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MEAN STREETS

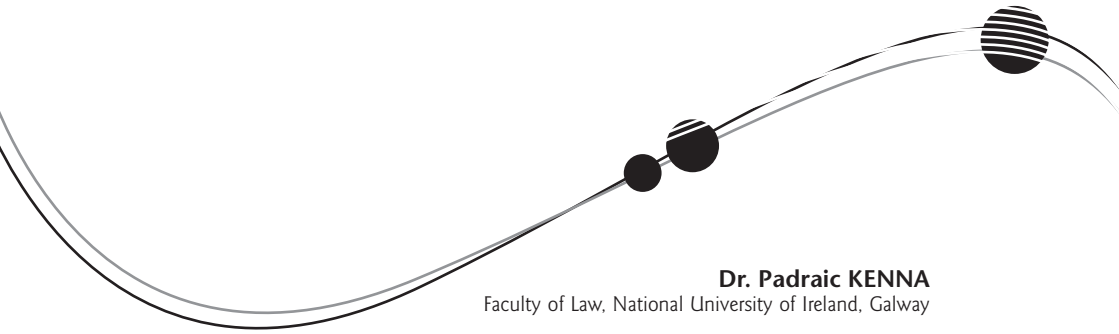
A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

POVERTY IS NOT A CRIME. IT'S A SCANDAL.

Fondation Abbé Pierre
FEANTSA
HOUSING RIGHTS WATCH

CHAPTER I

Applying a Human Rights – Based Approach to Homelessness – from Theory to Practice



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I thought you were a lawyer
I'm a human first, then a lawyer.
It's possible to be both.

The Street lawyer – John Grisham (1998)

In order to explain what the Law is, it is common to compare the individual within a society with "Robinson Crusoe on his island". The latter, as he was alone, could not establish any legal relationship because the Law is always related to a society; that is, a plurality of people that are in contact and have to resolve conflicts of interests. Human beings have always fought to improve their well-being and living conditions. This is why they have developed mechanisms for co-existence (determining how they relate to others, how they interact with their environment), and set up instruments guaranteeing their survival and happiness. This set of norms constitutes the (objective) Law; that is, a system of norms establishing and guarding a given organisation of social relations, and it tends to prevent the violation of such norms. Consequently, the norm (Law) organises something and the public authority guarantees the binding effectiveness of such norm. It is worth noting that each of these systems of norms a rises in a given political, economic and social context, and that they are imposed by the dominant social groups at a particular moment in history. The achievement and recognition of liberty, dignity, equality, and well-being have been guaranteed by social, political, and even cultural struggles (Castanyer *et al.*, 2009).

Therefore, recognition of "rights" by the State has primarily responded to the struggle (by the community and its organisations) to achieve such rights. Nevertheless, it is worth noting that such recognition by the State has allowed us to "identify responsibilities when it comes to guarantee those rights, generalise their protection, and launch policies and measures tending to achieve their validity in an irreversible way". It is established that individuals are born with some inherent rights that, as such, are enjoyed even without recognition by a third party (as these rights are not given by anyone, no one can take them away or abolish them). Nonetheless, it is also true that recognition by the State places these rights in three important spheres: guarantee, requirability, and reparation (Graciela *et al.* 2008). The other side of the (objective) Law, understood as the set of rules organising the behaviour of individuals, are (subjective) rights. Rights imply the possibility to act according to the Law; they consist of the capacity (or set of capacities) bestowed on an individual to defend her/his interests in the framework of the general rule. Thus, there is a link between the Law and rights: while the former sets the limits of the power or the capacity to act of individuals, the latter represent the very capacity of action according to the rules (Lacruz, 1998). Therefore, the term "right" designates a capacity of the individual, which generates the legal duty for public authorities to comply: to either do or not do something.

HOW WERE HUMAN RIGHTS BORN?

Human rights have been progressively recognised over history through the evolution of individuals, peoples and communities, and through the evolution of the legal, political and moral ideas in force at any given time. The history of human rights must be considered in their contexts. We tend to see history as an inevitable series of isolated events taking place at a given time; however, history is a process where events are interrelated and form a whole (Graciela *et al.*, 2008). Therefore, social achievements obtained through efforts and struggles can be reversed, or even erased. It is thus of utmost importance to know the reasons behind reversals, as well as the actions that prevent them.

The history of human rights starts in the Modern Ages, because during the Middle Ages there were no true declarations of universal rights, only privileges that monarchs gave to certain social groups. The history of social movements demanding the recognition of "rights" and the end of privilege and arbitrary rule began in England (Magna Carta Libertatum [1215], The Petititon of Rights [1628], Habeas corpus [1679], The Bill of Rights [1689]), the United States (the Virginia Declaration of Rights [1776], United States Declaration of Independence [1776]), and France (Declaration of the Rights of Man and of the Citizen [1789]). In the nineteenth century, the Industrial Revolution consolidated inhuman and dangerous labour standards, that instead of dignifying the human condition, in fact aggravated inequalities and enhanced privilege, leading to social conflicts lead by the proletariat, which demanded basic rights.

