

# THE POST-COVID CITY: LESSONS FOR THE FUTURE IN LAW AND DEVELOPMENT

| A REPORT

DATE

10 July 2020

12.00-14.00 (GMT) | 14.00 - 16.00 (Nairobi time)

ORGANIZED BY

Institute of Advanced Legal Studies

IN COLLABORATION WITH

UN-Habitat



## URBAN LAW DAY 2020

The world is currently going through an unprecedented crisis as COVID-19 continues to take lives, cripple health care systems, ravage economies and disrupt social dynamics. Cities have occupied a prominent position in the context of the pandemic for several reasons. Their relatively dense populations, characterized with overcrowding in many countries, have provided conducive environments for the spread of the virus. Urban areas also act as engines of economic growth and as COVID-19 brings most activities to a halt, cities have faced the brunt of its effects. The vibrancy and openness of cities as centres of social, political and cultural expression have also been inhibited due to enactment of measures that limit physical interactions.

Governments have responded to the pandemic by enacting measures ranging from preventive ones such as declarations of state of emergency, physical distancing, restriction of movements, imposition of curfews and prohibition of large gatherings to more support-oriented ones such as food distributions, direct cash transfers, moratoriums on evictions and loan repayment and diverse job-protection initiatives. The urgency and scope of the challenge has highlighted the importance of strong institutions and the necessity of multi-stakeholder engagement and cooperation.

However, COVID-19 has threatened to destabilize governance institutions and the system of checks and balances as well as undermine democracy, human rights, and the rule of law. It has hindered normal functioning of governance institutions (such as courts and parliaments) in many countries by limiting their ability to convene for deliberations and led to the introduction of emergency measures some of which have been deemed to be autocratic and used to infringe fundamental rights and freedoms.

The 7<sup>th</sup> Urban Law Day "**The post-COVID City: lessons for the future in law and development**", was jointly organized by the Institute of Advanced Legal Studies (IALS) and UN-Habitat to discuss the impacts of the pandemic on cities and to identify lessons learnt to mitigate the effects and enhance resilience towards similar crises in future. The 2020 edition was historic in that it was the first fully virtual session since the initiative's inception in 2014. While the absence of a physical congregation exemplified the disruptive effects of the pandemic, one positive outcome was that it enabled the participation of individuals who would have otherwise not been able to travel to London.

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### The Urban Law Initiative, *Dr. Maria Mousmouti, IALS*



The partnership between IALS and UN-Habitat is potentially transformative as both parties leverage their primary strengths for common pursuit of the 2030 Agenda. IALS brings its strength of generating knowledge, while UN-Habitat is good at harnessing knowledge to create impact. Indeed, in a relatively short period (7 years), the fruits of the Initiative are already visible. It has contributed to a wider recognition of the importance and role of urban law in sustainable development; facilitated networking and discussion among the academia, policy makers and practitioners; and introduced urban law issues on the agenda by identifying niche areas for policy and legal discussion. The Initiative has also promoted the use of knowledge to improve practice and built awareness and capacity within the 'urban' community on good legislation and law-making.

**Rights-clashes, legal fault-lines and COVID-19 in South Africa's informal settlements,**  
*Prof. Marius Pieterse, University of Witwatersrand*



Prof. Pieterse highlighted the plight of over 1.2 million households residing in informal settlements in South Africa. Overcrowding and inadequate basic services in slums have complicated social distancing and hygiene. Coupled with the prevalence of poverty which excludes most residents from access to healthcare, COVID-19 has had particularly dire effects on informal settlers. In response, the government introduced de-densification measures which involved the relocation of households to temporary shelters. However, while this move was aimed at containing the spread of the virus - and as a consequence ensure the right to health - there have been concerns that it amounts to evictions and thus an infringement of the right to housing. The resulting situation is a clash between the right to health and the right to housing. Prof. Pieterse particularly noted that the conundrum was the result of long-standing deficiencies in the content, implementation and articulation of laws and policies that deal with informal settlements as well as governance shortcomings and lack of political will.

**Equal Pay as a Human Right: A Closer Look at New York City Human Rights Law after COVID-19,** *Prof. Geeta Tewari, Widener University Delaware Law School & Urban Law Center, Fordham School of Law*



Prof. Tewari delivered an insightful account of the pandemic's disproportionate impact on women and minorities in the United States, highlighting that women constituted 49% of the workforce but accounted for 55% of job losses from the economic fallout of COVID-19. The losses were even bigger for women of colour with Black women and Latinas experiencing a significant rise in unemployment rates. Prof. Tewari thus brought to the fore issues of intersectionality where multiple factors come together to negatively affect marginalized individuals and push them further down the pay equity scale. A holistic approach to women's empowerment through local government and public-private partnerships to address the range of systematic and structural factors that hinder progress and to create greater awareness and transparency of workers' rights, is urgently needed.

