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Solving the Housing Crisis Half-a-House at a Time: Incremental Housing as a Means to Fulfilling the Human Right to Housing

Vincent Halloran

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Solving the Housing Crisis Half-a-House at a Time: Incremental Housing as a Means to Fulfilling the Human Right to Housing

Vincent Halloran *

This student note will attempt to answer two broad questions: 1) Does Chile's incremental housing model fulfill an international human right to housing?; and 2) Can incremental housing be implemented in a U.S. jurisdiction? Incremental housing is a unique social housing model developed by Chilean architect Alejandro Aravena, which consists of building just half-a-house, thus allowing the recipients to maximize limited housing subsidies through participatory improvements to ultimately gain transferable wealth through credit. While incremental housing does not offer a panacea in application in Chile, the model represents an important step toward realizing a right to housing in a deeply unequal environment. Incremental housing is not only implementable in a U.S. jurisdiction, but also offers an innovative model to make social housing viable.

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I. INTRODUCTION

A nation often celebrated as “the poster child of neoliberalism and transition to democracy[,]” Chile was recognized for its progress by becoming South America’s first Organization for Economic Cooperation and Development (OECD) member in 2010.¹ However, mass protests rocked Santiago in 2019, complicating this market-friendly perception to reveal the sharp inequalities underlying Chile’s development.² Today, despite being South America’s wealthiest nation, Chile also has the highest income inequality of any OECD member state.³

In Chile, the long-marginalized inhabitants of informal communities, or *pobladores*, have historically been forced to organize land seizures and other social movements in pursuit of defined living space.⁴ However, since the transfer of power to democratic authorities with the fall of General Augusto Pinochet’s dictatorship in 1989, moderate Chilean administrations have pursued land titling programs and large-scale social housing subsidies to carve out a safer

¹ Branko Milanovic, Chile: The Poster Boy of Neoliberalism who Fell from Grace, *GLOBAL POL’Y J.* (Oct. 30, 2019), <https://www.globalpolicyjournal.com/blog/30/10/2019/chile-poster-boy-neoliberalism-who-fell-grace> (“[W]hile in the 1960-70s it was in the middle of the Latin American league by GDP per capita, it is now the richest Latin American country. It was of course helped too by high prices for its main export commodity, copper, but the success in growth is incontestable.”); see also *Chile signs up as first OECD member in South America*, *OECD* (Nov. 1, 2010), <https://www.oecd.org/chile/chilesignsupasfirstoecdmemberinsouthamerica.htm>.

² Laura Millan Lombrana, *Latin America’s Poster Child Seeks a Third Way Out of Crisis*, *BLOOMBERG* (Nov. 16, 2019, 12:00 AM), <https://www.bloomberg.com/news/articles/2019-11-16/latin-america-s-poster-child-seeks-a-third-way-out-of-crisis> (“What started as a protest against a 30-peso (4-cent) rise of subway fares on Oct. 18 quickly snowballed into the biggest social unrest Chile has seen since the end of Augusto Pinochet dictatorship in 1990.”).

³ *Id.* (“Chile is the most unequal member of the 36-member Organization for Economic Cooperation and Development” with a Gini coefficient over 0.45. “While Chile may be the wealthiest nation in South America, the average monthly income is 574,000 pesos (\$738), according to the National Statistics Agency.”).

⁴ See Edward Murphy, *A Right to Low-Income Housing in Chile*, *THE N. AM. CONG. ON LATIN AM. (NACLA)* (Oct. 18, 2015), <https://nacla.org/news/2015/10/18/right-low-income-housing-chile> (“The occupations were a response to abysmal housing conditions. During the 1950s and 1960s, the proliferation of shantytowns and run-down tenements stood as a powerful symbol of injustice and underdevelopment.”).

and more livable housing situation for the *pobladores* and work toward access to low-income housing as a right.⁵

Incremental housing soon emerged as a unique method for Chilean policymakers seeking to address the serious housing inequalities still experienced by millions of Chileans after the Pinochet era, becoming a key aspect of Chile's Progressive Housing Programme.⁶

The underlying objective of incremental housing is to address the deep income gap in Chile and the limited housing access it creates.⁷ However, incremental housing is not a traditional public housing project; it is a unique social housing model conceived by Chilean architect Alejandro Aravena of the Santiago-based firm Elemental, which settles families "legally, in real houses" by granting a transferable title to half-a-house within tight financial constraints to maximize limited government subsidy.⁸ This title creates social mobility

⁵ Murphy notes:

In the quarter century since the return to representative democracy, the government's subsidies for housing have helped to spur a massive building boom in low-income areas, especially in Santiago. [. . .] [T]he post-dictatorship governments have supported subsidized housing in explicit efforts to fulfill the expectations of citizens and to maintain harmonious sociopolitical relations.

See id.

⁶ Rodrigo Mora et al., *Exploring the Mutual Adaptive Process of Home-Making and Incremental Upgrades in the Context of Chile's Progressive Housing Programme (1994-2016)*, 35 J. HOUSING & BUILT ENV'T 243 (2019) [hereinafter *Exploring the Mutual Adaptive Process*].

⁷ *See Housing Inequality Defines Chilean Landscape – U.N. Expert Says*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (U.N HUMAN RIGHTS) (OHCHR) (Apr. 28, 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21554&LangID=E>.

⁸ JUSTIN MCGUIRK, *RADICAL CITIES: ACROSS LATIN AMERICA IN SEARCH OF A NEW ARCHITECTURE* 81–82 (2014):

The task was to settle the [ninety-three families illegal squatting near Iquique, Chile] legally, in real houses. [. . .] With just \$7,500 per family in government subsidies both to buy the land and build the houses, there was enough money to do one, but not the other. [. . .] His answer was to build each family half of a good house[. . .].

by incentivizing investment because it is not just government property, but also what will become their own home.⁹

Effectively, the Chilean government subsidizes the construction and purchase of a half-built house, allowing the lower-income residents to auto-construct the remaining facilities.¹⁰ The half-a-house idea is what makes incremental housing revolutionary; it allows residents to make investments in structural improvements over time based on their unique needs and taste while gaining critical access to credit systems and the eventual transfer value of their new home.¹¹ Incremental housing offers a unique opportunity to transform informal communities through participatory development and make social housing projects viable on an international scale.¹²

This article seeks to explore the international status of housing as a legal right in order to understand how Chilean incremental housing presents a unique opportunity to realize this right; then, the article will examine the adaptability of the incremental housing model to a U.S. jurisdiction, where projects seeking to resolve long-standing housing and credit inequities face a limited conception of housing as a right. While this article will argue for the recognition of a universal right to housing in the U.S., the focus of this article will be to explore how incremental housing—a progressive, small-scale

⁹ See *id.* at 82 (“Thanks to this house, he now has some social mobility. He paid 180,000 pesos, or just \$400, of his own savings for it, and now he estimates that it’s worth \$50,000.”).

¹⁰ See Ariana Zilliacus, *Half a House Builds a Whole Community: Elemental’s Controversial Social Housing*, ARCH DAILY (Oct. 24, 2016), <https://www.archdaily.com/797779/half-a-house-builds-a-whole-community-elementals-controversial-social-housing> (supplying useful visualizations of Elemental’s developments across Chile.).

¹¹ See Ali Derya Dostoglu, *Study of Quinta Monroy Housing Project Around the Issue of Property*, CONTEMPORARYAGAINSTME (Sept. 10, 2011), <https://contemporaryagainstme.wordpress.com/2011/09/10/study-of-quinta-monroy-housing-project-around-the-issue-of-property/> (“The idea behind these expansions was to trigger a participatory process which would result in an incremental housing development, while also decreasing the construction expenses” to ultimately assign “‘real’ values to the houses within the site in order to open them to the market.”).

¹² See, e.g., Esin Hasgül, *Incremental Housing: A Participation Process for Informal Housing*, 13.1 ITU|AZ 15, 25 (2016) (“[I]ncremental housing as a participation process for informal housing can be a multi-sided solution concerning both social and economical issues.”).

solution to housing inequality—could be realized within a specific U.S. legal framework.