This new scenario showed, among other things, that recognizing human rights was not enough: there was a need to guarantee social rights, and, at the same time, political democracy had to become a social democracy. In addition to the adoption of social rights, during the nineteenth century there was a "formal change" in the recognition of rights, as they were no longer proclaimed in "declarations", but rather included in the constitutions of states, which was meant to provide rights with the guarantees set up by each constitution. During the twentieth century there was recognition of economic and social rights, which would later be expanded from the second half of the century. After World War I, several declarations of human rights were promulgated, including the Constitution of the United States of Mexico (1917), the Soviet Declaration of the Rights of the Working and Exploited People (1918) in Russia, and the Weimar Constitution (1919) in Germany. The twentieth century witnessed social struggles leading to the recognition of rights such as the fight against racial discrimination, the achievement of women's suffrage, and the consolidation of the movements for the liberation of women and against their discrimination.

Between the two World Wars, a highly important political development took place: the rise of totalitarian regimes, inherently opposed to the rights of individuals. This is why, immediately following the defeat of such regimes, a movement was created for the recognition and the protection of individual rights from a universal perspective. Thus, 1945 saw the approval of the United Nations Charter, creating this international organisation that, embraced the "respect for human rights and

fundamental freedoms" as one of its fundamental principles. In consequence, in 1948, the Declaration of Human Rights was approved, later to be complemented by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both approved in 1966.

The United Nations Charter allowed for the existence of regional agreements or bodies, and thus the Council of Europe was born as an intergovernmental organisation aimed at the protection of human rights. The Council of Europe promotes "the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy" (Preamble, Statute of the Council of Europe, 1949). Every Member State must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms (article 3, Statute of the Council of Europe, 1949). The Council of Europe refined the definition and the defence of those fundamental rights and created the European Convention on Human Rights and Fundamental Freedoms in 1950 and the European Social Charter (ESC) in 1961. The European Social Charter includes social and economic rights, while the European Convention on Human Rights focuses on civil and political rights. To develop and protect these rights further, the European Court of Human Rights and the Committee of Social Rights of the Council of Europe have progressively set up positive duties for member states. We can see a change in the perception that the ESC is less important than the Convention. There is increasing pressure for the ESC to become an emblematic expression of the European Law of Social Rights or Social Law of Human Rights, and as the bulwark of the European social democracy (Jimena, 1997).

The establishment of the European Union (EU) has led to the expansion and recognition of fundamental rights. The founding Treaty of the European Community included the recognition of different rights (mainly economic) in the context of the Common Market. Within the Treaty is the commitment to guarantee the free movement of goods, capital, services, and people, which should all be enjoyed free from discrimination based on nationality. A wage equality clause is also part of the EU's commitment to equality. Taking the recognition of these rights as a point of departure, the Court of Justice put forth a wide list of fundamental rights and references to other international treaties and to constitutions of the Member States, which were integrated later, through several reforms, to the community Treaties. The European Economic Community (EEC) and, later the EU had to include fundamental rights in the Treaties, and to respect them in the making and implementation of policies. This was due, to a great extent, to the protective action undertaken by the Court of Justice, even though the community Treaties did not entitle the Court to have this role until the entry into force of the Treaty of Amsterdam (Freixes *et al.*, 2002).

To sum up, the progressive recognition of human rights, understood as a historical process of expansion of the legal content of human dignity, establishes that these rights should not be set as a hierarchy in terms of relevance, implied duties for public authorities, or legal implications. Instead, as per paragraph 5 of the first

part of the *Vienna Declaration and Programme of Action*, approved by the World Conference on Human Rights (1993): "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

WHAT IS THE HUMAN RIGHTS-BASED APPROACH?

The Human Rights-Based Approach (HRA) is a conceptual framework for the process of human development that, from a normative perspective, is based on the international human rights legislation and, from an operative perspective, is aimed at the enhancement and the protection of human rights. The objectives of this approach lie in the analysis of those inequalities that play a central role in international development policies, and in correcting the discriminatory practices and unfair distribution of power that hinder development (OACDH, 2006). Although the HRA was born in the context of international development policies, the supporting rationale was the conviction that the design, implementation and evaluation of every public policy should incorporate the human rights perspective (Kenna, 2011). Therefore, this approach helps to create policies, laws, regulations and budgets that establish which particular human rights must be dealt with, what must be done, and to what extent; and also contributes to judge who is responsible for their enforcement and to ensure that the necessary capacities and resources are allocated (ACNUDH, 2006). In this sense, the HRA can be understood as a new perspective for the conception and design of public policies in the framework of a consultation process between the State and civil society (Jiménez, 2007). The HRA demonstrates that the goal of public policies is no longer to satisfy needs, but to realise rights. Satisfying a need may be legitimate, but it is not necessarily linked to a duty of the State, while the existence of rights involves deciding who is responsible for their enforcement (ALG, 2010). Rights imply duties, while needs do not. An approach based on human rights identifies rights-holders and what they are entitled to as well as the corresponding duty-bearers and the duties they have to fulfil. Additionally, such an approach tries to strengthen the capacity of rights-holders to claim their rights and the capacity of duty-bearers to fulfil their obligations. Therefore, we can identify significant differences between approaches based on charity, needs, or rights.

