

## Written Submissions of Sebastian Kornhauser to the United Nations Special Rapporteur on Extreme Poverty and Human Rights (Re: United Kingdom)

14 September 2018

*(3) What are the most significant human rights violations that people living in poverty and extreme poverty in the United Kingdom experience? Please exemplify by referring to specific cases and relevant norms of international human rights law.*

In this short submission, I endeavour to highlight what I perceive to be catalysts of the most significant human rights violations in England against people living in poverty. I list them in five categories beginning with substandard housing. The starting point is that English mind set of making the poor suffer survives historically as a transposition from the Statute of Artificers 1562 (5 Eliz. 1 c. 4) which sought to restrict workers' freedom of movement and regulate training and subsequently from the Poor Law Amendment Act of 1834 (4 & 5 Will. IV cap.76) designed to reduce the cost of looking after the poor. My observation to a historical link is supported by the research of Lorie Charlesworth. He said this:

The criminalising of the poor in England is an old tradition. From the fourteenth century onwards, the link between the methods used to control vagrancy and the later operation of formal poor relief in England and Wales created an association between the two which influenced both legislation and the treatment of the poor; a connection which continues today.<sup>1</sup>

The nature of punishment directed against poor people in England comes in the form of deprivation of quality of life. Poor people are looked on with repugnance as objects of parasitism who take up the state's resources. They are perceived as unindustrious failed individuals who are expected to "disappear" from sight and become economically productive. They are condemned by circumstance and dire necessity and cannot afford to purchase their own house. Under such circumstances, poor people are less capable of governing their life. If housed, they are consigned to a housing estate for life which exposes vulnerable people to a plethora of vicissitudes and negative circumstances which includes deleterious happenstance. Ryan put it thus:

"Poverty is vulnerability to death in its crudest forms. Poverty is the relentless daily attribution of contending with the most primitive concerns of human existence: food and cleanliness and clothes and heat and housing and rest and play and work."<sup>2</sup>

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<sup>1</sup> Lorie Charlesworth, 'Why is it a Crime to be Poor?' *Liverpool Law Review*, (1999) 149 - 167

<sup>2</sup> Philip Scott Ryan, 'Decent Housing as a Constitutional Right' *Howard Law Journal*, Vol. 14, (1968) 338 - 360

## Politics of ‘Satisficing’

### Definition of the term ‘satisfice’

*‘To decide on and pursue a course of action that will satisfy the minimum requirements necessary to achieve a particular goal’.*<sup>3</sup>

There is an inherent relationship between the ownership / management of property and the obligation to fulfil certain duties and provide certain services. But this has been neglected in the sphere of social housing. The duty to provide permanent housing has been contracted out by local authorities to quasi-public entities such as private housing management organisations, co-operatives and housing associations. This arrangement emerged in an era of privatisation and contractualisation of public services. Quasi-public / private entities (delegated by the state) have in turn subordinated the requirement to ensure that what ordinarily ought to be high quality housing falls aside to the technique of ‘satisficing’. The impact and the long-term consequences arising out from the politics of satisficing is sub-standard living conditions in perpetuity and the permanent damage to people’s lives, both physically and psychologically. When it comes to housing law, courts overlook the basis of the law of agency found in maxims: *Qui facit per alium facit per se* (He who does anything by another does it by himself) *Qui per alium facit per seipsum facere videtur*. He who acts through another does it by himself and *nemo potest facere per alium, quod per se non potest* and *Delegata Potestas non potest delegari*.

The concept of ‘satisficing’ can be described as a modified concept of rational behaviour where decisions are made to pursue a course of action that will satisfy the minimum requirements necessary to achieve an outcome. Put simply, satisficing is to act in a way as to fulfil the minimum requirements necessary to attain a particular result, namely to make decisions which are ‘just good enough’ (but not the best) in order to satisfy a particular criterion. In this instance, to overcome regulatory hurdles. The legislative approach has lent itself to the politics of satisficing. Take for example s.14(3) (a) of the Housing and Planning Act 1986 which required that the duty of housing authorities was to provide accommodation that is “suitable.” “... by making available suitable accommodation held by them under Part II (provision of housing) or any enactment”. What “suitable” means (or might mean) is very broad and open to interpretation.

