

# **Principle, Politics and Practice: The Role of UN Special Rapporteurs on the Right to Adequate Housing in the Development of the Right to Housing in International Law**

**Jessie Hohmann**

**Queen Mary, University of London**

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## ***Abstract***

This chapter considers how the approaches of the various UN Special Rapporteurs on housing have fed into the development of the content of the right to housing in international and domestic law. Here, I address two themes that emerge from the Reports of the Special Rapporteurs on adequate housing as central and enduring factors underlying the violation of the right. These themes are: women's housing rights; and economic globalisation and the financialisation and marketisation of housing. I argue that in their work on these two issues, the Special Rapporteurs have, attacked, in a deeply structural fashion, the failure of states to ensure the right to adequate housing, and in doing so have provided an important, even radical critique of the prevailing social and economic paradigm. In the context of a complex interaction among principles, politics and practice within which all Special Rapporteurs work these reports remain important normative statements on a world in which the right to adequate housing is possible, even if their impact on the ground has often been muted by those same political and practical factors.

## **1. Introduction**

In this paper, I first set out the history of the mandate of the UN Special Rapporteurs on housing,<sup>1</sup> and the general approach the Rapporteurs have taken to their work. I then turn to consider in more detail two specific themes that the Rapporteurs have tackled. These are the right to adequate housing of women, and the impact of globalisation and the international financial system in the realisation (or otherwise) of the right to adequate housing. Concentrating on the thematic, annual and special reports,<sup>2</sup> I argue that on these two issues, the Special Rapporteurs have provided a deeply structural criticism of states' failures to ensure the right to adequate housing, and in doing so have provided an important, even radical critique of the prevailing social and economic paradigm. In the final section, I evaluate the importance of these reports, concluding that the work of the Special Rapporteurs on adequate housing is an immense achievement, even if it ultimately remains constrained by the politics and pragmatics within which all Special Rapporteurs must operate.

All UN Special Rapporteurs work within a complex matrix of principle, politics and practice.

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<sup>1</sup> Throughout, I refer to the four special rapporteurs as the Special Rapporteurs on housing as this term encompasses the developing language of the mandate title over time. The research in this Chapter is current to October 2015.

<sup>2</sup> I concentrate here on the annual, thematic and special Reports of the Special Rapporteurs, rather than country visits or communications, for example, because these Reports demonstrate the existence of themes with worldwide relevance, and which – within the specifics of the mandate – the Special Rapporteurs have identified as those most important to be brought to international attention.

Political factors often influence the work of the UN Human Rights Council, as they did the former Commission on Human Rights. These factors can direct which situations of human rights violation receive attention from the Human Rights Council, how they receive it and whether they receive any attention at all.<sup>3</sup> Notably (as was the case with the first Rapporteur on Housing) even whether the Commission on Human Rights or another body, such as the UN Sub-Commission on Human Rights, is responsible for the mandate may itself be a political question.<sup>4</sup> This has been amply demonstrated in the literature, and indeed this volume also makes it all too clear.<sup>5</sup> At the same time, all Special Rapporteurs are constrained by certain practical factors, among them limited time and money,<sup>6</sup> and by necessity, by the specifics of the mandate itself which sets out the responsibilities and areas of competence of the Rapporteur, and which itself will reflect States' political concerns.<sup>7</sup> At the same time, significant action on related issues is often occurring elsewhere within the United Nations system,<sup>8</sup> which means that the Special Rapporteurs will have to coordinate with – or seek to hold their own against – other initiatives. The practical constraints are of course not unrelated to the political ones. For example, the continuation of a specific mandate may have more to do with political favour than the specifics of the human rights situation on the ground.<sup>9</sup>

What can be achieved by Special Rapporteurs is therefore limited through the confluence of politics and practice. Importantly, we must recognise that this not only limits the mandate holders' impact on the ground and their ability to have their recommendations translated into action. As Susan Marks has noted, this context can even limit their ability to ask certain questions at the outset, or reach certain conclusions at the end point.<sup>10</sup> As such, the normative principles developed in the Reports of the Special Rapporteurs on adequate housing, particularly with respect to a critique of, first, the violation of women's right to adequate housing, and second, the prevailing economic paradigms of economic globalisation and the financialisation and marketisation of housing, should be understood as a major achievement.

As is evident from the analysis below, the Special Rapporteurs' work provides an important counterpoint to the dominant discourses of states over the course of the different mandates. Beginning in 1993, with the mandate of Rajindar Sachar, from the Sub-Commission on Human Rights,<sup>11</sup> and following through the continuing UN Commission on Human Rights/Human

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<sup>3</sup> See Rosa Freedman, 'New Mechanisms of the UN Human Rights Council' (2011) 29 NQHR 289, 322-23 (discussing the Council) and 289 – 90 (discussing the former Commission); Hurst Hannum, 'Reforming the Special Procedures and Mechanisms of the Commission on Human Rights' (2007) 7 HRLR 73, 74.

<sup>4</sup> Theo van Boven, "Political" and "Legal" Control Mechanisms Revisited' in Morten Bergsmo (ed), *Human Rights and Criminal Justice for the Downtrodden* (Brill 2003) 544.

<sup>5</sup> **Cross ref to relevant chapters** in this volume.

<sup>6</sup> Oliver Hoehne, 'Special Procedures and the New Human Rights Council – A Need for Strategic Positioning' (2007) 4 Essex Human Rights Review <<http://projects.essex.ac.uk/ehrr/V4N1/Hoehne.pdf>> 7, 10, accessed 17 November 2015; Surya Subedi, 'Protection of Human Rights through the Mechanism of UN Special Rapporteurs' (2011) 33 HRQ 201, 217.

<sup>7</sup> Nigel Rodley, 'On the Responsibility of Special Rapporteurs' (2011) 15(2) IJHR 319, 328-9.

<sup>8</sup> Hannum, (n 3) 79, Hoehne (n 6) s 4.1.

<sup>9</sup> Marc Limon and Hillary Power, *History of the United Nations Special Procedures Mechanism: Origins, Evolution and Reform* (Universal Rights Group, 2014), 14. Notably, the Special Procedures largely survived the review and rationalisation process that followed the establishment of the HRC, despite fears that many mandates would be discontinued. See Olivier de Schutter *International Human Rights Law* (CUP 2010), 882.

<sup>10</sup> Susan Marks, 'Human Rights and Root Causes' (2011) 74 MLR 57, 71.

<sup>11</sup> UNCHR, (Sub-Commission on the Prevention of Discrimination and Protection of Minorities) Res 1992/26 (27 August 1992); UNCHR Decision 1993/103; ECOSOC Dec.1993/287.

Rights Council Mandate established in 2000<sup>12</sup> to the current mandate holder Leilani Farha, the Special Rapporteurs have engaged directly with some of the deepest structural challenges facing the enjoyment of the right to adequate housing. Concentrating on the thematic, special and annual reports of the Rapporteurs, this paper examines two enduring themes identified by the Special Rapporteurs, through which they have provided an important critique of the current economic, social and political paradigms that result in the violation of the right to housing of millions of people worldwide. These two issues are the rights of women to housing, and the commodification, globalisation and financialisation of housing and goods and services associated with it.

