the right is still a problem.¹⁸⁶ Legrand also demanded more funds at the local level to respond to housing issues because the national level alone cannot respond to all the individual needs.¹⁸⁷

Furthermore, DALO mandates that evictions can only occur if they are conducted in good faith. Unfortunately, this protection has not been upheld consistently. The French government prohibits landlords from evicting tenants in the winter months.¹⁸⁸ Although this annual restriction was terminated on March 15, 2009, it was renewed for the following winter beginning November 1, 2009, giving an additional 1.8 million families who struggle to pay rent a temporary roof over their

¹⁸⁰ *Id.*

¹⁸¹ Cordélia Bonal, *Les laissés-pour-compte du Dalo s'impatientent*, LIBERATION.FR, Dec. 2, 2009, <http://www.liberation.fr/societe/0101606309-les-laissses-pour-compte-du-dalo-s-impatientent>.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *French Bill Would Give Homeless the Legal Right to Permanent Housing*, *supra* note 151.

¹⁸⁶ Lacharme, *supra* note 159, at 23.

¹⁸⁷ *French Bill Would Give Homeless the Legal Right to Permanent Housing*, *supra* note 151.

¹⁸⁸ Katharine Coit, *News from France: Shame on Sarkozy! So Much for the Right to Housing!*, HABITAT INT'L COAL., Mar. 13, 2009, <http://www.hic-net.org/news.php?pid=3042> (last visited June 14, 2009).

heads.¹⁸⁹ Human rights activists argue that while this is the step in the right direction, regardless of the season, people still require housing.¹⁹⁰ The Conseil d'Etat, the highest administrative court in France, focused on the challenges of enforcing the right to housing in its 2009 annual report.¹⁹¹ In the report, they argued that the biggest issue with the enforcement of DALO is the lack of housing supply, and that until the French government is forced to comply with the legislation by increasing the number of housing units, there will not truly be a right to housing for the entire nation.¹⁹²

While DALO is far from perfect, it signals a sea change in French housing policy. The main reason that this law is effective is that individuals have the right to sue the government in the courts if their housing rights are denied.¹⁹³ This right to sue provides individuals with agency and recourse if their rights are denied. As demonstrated in the case of Namizata Fofana, the courts have also upheld their responsibility in enforcing this law.¹⁹⁴ The next steps that the French government takes are critical, but the first steps have definitely started to change the view of the international community and of the national activists regarding the housing situation in France. Most importantly, the French government is no longer shying away from the problems that inadequate housing and homelessness has created for the country. The French government has recognized early problems in enforcing DALO, and is taking attempts to adjust.

C. WHAT OTHER EUROPEAN COUNTRIES CAN LEARN FROM FRANCE AND THE NETHERLANDS

The differing models from France and the Netherlands demonstrate that each European country needs to take into account its population, culture, and judiciary when implementing its individual strategy to enforce the right to housing. First, each government needs to

¹⁸⁹ *Winter Ban on Evictions Brings Temporary Relief to Crisis-Stricken Tenants*, FRANCE 24, Nov. 2, 2009, <http://www.france24.com/en/20091102-france-winter-ban-evictions-relief-crisis-stricken-tenants-housing-crisis-france>.

¹⁹⁰ *Id.*

¹⁹¹ Press Release, Conseil d'Etat, *Droit au Logement, Droit du Logement*, (June 10, 2009), http://www.conseil-etat.fr/cde/media/document/dp_droit-au-logement-droit-du-logement_2009.pdf.

¹⁹² *Id.*

¹⁹³ Newman, *supra* note 156.

¹⁹⁴ *Id.*

be mindful of its population and population density. Countries with a larger population, such as France, have to finance a larger supply of housing.¹⁹⁵ In countries like Netherlands with a smaller population but less land, it will be a constant challenge to find space for all the housing to house the population.¹⁹⁶ In countries with a dense population, housing will cost more because space will be in higher demand.¹⁹⁷

Second, each country needs to be aware of the cultural issues of the nation. In the Netherlands, the government has been actively working to provide housing for one and a half centuries.¹⁹⁸ Social housing in the Netherlands lacks the negative stigma that other countries attach to it.¹⁹⁹ However, in France, the social housing is extremely dilapidated and for only the very poor.²⁰⁰ Although the French government has promised to improve the quality of the housing, it has rarely delivered on these promises.²⁰¹