In Part II, the article will discuss the international status of housing as a right and review how individual states have implemented norms to realize universal housing rights. Part III breaks down the legal structures necessary to implement incremental housing in Chile, while providing some additional background on the intellectual foundations of the model. Part IV explores whether a right to housing actually exists in modern Chile. Part V evaluates whether Chile's incremental housing program provides a useful legal model for policymakers across the globe, identifying the strengths and weaknesses of incremental housing in practice. Finally, Part VI will discuss how incremental housing could be legally implemented within a U.S. jurisdiction facing a severe housing shortage to gauge whether incremental housing is a realistic solution to confront housing shortages in major U.S. cities.¹³

II. HOUSING AS A HUMAN RIGHT IN INTERNATIONAL LAW

International governmental organizations have long recognized housing as an essential aspect of human development.¹⁴ Accordingly, the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) both enshrined the right to adequate housing as a fundamental human right.¹⁵ Indeed, Article 25 of the UDHR proclaims, “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including . . . housing.”¹⁶ Similarly, Article 11 of the ICESCR provides “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing . . .” and that “States Parties will take appropriate steps to ensure the

¹³ For the purposes of this investigation, Miami-Dade County, FL and the City of Miami Beach, FL will serve as a case study reference point.

¹⁴ See Office of the U.N. High Comm. for Human Rights, *The Right to Adequate Housing*, U.N. Habitat Fact Sheet No. 21 (Rev. 1), at 1 (May 2014) [hereinafter U.N. Habitat].

¹⁵ *Id.*

¹⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 25(1) (Dec. 10, 1948).

realization of this right.”¹⁷ Further, “[t]he right of every human being to an adequate standard of living, including housing, was reaffirmed by the international community at the World Conference on Human Rights in Vienna in 1993.”¹⁸

Interestingly, the UDHR “derives to a very significant extent from a draft placed before the United Nations by the American Law Institute.”¹⁹ In fact, “[t]he Institute’s ‘Statement of Essential Rights’ made express provision for ‘the right to adequate food and housing[.]’” drawing inspiration from President Franklin D. Roosevelt’s noteworthy “Four Freedoms” speech, which emphasized a freedom from want.²⁰ However, despite being a signatory to the ICESCR, “the United States does not explicitly recognize a right to adequate housing in its Constitution or in federal law.”²¹

A. *The Status of Housing as a Right in International Law*

After the adoption of the UDHR by the United Nations General Assembly in 1948, “the right to adequate housing joined the body of international, universally applicable and universally accepted human rights law.”²² In fact, as many as twelve texts adopted by the United Nations emphatically preserve a right to adequate housing.²³ Article 25.1 of the UDHR unambiguously declares “adequate housing is the right of every child, woman and man- everywhere.”²⁴ Looking further, Article 11.1 of the ICESCR, acceded to or ratified by 108 states, “contains perhaps the most significant foundation of

¹⁷ International Covenant on Economic, Social and Cultural Rights art. 11, ¶ 1, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

¹⁸ Chris Sidoti, Human Rights Comm’r, Human Rights and Equal Opportunity Comm’n, Address to the National Conference on Homelessness (Sept. 4, 1996).

¹⁹ *Id.*

²⁰ *Id.*

²¹ THE INT’L HUMAN RIGHTS COMM., NEW YORK CITY BAR, *ADVANCING THE RIGHT TO HOUSING IN THE UNITED STATES: USING INTERNATIONAL LAW AS A FOUNDATION 1* (2016) [hereinafter *ADVANCING THE RIGHT TO HOUSING*].

²² See Office of the U.N. High Comm. for Human Rights, *The Right to Adequate Housing*, U.N. Habitat Fact Sheet No. 21 (Rev. 1), at 1 (Oct. 28, 2009) [hereinafter *Fact Sheet No. 21*].

²³ *Id.*

²⁴ *Id.*

the right to housing found in the entire body of legal principles which comprise international human rights law.”²⁵

The right to housing also finds protection in a variety of international compacts developed by the post-war international system.²⁶ For example, the United Nations Declaration on Social Progress and Development (1969) and the United Nations Vancouver Declaration on Human Settlements (1976) recognize the right of all people to adequate housing.²⁷ The most universally ratified of all United Nations human rights compacts²⁸, the International Convention on the Elimination of All Forms of Racial Discrimination (1965), obligates all States to “prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights in particular . . . the right to housing” in Article 5(e).²⁹

Recognizing the unique housing inequities facing women, the Convention on the Elimination of All Forms of Discrimination Against Women (1979) makes clear in Article 14 that States Parties are specifically required to “eliminate discrimination against women in rural areas” and to ensure to such women the right “to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.”³⁰ The United Nations

²⁵ *Id.*

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

See also ICESCR, *supra* note 17.

²⁶ U.N. Habitat, *supra* note 14, at 1 (“Other international human rights treaties have since recognized or referred to the right to adequate housing or some elements of it, such as the protection of one’s home and privacy.”).

²⁷ Fact Sheet No. 21, *supra* note 22, at 4.

²⁸ *Id.*

²⁹ International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195, 220.

³⁰ Convention on the Elimination of All Forms of Discrimination Against Women art. 14(2), *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13.

Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989) acknowledge the special housing rights of children, with Article 27 of the Convention specifically requiring “States parties to take appropriate measures to assist parents and others responsible for the child to implement the right to an adequate standard of living, and: in case of need [to] provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”³¹

Several international covenants aimed at protecting the rights of workers also recognize the interrelated importance of housing rights. For example, Article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) provides that “[m]igrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to . . . access to housing, including social housing schemes, and protection against exploitation in respect of rents.”³² International Labor Organization (ILO) Recommendation No. 115 on Worker’s Housing (1961), the lengthiest international legal text regarding housing, includes several clauses that identify the critical importance of housing and underline the various legal sources of housing rights.³³ The 1961 Recommendation states that “it should be an objective of national housing policy to . . . [ensure] that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.”³⁴ According to the United Nations Office of the High Commissioner for Human Rights, a total of thirty-seven ILO conventions and recommendations concern housing in some way.³⁵

Several other international agreements recognize housing rights among those critical for the protection of other marginalized

³¹ Convention on the Rights of the Child art. 27, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3; *see also* G.A. Res. 1386 (XIV), at 19–20 (1959).

³² G.A. Res. 45/158, at 267 (1990).

³³ Fact Sheet No. 21, *supra* note 22, at 4.

³⁴ Int’l Labour Organization, *Workers’ Housing Recommendation*, ¶ 2 (1961), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R115.

³⁵ Fact Sheet No. 21, *supra* note 22, at 4.

groups.³⁶ For instance, the Convention Relating to the Status of Refugees (1951) states that “Contracting States are required to accord refugees treatment as favourable as possible, and not less favourable than that accorded to aliens generally in the same circumstances with regard to housing.”³⁷ Though not yet adopted, the United Nations Draft Declaration on the Rights of Indigenous Peoples mentions housing rights twice, stating that “indigenous peoples shall have a right to determine, plan and implement all housing and other social and economic programmes affecting them” and “the right to autonomy in matters relating to their own internal and local affairs, including housing.”³⁸

Though not legally binding, many resolutions by different United Nations decision-making bodies offer internationally accepted standards relating to the right to adequate housing.³⁹ With Resolution 42/146, the General Assembly underlined the necessity for stronger action at domestic and international levels to “promote the right of all persons to an adequate standard of living for themselves and their families, including adequate housing” by “call[ing] upon all States and international organizations concerned to pay special attention to the realization of the right to adequate housing in carrying out measures to develop national shelter strategies and settlement improvement programmes.”⁴⁰

Other resolutions approved by the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities also refer to the right to adequate housing; for example, the Sub-Commission encouraged “all States to pursue effective policies and adopt legislation aimed at ensuring the realization of the right to adequate housing of the entire population, concentrating on those currently homeless or inadequately housed” in Resolution 1991/26.⁴¹

³⁶ *See id.*

³⁷ *Id.* at 5; *see* Convention Relating to the Status of Refugees art. 21, July 28, 1951, 189 U.N.T.S. 137, 166.

³⁸ Fact Sheet No. 21, *supra* note 22, at 5; *see* G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples art. 3–4, (Sept. 13, 2007).

³⁹ *See* Fact Sheet No. 21, *supra* note 22, at 5.