## 2. History of the Mandate and Approach of the Special Rapporteurs:

Until 1994, the United Nations Commission on Human Rights did not issue mandates for Special Rapporteurs on economic, social and cultural rights. It was felt that economic and social rights situations necessarily concerned the structural aspects of economies and societies, and were, accordingly, not appropriate matters for the fact finding missions and other work of Special Rapporteurs.<sup>13</sup> Accordingly, economic and social rights mandates were initially created under the Sub-Commission on Human Rights. Thus it was under this organisation that the first Special Rapporteur on housing worked. Mr Rajindar Sachar, an Indian lawyer and later High Court Judge, was appointed under the specific title of Special Rapporteur on Promoting the Realization of the Right to Adequate Housing.<sup>14</sup> Sachar produced a working paper for the UN in 1992.<sup>15</sup> He was subsequently appointed as Special Rapporteur, and submitted three reports between 1993 and 1995.<sup>16</sup>

Sachar's working paper and three reports as Special Rapporteur made a clear contribution to developing the conceptual clarity of the right to adequate housing in international law, including its normative content and States' obligations. His reports fostered an understanding of the right to adequate housing that is broad and multifaceted. Working when the Committee on Economic, Social and Cultural Rights (CESCR) had only begun to consider the nature of the right under the International Covenant on Economic, Social and Cultural Rights (ICESCR), and very few cases at international, regional, or domestic level existed to clarify state obligations or the content of the right, Sachar's work reinforced the conceptual basis being

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<sup>12</sup> UNCHR Res. 2000/9 (17 April 2000). The mandate was extended in 2007 by the Human Rights Council in Res. 5/1 (18 June 2007) and then reviewed in Res. 6/27 (14 Dec 2007). The mandate was again extended in 2010 Res 15/8 and 2014 Res 25/17 (14 April 2014) UN Doc A/HRC/RES/25/17.

<sup>13</sup> van Boven, (n 4), 544.

<sup>14</sup> Res1992/26 (n 8).

<sup>15</sup> E/CN.4/Sub.2/1992/15 (12 June 1992).

<sup>16</sup> UNCHR, (Sub-Commission on Prevention of Discrimination and Protection of Minorities), *The Realization of Economic, Social and Cultural Rights: The Right to Adequate Housing: Progress Report Submitted by Mr. Rajindar Sachar, Special Rapporteur* E/CN.4/Sub.2/1993/15 (22 June 1993); UNCHR (Sub-Commission on Prevention of Discrimination and Protection of Minorities), *The Realization of Economic, Social and Cultural Rights: The Right to Adequate Housing: Second Progress Report Submitted by Mr. Rajindar Sachar* E.CN.4/Sub.2/1994/20 (21 June 1994); UNCHR, *The Realization of Economic, Social and Cultural Rights: The Right to Adequate Housing Final Report Submitted by Mr. Rajindar Sahar, Special Rapporteur* E/CN.4/Sub.2/1995/12 (12 July 1995).

created by the CESCR, as evidenced particularly in its 1991 General Comment No. 4 on the right to adequate housing.<sup>17</sup>

In the working paper,<sup>18</sup> he identified the causes of the ‘international housing crisis’ as including ‘the failures of government and development policies’,<sup>19</sup> ‘speculation and the commoditization of housing’<sup>20</sup> and ‘structural adjustment programmes and debt.’<sup>21</sup> From the beginning, he understood the denial of housing as ‘a structural injustice’,<sup>22</sup> and stated that adequate housing must be seen as ‘an instrument for the promotion of justice, equality and peace.’<sup>23</sup> Sachar took special care to spell out the legal nature of the right and the specific state obligations for its realisation.<sup>24</sup> He also focused on legal aspects of enforcement,<sup>25</sup> on legislative measures for enjoyment of the right,<sup>26</sup> and on comparing the right to housing with the right to property,<sup>27</sup> making his reports a dense and specific resource on the legal aspects of the right.

Nevertheless Sachar also detailed the shortcomings of a ‘legal approach’ to the right to housing,<sup>28</sup> noting particularly the serious tensions between the ideal of legal rules and practical reality of the ‘sheer irrelevance’ of top-down international law to most individuals seeking adequate housing conditions.<sup>29</sup> He noted that ‘in most instances, it is not the law itself, but mobilization by affected persons and communities asserting, claiming and demanding their rights which will be absolutely fundamental to the housing rights they possess in law becoming a reality’.<sup>30</sup> Thus, the right to adequate housing was understood from the beginning within much broader economic and social contexts and the quest for its realisation was understood as profoundly political.

Sachar also successfully elucidated the justiciability of the right to housing, drawing on prescient jurisdictions such as the Indian Supreme Court,<sup>31</sup> and the cases of the European Court and Commission of Human Rights considering Article 8 and the right to home and family life.<sup>32</sup> His reports are an invaluable consolidation of domestic and regional practice, and overall strengthen and clarify the arguments around the right, its importance and the state obligations over it. It can be argued strongly that his work has had an enduring impact on the central normative content, and approach to, the right to adequate housing in international law.

Although the Commission on Human Rights began creating mandates on economic and social rights topics in 1994,<sup>33</sup> the Commission did not revive a mandate on the right to adequate housing until 2000. At that point, Mr. Miloon Kothari became the first Special Rapporteur on

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<sup>17</sup> UN Committee on Economic, Social and Cultural Rights, ‘General Comment No 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)’ (13 December 1991) UN Doc E/1992/23.

<sup>18</sup> Sachar *Working Paper 1992* (n 15).

<sup>19</sup> *Ibid* paras 22 - 25

<sup>20</sup> *Ibid* paras 38 - 40

<sup>21</sup> *Ibid* paras 50 – 51.

<sup>22</sup> *Ibid* para 16

<sup>23</sup> *Ibid* para 17.

<sup>24</sup> Sachar, *Progress Report 1993* (n 16) paras 21 – 82.

<sup>25</sup> *Ibid* paras 77 – 86.

<sup>26</sup> *Ibid* paras 108 – 112.

<sup>27</sup> *Ibid* paras 65 – 76.

<sup>28</sup> *Ibid* at para 102 – 107.

<sup>29</sup> *Ibid* para 102 – 107.

<sup>30</sup> *Ibid* para 105.

<sup>31</sup> Sachar *Final Report 1995*, (n 16) paras 89 - 90.

<sup>32</sup> Sachar *Progress Report 1993* (n 16) paras 114 – 118.

<sup>33</sup> Hoehne (n 6), 4.

Adequate Housing as a Component of the Right to an Adequate Standard of Living.<sup>34</sup> Kothari, also Indian but an architect by training, held this mandate until 2008.

The mandate had four main points of focus.<sup>35</sup> First, the mandate had a practical or empirical strand, which included to report on the status of the realisation of rights relevant to the mandate across the world,<sup>36</sup> and to explore options for financing technical cooperation and assistance towards this aim.<sup>37</sup> From the start, this gave the Rapporteur an explicit role in situating the right to adequate housing within a very wide context of the realisation of any rights *relevant* to the mandate. This unusually broad phrasing has been embraced by the Special Rapporteurs, and has resulted in an unusually ‘holistic’ approach to the understanding of the enjoyment of adequate housing.<sup>38</sup> In practice, the Special Rapporteurs on housing have gone well beyond lip-service to the interdependent and interrelated nature of human rights, and have embraced fully an understanding of housing as profoundly connected to the structural economic and political paradigms within which it is enjoyed or violated,<sup>39</sup> as is discussed further below in section 3.

Second, the mandate focussed on creating avenues for dialogue and cooperation between and among different agencies of the UN system, other international agencies and national governments.<sup>40</sup> Third, it directed him to promote the right within the field operations and national offices of the UN.<sup>41</sup> This gave the Rapporteur the opportunity to mainstream housing rights issues into a host of other UN Special Procedures, an opportunity that Kothari, in particular, took up wholeheartedly.<sup>42</sup> In this respect, the envisaged audience for Kothari’s reports to the UN was clearly UN bodies and agencies, and he sought to impact on their day-to-day work. His 2006 Comprehensive Review evidences the extensive discussions and collaborations between the UN Special Rapporteur and a host of other UN agencies, programmes and treaty bodies that helped to mainstream housing issues into their work.<sup>43</sup>

Finally, the mandate called for the application of a gender perspective to the questions and issues encountered.<sup>44</sup> Each of the Special Rapporteurs working under this mandate have been particularly attentive to the question of gender and housing, but Kothari’s contribution to this area was particularly significant and is discussed further below in section 3.1.