Third, France and the Netherlands demonstrate the importance of the courts in enforcing the right to housing.²⁰² Varun Gauri, a Senior Economist in the Development Research Group of the World Bank, and Daniel Brinks, a political science professor at the University of Notre Dame, argue that the process of enforcing socioeconomic rights in the courts results in the legalization of policy.²⁰³ However, before the court can recognize these rights, individual governments need to grant their citizens the ability to challenge violations of the right to housing in the courts.²⁰⁴ Typically, courts engage only those individuals who have the resources to obtain their services. However, by recognizing the right to housing, national governments can grant citizens who previously lacked the resources to access the courts a chance to challenge violations of that right.²⁰⁵ While courts alone cannot improve the housing situation in a

¹⁹⁵ Goodchild, Bertrand, Sheridan & Rousseau, *supra* note 131, at 29.

¹⁹⁶ OUWEHAND & VAN DAALEN, *supra* note 86, at 5.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 3.

²⁰⁰ Blanc & Bertrand, *supra* note 134, at 142-43.

²⁰¹ *Id.*

²⁰² The South African Constitutional Court in 2000 in *Grootboom* also recognized a right to housing on the national level. Varun Gauri & Daniel M. Brinks, *Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights*, in *COURTING SOCIAL JUSTICE* 1, 2 (Varun Gauri & Daniel M. Brinks eds., 2008).

²⁰³ *Id.* at 4-6.

²⁰⁴ *Id.* at 21.

²⁰⁵ Daniel M. Brinks & Varun Gauri, *A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World*, in *COURTING SOCIAL JUSTICE*, *supra* note 205, at 303, 305.

country, as Supreme Court Justice Benjamin Cardozo said, “we find [the court system’s] chief worth in making vocal and audible the ideals that might otherwise be silenced. . . in guiding and directing choice within the limits where choice ranges.”²⁰⁶

While the use of the courts to enforce the right to housing may raise concerns of judicial activism, Brinks and Gauri argue that this is not the case.²⁰⁷ In their case studies of South Africa, Brazil, India, Nigeria, and Indonesia, they learned that the enforcement of socioeconomic rights through the courts did not lead to legislating from the bench.²⁰⁸ Rather, courts were able to merely add to the policy discourse by identifying and enforcing rights that are already recognized in international law.²⁰⁹

There are several criticisms of the right to housing proposed in this note. First, the French Conseil d’Etat in its annual report raised concerns that administrative courts are not well situated to hear concerns related to housing.²¹⁰ The Conseil argues that judges are unable to uphold a right when the supply of housing in France fails to meet the demand of its citizens.²¹¹ However, this does not per se doom the law to failure. Although the Conseil d’Etat correctly observes that French housing construction fails to keep pace with the demand for housing, it finds a place for their judges to rule on DALO matters by “reconstructing” the right to housing or holding the French government accountable to increase the supply of housing.²¹² The Conseil suggests several ways that the French government could increase supply including public land trusts and the densification of housing.²¹³

Furthermore, the Rent Tribunals, the Dutch equivalent to the French administrative courts, have successfully enforced the right to affordable, quality housing in the Netherlands.²¹⁴ The Council of Europe

²⁰⁶ *Id.* at 351.

²⁰⁷ *Id.* at 304.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Conseil d’Etat, *supra* note 191.

²¹¹ *Id.*

²¹² *Id.*

²¹³ Land trusts would allow the national government to own land in their own name to ensure that there is never a scarcity of land for affordable housing. Densification of housing is encouraged because by building taller housing units, the government could house more families on less land. *Id.*

²¹⁴ BUCK, *supra* note 124, at 5-7 (A rent tribunal is a “specialized court”, since it only hears cases related to rent and housing; further it elaborates that the Dutch government has integrated the

and the European Court of Human Rights have also proven that courts can enforce the right to housing and can sanction a government for failing to meet their commitments.²¹⁵ While creating a right to housing alone is insufficient, coupling this right with a mandate for the government to increase the supply of housing can create the practical, enforceable right that the Conseil d'Etat calls for.

Second, critics argue that enforcement of the right to housing is too expensive.²¹⁶ However, their argument does not hold weight in light of the other social programs that national governments have been able to and continue to fund.²¹⁷ Following the end of World War II, European countries adopted very expansive social welfare programs.²¹⁸ Chester Hartman argues that the amount of money that goes into providing daily services for the homeless population is much greater than the cost of housing the population, so it could actually save money.²¹⁹ Due to the current economic downturn, enforcing the right to housing in Europe now could protect thousands of people from losing their homes.²²⁰ France and the Netherlands demonstrate that it is possible to create a legally enforceable right to housing at the national level. While each European country may not be able to provide each of its citizens with adequate housing, it is still important that it tries to the best of its ability to uphold the human right to housing.