⁴⁰ *Id.*

⁴¹ *Id.*

B. What does the international right to adequate housing really guarantee?

The United Nations Committee on Economic, Social and Cultural Rights has made clear that the right to adequate housing should not be interpreted narrowly, but instead “[i]t should be seen as the right to live somewhere in security, peace and dignity.”⁴² The Committee identifies the following freedoms as foundational to the right to housing: 1) protection from forced evictions; 2) the right to be free from arbitrary interference with your home; and 3) the right to choose where you live.⁴³ The Committee also identifies the following four entitlements which accompany the positive freedoms to create an obligation on states: (1) security of tenure; (2) housing, land, and property restitution; (3) equal and non-discriminatory access to adequate housing; and (4) participation in housing-related decisions at the national and community levels.⁴⁴ The Committee’s conception of minimum housing criteria illustrate that a right to adequate housing means more than “just four walls and a roof[,]” but instead includes specific standards.⁴⁵

The Committee has also sought to explain away several misconceptions regarding the right to housing. The Committee clarifies that the right to housing does not obligate the State to build homes for the entire population, but that the right to adequate housing is also not just a “programmatic” goal to be reached in the distant future.⁴⁶ Moreover, the Committee affirms that the right to adequate housing does not proscribe developments which might lead to the displacement of populations, as the right to housing is not the same as the right to property.⁴⁷ Finally, while the Committee notes that the right to adequate housing is not the same as a right to land, the right does encompass access to adequate services.⁴⁸

⁴² U.N. Habitat, *supra* note 14, at 3. (“The characteristics of the right to adequate housing are clarified mainly in the Committee’s general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions.”).

⁴³ *Id.* at 3–4 (“According to the United Nations Human Settlements Programme (UN-Habitat), at least 2 million people in the world are forcibly evicted every year, while millions are threatened with forced evictions.”).

⁴⁴ Fact Sheet No. 21, *supra* note 22, at 3–4.

⁴⁵ U.N. Habitat, *supra* note 14, at 3.

⁴⁶ *Id.* at 6–7.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 8.

C. *Implementation of Housing as a Right by Individual States*

1. Mexico

Mexico's 1917 Constitution provides for broad social rights, including an express right to adequate housing.⁴⁹ Article 4 of the Constitution provides that every family has a right to dignified and decent housing, underlining that the law will establish the tools and support necessary towards that end.⁵⁰ Furthermore, Article 123 obligates all agricultural, industrial, and mining businesses, or any other type of employer, to provide comfortable and clean housing to their workers based on the relevant legal standards.⁵¹

However, the contemporary reality in Mexico makes clear that these rights are more aspirational than actionable in practice, as much of the Mexican population faces a housing deficit that makes life more expensive and difficult.⁵² Today, as many Mexicans lack

⁴⁹ Fernando Yllanes Ramos, *The Social Rights Enshrined in the Mexican Constitution of 1917*, 96 INT'L LAB. REV. 590, 605–06 (1967); Yllanes further writes:

Economic and social rights, which are concerned with well-being and justice, were recognized at the same time as traditional freedoms in the Mexican Constitution; without any specific doctrine to inspire it or any foreign experience to serve as an example, it nevertheless found the right answer required by the special character of the Mexican Revolution[. . .]

See also id. at 592.

⁵⁰ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 4, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) (“Toda familia tiene derecho a disfrutar de vivienda digna y decorosa. La Ley establecerá los instrumentos y apoyos necesarios a fin de alcanzar tal objetivo.”).

⁵¹ *Id.* at art. 123. (“Toda empresa agrícola, industrial, minera o de cualquier otra clase de trabajo, estará obligada, según lo determinen las leyes reglamentarias a proporcionar a los trabajadores habitaciones cómodas e higiénicas.”).

⁵² Reyes Vega, Jose Manuel, *Propuesta de Vivienda Social Progresiva para el Municipio de Toluca, Estado de México* [Progressive Social Housing Proposal for the Municipality of Toluca, State of Mexico], UNIVERSIDAD AUTÓNOMA DEL ESTADO DE MÉXICO, septiembre 2018, p. 6:

A pesar de ser un derecho constitucional, esto no ve reflejado en la realidad de la vivienda en México, tal parece que no es lo mismo lo que se dice que lo que se hace, teniendo así un país

the resources to purchase legitimate housing, up to 65.3% of all homes have been built informally through auto-construction, with a correspondingly low level of quality.⁵³

2. United Kingdom

While the unwritten Constitution of the United Kingdom (UK) does not contain an express right to housing, the UK has signed and ratified the ICESCR.⁵⁴ Nevertheless, because Parliament has not directly incorporated the ICESCR into national law, citizens cannot go to a local court to “adjudicate a rights claim on the basis of a breach of the ICESCR.”⁵⁵ Bearing the legal status quo in mind, the reality of housing inequality in the UK paints a bleak picture; “recent statistics have shown that there are at least 320,000 people homeless in Britain[,]” with 170,000 homeless in London alone.⁵⁶

3. South Africa

The South African Constitution of 1996, often considered the “pinnacle of modern constitutional draftsmanship[,]” provides that “[e]veryone has a right to access adequate housing” in Article 26.⁵⁷

con un rezago habitacional alto que encarece la vida de gran parte de la población.

⁵³ Reyes also writes:

En México aproximadamente 65.3% del total de viviendas ha sido desarrollada a través de la autoconstrucción o autoproducción, ya que gran parte de la población mexicana de escasos recursos no cuentan con la facilidad para acceder a una vivienda digna, generando así vivienda de baja calidad, que frecuentemente cuentan con problemas de carácter técnico, así como espaciales.

Id. (Auto-construction refers to housing built directly by the residents themselves through an informal, interactive process; often, auto-construction occurs without the protection of legal title.).

⁵⁴ JESSIE HOHMANN, PROTECTING THE RIGHT TO HOUSING IN ENGLAND: A CONTEXT OF CRISIS 12 (2015).

⁵⁵ *Id.*

⁵⁶ Douglas Maxwell, *A Human Right to Housing?*, U. OXFORD L.: HOUSING AFTER GRENFELL (Feb. 25, 2019) (U.K.), <https://www.law.ox.ac.uk/housing-after-grenfell/blog/2019/02/human-right-housing>.

⁵⁷ *Id.*

Demonstrating the relevance of this protection, the highest court of South Africa offers a uniquely comprehensive conception of the right to adequate housing in the watershed *Grootboom* decision, stating:

Housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, and there must be a dwelling. The right of access to adequate housing also suggests that it is not only the State that is responsible for the provision of houses, but that other agents within society, including individuals themselves, must be enabled by legislative and other measures to provide housing.⁵⁸

Regardless, South Africa remains affected by a significant deficit in affordable housing, with a backlog of 2.3 million houses that is growing by roughly 178,000 houses a year.⁵⁹

D. Housing Rights in the United States: Continuing Problems of Enforceability

1. Application of International Housing Rights in the U.S.

The UDHR, like other international covenants, is non-binding and thus only enforceable with the consent of individual states.⁶⁰ As discussed earlier, the UK offers an example of the complications of enforcing an international right to housing, as it has ratified the ICESCR but has failed to make the document actionable through

⁵⁸ *Gov't of the Republic of South Africa. & Ors v. Grootboom & Ors*, 2000 (11) BCLR 1169 (CC) at 29 para. 35 (S. Afr.).

⁵⁹ Mayra Hartman, *A Solution to SA's Housing Crisis is Right Under Our Noses*, FIN24 (Dec. 24, 2018), <https://www.fin24.com/Opinion/a-solution-to-sas-housing-crisis-is-right-under-our-noses-20181224-2>.

⁶⁰ Martha F. Davis, *Bringing It Home: Human Rights Treaties and Economic, Social, and Cultural Rights in the United States*, 41.2 A.B.A. HUM. RTS. MAG., Apr. 1, 2015, at 1.

incorporation within UK domestic law.⁶¹ Concerningly, in recent years, U.S. courts have similarly limited the enforceability of international treaties in domestic law, viewing these agreements as “contracts between nations” to be enforced on “the honor of the parties” rather than a cognizable aspect of federal law.⁶²

Demonstrating the oft-competing pull of international and domestic legal norms, “U.S. engagement in the international human rights treaty regime—as contemplated by the text of the Supremacy Clause—makes demands on the domestic legal system.”⁶³ In recent years, U.S. courts have clarified that international treaties ratified by the U.S. are not necessarily enforceable in domestic tribunals; instead, only those international commitments which have been incorporated within domestic law by Congress through enabling statutes or that are self-executing are binding in U.S. courts.⁶⁴

Contemporary court rulings ignore the clarity offered by the Constitution, as “[u]nder the plain terms of the Supremacy Clause, it shouldn’t matter: statutes and treaties are both the ‘Supreme law of the land[.]’”⁶⁵ Indeed, “[t]he Founders understood that treaties depended on interest and honor on the international plane, but they made treaties enforceable in our courts anyway in order to avoid the international friction that could be expected to result from treaty

⁶¹ HOHMANN, *supra* note 54.

⁶² Carlos Manuel Vázquez, *Treaties as the Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 HARV. L. REV. 599, 600 (2008).

⁶³ Davis, *supra* note 60; *see also* U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”).