Looking back, we can see that Sachar and Kothari were in a unique position, able to define a field of housing as a human rights obligation and concept when doubt as to its very status as a

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<sup>34</sup> UNCHR Res. 2000/9 (n 12).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid* para 7 d(i).

<sup>37</sup> *Ibid* Para 7 d(v).

<sup>38</sup> Thomas McCarthy (ed), *Attacking the Root Causes of Torture: Poverty, Inequality and Violence: An Interdisciplinary Study* (World Organisation Against Torture 2006), 234.

<sup>39</sup> *Ibid.*

<sup>40</sup> UNCHR Res. 2000/9 (n 12) para 7 d(ii) and (iv)

<sup>41</sup> *Ibid* para 7 d(vi).

<sup>42</sup> Kothari’s work and coordination with the Special Rapporteur on Violence Against Women is detailed in UNCHR, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari* (8 March 2004) UN Doc E/CN.4/2004/48, para 42, 45 and UNCHR, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mr. Miloon Kothari* (1 March 2002) UN Doc E/CN.4/2002/59, para 66.

<sup>43</sup> UNCHR, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari* (14 March 2006) UN Doc E/CN.4/2006/41 paras 17 – 24.

<sup>44</sup> UNCHR Res. 2000/9 (n 12) para 7d(iii).

right still existed.<sup>45</sup> In contrast, by the time that Raquel Rolnik became Special Rapporteur in 2008, she joined a rich debate on the right to adequate housing that was being vigorously conducted across the UN, NGOs and civil society, and by academics from around the world.

Between 2008 and 2014, Rolnik fulfilled the mandate, the official title of which had become Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to non-Discrimination in this Context.<sup>46</sup> Rolnik, a Brazilian, brought her experience as an urban planner and architect to the mandate, which had changed direction subtly but significantly in December 2007. The revised mandate instructed the Special Rapporteur to identify best practices and main challenges, including ‘protection gaps’ in realising the right, and to place particular emphasis on practical solutions for implementing the rights relevant to the mandate. The mandate to facilitate technical assistance remained, as did the gender perspective. But the emphasis on dialogue had moved to one that was more internally focused within the UN, and which explicitly cautioned against duplication of the work of other UN bodies and agencies.<sup>47</sup> Rolnik’s reports explicitly seek to speak to and with a broad audience, acknowledging that the very existence of the right was still unknown to many, including ‘most professionals, government officials and civil society activists ... mainly because the debate on the issue takes place in specialized circles and reports’.<sup>48</sup> Invoking a wide range of academic and theoretical works as sources, her Reports also exhort action not only from the Human Rights Council, but directly from states and individuals, based on an understanding that the right to adequate housing cannot only be debated in technocratic circles and must instead be accessible to all, including rights holders themselves.<sup>49</sup>

Rolnik took on the mandate at a moment crucial for two reasons. First, her tenure coincided with the global financial and sub-prime mortgage crisis, with its far-reaching and in many instances disastrous implications for the enjoyment of the right to adequate housing. Accordingly, Rolnik produced two important reports in this area, providing an important exposition of the operation of a globalised financial market on the enjoyment of the right to adequate housing,<sup>50</sup> and second, on the impact of credit policies on those living in poverty.<sup>51</sup> She also undertook missions to the World Bank, specifically seeking to ensure their financing policies provided adequate safeguards for the right.<sup>52</sup> She thus sought to ensure the right to adequate housing’s relevance and prominence not just with states, but with those financial actors often wielding great power over states’ economic policies. This strand of Rolnik’s work

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<sup>45</sup> In his final report, Sachar responded to State arguments in international fora to the effect that the right was not a right at all. See Sachar, *Final Report 1995* (n 16) paras 55 – 56.

<sup>46</sup> UNHRC Res 6/27 (n 12).

<sup>47</sup> *Ibid* para 5.

<sup>48</sup> UNGA, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context* (13 August 2008) UN Doc A/63/275 para 23.

<sup>49</sup> *Ibid*.

<sup>50</sup> UNHRC *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik* (4 February 2009) UN Doc A/HRC/10/7.

<sup>51</sup> UNGA *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living* (10 August 2012) UN Doc A/67/286.

<sup>52</sup> UNHRC *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik Addendum Mission to the World Bank* (3 February 2013) UN Doc A/HRC/22/46/Add.3 para 57 – 69. See also UNHRC *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik Addendum Preliminary note on the mission to the World Bank Group (26 October to 1 November 2010)* (7 January 2011) UN Doc A/HRC/16/42/Add.4.

is important for many reasons, and provides repeated demands to imagine housing and land within a fundamentally different paradigm: as social and public goods, not as financial instruments or commodified market assets.<sup>53</sup>

Second, she also came into the mandate at the time of a new Optional Protocol to the ICESCR. The coming into force of the Optional Protocol might be hoped to once and for all have laid rest to suspicions about the right to adequate housing's justiciability,<sup>54</sup> but the ongoing resistance to the idea of individual enforcement, and perhaps also the specifics of the Optional Protocol's enforcement machinery and standard of review,<sup>55</sup> prompted the Special Rapporteur to report on the justiciability of the right once again.<sup>56</sup>

In June 2014, Canadian Leilani Farha took over the mandate.<sup>57</sup> With her tenure, the mandate returns to a legally trained individual, this time head of the NGO Canada without Poverty.<sup>58</sup> At the time of writing, Farha has produced three Reports. The first report sets out her priorities, which include an overarching goal of dealing with the 'implementation gap' in enjoyment of the right, noting that 'the well-elaborated norms and commentary on this right have not necessarily been translated into substantive progress.'<sup>59</sup> Her proposed methods for achieving substantive progress include both the procedural, such as through facilitating national/international interaction,<sup>60</sup> and the normative, such as through the further elucidation of standards and obligations such as progressive realisation.<sup>61</sup> Important themes include involvement with the UN's urban sustainable development agenda, placing housing on the global development agenda,<sup>62</sup> continued attention to the housing rights of the marginalised and most vulnerable,<sup>63</sup> homelessness,<sup>64</sup> and engagement with subnational governments.<sup>65</sup> Farha's credentials on women's right to adequate housing were already established in her work with Kothari on his reports on this topic.<sup>66</sup> Her first Annual report specifically tackles the issues of local and subnational responsibility for housing rights within a framework of state

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<sup>53</sup> See further the discussion in section 3.2, below, and A/HRC/16/42/Add.4 (n 52) para 10. See also Raquel Rolnik and Lidia Rabinovitch 'Late-Neoliberalism: the Financialisation of Homeownership and the Housing Rights of the Poor' in Aoife Nolan, (ed) *Economic and Social Rights after the Global Financial Crisis* (CUP 2014).

<sup>54</sup> See Catarina Albuquerque, 'Chronicle of an Announced Birth: the Coming into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – the Missing Piece of the International Bill of Human Rights' (2010) 32 HRQ 144; Tara Melish, 'Introductory Note to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2009) 48 ILM 256.

<sup>55</sup> Bruce Porter, 'The Reasonableness of Article 8(4): Adjudicating Claims from the Margins' (2009) 27 Nordic Journal of Human rights 39, 44; Jessie Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart, 2013), 30 – 31.

<sup>56</sup> UN Doc A/63/275 (n 48).

<sup>57</sup> UN Doc A/HRC/RES/25/17 (n 12). The terms of the mandate do not differ substantially from those under which Rolnik operated.

<sup>58</sup> Office for the High Commission on Human Rights, *Special Rapporteur on Adequate Housing as a Component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Ms. Farha at <<http://www.ohchr.org/EN/Issues/Housing/Pages/LeilaniFarha.aspx>> accessed June 22 2015.

<sup>59</sup> UNGA Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (7 August 2014) A/69/274, para 14.

