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ENHANCING SECURITY OF TENURE: POLICY DIRECTIONS

ENHANCING **URBAN SAFETY AND SECURITY**
GLOBAL REPORT ON HUMAN SETTLEMENTS 2007

ABRIDGED EDITION

VOLUME 2

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GLOBAL REPORT ON HUMAN SETTLEMENTS 2007

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Enhancing Security of Tenure: Policy Directions

United Nations Human Settlements Programme

UN-HABITAT

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1   *Reducing Urban Crime and Violence: Policy Directions*
2   *Enhancing Security of Tenure: Policy Directions*
3   *Mitigating the Impacts of Disasters: Policy Directions*

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The list of selected references at the end of this volume contains only a few important publications on the sub-theme of security of tenure, as well as sources of quotations, boxes, tables and figures included in this volume. A complete list of references may be found in the full *Enhancing Urban Safety and Security: Global Report on Human Settlements 2007*.

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CONTENTS

INTRODUCTION

Enhancing Urban Safety and Security: Global Report on Human Settlements 2007 (Global Report 2007) addresses three threats to the safety and security of towns and cities, viz: crime and violence; security of tenure and forced evictions; and natural and human-made disasters. This publication, which focuses on security of tenure and forced evictions, is the second of three volumes of the Abridged Edition of the Global Report 2007. The main purpose of this volume is to present, in summary form, the main findings of the Global Report 2007 on security of tenure and, on the basis of this, to suggest policy directions for enhancing security of tenure and reducing forced evictions within urban settlements.

Security of tenure — or 'the right of all individuals and groups to effective protection from the state against forced evictions' — is a major concern for hundreds of millions of the urban poor. The possibility that individuals, households or whole communities may be evicted from their homes at any time is a major safety and security threat in urban areas the world over.
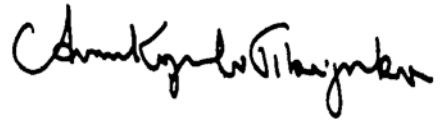
The year 2007 marks a turning point in human history: for the first time there are more people living in cities and towns than in rural areas. Although the major part of urban growth in most cities today occurs through natural population growth or physical extension of urban areas, large numbers of these new urban dwellers are migrants from rural areas. It is now widely known and understood that migrants to the world's cities do not end up as residents in formal neighbourhoods, whether low or middle income. Rather, because very few governments have sufficiently prioritized actions in support of pro-poor housing solutions for the urban poor, the formal housing market is neither affordable nor accessible to these groups. As a result, slums, shanties, pirate subdivisions, pavements and park benches become the new abodes for millions of people every year.

Security of tenure is crucial to any proper understanding of the housing reality facing every household throughout the world. Indeed, the worse the standard of one's housing, generally the more important the question of security of tenure will become. The degree of 'security' of a household's tenure determines its probability of forced eviction, level of access to basic services such as water and electricity, and its ability to improve housing and living conditions in general.

At the same time, while a great deal has been written on the clear linkages between security of tenure and the achievement of the Habitat Agenda goal of adequate housing for all, security of tenure often remains underemphasized by policy makers, perhaps overemphasized by those with large vested interests in land, and, as a concept, all too commonly misunderstood by those with the most to gain from improved access to it. In particular, it is important to note that security of tenure does not necessarily imply ownership of land or housing.

The following chapters address a range of issues linked to the increasingly prominent and fundamental issue of security of tenure. Following Chapter 1, which provides a conceptual framework for understanding and addressing urban safety and security issues in general, Chapter 2 explores the scope and scale of tenure insecurity in the world and trends surrounding tenure. Chapter 3 provides a review of policies that have been adopted to address tenure concerns, while Chapter 4 examines how an approach to security of tenure combining international advocacy with human rights and human security concerns could prove invaluable in preventing the practice of forced evictions. The final part of Chapter 4 provides a set of specific recommendations for future action. These include, at the international level, legislation against forced evictions and secure tenure campaigns and, at the national level, policies on upgrading and regularization, titling and legalization, as well as improved land administration and registration.

It is my hope that policy makers at central and local government levels, civil society organizations and all those involved in the formulation of policies and strategies for enhancing security of tenure within towns and cities will find this publication useful.

Anna Kajumulo Tibaijuka
Under-Secretary-General and Executive Director
United Nations Human Settlements Programme (UN-Habitat)

KEY FINDINGS AND MESSAGES

KEY FINDINGS

More than 150 countries have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). Governments in all of these countries are legally obliged to collect data and report on the scale and scope of tenure insecurity, forced evictions and homelessness (among other issues) in their countries. Despite this, there is a glaring lack of comprehensive and comparative data on security of tenure and forced evictions, both globally and within most countries.