**Post COVID prospects for the right to adequate housing,**  
*Mr. Robert Lewis-Lettington, Chief of Land, Housing and Shelter Section, UN-Habitat*



Mr. Lewis-Lettington began by discussing the freedoms and the entitlements that underpin the right to adequate housing and explored them in the context of COVID-19. He observed with relief that many countries have introduced protection measures during the pandemic and as such, there has not been a particular increase in evictions or relocations during this period. However, there is a concern about a post-pandemic surge in evictions once the emergency is over and the protections have been lifted. The potential for longer term risks in landlord-tenant structures as tenants are protected from evictions at the expense of the income needs of (sometimes also poor) landlords as well as similar risks in land ownership patterns was also discussed. On a positive note, the pandemic may result in a greater emphasis on the public health role of housing with a focus on its quality.

**Access to Justice after COVID-19**, *Dr. Ana Paula Pimentel Walker, University of Michigan*



Dr. Pimentel Walker gave a Brazilian perspective of the pandemic's impact, which interestingly, shared several elements with the previous presentations. Similar to the United States, COVID-19 has had a disproportionate effect on minorities. In Brazil, people of colour and residents of informal settlements account for the highest number of deaths from the pandemic. The presence of a 'rights clash' was illustrated and while in South Africa it was between the right to health and the right to housing, in Brazil, it was between the right to housing and the right to a healthy environment. According to her, the administrative law model of enforcing socio-economic rights had proved to be an inadequate mechanism of vindicating the rights of informal settlers.

## KEY LESSONS FOR POST-COVID-19 CITIES

**Coherence among related legal and policy frameworks is paramount to make laws a powerful tool** - COVID-19 has underscored the utility of legal frameworks in crises. As the virus took hold, many governments undertook legal interventions to deal with it. Movement restrictions, declarations of emergencies and job stimulus packages are examples of some of the measures that have been affected through the law. In South Africa, for instance, it was shown that the Disaster Management Act 2002 provided the framework through which COVID-19 response plans were made. Similarly, the importance of the law in introducing emergency protections against evictions was highlighted in the discussion. It was also revealed that lack of coherence among related legal and policy frameworks impedes effective crises prevention and management. In South Africa, legal fragmentation has contributed to the persistent inability to improve the welfare of slum dwellers in that although the spatial planning law recognizes informal settlements and in-situ upgrading, municipal zoning regulations and land use by-laws do not cater for them.

and blurring of civil and criminal authority in a number of cases. Furthermore, police brutality in the enforcement of emergency measures were noted to pose a serious risk to human rights in cities. A Rule of Law approach to emergencies is essential as it could protect against the arbitrary and abusive use of power, the application of disproportionate measures, and exclusion of vulnerable populations. To be effective, emergency laws and ordinances must have clear messages, be implementable and designed in a way that encourages compliance. Furthermore, they need to be justified, and proportional to need and most importantly, their enforcement should not lead to more harm than good.



**Emergency responses need to be grounded in the Rule of Law** – COVID-19 has led to the understandable need for governments to use emergency powers for prompt and flexible response to an ever-evolving crisis. The challenge, however, is that such measures carry the risk of causing massive human rights infringements. A few were highlighted during the session including restrictions on movement that could unfairly target informal settlers, involuntary relocations (de-densification schemes in South Africa),

and blurring of civil and criminal authority in a number of cases. Furthermore, police brutality in the enforcement of emergency measures were noted to pose a serious risk to human rights in cities. A Rule of Law approach to emergencies is essential as it could protect against the arbitrary and abusive use of power, the application of disproportionate measures, and exclusion of vulnerable populations. To be effective, emergency laws and ordinances must have clear messages, be implementable and designed in a way that encourages compliance. Furthermore, they need to be justified, and proportional to need and most importantly, their enforcement should not lead to more harm than good.

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**Urban governance may be transformed as sub-national governments and local authorities fill gaps left by national governments**

– As national governments struggled to cope with the demands of the pandemic, regional and local governments have stepped up. In the United Kingdom, for instance, Prof. Robert Home (Anglia Ruskin University) saw the possibility of local authorities clamouring for more powers in response to the national government's inability to respond adequately. He observed that some local authorities had to procure personal protective equipment (PPEs) yet this was the national government's responsibility. In Brazil, the right to housing is a shared constitutional obligation between the federal and local governments, however the burden increasingly falls on the local governments. COVID-19 may thus lead to increased decentralization and clearer distinction of roles between different levels of government to enhance future preparedness.

**Role of civil societies and community groups must be strengthened**

- Non-governmental organizations, community groups and the civil society have always played a crucial role in provision of goods and services as well as advocacy and awareness raising. With the advent of COVID-19, these actors have been cast into a prominent role in helping communities deal with the effects of the pandemic. In Brazil, non-state actors have supported access to basic services and led the provision of legal aid services to promote access to justice for residents of informal settlements. In South Africa, civil society groups have been instrumental in pressuring the government to scale down its de-densification plans that would have amounted to evictions that threaten livelihoods and destroy social networks.