<sup>60</sup> Ibid. para 20 - 25

<sup>61</sup> Ibid. para 28 – 35.

<sup>62</sup> Ibid. para 83- 89.

<sup>63</sup> Ibid. para 60 – 66.

<sup>64</sup> Ibid. para 67 – 69.

<sup>65</sup> Ibid. para 80 – 82.

<sup>66</sup> E/CN.4/2003/55, para 8.

obligations.<sup>67</sup> In her most recent report at the time of writing, she calls for the right to adequate housing to lie at the heart of the UN Habitat III ‘new urban agenda’.<sup>68</sup> She argues that a rights based approach to urban development ‘can effect the kind of spatial, geographic, social and attitudinal change required to address the structural causes of exclusion and inequality’.<sup>69</sup>

### **3. Structural Human Rights Violations and the Work of the Special Rapporteurs on Housing:**

In this section, I analyse the special, annual and thematic reports of the Special Rapporteurs in two areas: women’s right to adequate housing, and the impacts of globalisation and the financialisation of housing on the realisation of the right. The Reports illuminate a powerful critique of the social, economic and political structures that prevent the realisation of the right to adequate housing. Overall, they present an important, even radical, critique of states failures with respect to the right to adequate housing. Here, I analyse the important normative contribution contained in these Reports, before turning to consider the impact of the Special Rapporteurs’ work on adequate housing in section 4.

#### **3.1 Women’s Right to Housing**

The issue of women’s access to and enjoyment of the right to adequate housing is not a niche or interest group issue. Rather, as Rolnik put it, ‘[t]he status of women’s right to adequate housing is central ... to understanding the dynamics of gender inequality itself, both within and outside the home.’<sup>70</sup> She continues that the issue is at ‘the heart of social inequality and discrimination.’<sup>71</sup> This is because women’s lack of access to adequate housing is not merely a question of material needs, but also her inclusion in society: ‘When a woman is unable to access adequate housing and land mainly because she is a woman, she is ... relegated to a subordinate and dependent position within society because of her gender.’<sup>72</sup> Thus, the realisation of the right to adequate housing for women is ‘essential’ to overcoming oppressive and exclusive gender power structures.<sup>73</sup>

The Special Rapporteurs have provided a wealth of examples of how violations of the right to adequate housing generally have a greater impact on women. Sachar’s first progress report

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<sup>67</sup> UNGA *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context* (22 December 2014) UN Doc A/HRC/28/62.

<sup>68</sup> The UN’s Conference on Housing and Sustainable Urban Development (Habitat III) will be held in October 2016, and Farha’s 3<sup>rd</sup> annual report aims squarely at placing the right to housing at its heart and as its guiding principle. UN Doc A/70/270 (4 August 2015) para 1 and 9 – 10.

<sup>69</sup> *Ibid* para 11.

<sup>70</sup> UNHRC *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik* (26 December 2011) UN Doc A/HRC/19/53 para 1; See also Sachar, *First Progress Report 1993* (n 16) para 9 c.

<sup>71</sup> Rolnik Report UN Doc A/HRC/19/53 para 3

<sup>72</sup> *Ibid*.

<sup>73</sup> *Ibid*.



identified that '[i]t needs to be widely recognized that women bear the primary responsibility for sustaining and maintaining homes and are the worst affected by crisis situations in their country's resource base.'<sup>74</sup> Similarly, Kothari's three studies on women and housing reveal the multiple ways in which women are at the forefront in providing housing and associated goods such as water, fuel and home-based labour, and are accordingly the most affected when housing rights are violated, including through forced evictions.<sup>75</sup> The Special Rapporteurs have also identified that certain groups of women are particularly at risk of the violation of their right to adequate housing, through 'double discrimination'. These include widows, female headed households, indigenous or tribal women, and women subject to domestic violence.<sup>76</sup>

Recognising that adequacy has different meanings for women than for men, and indeed different meanings for differently situated women,<sup>77</sup> the Special Rapporteurs have sought to give more specific content to this term than it has been given by the CESCR in General Comment 4.<sup>78</sup> Kothari, for example, argues for a need to understand and apply both substantive equality and the intersectional approach to the concept of adequacy, so that each woman, in whatever specific group or at whatever specific stage of life, can realise adequate housing.<sup>79</sup> Thus, in addition to the CESCR's seven elements,<sup>80</sup> Kothari identified a further nine elements he considered necessary to evaluate the adequacy of housing, as follows:

access to land, water and other natural resources; freedom from dispossession, damage and destruction; access to information; participation; resettlement, restitution, compensation, non-refoulement and return; privacy and security; access to remedies; education and empowerment and freedom from violence against women.<sup>81</sup>

Further, as Rolnik pointed out, each and every one of the elements of the right to adequate housing need to be applied with a gender perspective in order to ensure that housing is adequate for women<sup>82</sup> Thus, her interpretation of security of tenure entails an independent right of women to security of tenure to be explicitly recognised in law, regardless of the status of the women to any other individual in the house.<sup>83</sup> With respect to habitability, she notes that gender sensitive architecture and design can help promote non-hierarchical uses of the home, and thus more equitable participation in household responsibilities across the family.<sup>84</sup>

The indivisibility of all human rights is perhaps more tangible with respect to the right to adequate housing than many other human rights. The CESCR's seven elements of the right in General Comment 4 are evidence of this fact: they interact in complex ways, not only with

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<sup>74</sup> Sachar, *First Progress Report 1993* (n 16) para 9c.

<sup>75</sup> UNCHR *Women and Adequate Housing* (25 February 2005) UN Doc E/CN.4/2005/43 at para 49.

UNCHR, *Women and Adequate Housing Women and Adequate Housing* (26 March 2003) E/CN.4/2003/55 paras 27 – 34.

<sup>77</sup> Kothari, *Women and Adequate Housing 2005* (n 75) paras 13 and 47.

<sup>78</sup> General Comment No 4, defines adequate housing as incorporating seven necessary elements: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; cultural adequacy. (n 17) para 8. For an analysis of the seven elements see Hohmann (n 55) 20 - 28.

<sup>79</sup> Kothari, *Women and Adequate Housing 2005* (n 75) para 47.

<sup>80</sup> General Comment 4, (n 17) para 8.

<sup>81</sup> UNCHR, *Women and Adequate Housing* (27 February 2006) UN Doc E/CN.4/2006/118 para 11.

<sup>82</sup> Rolnik, A/HRC/19/53 (n 70) paras 31 – 52.

<sup>83</sup> Ibid para 34. See also Sachar on 'essential homelessness' below, text accompanying footnotes 87 - 89.

<sup>84</sup> Rolnik, A/HRC/19/53 (n 70) para 49.

each of the other elements, but also with aspects of personal identity, the built environment, and the legal landscape in any state, and adequate housing cannot be enjoyed unless all are present.<sup>85</sup> While the elements of the right to housing can be used to assess adequacy, when they are not present or enjoyed, they also strikingly demonstrate the intersectional nature of violations of the right to adequate housing. Thus, an intersectional approach to women and housing is ‘crucial’.<sup>86</sup>

Contributions of the Special Rapporteurs on the right to housing in revealing the intersectional nature of the denial of the right to housing are significant. For example, the denial of rights to the home, as Sachar pointed out, is not only an issue of security of tenure, but can amount to homelessness itself. His development of the concept of the ‘essential homelessness’ of women provides a powerful analytical tool to illustrate the connection between de facto and de jure enjoyment of housing.<sup>87</sup> This ‘essential homelessness’ occurs when women have no right to the home in which they are born, marry, or die.<sup>88</sup> Independent security of tenure, not attendant on a relationship with another (normally male) person is thus fundamental to the enjoyment of adequate housing for women.<sup>89</sup>

Kothari particularly focussed on violence against women as an experience of violation of women’s right to adequate housing.<sup>90</sup> The violence to which women are subjected in the home is not only a denial of equality, but may also constitute forced eviction if a woman has to flee her home to escape abuse.<sup>91</sup> Poverty and lack of access to education make women more vulnerable to these abuses.<sup>92</sup>

The intersection of factors, including lack of access to credit and finance, discriminatory or unequally enjoyed rights to land, and the operation of traditions that deny women rights to housing and property,<sup>93</sup> means that women are more likely to be harmed in their houses, more likely to be denied their right to or enjoyment of adequate housing, and are least likely to have the power and resources with which to contest these denials.