In the absence of such data, perhaps the best indicator on the scale of urban tenure insecurity is the extent of informal settlements and slums. Insecure tenure is, in fact, used as one of the indicators in defining what constitutes a slum. Today, there are about 1 billion slum dwellers in the world. The vast majority of these, more than 930 million, are living in developing countries, where they constitute 42 per cent of the urban population. In the urban areas of the least developed countries, slum dwellers account for 78 per cent of the population. The proportion of slum dwellers is particularly high in sub-Saharan Africa (72 per cent of the urban population) and in Southern Asia (59 per cent).

The most visible outcome of tenure insecurity is the practice of forced evictions. Based on incidents reported to an international non-governmental organization (NGO) in a limited number of countries, at least 2 million people in the world are forcibly evicted every year. The actual figure is probably significantly higher. In addition, every year, several million people are threatened by forced evictions.

In Nigeria alone, an estimated 2 million people have been forcibly evicted from their homes since 2000. In Zimbabwe, an estimated 750,000 people were evicted in 2005 alone. In China, during the 2001 to 2008 period, it is estimated that 1.7 million people have been directly affected by demolitions and relocations related to the Beijing Olympic Games. Evictions are not only found in developing countries, however. Each year, 25,000 evictions, on average, are carried out in New York City alone.

The main causes of large-scale forced evictions are public infrastructure development, international mega events (including global conferences and international sporting events, such as the Olympic Games) and urban beautification projects. Often, such evictions are violent — undertaken with bulldozers, supported by heavy police presence and the targets of such forced evictions are nearly always the residents of poor informal settlements or slums.

In addition to the millions of people subjected to forced evictions, perhaps an even higher number of people are subject to market-based evictions. This is a phenomenon directly linked to increased globalization and commercialization of land and housing. Through a process commonly known as gentrification, individuals, households or even whole neighbourhoods — most of them urban poor — are forced out of their homes, due primarily to their inability to pay higher rents.

Security of tenure is not necessarily related to specific tenure types. Tenure security is also related to a number of other cultural, social, political and economic factors and processes. A whole range of tenure types may thus offer security of tenure to urban dwellers. Even residents with title deeds living on freehold land may be evicted by the state in legitimate (and sometimes less legitimate) cases of expropriation or compulsory acquisition for the 'common good'.

As noted above, evictions are most prevalent in areas with the worst housing conditions. Furthermore, when evictions do occur, it is always the poor who are evicted. Furthermore, women, children, ethnic and other minorities, and other vulnerable and disadvantaged groups are most negatively affected by evictions. Invariably, evictions increase, rather than reduce, the problems they were aimed at 'solving'.

Just as particular groups are more exposed to tenure insecurity; particular events are also major factors affect-

ing tenure security. Natural and human-made disasters, as well as armed conflict and civil strife, are major factors threatening the security of tenure of a large number of people every year. The groups most vulnerable to tenure insecurity in the aftermath of such events are, again, the poor, women, children, ethnic and other minorities, and other vulnerable and disadvantaged groups.

Lack of security of tenure is not only a problem in itself. It is part of a vicious cycle since it is often accompanied by poor or deteriorating dwellings and infrastructure, which, in turn, may lead to increased exposure to crime and violence, as well as to natural and human-made disasters.

KEY MESSAGES

When evictions are being considered, it is essential that all alternatives to evictions are considered — in collaboration with the potential evictees themselves — before an eviction takes place. When evictions are unavoidable (e.g. in the case of non-payment of rent), such evictions should only be carried out in accordance with the law, and such evictions should never result in individuals being rendered homeless or vulnerable to the violation of other human rights. Under no circumstance should evictions be undertaken without acceptable relocation sites being identified in close cooperation with the evictees.

Interventions addressing the issue of security of tenure should always ensure that the requirements of all groups are adequately addressed. In essence, it is essential to prevent any detrimental discrimination with respect to housing, land and property. For example, land titles should be issued equally to both men and women. Similarly, slum upgrading programmes should consult with and consider the needs of 'owners', tenants and subtenants.

When developing housing and urban policies, it is essential that governments adopt a framework based on housing, land and property rights, as elaborated in inter-national law. Such a framework should take cognisance of the fact that there is a whole range of tenure types which may offer increased security of tenure to the urban poor. In some cases, perceived security of tenure may even be improved simply through the provision of basic services and infrastructure. Perhaps the most important component of improving the security of tenure in informal settlements and slums is that governments at all levels should accept the residents of such settlements as equal citizens, with the same rights and responsibilities as other urban dwellers.

It is essential that states fulfil their obligations under international law with respect to the collection and dissemination of information regarding the scale and scope of tenure insecurity, forced evictions and homelessness. Without the timely collection of such data, it is, in effect, impossible for governments to verify whether they are contributing effectively to the progressive realization of the right to adequate housing according to their obligations as defined in the ICESCR.