⁶⁴ *Medellín v. Texas*, 552 U.S. 491, 523 (2008) (The majority, ruling against the applicability of the UN Charter to allow domestic enforcement of International Court of Justice decisions, states: “Nothing in the text, background, negotiating and drafting history, or practice among signatory nations suggests that the President or Senate intended the improbable result of giving the judgments of an international tribunal a higher status than that enjoyed by ‘many of our most fundamental constitutional protections.’”).

⁶⁵ Thomas Lee, *The Origins and Fall of Treaty Supremacy and Its Significance*, OPINIO JURIS (Feb. 15, 2017), <http://opiniojuris.org/2017/02/15/32999/>; *cf.* *United States v. Percheman*, 32 U.S. 51, 65 (1833) (“Some legislative recognition of the[. . .] validity [of specific treaties] might indeed be necessary to sustain a suit upon them in our courts, but the national obligation to respect them could hardly be denied.”).

violations and to capture the benefits of a reputation for treaty compliance[.]”⁶⁶ Despite this, the erosion of treaty supremacy in the United States is an indisputable trend, and arguably symptomatic of the evolution of the U.S. from fledging post-colonial outpost to global power.⁶⁷

Accordingly, though the United States is a signatory to the UDHR, the U.S. has never ratified the document to make it enforceable domestically.⁶⁸ Similarly, “[t]he [U.S.] has never ratified the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), or the Convention on the Rights of the Child (CRC)[.]”⁶⁹ However, the U.S. has ratified the International Covenant on Civil and Political Rights (ICCPR)

⁶⁶ Vázquez, *supra* note 62 (The author concedes that non-self-executing treaties lack enforceability under U.S. law, but argues that “a default rule of self-execution is not only more consistent with the constitutional text and structure and with Supreme Court precedent, it is also normatively attractive because it leaves the treaty-makers with the power to control the domestic consequences of the treaties they conclude.”).

⁶⁷ Lee states as follows:

The United States at founding was a militarily weak, poor, revolutionary new country—a tobacco republic. We needed a[n] ironclad rule of treaty supremacy in the face of rebellious quasi-sovereign states, in order to maintain the treaty of peace and to be treated as an equal by the European powers. The United States is in a very different place in the world order today, and the dilution of treaty supremacy seems to me a natural (if troubling) consequence of this new reality.

Lee, *supra* note 65.

⁶⁸ See *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734 (2004) (“[T]he Declaration does not of its own force impose obligations as a matter of international law.”).

⁶⁹ Davis, *supra* note 60; see *Human Rights and the United States*, ADVOC. FOR HUM. RTS (Jan. 2020), https://www.theadvocatesforhumanrights.org/human_rights_and_the_united_states (“Although President Carter signed CEDAW in 1980, today the United States is the only industrialized country that has not ratified the treaty.”); see also Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights*, AM. C.L. UNION (Nov. 20, 2015), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens> (After South Sudan and Somalia ratified the CRC in 2015, the US stands as the only nation in the world that has not ratified the covenant.).

and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁷⁰

Despite the worrying lack of adherence to international legal structures by the United States, the notion of a human right to adequate housing included in non-binding international covenants such as the UDHR, the ICESCR, and CERD, “is playing an increasingly important role in domestic advocacy challenging the criminalization of homelessness.”⁷¹ According to a 2014 report, 53 percent of U.S. cities proscribed sitting or lying down in public, while 43 percent of cities prohibited sleeping in vehicles.⁷² Acknowledging this, “[i]nternationally focused advocacy has kept the issue in the lime-light, with both the UN Human Rights Committee and the CERD Committee condemning these laws in the course of monitoring U.S. compliance with its treaty obligations.”⁷³

2. Housing Rights in U.S. Domestic Law

Due to a lack of recognition of international norms, housing rights in the United States remain woefully limited. As Emily Bergeron, Assistant Professor at the University of Kentucky’s Department of Historic Preservation, states,

[D]espite these lofty international conventions, the United States is far from addressing the lasting impacts of historic and continuing injustices [. . . because] housing has [. . .] been commodified and, therefore, disconnected from its social function. It reflects income inequality and environmental injustice.⁷⁴

In the absence of a universal right to housing, Title VIII of the Civil Rights Act of 1968, which has become known as the Fair Housing Act of 1968, protects against “discrimination concerning

⁷⁰ See Davis, *supra* note 60; see also *Human Rights and the United States*, *supra* note 69.

⁷¹ Davis, *supra* note 60.

⁷² *Id.* (“A 2014 report by the National Law Center on Homelessness & Poverty, titled No Safe Place[.]”).

⁷³ *Id.*

⁷⁴ Emily Bergeron, *Adequate Housing Is a Human Right*, 44.2 AM. BAR ASSOC. HUM. RTS. MAG., Oct. 2019, at 10.

the sale, rental, and financing of housing based on race, religion, national origin, sex, (and as amended) handicap and family status.”⁷⁵ The Fair Housing Act serves as an important tool for modern environmental justice advocates because the Act “presents opportunities for collaborative, community based advocacy around local, regional, and national issues of concentrated poverty, displacement, environmental health, and residential segregation.”⁷⁶ Attractively, Title VIII claims offer “a private right of action and access to remedies like injunctions and damages” and “are enforceable against private parties, rather than just government entities.”⁷⁷

Currently, enforcement of the Fair Housing Act relies on federal administrative rules to ensure that communities receiving federal housing subsidies are “affirmatively furthering” fair housing and desegregation; however, these administrative policies are subject to the shifting tides of electoral politics and therefore cannot be relied upon to resolve structural housing inequalities in the long-term alone.⁷⁸

⁷⁵ Interestingly, the Department of Housing and Urban Development notes:

The enactment of the federal Fair Housing Act on April 11, 1968 came only after a long and difficult journey. From 1966-1967, Congress regularly considered the fair housing bill, but failed to garner a strong enough majority for its passage. However, when the Rev. Dr. Martin Luther King, Jr. was assassinated on April 4, 1968, President Lyndon Johnson utilized this national tragedy to urge for the bill’s speedy Congressional approval. Since the 1966 open housing marches in Chicago, Dr. King’s name had been closely associated with the fair housing legislation. President Johnson viewed the Act as a fitting memorial to the man’s life work, and wished to have the Act passed prior to Dr. King’s funeral in Atlanta.

History of Fair Housing, DEP’T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history.

⁷⁶ Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law’s Inner-City Crisis*, 54 HARV. C.R.-C.L. L. REV. 629, 636 (2019).

⁷⁷ Wyatt G. Sassman, *Environmental Justice As Civil Rights*, XVIII:iv RICH. J.L. & PUB. INT. 441, 455 (2015).

⁷⁸ Lola Fadalu, *Trump Pulls Back Efforts to Enforce Housing Desegregation*, N.Y. TIMES (Jan. 03, 2020), <https://www.nytimes.com/2020/01/03/us/politics/trump-housing-segregation.html>.

In order to build upon the critical protections of the Fair Housing Act and limit executive interference, Congress should take a stronger position to address the housing inequalities experienced by many Americans and follow the lead of several progressive states and cities in recognizing a comprehensive right to housing. Article XVII of the New York State Constitution serves as a useful model to policymakers elsewhere, providing that “the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions”⁷⁹ Importantly, New York courts have ensured that the constitutional protection has teeth, applying Article XVII to “establish[] a right to shelter for all homeless men in New York City, and also detail[] the minimum standards which the City and State must maintain in shelters, including basic health and safety standards.”⁸⁰

Applying New York’s right to shelter as a model, California lawmakers have recently considered creating “a legal right to housing for children and families . . . [t]hat would entail providing public assistance to children and families on the brink of homelessness,

The Obama administration defined furthering fair housing as addressing “significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”

The Trump administration would drastically pare that back to simply saying people should live “where they choose, within their means, without unlawful discrimination related to race, color, religion, sex, familial status, national origin, or disability.”

⁷⁹ N.Y. CONST. art. XVII, § 1.

⁸⁰ *The Callahan Legacy: Callahan v. Carey and the Legal Right to Shelter*, COALITION FOR THE HOMELESS (Jan. 2020), <https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter/> (Following the settlement of lengthy negotiations between the government defendants and the plaintiffs by consent decree.); see *The Callahan Consent Decree: Establishing a Legal Right to Shelter for Homeless Individuals in New York City*, COALITION FOR THE HOMELESS (1981), <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/Callahan-ConsentDecree.pdf>.

including help with rent and eviction defense, and, if necessary, finding them emergency and permanent housing.”⁸¹ Congress should follow the lead of these trailblazing U.S. jurisdictions to make universal access to adequate housing a cognizable legal right.