Taken together, the Reports of the Special Rapporteurs on adequate housing have gone well beyond the work of the CESCR in illuminating the ways in which women’s rights to adequate housing are violated, and the causes and consequences of these violations. However, I argue that the most important contribution to the understanding of women’s rights to adequate housing of the Special Rapporteurs is the constant insistence that the intersectional harms experienced by women, the lack of security of tenure, and violence, are not mere incidents or

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<sup>85</sup> Hohmann, (n 55) at 20 – 28 on General Comment 4; and see further Ch 7 on identity and Ch 8 on the built environment.

<sup>86</sup> UNHRC, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Miloon Kothari, (13 February 2008) UN Doc A/HRC/7/16, para 40.

<sup>87</sup> Sachar, *Final report 1995* (n 16) paras 45 – 49.

<sup>88</sup> *Ibid.* at para 46.

<sup>89</sup> Kothari, *Women and Adequate Housing 2003* (n 66) para 54. See also Kothari, *Women and Adequate Housing 2005* (n 75) para 40. See further Hohmann (n 55) 152 – 165, 184 – 89.

<sup>90</sup> Kothari, *Women and Adequate Housing 2005* (n 75) 41 – 48.

<sup>91</sup> Kothari, E/CN.4/2002/59 (n 42) para 66; UNCHR *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari *Addendum Summary of information transmitted to Governments and replies received* (17 January 2005) UN Doc E/CN.4/2005/48 Add 1 para 48. See further Kothari, E/CN.4/2004/48 (n 42) paras 41 – 57.

<sup>92</sup> Kothari *Women and Adequate Housing 2003* (n 75) paras 51 and 53.

<sup>93</sup> *Ibid.* para 21.

‘accidents of history.’<sup>94</sup> Rather, the work of the Special Rapporteurs on housing points importantly to the fact that these and other harms are naturalised and perpetuated by the structural denial of women’s equality.<sup>95</sup> The denial of women’s right to adequate housing is perpetuated through political, economic, and social structures that remain stubbornly entrenched because those structures favour already empowered groups.<sup>96</sup>

As such, all of the Special Rapporteurs on housing have taken a strong stance against the root discrimination against women which continues across the globe at familial, societal and global levels. For example, Kothari noted that ‘violence against women is a manifestation of historically unequal power relations between men and women on both individual and societal levels’<sup>97</sup> and that, for example, ‘persistent poverty, where women and others are forced to live in inadequate and insecure housing and living conditions, also exposes women to forms of gender-based violence, and arguably is itself a form of violence.’<sup>98</sup>

Poverty and the denial of rights are demonstrated as linked, with fetters of subjugation that bind women not only within their families but also through the power relations of individuals in one state with those in another.<sup>99</sup> The economic aspects which contribute to this situation of inequality are the subject of another enduring concern of the Special Rapporteurs on housing: globalisation, and the marketisation and financialisation of housing, which I now turn to.

### ***3.2 Marketisation, Financialisation and the Impacts of a Global Economy***

A second enduring concern of all of the Special Rapporteurs on housing emerges in their attention to the effects and implications of globalisation and a globalised economy on the enjoyment of the right to adequate housing.

While the Special Rapporteurs on the housing have not provided concrete definitions of globalisation, each have made frequent references to the concept. Kothari’s understanding of globalisation drew on the work of other UN bodies including particularly the study of the Special Rapporteurs on globalization and its impact on the full enjoyment of all human rights and the work of the CESCR including notably its statements on globalization in 1988 and

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<sup>94</sup> Marks, (n10), 67.

<sup>95</sup> Kothari *Women and Adequate Housing 2003* (n 75) paras 42 – 50.

<sup>96</sup> Leilani Farha, ‘Is there a Woman in the House? Re/conceiving the Human Right to Housing’ (2002) 14 *CJWL*118, 121 – 124, Hohmann (n 55) 152 – 165, 184 - 189.

<sup>97</sup> Kothari *Women and Adequate Housing 2005* (n 75) para 42. See also Kothari *Women and Adequate Housing 2006* (n 81) para 32.

<sup>98</sup> Kothari *Women and Adequate Housing 2005* (n 75) para 41. See also Kothari *Women and Adequate Housing 2006* (n 81) para 32.

<sup>99</sup> Hohmann (n 55) 159 – 65, Arlie Hochschild ‘The Nanny Chain’ (2000) *American Prospect* 41.

1999.<sup>100</sup> In these UN documents,<sup>101</sup> globalisation receives no single definition, but is clearly understood as a process of increased internationalisation, supported by a ‘growing legal and institutional framework within which the regimes of contemporary international trade, finance and investment are being conducted.’<sup>102</sup> Elsewhere, globalisation has generally been equated to the state’s weakening power in the field of economic and social action,<sup>103</sup> although the relationship is better understood as one that involves a ‘lengthening distance’ between the individual and state, and a conscious choice about how and through which intermediaries power should be exercised, rather than a *lack* of power on the part of the state.<sup>104</sup> Although providing no single or simple definition, the UN studies on which Kothari relies problematise the concept of globalisation from the outset, noting negative impacts on the realisation of human rights, the masking of state power behind the policies of international financial institutions, and the privileging of the global over the local and the traditional.<sup>105</sup> Rolnik’s understanding of globalisation is informed by the work of scholars such as Marcuse, Kenna, Anderson, and Andreasson,<sup>106</sup> which also question the value and underlying principles of globalisation, such as a commitment to the predominance of economic growth as a policy goal, the permeability of national borders to international capital movements; the elimination of trade restrictions and government regulations that might infringe market operations, the prominence of the transnational corporation as a key actor, and - as a necessary corollary to the commitment to economic growth - ‘the promotion of voracious consumerism.’<sup>107</sup>

From the very first, the Special Rapporteurs on housing have undertaken a sustained critique of globalisation: in his first report, Sachar attacked the ‘continued indulgence by the world’s governments of citizens who are already better off’ through ‘skewed fiscal policies’ and the failure to reorder economic affairs to fulfil instead the right to adequate housing.<sup>108</sup> Kothari identified globalisation as a priority issue for attention.<sup>109</sup> He noted that the benefits of globalisation were unevenly felt across and within countries, with the poor everywhere experiencing the least advantage.<sup>110</sup> He also noted an urgent need for a research agenda to

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<sup>100</sup>See E/CN.4/2001/51 para 56. Drawing on UNCHR *Human rights as the primary objective of international trade, investment and finance policy and practice* E/CN.4/Sub.2/1999/11 and *The Realization of Economic, Social and Cultural Rights: Globalization and its impact on the full enjoyment of human rights Preliminary report submitted by J. Oloka-Onyango and Deepika Udagama, in accordance with Sub-Commission resolution 1999/8* E/CN.4/Sub.2/2000/13; and CESCR statements E/C.12/1999/9. Sachar addressed globalisation by name only in his final report, where he stated that: ‘We hear reports daily of growing economies, liberalization of trade regimes, globalization of the world market and other such fancy phrases, as if such things were all that mattered in our world and these issues were inherently good for humanity.’ *Sachar, Final Report* (n 16) para 16. Similarly, Kothari dedicated a section of his 2000 annual report to globalisation as an impediment to the realisation to the right to adequate housing, but did not define it as such, concentrating instead on its effects. See E/CN.4/2001/51 at para 56 – 61.