TABLE 1:
Shift in Development Thinking Introduced by Human Rights-Based Approach

Charity Approach	Needs Approach	Rights-Based Approach
Focus on input and outcome	Focus on input and outcome	Focus on process and outcome
Emphasises increasing charity	Emphasises meeting needs	Emphasises realising rights
Recognises moral responsabilty of rich towards poor	Recognises needs as valid claims	Recognises individual and group rights as claims towards legal and moral duty-bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focus on manifestation of problems	Focus on immediate causes of problems	Focuses on structural causes and their manifestations

Source: (Kirkemann & Martin, 2007)

The principles guiding the development of the HRA are based on their:

Universality and Inalienability: Human rights are *universal* and *inalienable*. *All people everywhere* in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the *Universal Declaration of Human Rights*: "All human beings are born free and equal in dignity and rights."

Indivisibility: Human rights are *indivisible*. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

Interdependence and Interrelatedness: Human rights are *interdependent* and *interrelated*. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

Equality and Non-discrimination: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

Participation and Inclusion: All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

Accountability and Rule of Law: States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights[1].

These human rights principles must guide and pervade the development of public policies; that is, this is not about an additional policy, isolated from others, but rather a general orientation common to all policies. For this purpose, it is necessary to set up specific measures aimed at: promoting human rights and raising awareness in the society as a whole and, especially, among the involved actors, capacity-building, to create a sustainable system of human rights enforcement; integrating human rights in the legislation and actually enforcing them; and, of course, supervising these policies and objectives through an effective and participatory system of social monitoring of human rights. In the same fashion, UNESCO (2006) stated that an effective implementation of human rights must integrate four basic elements:[2]

- Analysis of human rights based on the duties of states.
- Setting clear deadlines for the goals and standards of human rights.
- Action programmes and plans with responsibilities across all levels of government and administration.

1. Source: Human Rights Principles – United Nations: http://www.unfpa.org/rights/principles.htm - retrieved, 7 May 2013
2. The text of the UNESCO Strategy on Human Rights is reproduced in its entirety as adopted by the General Conference of UNESCO at the 20th plenary meeting of its 32nd session on 16 October 2003 by 32 C/Resolution 27.

- An effective control of the compliance with and the enforcement of human rights, involving both government authorities and rights-holders.

Therefore, the HRA offers a normative framework for the development and implementation of public policies, as well as for their evaluation according to a wide set of parameters and indicators designed to assess progress beyond the legal and institutional frameworks. The HRA is related to the process and the outcomes of the enforcement of human rights and requires some necessary, specific and unique elements (UNICEF, 2004):

- Assessment and analysis in order to identify the individual human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers, as well as the immediate, underlying, and structural causes when rights are not realized.
- Programmes to assess the capacity of rights-holders to claim their rights and of duty-bearers to fulfil their obligations. Later, they then develop strategies to build these capacities.
- Programmes to monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

In addition, the following are essential, for the implementation of the human rights-based approach (UNICEF, 2004):

- Situation analysis is used to identify immediate, underlying, and basic causes of development problems. These analyses have to take into account all stakeholders, in order to set up strategic partnerships.
- Strategies enhance the development of human rights because they monitor and evaluate both processes and results. Strategies or programmes must focus on disadvantaged or excluded groups, as the goal is to reduce inequalities. Goals and targets must be measurable, as they are fundamental components of programming and evaluation. In fact, strategies or programmes have to keep themselves accountable vis-à-vis all stakeholders.
- Participation is both a means and a goal. People are recognised as key actors in their own development, rather than passive recipients of commodities and services.

THE HUMAN RIGHTS-BASED APPROACH AND POVERTY

The February 2010 Eurobarometer survey on poverty and social exclusion shows that almost one quarter of Europeans (24%) consider that people are poor if their resources are so limited that they cannot fully participate in our society. An additional 22% define poverty as the inability to pay for the basic goods needed to live, while another 21% define poverty as the need to depend on social benefits or public assistance. A sizeable minority (18%) believes that people are poor if the amount of