E. Conclusions on the Status of an International Right to Housing

Based on this analysis, even those nations that do recognize a right to adequate housing have struggled to realize this entitlement for their populations. Regardless, the United States would do well to enshrine the universal right to adequate housing among our fundamental rights, so as to provide a comprehensive legal tool for communities affected by long-term housing inequities.

III. INTRODUCTION TO THE LEGAL IMPLEMENTATION OF
INCREMENTAL HOUSING IN CHILE

The following section seeks to develop a broad overview of the ideological roots and legal foundations of incremental housing to understand the collaborative implementation of the model in practice.

A. The Ideological Roots of Elemental’s Unique Approach to Incremental Housing

Incremental housing finds its roots in the radical scholarship of John Turner, a British architect and author known for advocating that there is much to learn from “the self-building and self-management of housing and neighbourhoods” in the dynamic cities of Latin America.⁸² Turner argued “that housing is best provided and managed by those who are to dwell in it rather than being centrally administered by the state.”⁸³ In his seminal work, *Freedom to Build*,

⁸¹ Jeremy B. White, *California will consider ‘right to housing’ legislation this year*, POLITICO (Jan. 06, 2020, 8:48 PM), <https://www.politico.com/states/california/story/2020/01/06/california-will-consider-right-to-shelter-legislation-this-year-9420607>.

⁸² *John Turner*, SPATIAL AGENCY, <https://www.spatialagency.net/database/john.turner> (This unique tool for analyzing ideological connections between influential scholars allows visitors to explore the scholarship of individual authors while providing visualizations of relationships to other similar works.)

⁸³ *Id.*

Turner wrote: “When dwellers control the major decisions and are free to make their own contribution to the design, construction or management of their housing, both the process and the environment produced stimulate individual and social well-being.”⁸⁴

Applying Turner’s scholarship as a touchstone, Elemental, the Chilean architectural firm behind incremental housing, focuses on public-interest projects with broad social impact; these projects include not only housing, but also public spaces, infrastructure, and transport designed via a collaborative process involving close cooperation with the end users.⁸⁵ The founder of Elemental, Chilean architect Alejandro Aravena, won the Pritzker Prize in 2016 for epitomizing “the revival of a more socially engaged architect . . . fighting for a better urban environment for all.”⁸⁶ According to contemporary Chilean researcher César Orellana, Aravena’s housing solution is conceptually located within the “Model of Progressive Development” promulgated by Edwin Haramoto in 1987.⁸⁷ The incremental housing model, grounded in embracing auto-construction, seeks to create conditions for the active participation of residents in the building process based on confidence in their own abilities to troubleshoot problems and their unique capacity to improve their living space over time.⁸⁸

⁸⁴ MCGUIRK, *supra* note 8, at 86.

⁸⁵ *Vivienda en Chile*, 1 REVISTA RED DE ESTUDIANTES DE ARQUITECTURA, at 65 (Dec. 20, 2016) (“[S]e enfoca en proyectos de interés público e impacto social, incluyendo viviendas, espacio público, infraestructura y transporte, a través de un proceso de diseño participativo en el cual los arquitectos trabajan en estrecha colaboración con los usuarios finales.”).

⁸⁶ Zilliacus, *supra* note 10 (The Pritzker Prize is a prize awarded annually recognizing career achievement in the field of architecture.).

⁸⁷ César Orellana, *Quinta Monroy HOY*, INVITRO: HÁBITAT RESIDENCIAL Y TERRITORIO (Apr. 20, 2016), <https://invi.uchilefau.cl/quinta-monroy-hoy-por-cesar-orellana/>.

La solución habitacional de Aravena se enmarca conceptualmente dentro del denominado Modelo de Desarrollo Progresivo propuesto por Edwin Haramoto en 1987 basado en el modelo de autoconstrucción y que como tal “debe crear las condiciones para una participación activa del habitante, sustentada en la autoconfianza en sus medios para resolver problemas y en su capacidad de gestión.”

⁸⁸ *Id.*

B. Introducing Quinta Monroy as an Example of the Model in Practice

Elemental, an unorthodox firm from its outset as a partnership between Santiago's Universidad Católica and the state-owned petroleum company, COPEC, was founded expressly to troubleshoot radical solutions to the problem of limited social housing subsidies in Chile.⁸⁹ After years of sustained government lobbying by Elemental, the government finally relented in 2003 and tasked the firm with developing a unique housing solution.⁹⁰

Quinta Monroy, an incremental housing project prototype applying a collective solution to a unique social issue, is located in the desert city of Iquique, Tarapacha, Chile.⁹¹ The Elemental development was born out of the need to house 100 families that had illegally squatted on 0.5 hectares of land near the center of Iquique for over thirty years.⁹² The challenge of the project was straightforward: the cost of the land was three times what the social housing subsidy could generally provide for land.⁹³ "With just \$7,500 in government subsidies both to buy the land and build the houses, there was enough money to do one and not the other."⁹⁴

According to Aravena, "[w]e tested every single known typology available on the market, . . . [n]one of them solved the question. That's why social housing is always two hours away on the peripheries. That's the drama of Latin America."⁹⁵ Despite this, all parties involved sought to avoid the displacement of the squatting families to the periphery of the city by stretching the subsidy as far as

⁸⁹ See MCGUIRK, *supra* note 8, at 81.

⁹⁰ *Id.*

⁹¹ JOSÉ CRUZ, DISEÑO ARQUITECTÓNICO DE VIVIENDAS PROGRESIVAS DE INTERÉS SOCIAL PARA EL BARRIO "MENFIS BAJO", EN LA CIUDAD DE LOJA 110 (2017).

⁹² See Orellana, *supra* note 87 ("Quinta Monroy nace por la necesidad de radicar a 100 familias que por 30 años habían estado ocupando ilegalmente un terreno de 0.5 hectáreas en el centro de la ciudad de Iquique . . .").

⁹³ See CRUZ, *supra* note 91 ("A pesar del costo del terreno que era 3 veces más que lo que la vivienda social normalmente puede pagar por suelo, lo que se quería lograr era la erradicación de estas familias a la periferia.").

⁹⁴ MCGUIRK, *supra* note 8, at 81.

⁹⁵ *Id.* at 81–82 (quoting excerpt from McGuirk's first interview with Aravena).

possible through incremental construction.⁹⁶ While the total living area for each home would only be thirty square meters, ten meters below the Chilean national average for social housing, “the houses were arranged with voids between them, so that when they had a little extra cash the families could extend, adding extra rooms until they had a sixty-square-metre house.”⁹⁷

Ariana Zilliacus describes the revolutionary model applied at Iquique in terms that make its advantages clear, writing:

Everything that families wouldn't have an easy time building alone, such as concrete foundations, plumbing, and electricity, has been finished for them. The Chilean government pays for roads, drainage, sewage, garbage collection, busses and any other necessary infrastructure, to focus on building a good community. Residents just have to provide their time, labor and any extra materials.⁹⁸

Within just “a couple of years,” all the families had embraced auto-construction to complete their homes, filling the gaps between Elemental's concrete cores with unique new facades of varying colors and designs.⁹⁹ A British architect concludes, “[i]t was standardized concrete modernism alternating, like the fronts and backs of playing cards, with favela-style spontaneity.”¹⁰⁰

C. A Brief Description of the Legal Structures Used to Implement Existing Incremental Housing Projects in Chile

The initial role of government subsidies, as in other international social housing projects, remains key in the development of incremental housing. Specifically, Quinta Monroy forms part of a Chilean government program, called “Dynamic Social Housing without Debt” (“VSDsD”), aimed at housing citizens who lack the ability to take on more debt.¹⁰¹ The program exists to this day, functioning

⁹⁶ See CRUZ, *supra* note 91.

⁹⁷ MCGUIRK, *supra* note 8, at 82.

⁹⁸ Zilliacus, *supra* note 10.

⁹⁹ See MCGUIRK, *supra* note 8, at 82.