<sup>101</sup> E/CN.4/Sub.2/1999/11 (n 100) and E/CN.4/Sub.2/2000/13 (n 100); E/C.12/1999/9 (n 100).

<sup>102</sup> E/CN.4/Sub.2/2000/13 (n 100) para 8.

<sup>103</sup> William Felice, ‘The viability of the United Nations approach to economic and social human rights in a globalized economy’ (1999) 75 *International Affairs* 563, 586 - 88.

<sup>104</sup> Saskia Sassen, *Territory, Authority, Rights* (updated edn) (Princeton UP 2006) 319. See also E/CN.4/Sub.2/2000/13 (n 100) para 11.

<sup>105</sup> E/CN.4/Sub.2/2000/13 (n 100) para 6 – 10; E/C.12/1999/9 (n 100).

<sup>106</sup> Rolnik A/HRC/10/7 (n 50) para 43, 21, 22 respectively.

<sup>107</sup> Felice (n 103), 586. See further Tim Jackson, *Prosperity without Growth: Economics for a Finite Planet* (Routledge 2009) Chapter 6.

<sup>108</sup> Sachar, *Progress Report 1993* (n 16) para 9e.

<sup>109</sup> UNCHR *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, submitted pursuant to Commission resolution 2000/9*, (25 January 2001) UN Doc E/CN.4/2001/51, para 56 – 61.

<sup>110</sup> *Ibid* para 57.

determine whether economic globalisation was compatible with the enjoyment of land and housing rights at all.<sup>111</sup> Rolnik also illuminated the ways in which the dominant economic paradigms push the privatisation and marketization of land and the goods and services necessary for the enjoyment of adequate housing, failing to take account of the social nature and public goods inherent in land and housing even when those responsible for the policy admit that the market alone cannot ensure the right to adequate housing for all.<sup>112</sup>

Over time, the Special Rapporteurs on housing's reports in this area have shifted in line with prevailing understandings of the role of the state. For example, at the turn of the millennium, globalisation was most often discussed as involving a significant diminution in the sovereignty and power of the state.<sup>113</sup> Accordingly, Kothari sought to understand how the structural factors of the global economy impacted on the housing rights of the poor. He noted that under conditions of globalisation, economic inequalities were growing and with them the 'number of humanity's homeless or precariously sheltered persons'.<sup>114</sup> Kothari posited that 'globalization and the process of increasing economic integration have limited the role and capacity of States to provide adequate resources and other provisions which are often necessary' to the fulfilment of the right to adequate housing and water.<sup>115</sup> In Kothari's understanding of the issue, states remain victims (though perhaps acquiescent ones) of outside global forces, although there is capacity for resistance in approaches such as participatory budgeting and through the democratic process.<sup>116</sup>

By the time Raquel Rolnik took on the mandate in 2008, it had become clear that in the vast majority of cases, states were central to, rather than on the side-lines of, the process of economic globalisation and that housing policies played a major role in the global economic picture. By this point, it had become patently obvious that governments across the world had been heavily invested in housing as the very instrument of that economic globalisation, through the commodification and financialisation of housing within the globalised financial system.<sup>117</sup> Moreover, it was clear that the financialisation of housing had significant implications for the potential realisation of the right to adequate housing.<sup>118</sup>

Thus, Rolnik's first thematic report dealt explicitly with the housing, financial and economic crisis unfolding at that time. Her report provides a clear and unequivocal exposition of the failings of the financialised housing system from a human rights perspective. Detailing the 'fundamental flaws in current economic and housing policies'<sup>119</sup> and the 'inability of market mechanisms to provide adequate and affordable housing for all',<sup>120</sup> her report constitutes a stinging critique of globalised neo-liberal housing policies and their worldwide implications,

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<sup>111</sup> Ibid para 61.

<sup>112</sup> Rolnik, A/HRC/16/42/Add.4 (n 52) para 10.

<sup>113</sup> Robert Holton, *Making Globalization* (Palgrave 2005), 6; Kenichi Ohmae, *The End of the Nation State* (Free Press 1995).

<sup>114</sup> Kothari E/CN.4/2002/59 (n 42) para 50

<sup>115</sup> Ibid. para 51.

<sup>116</sup> Kothari, A/HRC/7/16 (n 86) para 87.

<sup>117</sup> See eg Manuel Aalbers, 'The Financialization of Home and the Mortgage Market Crisis' (2008) 12 *Competition and Change* 148; Rolnik and Rabinovich, (n 53); Paul Langley, *The Everyday Life of Global Finance: Saving and Borrowing in Anglo-America* (OUP 2008) 193 – 194; Saskia Sassen 'When Local Housing Becomes an Electronic Instrument: The Global Circulation of Mortgages – A Research Note (2009) 33 *International Journal of Urban and Regional Research* 411, 419 – 20.

<sup>118</sup> Padraic Kenna, 'Introduction' in Padraic Kenna (ed) *Contemporary Housing Issues in a Globalized World* (Ashgate 2014), 26-7; Rolnik and Rabinovich (n 53), 68 – 69, 87; Langley (n 117) 127.

<sup>119</sup> Rolnik, A/HRC/10/7, (n 50) para 18

<sup>120</sup> Ibid.

and she argues that access to housing cannot be based solely on the ability to enter a housing market, as ‘income based competition ... in human rights terms, becomes unacceptable discrimination’.<sup>121</sup>

She stressed in her recommendations that all actors should ‘fully recognize the multiple dimensions of housing, which is much more than a mere financial asset and has great implications for the individual, the community and society as a whole’.<sup>122</sup> Further, she urged government intervention in both housing policies specifically,<sup>123</sup> and in the market more generally.<sup>124</sup> Her report and the recommendations included demonstrate the profound failure of the financialisation of housing to ensure or even respect the right to adequate housing.

In 2012, Rolnik followed up this work with a report on housing finance policies and their impact on the poor.<sup>125</sup> She concentrated on mortgage lending for low income borrowers, the provision of capital subsidies to low income groups to facilitate their entry into housing markets, and microfinance for housing construction and improvements,<sup>126</sup> and held these up for scrutiny under a human rights lens. She concluded that, contrary to the predominant assumption that housing financial markets ‘if well designed and regulated, can provide access to adequate housing for all segments of society’<sup>127</sup> in reality, these policies are discriminatory against the poor, and are, overall, ‘incompatible with the full realization of the right to adequate housing of those living in poverty, failing to supply habitable, affordable and well-located housing solutions accessible to the poor’.<sup>128</sup>

Like Sachar and Kothari before her, she challenged not only the details of economic globalisation, but questioned both its effects, and the potential of the principles upon which it is based to measure up under a human rights framework at all. Accordingly, she called for a ‘paradigm shift’ from a financialised to a human rights-based approach to housing policies.<sup>129</sup>

Moreover, Rolnik was at pains to point out that these globalised financial policies have not been cheap solutions for States’ housing needs. Although couched in terms of non-intervention, ‘states still invest huge public resources in housing’.<sup>130</sup> According to Rolnik, however, the beneficiaries of state intervention in financialised housing markets are seldom the poor.<sup>131</sup> The conclusion is that States are not passive victims or merely acquiescent bystanders in a global housing market. Instead, they are central actors, and their policy choices deliberately empower some, while quietly sanctioning the fact that others will bear the brunt.

The work of the Special Rapporteurs on economic globalisation and the financialisation of housing within a global financial economy thus presents a stringent critique and important counterpoint to the prevailing economic and financial policies of states and inter- and multi-national financial institutions. The reports, with their lucid and repeated expositions of the impacts of these financial policies on the poor, the marginalised and the disempowered,

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<sup>121</sup> Ibid para 50.

<sup>122</sup> Ibid para 78.

<sup>123</sup> Ibid para 79 – 83 for example.

<sup>124</sup> Ibid para 86 – 87, 89 – 90.

<sup>125</sup> Rolnik A/67/286 (n 51).