### Replacing vague terms with a sterling standard?

The terms “adequate” and “suitable” are sufficiently amorphous to permit sub-standard housing because what is “**suitable**” and what is “**adequate**” is little more than a subjective value judgment that falls to the caprice of local authority employees in their individual assessments. The words “adequate” and “suitable” allow for a

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<sup>3</sup> ‘Satisfice’ - OED Online, Oxford University Press (Web)

sliding scale of interpretations and amount to a licence for the provision of sub-standard services in social housing, I reasonably believe that these words “adequate” and “suitable” require removal from legislation and replaced with a sterling standard that summon the characteristics of high quality in redesigning living. It is perhaps valuable to note that during the 1930’s and thereafter, legislative areas such as planning, housing and compulsory purchase were riddled with ouster clauses (jurisdiction stripping provisions) barring access to the courts on questions of planning and housing policy. See for example s.11 of the Housing Act 1930 and Schedule 4 of the Housing Act 1957. Social housing was a non-justiciable ‘no-go’ area. It was an English national institutional approach that became an unspoken industry for the exploitation of the poor at industrial level combined with the provision of a ‘bare minimum’. The most profound human rights violations, in my view, that people living in poverty and extreme poverty in the United Kingdom experience are:

### **Substandard Housing**

(1) Forced to live indefinitely in substandard housing<sup>4</sup> arising from a lack of choice to live better elsewhere. The inability of vulnerable people to break out of slum housing is intrinsic to their dire socio-economic hardship and necessitous circumstances. They are dependent on benefits and to a life of low income which prevents the exercise of vulnerable people’s right to personal self-determination and self-development, such as a path of progress in life where they engage in self-employment or entrepreneurship that can generate wealth. On the other side of the spectrum, the cost of quality private property, either to rent or to purchase is an unrealistic impossibility even for those who are not poor and beyond comprehension.

### **Negative consequences arising from concentrating lots of poor people in close proximity to each other**

(2) The architectural design of “council estates” and social housing is such that they concentrate many into very close proximity. The hard reality is that when many vulnerable people are squashed into confined spaces, poverty begets poverty and illth generates illth. In comparison to a freehold title holder of luxury terraced property in Belgravia in a secluded mews not exposed to the same element of risk, social housing tenants in Britain are exposed to unprecedented risk and negative happenstance. The greater levels of risk and negative happenstance I refer to such as ill health, occur in the shadows of pathological recidivism of other individuals. Examples of “neighbours from hell” and violence enhances the likelihood of getting assaulted, harassed, stabbed to death, shot or burnt with acid, and in reverse, sent to jail for resorting to self-defence in resisting any of the above.<sup>5</sup> This should come

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<sup>4</sup> Daniel, L. Hatcher, *The Poverty Industry: The Exploitation of America’s Most Vulnerable Citizens*, (New York University Press 2016) 16, 201

<sup>5</sup> The occupier of Buckingham Palace, the owner of a castle in Scotland, or a cottage in East Sussex is not exposed to the same level of risk. They have a lot of space.

as no surprise. English media reported many fatal stabbings and an increase in violent crime in 2018. Most of these crimes were not committed by judges, doctors, architects, accountants or lawyers but by those who live or have lived on a council estate or in some form of social housing.

### **Tenancy Regimes that ensure there is no back up home to go to post eviction**

(3) Except Assured shorthold tenancies, two common types of long-term security of tenure in social housing is contained in two different regimes of tenancy. One is a Secure Tenancy<sup>6</sup> the other is an Assured Tenancy.<sup>7</sup> Although in principle both are protected tenancies, due to their unduly convoluted legal status<sup>8</sup>, the Assured tenancy is understood as “a periodic tenancy determinable on an uncertain event [*being*] treated as a defeasible tenancy for life”.<sup>9</sup> In practice, the term “defeasible” means that social housing tenants run the gauntlet of remaining constantly at risk of eviction by local authorities or housing associations. Even where previous possession proceedings have failed against tenants who stood up and defended their rights, fresh possession proceedings can be brought against them in the future. No matter how many times UK local authorities and housing associations have brought claims for possession against a tenant in the past and failed, they are entitled to try again, again and again and as often as they can with the aim of evicting the vulnerable person from his home for the purposes of obtaining vacant possession property and wrecking the lives of the dispossessed. Eviction is the engine of poverty reproduction because in certain circumstances, it triggers fresh obligations on the local authority to rehouse the evicted homeless. Where a tenant is deemed as being homeless of their own volition, either by abandonment, or evicted for, *inter alia*, a failure to pay rent. The local authority has no duty to rehouse such persons. They become homeless in perpetuity.