¹⁰⁰ *Id.*

¹⁰¹ Orellana further clarifies:

pursuant to federal law, with the stated purpose of providing state support to families that do not currently own a home.¹⁰² VSDsD grants subsidies to qualifying families, enabling them to buy a house or apartment in a rural or urban setting on the private market, or elect to participate in a social housing development, without taking on debt.¹⁰³ When Quinta Monroy was developed, this program provided the equivalent of US\$7,500 to subsidize the costs of land, development, and construction for “‘half a good home’ of 30 square meters” suitable for dynamic expansion by those living there.¹⁰⁴

According to a Chilean researcher, Aravena concluded that because of the limited government subsidy provided by the government program, it was practically impossible to build eighty square meters of quality home.¹⁰⁵ For this reason, by embracing the legal

[Quinta Monroy] se enmarca dentro de lo que se llamó el programa de Vivienda Social Dinámica sin Deuda (VSDsD), orientado hacia personas sin capacidad de endeudamiento y que en términos prácticos se les otorgó el equivalente a US\$7.500, para subsidiar los costos de suelo, urbanización y construcción de ‘media vivienda buena’ de 30 metros cuadrados susceptibles de ser ampliada por los propios habitantes (de ahí deriva lo dinámico).

Orellana, *supra* note 87.

¹⁰² A Chilean government website explains the program:

Permite a familias vulnerables que no son dueñas de una vivienda, acceder a un apoyo estatal para comprar de una casa o departamento que no supere las 950 Unidades de Fomento (UF) sin crédito hipotecario en sectores urbanos o rurales, o bien, integrarse a una de las iniciativas de la nómina de proyectos habitacionales del SERVIU.

Subsidio Fondo Solidario de Elección de Vivienda, D.S. N° 49, Ministerio de Vivienda y Urbanismo, CHILE ATIENDE, (last visited Oct. 9, 2020), <https://www.chileatiende.gob.cl/fichas/37960-subsidio-fondo-solidario-de-eleccion-de-vivienda-d-s-n-49>.

¹⁰³ *See id.*

¹⁰⁴ Orellana, *supra* note 87.

¹⁰⁵ Orellana notes:

[A]ravena concluye que ante la ausencia de financiación por parte del Estado, no es posible dar 80 m² de calidad, por lo tanto la solución es dar la mitad”, o sea el Estado no se compromete

and financial constraints of the program, Aravena determined that the solution was to provide residents with half-a-house instead.¹⁰⁶ Therefore, because the Chilean state was unwilling to completely resolve the basic housing needs of the squatters, it was left to the private sector to take the initiative and creatively work around this funding deficiency.¹⁰⁷

IV. WHETHER RECOGNITION OF HOUSING AS A HUMAN RIGHT ACTUALLY EXISTS IN CHILE?

As discussed in the introduction, Chile has long struggled to find adequate housing for all of its citizens despite decades of commitment to orthodox, market-based policy prescriptions.¹⁰⁸ Historically, marginalized communities lacking legitimate housing have been pushed to organize land seizures in order to secure their place near the opportunity of the city.¹⁰⁹

After the success of a military coup led by General Augusto Pinochet to unseat the democratically-elected government of socialist President Salvador Allende on September 11, 1973, the Pinochet regime “disproportionately repressed” many of the occupied neighborhoods.¹¹⁰ Many of the *pobladores* initially spared would later be forcefully displaced through massive slum removal programs throughout the late 1970s, contributing to overcrowding on the periphery of Chile’s cities where the marginalized communities were

a resolver totalmente una necesidad básica del individuo como es la vivienda o retrae su participación dejando a la iniciativa privada de los habitantes que sustituyan las carencias que ello conlleva

Id.

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ Murphy, *supra* note 4 (“During the 1950s and 1960s, the central government sought to expand individual home ownership by following a market-oriented model Through an expansion of debt, they increased the number of long-term home mortgages Little turned out as the planners hoped.”).

¹⁰⁹ *Id.* (“Between 1967 and 1973, some 400,000 people—about 14% of the city’s population—occupied land in the capital, Santiago. Other land seizures took place in the 1980s and 1990s, albeit on a smaller scale.”).

¹¹⁰ *Id.*

forced to live in uniform housing with unacceptably low lot sizes.¹¹¹ However, following a severe economic crisis in 1981, many *pobladores* re-organized for good, as the dictatorship reluctantly employed land titling programs to enable the seized land to be developed legitimately; with this, “[t]he dictatorship ultimately accepted, however grudgingly, the idea that housing was a right.”¹¹²

Chile’s troubling history with dictatorship and harsh experience with the extremes of neoliberal policymaking does not mean that Chile has not historically developed some Keynesian models to encourage home ownership. As early as 1906, Chile used national legislation to ensure housing access for its growing working class.¹¹³ Later in 1925, Chile passed further legislation aimed at safeguarding access to affordable housing.¹¹⁴ By mid-century, Chile had used its functioning liberal democracy to develop a broad public housing program under the tutelage of a national Housing Corporation (known by its Spanish-language acronym, “CORVI”).¹¹⁵ These programs enabled many Chileans to leave the transitory nature of informal housing behind, finding a defined living space to focus instead on improving their daily lives.¹¹⁶

¹¹¹ *See id.*

¹¹² *Id.* (“Yet following an economic crisis in late 1981, more than 50,000 *pobladores* in Santiago successfully organized to seize land once again, establishing new homes and neighborhoods. As before, the dictatorship harshly repressed many of the leaders, but nonetheless permitted the majority to develop the lands they had seized.”).

¹¹³ Orellana, *supra* note 87 (“[Y]a que desde los primeros intentos de leyes u ordenanzas, la ley de habitaciones obreras de 1906 . . .”).

¹¹⁴ *Id.* (“[P]asando por la ley de arrendamientos y la normativa de habitaciones baratas de 1925 . . .”).

¹¹⁵ *Id.* (“[L]a caja da habitación popular, la época de oro de la Corporación de Vivienda CORVI y los planes habitacionales en 1950 y la labor de la CORMU siempre estuvo presente en el accionar del Estado . . .”).

¹¹⁶ Orellana further explains:

[La meta era] otorgar más que una solución habitacional -concepto desde ya invocado con un sesgo de transitoriedad- una vivienda definitiva, con señales de dignidad y cuyas características de definición y confort permitieran al individuo terminar con una necesidad latente y pudiera enfocarse a partir de lo resuelto en su diario vivir, en mejores condiciones.

Id.

Since the end of dictatorship and a return to Chile's traditional democratic order, "the government's subsidies for housing have helped to spur a massive building boom in low-income areas, especially in Santiago."¹¹⁷ Over many years, the Progressive Housing Programme (1994-2016) allowed for coordination of a wider government effort to address the housing gap, which incorporated incremental housing solutions.¹¹⁸ Despite this, seizures have persisted to some extent, as inequalities produced during the dictatorship continue to cast long shadows in modern Chile.¹¹⁹ Today, despite the hard-fought right to housing once earned by *pobladores*, many Chileans still live precariously in informal housing while facing "a flexible and insecure labor market, in which they tend to carry heavy debt burdens."¹²⁰

V. CHILE'S INCREMENTAL HOUSING PROGRAM PROVIDES A USEFUL
LEGAL MODEL FOR POLICYMAKERS ACROSS THE GLOBE,
REGARDLESS OF WHETHER HOUSING EXISTS AS A RIGHT
LOCALLY

The incremental housing model developed by Elemental and implemented in coordination with Chilean authorities comes with advantages and disadvantages, as with any innovative social housing solution. Any comprehensive solution to the contemporary housing crisis is doomed to fail if it does not include those it is designed to empower from the beginning; indeed, that is what makes incremental housing so impactful.¹²¹ Certainly, "[w]e've seen how the rise of neoliberal policies favouring private interests has segregated the city[,]" for this reason, "[r]eversing the tide of segregation and rebuilding cohesion is one of the great tasks of the century."¹²² While planners and architects are important marshals in revitalization schemes, "they must channel the transformative potential of the slum dwellers" because "the working class is the only one able to

¹¹⁷ Murphy, *supra* note 4.

¹¹⁸ See Mora et al., *supra* note 6.

¹¹⁹ See Murphy, *supra* note 4.

¹²⁰ *Id.*

¹²¹ MCGUIRK, *supra* note 8, at 87 ("John Turner . . . felt that, far from seeing it as a burden, people derived a great deal of personal satisfaction from self-building, however ramshackle the result.").