<sup>126</sup> Ibid para 15.

<sup>127</sup> Ibid para 62.

<sup>128</sup> Ibid para 64.

<sup>129</sup> Ibid para 71.

<sup>130</sup> Ibid para 69.

<sup>131</sup> Ibid.

illuminate the political choices – and costs in human terms – behind financial policies that are posited in neutral and technical terms. Perhaps none of the Special Rapporteurs has made this point more eloquently than Sachar, who wrote in his final report in 1995:

If the world as a whole remains inadequately housed this will not be due simply to a lack of resources, deficient finances or insufficient land or materials, as is so often argued today. Rather, it will be a continuation of the misguided status quo, a tragically inequitable distribution of income and resources within and between nations, an attachment to the fiction of the all-providing market, the treatment of housing as a dispensable commodity and the ongoing marginalization of economic, social and cultural rights.<sup>132</sup>

Sachar's statement is both powerful and eloquent, but its impact is less clear. In the next section, however, we consider the contribution of the reports of the Special Rapporteurs on Housing have made. What impact have they had on the development of the right, and on its realisation?

#### **4. Housing Rights against the Grain: Assessing the Contribution of the Special Rapporteurs on Housing**

In our prevailing political, economic and social system, far too few harms or deprivations are in fact subjected to a structural and intersectional human rights analysis.<sup>133</sup> By examining the situation of housing rights violation through a housing rights lens, the Special Rapporteurs have demonstrated that poverty, mass-displacement, forced evictions, disenfranchisement from political power, hunger, thirst, and other marginalisations are not mere accidents. Very often, they are the result of conscious political and economic choices taken within and by States, and the international organisations they make up. The Special Rapporteurs on housing have been only too aware that the denial of the right to adequate housing is a result of 'planned misery': that is: 'misery that belongs with the logic of particular socio-economic arrangements.'<sup>134</sup>

That the Special Rapporteurs have been able to make this connection between the necessary denial of the human rights of some, and the continued operation of the current global economic and political structures, is an immense achievement. As Susan Marks has pointed out, the very political and practical arrangements within which all Special Rapporteurs work act to limit the ways and extent to which the question of why human rights violations continue to occur is even asked.<sup>135</sup> Marks has noted that many Special Rapporteurs show considerable and important attention to many of the structural or 'root' causes of human rights, but often cannot carry their investigation far enough. Analysing UN work on arbitrary detention in Afghanistan,<sup>136</sup> the UN

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<sup>132</sup> Sachar, *Final Report 2005* (n 16) para 147.

<sup>133</sup> Marks (n 10). On the difficulties of taking an intersectional approach in responding to an international human rights violation see the work of Jessie Hohmann, Lolita Buckner-Innis and Enzamaría Tramontana on CEDAW's *Kell v Canada* in the forthcoming *Feminist International Judgments Project Lavers & Hodson* (eds) *Feminist International Judgments: Women's Voices in International Law* (forthcoming).

<sup>134</sup> Marks (n 10) 75. Marks takes this phrase from Naomi Klein, *The Shock Doctrine* (Penguin 2007) who herself takes it from disappeared Argentine journalist Rodolpho Walsh. See Marks, (n 10) 59.

<sup>135</sup> Marks (n 10) 71.

<sup>136</sup> *Ibid* 63 – 65, analysing *Arbitrary Detention in Afghanistan: A Call for Action, Vol 1 - Overview and Recommendations* (UNAMA, Human Rights, 2009).

Human Rights Council's response to the 2010 earthquake in Haiti,<sup>137</sup> and the work of Special Rapporteur on the Right to Food, Olivier de Schutter,<sup>138</sup> Marks notes that in the second two examples, the relevant actors have taken a 'holistic' and contextual approach with an 'emphasis on poverty, discrimination, marginalisation and exclusion as structural bases of human rights violations,' and other 'root causes' of human rights violation.<sup>139</sup> However, she argues that her case studies reveal three problems. First, the investigation into the causes of violations is 'halted too soon'<sup>140</sup> so that although the issue of vulnerability may be addressed, ultimately, the question about the overarching social, economic and political framework within which conditions of vulnerability are 'systematically reproduced' is never asked.<sup>141</sup> She notes that this often results in a heavy emphasis on technical solutions,<sup>142</sup> and state-oriented remedies.<sup>143</sup> Second, Marks identified the problem that effects are treated as though they were causes: for instance, she questions whether arbitrary detention is the result of corruption and impunity of officials, or if, rather, the 'chain of causation moves in the opposite direction?'<sup>144</sup> Finally, she notes that causes might be identified, only to be then set aside.<sup>145</sup> This is particularly the case where analysis of causes is foregrounded in the body of a report, but attention to remedying these causes is absent in the recommendations.<sup>146</sup>

In analysing the annual, thematic and special reports of the Special Rapporteurs on housing, we can see that they have, particularly in the areas of women's right to adequate housing, and the impacts of globalisation and financialisation, avoided the problems Marks identified. As the previous section demonstrates, each of the four Rapporteurs has been acutely aware of the structural causes of violations, and, more importantly, the economic, social and political framework within which they are reproduced.<sup>147</sup> They have also argued for a different

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<sup>137</sup> Marks (n 10) 65 – 67, analysing *Report of the Human Rights Council on its Thirteenth Special Session 2 February 2010*, UN Doc A/HRC/S-13/2; Statement of Ms Navanethem Pillay, United Nations High Commissioner for Human Rights to the Human Rights Council Special Session, Geneva, 27 January 2010 at <http://www.ohchr.org/>

[EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9778&LangID=e](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9778&LangID=e) (last visited 15 September 2010); 'Human Rights Council Opens Special Session on Support to Recovery Process in Haiti: A Human Rights Approach, Statement of Walter Kaelin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9780&LangID> (last visited 15 September 2010).

<sup>138</sup> Marks (n 10) 67 – 70 analysing in particular 'Background Note: Analysis of the World Food Crisis by the UN Special Rapporteur on the Right to Food, Olivier De Schutter' 2 May 2008, 1, at <http://www2.ohchr.org/english/issues/food/index.htm> (last visited 15 September 2010); *Report of the Special Rapporteur on the right to food, O. De Schutter, 'Crisis into opportunity: reinforcing multilateralism'* UN Doc A/HRC/12/31, 21 July 2009; O. De Schutter, 'The Role of the Right to Food in achieving Sustainable Food Security' Statement to the World Summit on Food Security 18 November 2009, 2 at <http://www2.ohchr.org/english/issues/food/index.htm> (last visited 16 September 2010); O. De Schutter, 'The Right to Food and the Political Economy of Hunger' Twenty-sixth McDougall Memorial Lecture, Opening of the thirty-sixth Session of the FAO Conference, 18 November 2009, 7 at <http://www2.ohchr.org/english/issues/food/index.htm> (last visited 16 September 2010); *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum: Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge* UN Doc A/HRC/13/33/Add.2, 28 December 2009

<sup>139</sup> Marks (n 10) 70

<sup>140</sup> Ibid.

<sup>141</sup> Ibid, 71.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid, 72.

<sup>145</sup> Ibid, 73.

<sup>146</sup> Ibid.

<sup>147</sup> See above text accompanying footnote 1424(Sachar); 77 – 80 (Rolnik); 73 (Farha); 104 – 7 (Kothari).



understanding of causes and effects. An important example is provided by Kothari, when he argued that persistent poverty is not only the cause of gender-based violence, but ‘arguably is itself a form of violence.’<sup>148</sup> Finally, the Special Rapporteurs on Adequate housing have persisted in making recommendations that challenge states and international actors to eliminate the causes of violation: for instance, Rolnik has called for a ‘paradigm shift’ from financialisation to human rights as underpinning housing systems.<sup>149</sup> Most recently, Farha has included the structural causes of unequal and unsustainable urbanisation as explicitly tied to her recommendations on a new urban agenda for the realisation of the right to adequate housing.<sup>150</sup>

Nevertheless, by taking this radical stance, the Special Rapporteurs on housing have been fighting a strong tide of state opinion and the prevailing winds of global economics. As Marks is careful to point out, the three problems she identifies do not constitute personal shortcomings of particular persons or institutions: ‘Rather, they are limitations in the extent to which those institutions and officials are able to elucidate the root causes of whatever it is that concerns them, given the arrangements within which they operate.’<sup>151</sup> For the Special Rapporteurs on housing, there have, accordingly, been sacrifices on both political and practical fronts.

