

HOUSING RIGHTS AND SECURE TENURE: A PREREQUISITE FOR HOUSING THE POOR?^{1 2}

"Think piece" prepared by

UN-HABITAT

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1- What is the situation?

1.1 - Slum dwellers and informal settlers, a growing population of "sub-citizens":

People living, and often working in slums and irregular, unplanned settlements constitute a growing proportion of the population of cities, especially in developing and transitional economies. In cities of Africa, Asia and Latin America, slum dwellers comprise over 50% of the total population. The current number of approximately 1 billion of people living in slums and informal settlements is expected to rise, if nothing is done to stop the current trend, to 1.6 by the year 2020.

In many cities of the developing world the "informal" character of settlements is associated with the quasi-legal or illegal residential tenure status of the settlement population. Slum dwellers lack a legal document or formal agreement with the authorities that gives them the right to reside in the settlement. In some cities people have lived in informal settlements for generations or have come to feel secure because they have never experienced the threat of eviction. In such cases, informal settlements have essentially become established and residents enjoy "de facto" security of residential tenure.

While *de facto* tenure may minimize the threat of eviction, it does not provide the rights associated with *de jure* tenure. Where the authorities do not recognize the informal settlements, residents of the slums are denied access to urban basic services and commercial financial services. Slum dwellers are innovative and often adapt highly creative survival mechanisms but at high cost, often paying 10 times more per unit cost than their well-to-do counterparts in the same city. As an example slum dwellers in the city of Nairobi pay the litter of potable water 10 times more than a citizen in New York!

1.2 - Insecurity of Tenure, a situation that compounds the condition of the poor:

Unfortunately, a significant number of people living in slums and informal settlements live with the ***daily threat of eviction*** and do not enjoy the *relative* security of de facto tenure. The Centre for Housing Rights and Evictions (COHRE) documented over seven million persons in 60

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² Based on:

- the Global Campaign for Secure Tenure, concept paper,
- the does and don'ts of slum upgrading,
- Sustaining slum improvement and social development in urban areas, Weihai conference

countries who were forcibly evicted annually from their homes in 2001-2002. Often, these evictions are accompanied by severe violence, with victims on many occasions detained, arrested, beaten, tortured, and in some cases, even killed. Women are undoubtedly those who suffer most from forced evictions (see UN-HABITAT paper: “Women's Rights to Land and Property”).

A far larger number of people are believed to live with the threat of eviction and today forced evictions are taking place in several regions. A still greater number of slum dwellers risk eviction because they are tenants. They do not enjoy any protection from unscrupulous landlords as their rental status is prescribed by a verbal agreement beyond the juridical domain of rent tribunals and the courts.

Insecurity of residential tenure has many negative consequences. Large proportions of the world's urban population are not entitled to basic human rights. In addition to housing rights, they are denied the right to organize, make claims on public resources, or to participate in decision-making processes that impact on them directly. While living at close reach to the basic services of the formal city they are very often denied the right to access those services and it is quite frequent that the schooling rate of slums children is not only lower than that of other city children but it is even lower than in the rural areas. In many slums, infant, child and maternal mortality rates are much higher than rural averages and may be comparable to those experienced by the rural poor. Because slum populations live close to water mains, schools and health centres, it is assumed they have better access than rural dwellers. But they often have as little possibility of accessing these as rural dwellers. Poor urban groups can live next to water mains or hospitals but it does not mean they can get access to them.

The absence of rights is directly associated with the absence of investment by people living and working in slums. The population “gets by” but their productive potential is stymied, and they are not able to contribute to the economic growth and socio-political vitality of the city, other than to offer their labour at dehumanising wage rates, thus perpetuating their poverty further.

1.3 - The Global Campaign for Secure Tenure of UN-HABITAT, an advocacy tool developed by UN-HABITAT to fight this situation:

The Global Campaign for Secure Tenure, initiated by UN-HABITAT at the time the Millennium Development Goals were decided, is taking up these issues as part of a rights-based approach. The enormous concentration of abject poverty raises some difficult policy issues that are addressed within the ambit of the campaign. It must be self-evident that, for this category of the urban poor, access to land and services cannot be governed by ordinary market mechanisms such as an ability to pay. For this category of the urban poor, exceptional policy measures will have to be considered and may, indeed, point to the need for some fundamental rethinking on some of the assumptions and understandings that underpin existing approaches to tenure.

The Global Campaign for Secure Tenure aims at leading to an improvement in shelter strategies for the urban poor, promoting and supporting a far more prominent role for women, and directly and indirectly contributing to creating a climate for improved urban governance.

The Campaign addresses two distinct, but related, issues:

- The first is the extension of formality and secure title to already existing urban settlements.
- The second relates to the need for improved provision and availability of urban land that is well-located and affordable.

Informal settlements exist and expand because of the inadequate provision of land, speculative investment patterns, a tendency towards over-regulation, and a regulatory framework of standards, regulations and administrative procedures that is, at best, indifferent and - more likely - hostile to the needs of the urban poor.