money they can spend each month is below the poverty threshold (Eurobarometer, 2010). Nevertheless, the survey did not ask whether being poor was a consequence of a violation of human rights. It is still uncommon to consider poverty from a HRA perspective. Quite to the contrary, it is often seen as something pitiful or even as the poor person's fault. Nonetheless, poverty is both a cause and a product of human rights violations. Poverty violates human rights because it is a condition derived from cumulative social, political and economic processes (caused by shortages and inequalities) that exclude extremely poor people from the real and effective exercise of human rights and fundamental freedoms (IIDH, 2007). Because their freedom of action and choice is restricted, impoverished people cannot enjoy better and desired living standards. On the other hand, poverty is also the expression, the effect and the result of the structures that have chronically violated those rights, inasmuch as the political and socioeconomic systems have concentrated the benefits of economic growth, public policies and public resources but generally not to the benefit of the most disadvantaged. From this perspective, the defence of the human rights of poor people is not only a concern for lawyers and human rights activists, but also for society as a whole, as an essential element in the eradication of poverty (IIDH, 2007). Therefore, the link between human rights and poverty is evident: individuals whose rights are denied are more likely to be poor. Consequently, for a number of years, several initiatives have integrated the human rights-based approach in strategies for the eradication of poverty (OACDH, 2004). As reasserted by the United Nations High Commissioner for Human Rights, extreme poverty and social exclusion constitute a violation of human dignity and, therefore, require the implementation of urgent measures to eradicate these problems at the national and international level (OACDH, 2002). Thus, according to the principles outlined above, the application of the HRA to strategies or programmes for poverty reduction is generally characterised by the following features (OACDH, 2002):

- Indentifying the poor
- Recognition of the relevant human rights legislation at the national and international level
- Equality and non-discrimination
- Participation and empowerment
- Progressive realisation of human rights
- Monitoring and accountability

THE HUMAN RIGHTS-BASED APPROACH AND HOMELESSNESS

The above-mentioned Eurobarometer survey also shows that, in many countries, it is believed that poverty is related to high housing costs; 67% of Europeans think that decent housing in their area is too expensive (Eurobarometer, 2010). Furthermore, when poverty is described exclusively in terms of the level of expenses or income, it is taken for granted that acting on these levels would "resolve" the problem. Nevertheless, people who experience poverty do not only suffer hardships, but are also excluded, voiceless, and threatened by violence and insecurity (AI, 2009). Homelessness is increasingly being considered an expression of social exclusion

(Edgar & Doherty, 2001) instead of a situation of economic poverty. This point of view implies accepting that its causes are composed by structural, institutional, personal and relational factors (Edgar *et al.*, 2005).

The concept of "home" contains three areas or domains: having a house (or space) that is adequate to satisfy the needs of an individual and her family (physical domain); enjoying the opportunity to maintain privacy and to entertain social relations (social domain); and enjoying exclusive possession, security of occupation and legal right (legal domain) (Edgar *et al.*, 2005). Thus, the concept of home is an independent concept neither limited to the housing unit nor to the legal right to possession, but implying more than a permanent or temporary housing: it includes the human dimension of life and the relations that life entails (Kenna, 2006). As a summary, we can say that a home is the result of housing plus an X factor representing the social, psychological and cultural values acquired by a physical structure via its use as a housing unit (Fox; 2007).

$$Home = Housing + X$$

The United Nations Committee on Economic, Social and Cultural Rights, in its General Comment number 4 on "The right to adequate housing", established that the concept of adequacy serves to determine which factors must be taken into account in determining whether a housing unit is "adequate" anywhere in the world. Consequently, while adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, it is nevertheless possible to identify certain aspects that must be taken into account in any context. For example, the legal security of tenure; the availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility (physical); location; and cultural adequacy. For Europe, the definition of the "adequacy of housing" was established in Section 31 of the European Social Charter revised in 1996. Article 31 is devoted to the right to housing and establises that signatory countries must create measures aimed at "[promoting] access to housing of an adequate standard". The Committee of Social Rights of the Council of Europe judges that "adequate housing" is structurally safe housing, devoid of any health or sanitary risks, not overcrowded, and enjoying a legally sanctioned safe tenure. In the Committee's opinion, a dwelling is free of risks for health if it provides all the basic features (water, heating and waste disposal; plumbing and sewer systems; electric power; etc.) and that, if affected by specific problems, (such as the presence of lead or asbestos) these are under control (Kenna, 2006).