¹²² *Id.* at 27.

put an end to a segregation directed essentially against it.”¹²³ Embracing this essential truth is what motivates architects to describe incremental housing on the Quinta Monroy model as “a masterpiece of open design, a platform for adaptability, [and even] the iPhone of housing.”¹²⁴

Among the specific advantages of the incremental model in practice are the building workshops hosted by Elemental for the benefit of residents, who are also provided with a manual highlighting the standard methods for expanding their home without the need of taking on expensive custom extensions.¹²⁵ Employing this method, observers argue that the residents are ultimately left with a home much more “pleasant” than they would otherwise attain through informal auto-construction or “ordinary state funding.”¹²⁶ For this reason, the half-a-house model has received praise for “succeeding in using ‘scarcity as a tool.’”¹²⁷

The model, however, has not come without its share of criticism from detractors. Some criticize the model for its minimalist approach, as it seeks to provide “residents with just enough to meet the Chilean legal requirements for low-income housing, allowing them to expand the rest.”¹²⁸ The incremental housing solution has also been criticized because it represents a fundamental compromise for marginalized communities.¹²⁹ For example, residents in the northern coastal city of Constitución successfully staged a hunger strike to oppose the construction of a traditional housing block but failed to achieve their goal of individual family homes because of high costs, with an incremental Elemental development ultimately providing a solution.¹³⁰

¹²³ *Id.* (quoting Henri Lefebvre, from his insightful work *The Right to the City*, in WRITINGS ON CITIES (1996)).

¹²⁴ *Id.* at 82.

¹²⁵ See Zilliacus, *supra* note 10.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Sukjong Hong, *Can Half a Good House Become a Home?*, THE NEW REPUBLIC (June 14, 2016), <https://newrepublic.com/article/134223/can-half-good-house-become-home> (quoting Chilean architecture professor Fabian Barros).

¹³⁰ See Zilliacus, *supra* note 10.

The model can be criticized for some other obvious drawbacks, as though “it is clever housing, it is questionable urbanism.”¹³¹ While the design works on one block in the small Chilean city of Iquique, “extended to the scale of the slums [in many large cities] it would be a dispiriting monoculture.”¹³² Moreover, some residents have voiced complaints regarding their disinterest in building the other half of their house, while others have been consistently dissatisfied by the work of Elemental’s contractors.¹³³ Indeed many detractors “feel that governments should build houses, not half-houses[,] [. . . and ask,] [i]s it right that hard-working people with the scarcest of resources should have to finish building their home themselves?”¹³⁴

Despite these potential drawbacks, in an environment of severe housing scarcity, the advantages of incremental housing can likely still overcome any shortcomings. While “the notion of housing as a ‘platform’, as an ‘open system’ that allows poor people to help themselves[,]” can be criticized as “fashionable Silicon Valley rhetoric[,] [. . .] if one accepts the fact that the majority of housing in the world is self-built, then surely Aravena’s solution is a valuable compromise[.]”¹³⁵ Elemental’s model is worth celebrating because of its pragmatism, “[i]nstead of challenging the politics of a subsidy that is inadequate, he accepted it and designed a creative solution.”¹³⁶ Aravena did not allow the restricted subsidy to limit the quality and scale of the development, asking “not what kind of bad house to build, but how much of a good one?”¹³⁷

Not only did the Elemental development help many families realize the construction of their first good home, it also helped many families generate significant social mobility through equity, “an accumulation of capital that [the owner of one of Elemental’s Iquique homes] couldn’t have dreamed of when [that] patch of ground was covered in rickety shacks.”¹³⁸ That is why Aravena’s design offers a solution that is replicable on a global scale, because “systems

¹³¹ MCGUIRK, *supra* note 8, at 86.

¹³² *Id.*

¹³³ *See* Zilliacus, *supra* note 10.

¹³⁴ MCGUIRK, *supra* note 8, at 86.

¹³⁵ *Id.* at 88.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 85.

designed for extreme scarcity are what the urban peripheries of the world need, not nice houses.”¹³⁹

VI. THE LEGAL IMPLEMENTATION OF INCREMENTAL HOUSING: A DYNAMIC SOLUTION FOR U.S. JURISDICTIONS FACING SEVERE HOUSING SHORTAGES

A. *Practical Aspects of Implementation: Introducing the Necessary Legal Steps*

The first challenge planners and developers would face in adapting incremental housing to a U.S. jurisdiction to address a localized housing gap would be the rigorous building code standards employed by many U.S. localities.¹⁴⁰ The incremental housing model originates in Latin America, where informal housing predominates; in fact, “[t]he idea that you build half a house, effectively, and leave the residents to build the rest, is not new in Latin America.”¹⁴¹ Underlining the predominance of informal auto-construction, “[i]n most cities in Latin America, most of the building over last 50 years—depending on the city—40, 50, 60, 70 percent has been through incremental construction.”¹⁴²

Despite the informal roots of incremental housing, so long as the model can meet the minimum standards of a U.S. building code, there is no reason that the model would not be adaptable. For example, in Florida, the Florida Building Code exists as a minimal guide, incorporating “all building construction related regulations for public and private buildings in the State of Florida other than those specifically exempted by Section 553.73, F.S.”¹⁴³ Within this framework, Florida counties and municipalities have some latitude to

¹³⁹ *Id.* at 88.

¹⁴⁰ *See, e. g.*, FLA. BLDG. COMM’N, OVERVIEW OF THE FLORIDA BUILDING CODE 2 (2017).

¹⁴¹ Hong, *supra* note 129.

¹⁴² *Id.*

¹⁴³ FLA. BLDG. COMM’N, *supra* note 140; *see also* FLA. STAT. § 553.73 (2019) (“[T]he Florida Building Code . . . shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules . . .”).

adopt more restrictive local requirements, though none can be less protective than the statewide Code.¹⁴⁴

The notion that incremental housing would be significantly limited in implementation by U.S. building standards is easily assuaged. In fact, “[a] recent review of reports and news articles by Florida Housing’s staff found no examples [that] ‘reduced standards’ building codes specifically designed for affordable housing [would] reduce costs.”¹⁴⁵ A nationwide review of the effect of housing policies on costs suggests that “building code regulations impact mainly in the 1-5% cost range, perhaps up to 10%, and are not considered to be as important a cost factor as land use regulations.”¹⁴⁶ Ultimately, U.S. building standards still leave room for flexibility and long-term investment, as the “majority of cost of housing reduction ideas [. . .] center[] around minimizing zoning and other development requirements and impact fees” rather than building codes.¹⁴⁷

B. *Miami-Dade County, Florida as a Case Study*

Miami-Dade County, an urbanized area of South Florida, has recently seen increasing housing prices create affordability problems. In fact, a recent “report has found that six in ten employed adults in South Florida are spending more than 30 percent of their income on rent[,] [. . .] the highest of any metro area in the country.”¹⁴⁸ Problematically, “[h]ousing affordability is worse for minority populations[,] [. . .] show[ing] that black families in South Florida have less money left over after paying for housing costs than anywhere else.”¹⁴⁹ The high costs of housing in the area has a profound effect on housing patterns and daily commutes, as 77% of Miami-Dade residents are forced to travel well outside their neighborhoods to jobs in other parts of the county.¹⁵⁰

¹⁴⁴ FLA. BLDG. COMM’N, *supra* note 140, at 3.

¹⁴⁵ *Id.* at 4.

¹⁴⁶ *Id.* (citing to EDWARD L. GLASER & JOSEPH GYOURKO, *RETHINKING FEDERAL HOUSING POLICY* (AEI Press, 2008)).

¹⁴⁷ *Id.*

¹⁴⁸ Chase Remington, *Report: South Florida’s Housing Affordability Crisis Among Worst in Nation*, WLRN (Mar. 25, 2019), <https://www.wlrn.org/post/report-south-floridas-housing-affordability-crisis-among-worst-nation>.

¹⁴⁹ *Id.*

¹⁵⁰ John Robbins, *Miami ready to move ahead on Miami Beach transit connector*, MIAMI TODAY (Apr. 10, 2019),

Long-term trends in Miami-Dade are equally troubling, as the metropolitan area's middle class has shrunk from 65 percent of local households fifty years ago to just 43 percent today.¹⁵¹ Miami-Dade's Gini coefficient, a measure of income inequality with 0 being most equal and 1 being most unequal, is comparable to regional neighbors like Panama and Colombia.¹⁵² In fact, Miami's Gini coefficient, which makes it the second-most unequal U.S. city after only New York, is even higher than that of Chile.¹⁵³

Miami-Dade also has a significant homeless population, with 3,700 people living on the streets across the county.¹⁵⁴ While this number is much lower than the 58,000 living without permanent housing in Los Angeles, the homeless population in Miami-Dade still faces serious issues relating to personal hygiene due to a shortage of public bathrooms.¹⁵⁵

Concerningly, poverty in Miami-Dade has yet to recover from the Great Recession, having remained at 20.4 percent since 2008.¹⁵⁶ This rate is even more troubling considered against the backdrop of the housing affordability crisis, which has left 427,758 Miami-Dade

<https://www.miamitodaynews.com/2019/04/10/miami-ready-to-move-ahead-on-miami-beach-transit-connector/>.