The campaign is assisting governments and communities to overcome these obstacles in all regions with a strong emphasis on partnership, participatory urban development and systemic changes especially related to tenure and land issues.

2 - What should not be done?

2.1- Forced evictions, a gross violation of human rights:

The practice of unlawful forced evictions is unlawful. State authorities or quasi-private authorities working with the compliance of the state, are violating fundamental human rights when they evict households forcefully. The Covenant on Political, Cultural and Economic Rights states unambiguously the rights of persons not to be forcefully evicted. Over 120 Member States are signatories to the Covenant. At national level, many Member States have adopted legislation not only protecting people from forced eviction, but also ensuring persons that must be relocated as a last resort are entitled to affordable shelter and basic services (India, South Africa, Brazil and Philippines are a few examples).

The central failing in the practice of unlawful forced eviction is that it does not work. Evicted populations, more times than not, return to the same location, or an adjacent area. In the absence of affordable housing, evicted populations will seek shelter of substandard quality near existing sources of livelihood and reliable social networks – often the very place from where they were evicted. If the intentions of authorities are to get rid of people hoping they will just pack up and return to where they came from, the mode of eviction is ineffective.

Unlawful forced evictions in slums and informal settlements are highly complex matters. The nature of the land and structure ownership arrangements, the character of state and non-state governance structures, and the process by which land transactions actually occur is anything but visible and transparent. Further, the impetus of evictions varies. It may be a response to a land invasion, or an effort to “cleanse” an area of slum dwellers so as to increase the market value of adjacent land.

The role of the state to such situations, especially where non-state actors carry out unlawful forced evictions can not be one of compliance. Neither can their role be one of passing blame to other levels of government, as is often the case (e.g. central to city to provincial administration or to the judiciary). State authorities must not be complacent, nor condone unlawful evictions but rather take responsibility and seek to uphold the rule of law. ***This requires the strengthening of legal instruments and the judicial systems that adjudicate them, a long and challenging exercise.*** In municipalities where governance structures are weak or where state actors fail to assume their responsibilities, urban poor households must assert themselves. As mentioned above, they must organize, raise awareness about their rights, and increase their capacity to engage with state actors in ways that increase transparency and accountability.

UN-HABITAT has recently established an Advisory Group on Forced evictions to monitor, identify and promote alternatives to forced evictions. A periodic report will be submitted by the

group on the status of the urban poor facing forced evictions and will propose actions to counteract them. The core issue faced by the Group is to obtain that state members *fully comply with those international agreements to which they have committed themselves*.

3 - What is to be done?

3.1 - Provision of Security of Tenure is a prerequisite:

There is no fast, easy “quick fix” that will ensure that all residents of the city enjoy security of tenure. This is especially so in cities with large slums and in cities experiencing intense, rapid expansion of irregular, unplanned settlements such as in most of Sub-Saharan Cities. Rapid regularization of informal settlements may even have detrimental consequences for slum dwellers if not accompanied by complementary actions susceptible to ensure sustainability of the process such as improvement of income, strengthening of legal instruments and the judicial system, enhancement of the institutional framework. Slum dwellers, support organizations, professionals, and governments at all levels should adopt an incremental approach, reaching consensus on a set of initiatives that is commensurate with the local situation.

Legislation against the practice of unlawful forced evictions is essential for security of tenure. Laws that prohibit eviction and demolition without due legal process provide a legal basis for the protection of citizens and the accountability of public officials. However, as residents of slums throughout the world are painfully aware, legislation does not necessarily ensure full protection and accountability, and should not be considered an end in itself. Legislation must be backed up with efforts to sensitise public officials, the courts and private developers that eviction is an unacceptable practice. These may include advocacy, campaigning and related awareness raising activities. The success of advocacy requires strong, organized movements of the urban poor, partnerships between such movements and the local authorities, and the political will of the state.

The example of the Mumbai Urban Transportation System (see box hereunder) is indeed very eloquent and shows that where evictions have been a long conflicting history, negotiated resettlement has benefited to all stakeholders and greatly improved the economic growth of the city.

3.2 - Access to affordable land is to follow:

In addition to legislation and advocacy designed to stop unlawful forced evictions, governments can ensure security of tenure by promoting flexible land tenure arrangements. Some countries have begun this process by instituting block titles to entire sections of informal settlements. The block title does not provide individual title but rather designates a selected area, ensuring that no evictions or demolitions can take place. The block titles enable city authorities to incorporate parts of the city that were previously excluded and begin the process of registering, and eventually titling individual holders of land within these parts of the city (see example of Sri Lanka and Namibia below).

Governments can also legislate and introduce other flexible land tenure systems in addition to block titles. These include occupancy rights (permanent or temporary), lease agreements, community land trusts, adverse possession rights, anti-eviction rights etc. Flexible tenure systems are potentially effective means to ensure tenure security because they do not place unrealistic demands on local governments, particularly those in developing and transitional

economies that lack human resources and capital. And they tend not to disrupt municipal land markets.