III. CONCLUSION

While the right to housing has long been recognized in international law, individual countries have often done little until

administrative law system with the ordinary court system so it is now similar to other European administrative law systems); *See* Part II.A.2. *supra*.

²¹⁵ *See generally* Moldovan and Others v. Romania, *supra* note 59; *see generally* FEANTSA v. France, *supra* note 69.

²¹⁶ Peter D. Salins, *Comment on Chester Hartman's "The Case for a Right to Housing": Housing is a Right? Wrong!*, 9 HOUS. POL'Y DEBATE 259, 260 (1998).

²¹⁷ KLEINMAN, *supra* note 36, at 1.

²¹⁸ *Id.*

²¹⁹ Hartman, *supra* note 17, at 225-26.

²²⁰ *See generally* Stuart Weir, *We Must Protect the Right to Housing as Crisis Hits Home*, OUR KINGDOM, Feb. 11, 2009, <http://www.opendemocracy.net/blog/ourkingdom-theme/stuart-weir/2009/02/11/we-must-protect-the-right-to-housing-as-crisis-hits-home>; *See generally* Int'l Federation of Human Rights, *Special Session: The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights*, Feb. 20, 2009, http://www.fidh.org/IMG/article_PDF/article_a6370.pdf (explaining that the right to housing is one of the first to be undermined in an economic downturn, but is also one of the most needed).

recently to uphold this right for their citizens.²²¹ For too long the international community merely required governments to sign the international agreements such as the ICESCR and the UDHR, which provided very little enforcement for socioeconomic rights.²²² However, this has started to change. With the *FEANTSA* decision, the European Committee of Social Rights recognized that European governments cannot merely recognize the right to housing in theory, but they must also uphold this right in practice.²²³ This decision strengthened the right to housing.²²⁴ While France was specifically implicated in the decision and has been the only country to respond by passing progressive housing legislation, if other countries do not actively uphold their duty to enforce the right to housing, the ECSR has made it clear that it will respond accordingly.²²⁵

The most striking outcome from the two case studies is how different France and the Netherlands are from each other, including their approaches to enforcing the right to housing. This demonstrates that there is not one way to enforce the right to housing, but many ways to create a meaningful right. As Simon Brandon of *Inside Housing* maintains, "Housing policies are old and traditional. Financing affordable housing in France is very different from financing housing in England, or Sweden. All these national differences have to be accepted."²²⁶ Therefore, the models presented by France and the Netherlands only serve as a starting place for other countries to learn what has worked and what has failed. Each country starts from a different housing situation and has different needs, but every government still needs to take steps in enforcing the right to housing. Even if every law does not fix the problem, the Netherlands and France demonstrate that no country fails by attempting to create a justiciable right to housing.

Furthermore, policy alone will not create a meaningful right to housing.²²⁷ Rather, a legally enforceable right to housing needs to be created at the national level throughout Europe to grant European

²²¹ Goldstone, *supra* note 85, at vii.

²²² *Id.*

²²³ Padraic Kenna & Marc Uhry, *France Violates Council of Europe Right to Housing*, HOMELESS IN EUR., Autumn 2008, at 9, 10, http://www.feantsa.org/files/Month%20Publications/EN/Magazine_Homeless_in_Europe_EN/Homeless%20in%20Europe_Autumn08_EN.pdf.

²²⁴ *Id.* at 9.

²²⁵ *Id.* at 11.

²²⁶ Simon Brandon, *Continental Cause*, INSIDE HOUSING, Nov. 14, 2008, 30, 32, *available at* <http://www.iut.nu/Habitat%20Day/2008/InsideHousing.pdf>.

²²⁷ See Gauri & Brinks, *supra* note 202, at 4.

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citizens the legal recourse to challenge violations of that right in courts of law. The examples of France and the Netherlands demonstrate that governments can empower the courts to recognize the right to housing and provide recourse when the right is violated. If each European country enforces the right to housing nationally through its judicial system, the international and regional treaties that defined those rights will be given meaning and finally have the effect the drafters intended.