¹⁵¹ Andres Viglucci, *Miami-Dade's tale of two cities: 30 billionaires and the economic inequality of Colombia*, THE MIAMI HERALD (Apr. 22, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/article229441144.html> (This is "the 11th-lowest proportion among the 53 U.S. metros with populations of more than one million.").

¹⁵² *Id.* ("The Miami metro's score on the Gini coefficient for inequality places it on a par with Panama and Colombia.").

¹⁵³ *Id.*; see *Gini index (World Bank estimate) – Chile*, THE WORLD BANK, <https://data.worldbank.org/indicator/SI.POV.GINI?locations=CL> (last visited Oct. 9, 2020) (The World Bank lists Chile's Gini coefficient as 0.44 as of 2017, the most recent year for which data is available; Panama and Colombia are both listed above 0.49.).

¹⁵⁴ Linda Robertson, *Human waste from homeless people makes downtown Miami unpleasant, unsanitary*, THE MIAMI HERALD (Oct. 19, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/downtown-miami/article236262158.html>.

¹⁵⁵ *Id.*

¹⁵⁶ Douglas Hanks, *How poor is Miami? The rich earn \$40 for every \$1 earned by the poor*, THE MIAMI HERALD (May 24, 2016), <https://www.miamiherald.com/news/local/community/miami-dade/article79670752.html> ("That was the portion of residents living in poverty, which for a family of four is defined as earning less than \$25,000 a year.").

households cost-burdened, representing over half of the county's households.¹⁵⁷ Moreover, the affordability “problem is much larger among renters (62 percent cost-burdened) than among owners (43 percent).”¹⁵⁸ Clearly, the task for housing advocates in Miami-Dade, only made more serious by the COVID-19 pandemic¹⁵⁹, remains daunting. As non-profit Miami Homes for All has clarified in a recent report, “[t]o meet our current and future need, we should produce or preserve affordable homes for 210,000 households by 2030.”¹⁶⁰

C. *Assessing the Viability of Incremental Housing*

For the reason that many jurisdictions employ restrictive land use policies based on their unique local needs, a detailed analysis of local standards would be necessary before the development of an incremental project in any specific locality.¹⁶¹ However, because the problems of the housing crisis are national, the solutions offered by incremental housing are likely to be similarly applicable nationwide.¹⁶² In fact, “[t]he National Low Income Housing

¹⁵⁷ *Id.* (“People are considered ‘cost-burdened’ by housing when more than 30 percent of income goes toward a place to live. By that measure, Miami-Dade has the third most cost-burdened housing market in the country, behind two counties in the New York area.”).

¹⁵⁸ *Id.*

¹⁵⁹ See Joey Flechas, *While arguing over how to help the homeless intensifies, housing problem could worsen*, THE MIAMI HERALD (May 9, 2020, 6:30 AM), <https://www.miamiherald.com/news/local/community/miami-dade/article242521111.html>.

¹⁶⁰ *Miami-Dade Affordable Housing Framework*, MIAMI HOMES FOR ALL (last visited Oct. 9, 2020), affordablehousingframework.com (“It is safe to assume that the economic shutdown caused by COVID-19 has increased housing insecurity. Tens of thousands of working residents are estimated to have lost their jobs just in the first month of the shutdown, especially in the service and hospitality sectors.”).

¹⁶¹ *E.g.*, *Resilient Land Use and Development*, MIAMI BEACH RISING ABOVE (last visited Oct. 9, 2020), <http://www.mbrisingabove.com/your-city-at-work/resilient-land-use-and-development/> (As an example, this page explores the unique land use policies developed by City of Miami Beach officials to mitigate the long-term impacts of rising sea levels.).

¹⁶² Jeff Andrews, Alex Bazely, & Patrick Sisson, *The affordable housing crisis, explained*, CURBED (March 2, 2020), <https://www.curbed.com/2019/5/15/18617763/affordable-housing-policy-rent-real-estate-apartment> (“Nearly two-thirds of renters nationwide say they can’t

Coalition found that a renter working 40 hours a week and earning minimum wage can afford a two-bedroom apartment (i.e., not be cost-burdened) in exactly zero counties nationwide[.]” demonstrating the wide-scale nature of the housing scarcity crisis.¹⁶³

Though it may come as a surprise to some, “current research [. . .] shows that incremental development approaches are [already] common in contemporary U.S. cities[,] [though most examples] are of informal additions and unregulated and unpermitted modifications that leverage easy opportunities for expansion in the built environment of housing.”¹⁶⁴ However, a pioneering rural social housing program, the Mutual Self-Help Housing (MSHH) program, has shown that government-subsidized incremental development can also work on a large scale in the U.S.¹⁶⁵ The USDA mortgage subsidy program covers the down payment for the homes of participants, who in exchange “agree to contribute their sweat equity, through self-help, in cooperation with other participating households” to repay the subsidy through equity.¹⁶⁶ Other studies have similarly emphasized the global viability of incremental housing development: “there is a strong and substantiated user desire and

afford to buy a home, and saving for that down payment isn’t going to get easier anytime soon: Home prices are rising at twice the rate of wage growth.”)

¹⁶³ *Id.*

¹⁶⁴ Vinit Mukhija, *The Value of Incremental Development and Design in Affordable Housing*, 16.2 CITYSCAPE: J. OF POL’Y DEV. AND RES. 11, 14 (2014) (“For example, in many single-family homes, garages provide the easiest and most economic space for expansion, and they are regularly converted without permits. The converted garages sometimes house family members and, at other times, they are rented out as relatively affordable housing.”).

¹⁶⁵ *See id.* at 15.

¹⁶⁶ Mukhija notes:

The program has produced about 46,000 homes, nearly one-third of them in California, and nearly 60 percent of them have gone to minorities[. . .] Although the MSHH program provides beneficiaries with a finished home, most of the homes, as in incremental development efforts, are substantially modified over time through room additions, expansions, and other gradual improvements.

Id.

global benefit in promoting incremental expansion” in the place of monolithic inflexible high-rise social housing developments.¹⁶⁷

Among policy responses to the national issue of affordable housing scarcity, incremental housing uniquely allows for long-term profitability with initial subsidy because of the standardization of improvements with scale.¹⁶⁸ The greater the number of families which are included in an incremental development based on the Elemental model, the more that prefabricated pieces can be incorporated to reduce costs over the course of a long-term construction process.¹⁶⁹ Ultimately, much like at Quinta Monroy, incremental housing is adaptable because it enables social mobility through title and access to credit, encouraging investment in the half home because the house belongs to the resident, not the government.¹⁷⁰

VII. CONCLUSION

While the universal right to adequate housing only exists as an aspirational goal in most global jurisdictions, including the United States, the continuing issues of housing inequality underline the need for practical and adaptable solutions. Though the United States should take a leading role and embrace a national right to adequate

¹⁶⁷ CALEB HARPER ET AL., INCREMENTAL EXPANSION: EXAMINING USER-INITIATED TRANSFORMATIONS IN GOVERNMENT HOUSING IN MANAUS, INNOVATION IN URBAN DEVELOPMENT: INCREMENTAL HOUSING, BIG DATA, AND GENDER 8 (Allison M. Garland ed., 2013) (“By reprogramming formal high-density multistory housing through the lens of user transformation, it is possible to create a symbiotic hybrid of the desires of professional practice and those of its beneficiaries.”).

¹⁶⁸ See CRUZ, *supra* note 91, at 111-12.

¹⁶⁹ Cruz notes:

En vez de crear la mejor vivienda de 300 UF (US \$ 7.500) y multiplicarla por 100, pensar en el mejor edificio posible para esas 100 familias con 30.000UF (US \$ 750.000), un cambio de escala de este tipo, permite abordar la dimensión del barrio y también incorporar partes y piezas prefabricadas que pueden contribuir a reducir los costos y plazos de construcción.

Id.

¹⁷⁰ MCGUIRK, *supra* note 8, at 85. (“Thanks to this house, he now has some social mobility. He paid 180,000 pesos, or just \$400, of his own savings for it, and now he estimates that it’s worth \$50,000.”).

housing, in the meantime, the practical results of incremental housing in Chile evidence significant advances in a deeply unequal environment lacking a formal right to housing. The similarities between the realities of housing inequality in Chile and many U.S. jurisdictions, like South Florida, mean that the incremental housing model can provide an important tool for activists and planners in developing a multi-pronged solution to the housing crisis. Ultimately, regardless of whether a jurisdiction recognizes access to adequate housing as a human right, incremental housing offers a unique and flexible solution to transform informal communities through viable social housing.