Registration of land holdings and the establishment of a municipal cadastre inclusive of informal settlements is another important component of an incremental approach to securing tenure. Land surveyors and their professional institutions have developed in recent years a number of cost-effective, and easy to use GIS tools and land registration systems. Local governments with limited human and financial resources can adapt these to local settings, again, as a first step, and then re-tool and upgrade such systems over time (see FIG/ASIA, PNG below).

3.3 - Provision of secure tenure is the beginning of the process that leads to improving the lives of slum dwellers:

As we have seen earlier “significantly improving the lives of slum dwellers” cannot be achieved by bulldozing ‘slums’, which simply increases levels of overcrowding elsewhere and creates new ‘slums’ in peripheral areas outside city boundaries – and significantly worsened the lives of those who were displaced. Rather it can be achieved by supporting those living in ‘slums’ to buy, rent or build better quality accommodation.

Once security of tenure is provided slum-upgrading programmes can be engaged on a sustainable basis and provide perhaps the most important means to significantly improve the lives of slum dwellers. Measures to increase the supply and reduce the cost of good quality housing with infrastructure and services and the land available for housing are an important part of significantly improving the lives of slum dwellers. Such measures are also central to limiting and eventually preventing the formation of new slums.

Upgrading is seen as the most obvious way to ‘significantly improve’ the lives of slum dwellers and they often include programmes to provide the inhabitants with legal tenure. In many informal settlements, agreements have to be brokered between the original landowners, and those who actually live there which can be a complex and conflictual process. The Community Mortgage Programme in the Philippines and the work of the Community Organizations Development Institute in Thailand have made special provisions for supporting this process. Under this scheme Thailand is engaging an unprecedented countrywide slum-upgrading programme.

For most slum inhabitants, upgrading is preferable to new homes, because they are already established there with livelihood patterns and social networks linked to the site and the location. For governments, upgrading offers cost and up-scaling advantages over building new units.

Finally ***slum upgrading can also contribute to several other Millennium Development goals and their targets*** by also, among others, increasing the proportion of people with access to safe drinking water and to sanitation and helping to reduce child and maternal mortality rates.

3.4 - Slum Upgrading as a means to mobilise the urban poor around sustained saving schemes:

The examples given earlier of the programmes in India, the Philippines and Namibia have community-based savings and credit schemes as their base and these help their members cope with sudden falls in income or sudden need for expenditure, as well as providing credit to

support employment opportunities. UCDO/CODI in Thailand supports community-managed revolving funds that could provide grants or loans to members.

There are examples from many nations of new housing and settlements developed by organizations formed by low-income dwellers based around community-managed savings and credit schemes. Examples from Asia (India, Thailand, Philippines, Cambodia) as well as in South Africa, Kenya and Latin America are currently being documented by the Global Campaign for Secure Tenure that show impressive progress in community mobilisation and improvement of lives of slum dwellers.

The housing schemes developed by the South African Homeless People's Federation are exemplary where the setting up and management of the savings group helps the group to learn to manage finance and organize collectively. In India, the Alliance of SPARC, *Mahila Milan* and the National Slum Dwellers Federation has supported schemes through which several thousand households have got land and developed housing when this Alliance managed the resettling of 20,000 households from beside the railway tracks in Mumbai (see box below).

A Success Story on Alternative to Forced Evictions

The Railways, Slums and the Mumbai Urban Transport Project (MUTP)

The Departments and Ministries of the Government of India have been reluctant to part with their lands for resettlement of slum dwellers or even agree to share in the costs of such resettlement. The Railways is a case in point. Mumbai, commercial and financial capital of India, has a population of 12 million people of whom 55% live in slums. The suburban railway system accounts for 83% of passenger trips and is the lifeline of the city. Slums along the railway tracks slowed down trains from 60 km. per hour to 15 km. per hour, accidents would take place, commuters got delayed and the productivity of the city suffered. The Mumbai Urban Transport Project (MUTP), financed by the World Bank, is meant to improve the traffic and transportation system in the city. A huge investment was planned in resettling slum dwellers from along the tracks, laying new lines, buying more buses, building roads and over-bridges and so on.

The Railways did not want to agree to the resettlement because they were worried that it would set a precedent. However, the World Bank (and the Government of Maharashtra, a partner in the project) was insistent that resettlement be an integral component. After much debate, the Railways finally agreed because otherwise funds for this huge investment would not be available and land was made available for the resettled population.

Today, more than 20,000 families living along the railway tracks have been resettled, a wall has been built 10 metres on either side of the tracks and trains are plying much faster. As a result, the productivity of the rail system as also the productivity of the city has increased with more trains running on the same tracks at greater speeds. The alliance of Society for Promotion of Area Resource Centres (SPARC), National Slum Dwellers Federation (NSDF) and Mahila Milan (MM) was awarded a sole source contract to implement the resettlement through people's participation. No force was used.

This case brings out the convergence of interests of different agencies and entities: the Railways, the commuters, the State Government, the economy of the city, and the poor themselves, in a relative "win-win" situation.