Homelessness is a dynamic process, not a defining feature of a group of people or a static condition, and therefore it can be described as a continuum of situations of exclusion from adequate housing (Edgar *et al.*, 2005). This understanding is crucial for the application of the HRA to homelessness because, to eradicate homelessness, the focus must be on the promotion, protection, respect and non-violation of the right to adequate housing, understood as a human right and based on the principle of "human dignity". This understanding is called **housing rights-based approach**, a "sectorial" version of the human rights-based approach which is applied to the struggle against

housing exclusion and homelessness. The interrelation between the right to housing and other rights is evident, because "housing can be seen to help safeguard the rights to privacy, self-determination and the right to development. It facilitates a range of freedoms including freedom of speech, religious practice and other cultural expression […] [it] allows us security from cruel, inhumane or degrading treatment […] [it] is a primary means of protecting health and well-being, offering a space to prepare and cook foods hygienically, to shelter from weather, and to store clothing and other substantive possessions connected with our satisfactory functioning [...] [it] is an essential conjunct to the rights of education and work, and it supports a range of other activities necessary for survival –– providing a place to eliminate bodily wastes, to sleep and to relax … The right to adequate housing is a right with far reaching implications for the fulfilment of other rights and therefore our quality of life" (Austin, 1996). Therefore, assuming that "adequate housing" is a human right implies assuming that homelessness "is a violation of fundamental human rights and freedoms, including the right to liberty and security of the person, the right to freedom from discrimination, the right to privacy, the right to freedom of expression, the right to freedom of association, the right to vote, the right to social security, the right to health, and the right to an adequate standard of living" (Lynch & Cole, 2003). So in order to eradicate homelessness, we must overcome the artificial division between economic, social and cultural rights, on the one hand, and the civil and political rights on the other hand, and defend the indivisibility and the interdependence of all human rights.

When people are homelessness or face housing exclusion, their fundamental rights to dignity and equality are constantly threatened or violated. In many cases, the social stigmatisation and degraded and dehumanized conditions which are related, for instance, to rooflessness, seriously jeopardise the dignity of persons affected by this situation (Muñoz *et al.*, 2003). Sometimes, emergency services provided to homeless people puts their rights at risk. For example, they may encounter a lack privacy in shelters, impersonal or derogatory treatment by workers and officials, and many restrictive regulations (Miller & Keys, 2001). Furthermore, many homeless individuals' rights are violated by public order and security policies, and by aggression or abuse. So we can say that homelessness is a "consequence" of the violation of human rights but, at the same time, it is also a "cause" of further violations of human rights in general. As long as States do not comply with the duty (established in the International Covenant on Economic, Social and Cultural Rights)[3] to devote the maximum of their available resources[4] to achieving

3. Section.2.1 PIDESC, "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, 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 […]".
4. "To the maximum of their available resources" means that State resources have to be used to make effective each and every right recognised by the ICESC. In this sense, it is important to underline that these resources must be used in an equitable and effective manner, meaning that the priority must always be given to the protection of the most vulnerable members of society. Lack of resources does never justify that a State does not comply its duty to apply the rights enshrined in the ICESC: the State must always be able to proof that it has implemented enough measures to guarantee the universal right to housing in the shortest possible time and using the maximum of its available resources.

progressively[5], by all appropriate means,[6] the realisation of the right to housing, individuals experiencing homelessness may suffer a systematic and permanent violation of their rights.

It is important to remember the interdependence and indivisibility of human rights, because while we must defend the political and civil rights of homeless individuals, we cannot be distracted from the need to (given the definition) defend the right to housing. Vivian Rothstein (1996) showed that in the United States, in early and mid 1980s, the main task of the lawyers representing homeless people consisted of identifying housing services covering their needs, litigating for these services, and helping these people to overcome their situation. However, the provision of services was not sufficient, and given the increasing levels of homelessness over the following years, most lawyers started to defend the rights of homeless people to "exist and survive" in public spaces. This development led to the advocacy for "safe zones" for homeless people to live in (marginalised areas), free from persecution, or for the permission to distribute food on the streets, instead of advocating for more beds in shelters (Rothstein, 1996). This development makes it all the more important that we underline the need for an approach to homelessness problems that understands that there are structural, institutional, personal and relational factors which cause this phenomenon (Edgar *et al.*, 2005). Therefore, the advocacy for the rights of homeless people can take place also in each of those spheres. It does not make sense to defend an individual, only in the framework of the civil and political rights, or private law, unless it is combined with a legal struggle in terms of economic, social and cultural rights, or in the field of public and administrative law, either at the local, national, European or international level. Most important, however, is that homeless people have access to the justice system.

ACCESS TO JUSTICE AND HOMELESSNESS

Using the expression "access to rights" does not imply that the most vulnerable groups in society do not have rights, because, as stated above, every human being

5. "To achieve progressively" should not be interpreted as a duty devoid of content. It has to be noted that it is a mechanism intended to provide the needed flexibility, and that recognises the specificities of each country, as well as the difficulties faced by a government when tries to guarantee the full exercise of rights. The ICESC requires the states to implement, as quickly and effectively as possible, the measures necessary to guarantee a full attainment of the economic, social and cultural rights. On the other hand, from the Covenant it does appear that if a Member State implements any measure deliberately regressive regarding the exercise of economic, social and cultural rights, it will have to justify and to demonstrate that, on the contrary, it has used all available resources to prevent this from happening.
6. "By all appropriate means" is related to an immediate duty. After having ratified the Covenant, the states must undertake immediate action. The first action consists in an in-depth review of all the relevant legislation, in order to adapt it to international legal obligations. Nonetheless, it is not enough, as acknowledged by the Committee on Economic, Social and Cultural Rights. Moreover, the expression "by all appropriate means» implies that, in addition to legal measures, it is necessary to implement other policies of an administrative, judicial, economic, social and educative nature. As for the right to housing, this obligation implies that the states have to prepare a strategic housing plan.