**There is need for a holistic look at rights**

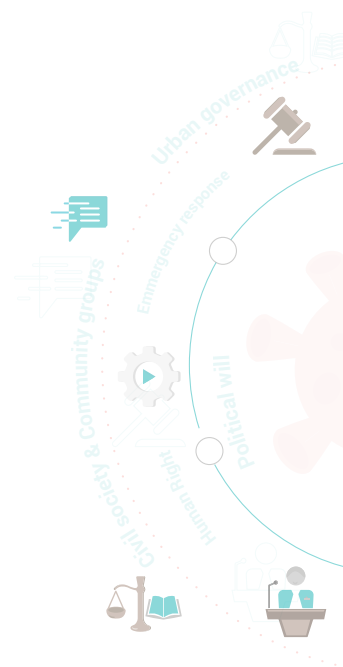
– While human rights are indivisible, interrelated and inter-dependent, the discussion showed that in some cases, this relationship breaks down; such as the 'rights clashes' in South Africa and Brazil. Participants expressed a need for a more holistic look at rights.

*Prof. Pieterse* called for enhanced domestic development of rights jurisprudence with a focus on underlying determinants. Such determinants would reveal linkages between different rights and provide a mechanism for pursuing them simultaneously. For instance, the concept of environmental health may offer a connection to the right to housing and thus bring health and housing together.

*Prof. Tewari* suggested cities provide more public awareness of rights, with public forums and workshops such as those administered by the New York City Human Rights Commission.

According to *Dr. Pimentel Walker* re-conceptualization and implementation of the right to life and human dignity may aid a comprehensive consideration of the rights of informal settlers in Brazil.

For *Mr. Lewis-Lettington*, an entry point for holistic consideration of human rights in urban areas is looking at adequate housing as more than four walls and a roof but to also include elements such as security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; appropriate location; and cultural adequacy.



## Political will is essential not only for effective crisis management but also for the implementation of the sustainable development agenda in general –

The state of unpreparedness that most countries found themselves in as the pandemic set in, can be attributed to lack of political will. In South Africa, for instance, although the Upgrading of Informal Settlements Programme (UISP) had the potential to massively improve welfare of slum dwellers, it had not gathered enough support due to lack of political will. At the same time, one of the encouraging outcomes of the COVID-19 response is the emergence of a strong political will to effectively and cooperatively deal with the pandemic.

As several speakers noted, COVID-19 has made “the impossible possible.” Extensive actions have been undertaken by a wide range of stakeholders to address effects of the pandemic.

For instance, even governments that have previously shown a reluctance to regulate the rental market have stepped in to impose moratoriums on evictions for various reasons including failure to pay rent. There is hope that the present scale and magnitude of the politically generated momentum to address COVID-19 will also be channelled to other sustainable development priorities.

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## PROGRAMME

### 14:00-14:15 - Introduction & Welcome address

- » Welcome address, *Dr. Remy Sietchiping*, Chief of Policy, Legislation and Governance Section, UN-Habitat
- » *Dr. Constantin Stefanou*, Director, Sir William Dale Centre for Legislative Studies, IALS, University of London
- » Overview of the Urban Law Initiative, *Dr. Maria Mousmouti*, IALS

### 14:15- 15:15 – Presentations

- » “Rights-clashes, legal fault-lines and COVID-19 in South Africa's informal settlements”- *Prof. Marius Pieterse*
- » “Equal Pay as a Human Right: A Closer Look at New York City Human Rights Law after COVID-19.” – *Prof. Geeta Tewari*
- » “Post COVID prospects for the right to adequate housing”- *Robert Lewis-Lettington*, Chief of Land housing and Shelter Section, UN-Habitat
- » “Access to Justice after COVID-19: The Limits of the Administrative Law Model to Enforce Socio-Economic Rights in Brazilian Informal Settlements”- *Dr. Ana Paula Pimentel Walker*, Assistant Professor of Urban and Regional Planning, University of Michigan

### 15:15–16:00 - Q & A – Discussion

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## CLOSING REMARKS



**Dr. Shipra Narang Suri**, Chief of Urban Practices Branch, UN-Habitat, underscored the importance of multi-level governance and multi-stakeholder engagement in designing and implementing appropriate responses in times of crises. She emphasized the need for sound planning policies, supportive legislative frameworks and adequate financial resources in the pursuit of sustainable urban development. Dr. Narang Suri also recognized the role of partnerships in the 2030 Agenda and reiterated UN-Habitat's commitment to the current partnerships as well as to seek out more areas of collaboration with other stakeholders.