On political fronts, the underlying radical position of the Special Rapporteurs has meant that even mild and constructive criticism of State housing policies has been met with highly politicised and ideological responses. Of course, some states remain hostile to external scrutiny of *any* type under the UN Special Procedures, as several of the contributions in this volume make clear.<sup>152</sup> Taking a stance that is explicitly critical of the structural economic, social and political frameworks upon which states operate appears to open Special Rapporteurs to additional avenues of criticism. Few nations would welcome such searching analysis of their failure to move social organisation forward so that women are not systematically and systemically marginalised and disempowered. And few states are yet ready to question the unequal financial benefits that flow from the current global economic paradigm. The country visit to the United Kingdom in 2013 by Raquel Rolnik is one example. Her preliminary findings, released in a press statement,<sup>153</sup> were largely constructive and contained elements of praise.<sup>154</sup> Nevertheless, the UK government’s response was outraged and unequivocally ideological, amounting in some instances to a personal attack on the Special Rapporteur’s character, religion and political views.<sup>155</sup> It is perhaps ironic that Marks selects the work of the

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<sup>148</sup> Kothari *Women and Adequate Housing 2005* (n 75) para 41.

<sup>149</sup> Rolnik A/67/286 (n 51) para 71.

<sup>150</sup> Farha A/70/270 (n 68) para 72 – 75.

<sup>151</sup> Marks (n 10) 71.

<sup>152</sup> **Cross ref chapters in this volume.**

<sup>153</sup> Press Statement by the United Nations Special Rapporteur on adequate housing: End mission to the United Kingdom of Great Britain and Northern Ireland, 29 August to 11 September 2013 (London, Sept 11 2013) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13706&LangID=E>> last visited June 22 2015.

<sup>154</sup> *Ibid.* See also UNHRC, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik Addendum Mission to the United Kingdom of Great Britain and Northern Ireland* (30 December 2013) UN Doc A/HRC/25/54/Add.2.

<sup>155</sup> Jessie Hohmann ‘Provoking Debate: The UN Special Rapporteur and the Right to Housing in the UK’ Oxford Human Rights Hub Blog (27 September 2013) <<http://ohrh.law.ox.ac.uk/provoking-debate-the-un-special-rapporteur-and-the-right-to-housing-in-the-uk/>> (last visited June 22 2015). See also Aoife Nolan ‘Grant Schapps Should Reconsider his ill-informed ‘Bedroom Tax’ UN outrage’ Guardian Comment is Free 13 Sept 2013 <<http://www.theguardian.com/commentisfree/2013/sep/13/grant-schapps-un-bedroom-tax-outrage>> (last visited November 3 2015); Amelia Gentleman and Patrick Butler ‘Ministers Savage UN Report Calling for Abolition of UK’s Bedroom Tax’ Guardian Online 3 Feb 2014 <<http://www.theguardian.com/society/2014/feb/03/ministers-savage-un-report-abolition-bedroom-tax>> (last

UN Special Rapporteur on the Right to Food as one of her examples for analysis, given that de Schutter has been exposed to similar criticism,<sup>156</sup> as recently have others.<sup>157</sup>

At the same time, the Special Rapporteurs on housing walk a fine line between an underlying structural critique, and the pragmatic need to fulfil their mandates' more practical or institutional functions. Certainly, the Special Rapporteurs on the right to adequate housing have also produced Reports and recommendations that focus on legislative and policy changes designed to provide a better technical environment for the realisation of the right to housing, such as by financing technical cooperation,<sup>158</sup> by pressing for legislative changes at the state level,<sup>159</sup> and through monitoring and indicators at the state and international level, for instance.<sup>160</sup> At one level, this is necessary given the terms of the mandate. At another, these efforts exist in tension with more structural recommendations that would necessitate not adding layers of accountability or technical assistance on top of flawed structures, but more fundamental changes to underlying paradigms of social and economic organisation.

The effect of the Special Rapporteurs' normative development of the concepts of women's right to adequate housing, and the impacts of financialisation and globalisation on the right to adequate housing has not been embraced by states. To date, States have found it easy to attack Special Rapporteurs, though in my view it is significant that states feel compelled to attack Special Rapporteurs on their (perceived) personal politics, rather than the substance of their ideas.

Moreover, in assessing the contribution of the special rapporteurs on adequate housing to the normative development of the right to adequate housing, it is also important to stress that contributions can be measured in many ways.

The clearest measurement of the impact of the work of the Special Rapporteurs on housing would be explicit references to their embrace in the development of national and international laws, policies and case law. We could also hope to find the ideas of the Special Rapporteurs on housing mirrored in these developments, albeit without attribution. As a matter of practice, such developments could translate into the realisation of the right to adequate housing for individuals, families and communities. As a matter of politics, they would be evidence of changing attitudes to, and embrace of, fundamentally different ways of thinking about housing and its relationship to the people who live in it.

These changes have not been achieved, but, at the level of principle, the UN Special Rapporteurs on housing have provided a set of normative statements that demonstrate that the world can be conceived of differently. The powerful critique, and alternative vision offered by

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visited 3 November 15). For comments amounting to a personal attack, see: Michael Seamark 'Raquel Rolnik: A dabbler in witchcraft who offered an animal sacrifice to Marx' Mail Online 12 Sept 2013 <<http://www.dailymail.co.uk/news/article-2418204/Raquel-Rolnik-A-dabbler-witchcraft-offered-animal-sacrifice-Marx.html>> (last visited November 3 2105).

<sup>156</sup> Nunatsiaq News 'Aglukkaq slams UN envoy's agenda on the right to food' 17 May 2012 at <[http://www.nunatsiaqonline.ca/stories/article/65674aglukkaq\\_slams\\_un\\_envoys\\_agenda\\_on\\_the\\_right\\_to\\_food](http://www.nunatsiaqonline.ca/stories/article/65674aglukkaq_slams_un_envoys_agenda_on_the_right_to_food)> (last visited November 3 2015).

<sup>157</sup> Anil Dawar, 'UN investigators accused of having 'leftist agendas' Daily Express Online 6 Feb 2015 at <<http://www.express.co.uk/news/world/556464/UN-investigators-accused-having-leftist-agendas-left-wing-politics>>

<sup>158</sup> Mandate of the Special Rapporteurs on housing (n 9).

<sup>159</sup> A/HRC/10/7 (n 50) paras 79 – 80,

<sup>160</sup> Sachar Progress Report 1993 (n 16) 159- 65.

them, remains important now, and available to States, civil society and international organisations into the future.

Whether the choices the Special Rapporteurs on the Right to Adequate housing have made between politics, practicality and principle have been the right ones is debateable. Indeed, the Special Rapporteurs themselves have taken different approaches to striking this balance.<sup>161</sup> A more practical and less structural approach might have made gains for some who currently lack the right to adequate housing, a more adept political positioning might have ensured adequate housing for others. Ultimately, however, the Special Rapporteurs on adequate housing have been firm in their principles, believing that only structural change can achieve the realisation of the right to housing for all. Even to make these statements of principle represents a notable achievement.

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<sup>161</sup> In her first report, Farha noted that ‘the well elaborated norms and commentary on the right to housing’ had not in fact ‘led to substantive progress.’ A/69/274 (n 59), para 14.