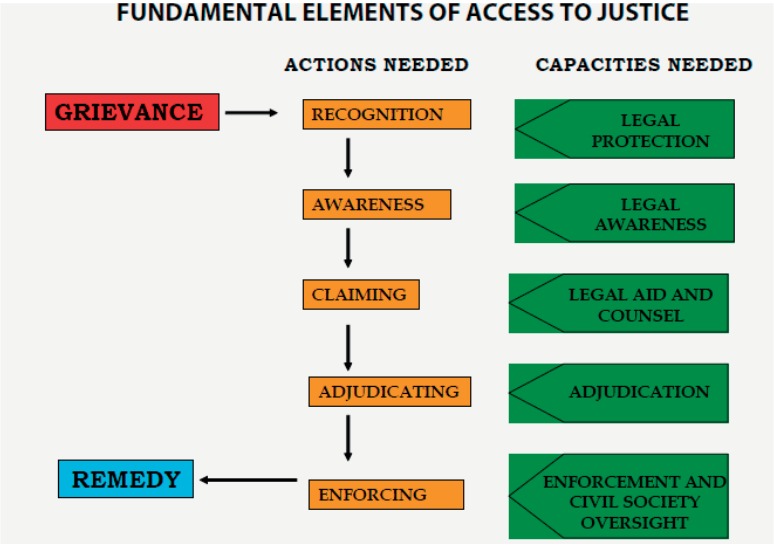
has inalienable and indivisible rights. This expression refers to the fact that there are groups of people that cannot fulfil their rights fully or sufficiently (ICHRP, 2004). As pointed out by the United Nations Development Programme (UNDP), lack of resources and failure to protect rights are two mutually reinforcing problems: while poverty actually restricts the access to justice, it is also true that the lack of access to justice perpetuates poverty among those individuals whose rights are not protected. Therefore, access to justice is an instrument for the transformation of power relationships that perpetuate exclusion and poverty (PNUD, 2005). In this way, the concept of "access to justice" does not only refer to the material or logistic means and instruments at the disposal of those who turn to the judiciary system as "users", it also implies the duty of the State to protect and guarantee the exercise of rights of individuals as "rights-holders", on equal terms and free of discrimination on the grounds of sex, racial or ethnic origin, age, political ideology or religious beliefs. In addition, it implies that rights-holders can have their claims resolved fairly and within a reasonable period, with impartiality and according to the criteria and procedures set down in law. Therefore, we can find the following restrictions to the access to justice (PNUD, 2004):

- Long delays; the prohibitive costs of using the system; the lack of available and affordable legal representation that is reliable and has integrity; abuse of authority and powers resulting in unlawful searches, seizures, detention and imprisonment; and weak enforcement of laws, implementation of orders and decrees.
- Severe limitations in existing remedies provided either by law or in practice. Most legal systems fail to provide remedies that are preventive, timely, non-discriminatory, adequate, just and deterrent.
- Gender bias and other barriers in the law and legal systems: inadequacies in existing laws effectively fail to protect women, children, poor and other disadvantaged people, including those with disabilities and low levels of literacy.
- Lack of *de facto* protection, especially for women, children, and men in prisons or centres of detention.
- Lack of adequate information about what is supposed to exist under the law, what prevails in practice, and limited popular knowledge of rights.
- Lack of adequate legal aid systems.
- Limited public participation in reform programmes.
- Excessive number of laws.
- Formalistic and expensive legal procedures (in criminal and civil litigation and in administrative board procedures).
- Avoidance of the legal system due to economic reasons, fear, or a sense of futility of purpose.

Consequently, it could be argued that the human rights-based approach, when applied to homelessness, sheds lights on several restrictions, such as how the social exclusion suffered by homeless people reflects power relationships. Very often, *individuals do not know their rights* (for instance, many immigrants are unaware of housing legislation), *do not know how to exercise their rights* (for example, the problem of evictions and, especially, mortgage foreclosures has revealed individuals' misunderstanding of the law, and the banks' abusive

arrogance), *cannot exercise their rights* (for lack of economic resources, or in the case of homeless people with mental conditions or drug addictions), and, finally, (some people) *do not want to exercise their rights* (for example, people reluctant to contact NGOs or lawyers out of distrust for all institutions linked to a State that has oppressed or excluded them).