### **Eviction and Homelessness**

(4) In *Drane v Evangelou* [1978] 1 WLR 455; [1978] 2 All ER 437 at 443 Lawton LJ held: “*that to deprive a tenant of the roof over his or her head is one of the most serious torts imaginable*”. The English have an unhealthy relationship with control and possession of land. It is something archaic, inherent from feudal times. Due to the “only or principle home” clause found in section 1(1)(b) of the Housing Act 1988 and inscribed in most social housing tenancy agreements, it implies that the person must occupy the social housing property as his only or sole home to the exclusion of any other home in order to remain eligible to live in that property. It also means that post eviction, the vulnerable person has no backup home to move into after the eviction has been carried out. Exposure of vulnerable people to extreme risk is a

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<sup>6</sup> Section 79(1) of the Housing Act 1985

<sup>7</sup> Meaning of Assured Tenancy is found in s.1(1) of the Housing Act 1988

<sup>8</sup> T.M. Fancourt, ‘*Megarry’s Assured Tenancies*’, Second Edition, London, (Sweet & Maxwell 1999)

<sup>9</sup> Paragraph 117 as per Lord Dyson in *Berrisford v. Mexfield Housing Cooperative Limited* [2011] UKSC 52

tolerated activity in England. A Possession order by itself cannot be enforced. The legal effect of eviction derives from the execution of the eviction by a court bailiff acting on a warrant of eviction. It has been held in *R v Newham LBC ex p Khan* (2001) 33 HLR 269 and at the Court of Appeal in *R v Newham London Borough Council ex p Sacupima* [2001] 1 WLR 563; (2001) 33 HLR 2, CA that homelessness occurs at the point of actual eviction, rather than the date when the possession order takes effect. In the 28 days prior to the eviction the occupier is 'threatened' with homelessness. The status of property and its value is of greater preponderance than the life of a human being. Vulnerable people suffer excruciating psychological and physical torment at the time of forcible displacement when they are evicted from their home when the eviction itself, takes place. The loss of home is usually a very traumatic experience that may last a long time.<sup>10</sup> In destitution, vulnerable people are close to the risk of death. In Germany, for example, a judge would not order eviction until he was satisfied that alternative accommodation is available for the dispossessed, prior to eviction. In England, an English judge does not (and does not have to) take such considerations into account. Street homelessness is good enough. Another consequence of being forced to endure destitution and street homelessness is the onset of mental illness. Although s. 189 (1) of the Housing Act 1996 read together with the Homelessness (Priority Need for Accommodation) (England) Order 2002 SI No 2051 sets out that a series of persons (in England) having priority need for accommodation, the reality is that local authority employees do whatever they can to refuse homeless applicants and deny them housing by creating hurdles impossible to pass through.

### **Collapse of the Legal aid system and with it the collapse of Equality of arms**

(5) Equality of arms is one of the fundamental tenets of the rule of law. In recent years, due to austerity measures and the evisceration of legal aid, vulnerable people experience poor access to legal services. With no legal aid, they cannot afford to instruct legal counsel to represent them whereas local authorities and housing associations have teams of powerful lawyers. The imbalance between the resources of the parties is enormous. This is a profound violation of the international law standards for access to justice because without money, poor people do not have access to skilled legal counsel and they are not on a level playing field with the other Party to the proceedings. The odds of them losing the case is greater. The withdrawal of legal aid is the deliberate creation of conditions that ensure the greatest possible inequality of arms takes place in legal proceedings. The English know that vulnerable people are often uneducated and not learned in law. The proliferation of litigants in person (LIPs) had started to annoy English judges. They have found themselves with heavier case management responsibilities. In short, wherever one turns to in exploring this subject, it is self-evident that the system has been designed in such a way where the odds are stacked against vulnerable people.

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<sup>10</sup> Tuomas Forsberg, 'Explaining Territorial Disputes: From Power Politics to Normative Reasons', *Journal of Peace Research*, Vol. 33, No. 4, (1996) 433 – 449, at 438

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