Several studies (Forell *et al.*, 2005; Mackie, 2008) show that homeless people often have multiple and interrelated legal problems, which, if not dealt with, can exacerbate the process of homelessness. Apparently, the factors leading to homelessness often have, at least partly, legal implications, for example in cases of divorce, domestic violence, evictions and foreclosures, excessive debts, discrimination when accessing housing, or landlord harassment. Legal assistance in these cases may prevent or reduce the risk of homelessness (Forell *et al.*, 2005). At the same time, however, the homelessness process itself puts homeless individuals in a position prone to legal problems, such as being sanctioned for incivility or antisocial behaviour, or being involved (or the victim of) robberies or aggression. In this way, social entities helping homeless people can/should develop legal services to assist individuals in need of help and to empower them. In certain cases (and for different reasons), some of the social entities/organisations that provide services to homeless people are not able to advocate or litigate on their behalf against government policy or legislation. However, there are other means through which homeless people can seek legal aid and support. For this purpose, these organisations should establish links with *pro bono* lawyers, and social entities specialised in the legal defence of human rights (or housing rights and homelessness), and work in networks with ombudsmen or with law schools with legal clinics. The aim of this cooperation is to fight social exclusion in the legal sphere, contributing to and being influential on the development of laws, instead of restricting themselves to service management and political lobbying. It is also worth noting that, in certain cases, the emphasis by human rights advocates on the legal and constitutional framework of human rights has led them to neglect certain forms of action, such as the development of social movements, that sometimes are more likely to motivate and emancipate excluded groups. Part III of this report includes some interesting examples of this. In order to overcome obstacles to the access to justice from the HRA, it is important to identify the grievance that calls for a remedy or redress. A grievance is defined as a gross injury or loss that constitutes a violation of international human rights standards. The capacity and actions needed to achieve access to justice, following a human rights-based approach, are outlined below (UNPD, 2004):



Source: (UNDP, 2004)

In this sense, as explained by the UNDP, legal protection means a recognition of the rights of disadvantaged individuals in the judiciary, and has to involve the right to claim remedies through formal mechanisms. Legal protection for disadvantaged groups can be improved, for instance, via the ratification of treaties and their integration into national law, as well as the recognition and implementation of the constitutional or national legislation. Legal awareness implies capacity-building for individuals, and dissemination of information that can help disadvantaged people to understand that they have the right to obtain reparation through the judiciary, to understand which institutions and authorities should protect their access to justice, and to understand the legal procedures.

On the other hand, for individuals to be able to initiate and pursue legal action, there is a need for legal assistance and advice through public defence systems and pro bono representation, or via laypersons with legal knowledge. Adjudication means developing capacities to determine the most adequate type of redress or compensation. The empowerment of the civil society and the monitoring of policies by the civil society and through parliamentary control are intended to enhance the capacity to enforce court decisions and to institute reasonable appeal procedures against arbitrary actions or rulings, strengthening the overall and collective accountability within the justice system (PNUD, 2004). Suggestions for enhancing the access to rights include the following (ICHRP, 2004):

- Encouraging governments to monitor access and collect disaggregated statistics to measure it; developing indicators for economic and social rights;
- Encouraging participation in decision-making at all levels;

- Developing techniques of budget monitoring and resource allocation to influence government spending priorities;
- Providing immediate services or benefits;
- Looking at issues of accountability;
- Building human rights awareness among the excluded and policy-makers;
- Encouraging strategic networking and issue-based alliances, especially among activists, human rights organisations and organisations with direct contact with excluded individuals and groups;
- Monitoring and supporting arms-length governmental human rights bodies, like national commissions of human rights.

THE HUMAN RIGHTS-BASED APPROACH AND ERADICATING HOMELESSNESS IN EUROPE

Throughout this chapter we have identified the main human rights principles that should guide public policy, as well as the features that should characterise programmes to reduce homelessness according to a human rights-based approach. It is essential to identify the elements shared by the Resolution B7-0475/2011 approved by the European Parliament with the aim to design a European strategy. As stated above, the United Nations High Commissioner for Human Rights believes that extreme poverty and social exclusion constitute a violation of human dignity and urges public authorities to undertake policies to eliminate those problems (OACDH, 2002). Poverty reduction programmes should be characterised by the following features: they identify the target population; they promote the recognition of human rights legislation, respect for equality and non-discrimination; and they contribute to the empowerment of the affected people and the participation of all actors. Moreover, these programmes should progressively realise human rights, a task that involves a series of policies enhancing the stability of actions and that eventually guarantees accountability through monitoring and evaluation of public policy, so measurable targets must be set.

Indeed, the fundamental aspects of the strategies for homeless people (put forth in the European Commission's 2010 joint report on social protection and social inclusion) include many of these features. The European Parliament acknowledges the need to build strategies for the eradication of homelessness, as homelessness entails an unacceptable violation of human dignity and, particularly, of Section 34 of the Charter of Fundamental Rights of the European Union on Social security and social assistance, as well as Section 31 of the Revised European Social Charter on the right to housing. In addition, the resolution urges the European Union Fundamental Rights Agency to pay more attention to the consequences of extreme poverty and social exclusion regarding access to and enjoyment of fundamental rights (considering that respect for the right to housing is essential to the enjoyment of other rights). Consequently, it is important to assign EU structural funds to a progressive development of housing policies targeted at homeless people, to ensure equality and non-discrimination, and to set up instruments to exercise the right to appeal, empowering those people and promoting their participation. For this purpose, the adoption of the ETHOS typology of homelessness and the involvement of Eurostat in the statistical analysis are essential for programming, monitoring and accountability.

Poverty Reduction Programmes (OACDH, 2002)	European Parliament resolution on an EU Homelessness Strategy B7-0475/2011
■ Identifying the poor	■ Taking into account the ETHOS typology ■ Promoting that definition (Social Protection Committee and its "indicators" sub-group) ■ Gathering data on homeless people (Eurostat) ■ Reflecting on changes of the profiles of homeless persons and, in particular, on the impact of migration;
■ Recognizing the relevant legislation in the national and international human rights framework	■ Having regard for the Charter of Fundamental Rights of the European Union, especially its Article 34, ■ Having regard for the revised European Social Charter of the Council of Europe, especially its Article 31, ■ Homelessness is an unacceptable violation of human dignity; ■ EU Homelessness Strategy should fully respect the Lisbon Treaty, ■ Urges the EU Agency for Fundamental Rights (FRA) to work more on the implications of extreme poverty and social exclusion in terms of access to and enjoyment of fundamental rights, bearing in mind that the fulfilment of the right to housing is critical for the enjoyment of a full range of other rights, including political and social rights;
■ Equality and non-discrimination	■ EU Homelessness Strategy should be fully compliant with the social housing policy of Member states, which legally enshrines the principle of promoting the social mix and fighting social segregation;
■ Participation and empowerment	■ Establish a working group for an EU homelessness strategy and to involve all stakeholders in the fight against homelessness, including national, regional and local policy-makers, researchers, NGO homeless service providers, people experiencing homelessness and neighbouring sectors such as housing, employment and health;
■ Progressive realisation of human rights	■ Envisage a package of activities to support the development and sustainment of effective national and regional homelessness strategies; ■ Call for the development of strong links between the EU homelessness strategy and EU funding streams, especially from the Structural Funds; calls upon the Commission to promote the use of the ERDF financing facility also for housing for marginalised groups to address homelessness in the different EU Member states; ■ Call for a specific focus on "housing-led" approaches;

■ Monitoring and accountability	■ Call for the design of a framework for monitoring the development of national and regional homelessness strategies, as a central element of the EU homelessness strategy; ■ Call for an annual or bi-annual reporting strategy to report on progress;

CONCLUSIONS

This chapter outlined how human rights are, in fact, the result of a historical process of tireless struggles to achieve an expansion of the legal content of human dignity. This is a dynamic and non-linear process with periods of improvement and periods of regression. The human rights-based approach was created to operationalise and expand human rights, on the assumption that the first step towards the empowerment of excluded groups means acknowledging that those individuals have rights that States have to respect and fulfil. The introduction of this concept aims to change the rationale behind policy-making processes so that the point of departure is not the existence of people in need of assistance, but rather that people are entitled to claim their rights. Rights imply duties, and duties need mechanisms making them claimable and enforceable (Abramovich, 2006). Homelessness, which is understood as processes of exclusion from adequate housing, is a violation of human rights. Nevertheless, homelessness, like poverty, is not only a consequence of human rights violations, but also a potential cause for the violation of other rights. Homeless people generally have many interrelated legal problems that, if left untackled, can exacerbate the homelessness process. Legal assistance can transform the law into a preventive tool to reduce the risk of homelessness, as well as an instrument of defence and empowerment. The European Parliament's Resolution on the need for a homelessness eradication strategy in Europe supports the underlying principle of poverty reduction programmes set up by the United Nations and developed according to the human rights-based approach. In these programmes, there has been a general recognition of the importance of empowering excluded and impoverished groups. The human rights-based approach essentially proposes to attain this empowerment through the recognition of rights, so access to justice plays a crucial role. But knowing is not enough. We must be willing, in the words of Ihering (1985), to fight for the Law. And this will to undertake a legal struggle, a legal battle for personal and collective dignity, is not something to be found in the "written Law", but rather in the intention of certain individuals and groups to claim their rights; that is, it is to be found in the "Law in action" (Ponce, 2006).

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MEAN STREETS

A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

Criminalising and penalising homeless people for carrying out life-sustaining activities in public because there is no where to go is a problem across the EU. Policies and measures, be they at local, regional or national level, that impose criminal or administrative penalties on homeless people is counterproductive public policy and often violates human rights.

Housing Rights Watch and FEANTSA have published this report to draw attention to this issue. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, before highlighting examples of penalisation across the EU, and finally suggesting measures and examples on how to redress this dangerous trend.

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