Under international law, forced evictions are regarded as *prima facie* violations of human rights. Despite this, the vast majority of forced evictions carried out in the world are in breach of international law. A global moratorium on forced evictions could be an effective first step towards addressing this recurrent violation of human rights.

Application of international criminal law to violations of housing, land and property rights is also necessary. If such rights are to be taken seriously, there should be strong legal grounds on which to discourage the impunity almost invariably enjoyed by violators of these rights. All of those who advocate ethnic cleansing, those who sanction violent and illegal forced evictions, those who call for laws and policies that clearly result in homelessness, or those who fail to end systematic discrimination against women in the land and housing sphere — and all of those promoting such violations — should be held accountable.

ACKNOWLEDGEMENTS

CHAPTER 1

UNDERSTANDING URBAN SAFETY AND SECURITY

The theme of 'urban safety and security' encompasses a wide range of concerns and issues. These range from basic needs, such as food, health and shelter, through protection from crime and the impacts of technological and natural hazards, to collective security needs, such as protection from urban terrorism. However, only a few of these concerns and issues have been, and can be, addressed from a human settlements perspective, mainly through appropriate urban policies, planning, design and governance. For this reason, the Global Report on Human Settlements 2007 focuses on only three major threats to the safety and security of cities in respect of which the human settlements perspective has in recent years increasingly contributed useful solutions: crime and violence; insecurity of tenure and forced evictions (which is the focus of this second of the three-volume abridged edition of the Global Report); and natural and human-made disasters. These threats either stem from, or are often exacerbated by, the process of urban growth and from the interaction of social, economic and institutional behaviours within cities, as well as with natural environmental processes.

This chapter briefly presents a conceptual framework for understanding urban safety and security issues based on two concepts: at a more general level, the concept of *human security*, and at a more specific level, the concept of *vulnerability*.

Before turning to these conceptual issues, it is important to emphasize that the urban poor are dispropor-

Urban crime is often seen as a police matter, but more can be done by others

© Ace Stock Limited / Alamy

tionately victimized by the three threats to safety and security examined in the Global Report on Human Settlements 2007: crime and violence, insecurity of tenure, and natural and human-made disasters. This is against a background of rapid urbanization and the conse-

quent urbanization of poverty. The world's population has recently become more than half urban, with projected urban growth in developing countries in the order of 1.2 billion people between 2000 and 2020. This growth increases the pressure on the urban poor to earn incomes and to secure adequate shelter, basic infrastructure and essential social services, such as healthcare and education. Existing backlogs of services — as reflected in the 1 billion people already living in slums — are strong indicators of the weak capacity of both public and private institutions to provide such services.

Threats to urban safety and security, including crime and violence, must therefore be placed within a context of both opportunity and risk. The medieval saying that 'city air makes men free' can be complemented with the observation that urban life offers the prospect of greater economic welfare as well. This observation, however, must be tempered by the reality of growing numbers of urban residents living in poverty, lacking basic infrastructure and services, housing and employment, and living in conditions lacking safety and security.

This distribution of risk and vulnerability is an important and growing component of daily urban life. It is part of what has been referred to as the 'geography of risk and vulnerability' and is often linked to the presence of millions of urban residents in slums, which are environments in which much crime and violence occur, where tenure is least secure, and which are prone to disasters of many kinds.

A HUMAN SECURITY PERSPECTIVE TO URBAN SAFETY AND SECURITY

Urban safety and security should be placed within the wider concern for human security, which has been increasingly recognized by the international community in recent years. This concern specifically focuses on the security of people, not states. The concept of human security was addressed in detail by the United Nations Commission on Human Security, co-chaired by former United Nations High Commissioner for Refugees (UNHCR) Sadako Ogata and Nobel Laureate and economist Amartya Sen. This commission issued its report in 2003 and addressed a wide range of dimensions of human security, including:

Homelessness is one of the most serious outcomes of tenure insecurity

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> *… conflict and poverty, protecting people during violent conflict and post-conflict situations, defending people who are forced to move, overcoming economic insecurities, guaranteeing the availability and affordability of essential health care, and ensuring the elimination of illiteracy and educational deprivation and of schools that promote intolerance.*

This obviously broad coverage includes several important distinguishing features that are relevant to urban safety and security:

- Human security focuses on people and not states because the historical assumption that states would monopolize the rights and means to protect its citizens has been outdated by the more complex reality that states often fail to fulfil their obligations to provide security.
- The focus on people also places more emphasis on the role of the human rights of individuals in meeting these diverse security needs. There is thus a shift from the rights of states to the rights of individuals.
- Recognizing and enhancing the rights of individuals is a critical part of expanding the roles and responsibilities for security beyond simply the state itself.
- People-centred solutions must be identified and supported to address the range of menaces and risks that they encounter.

- Human security, therefore, goes beyond the security of borders to the lives of people and communities inside and across those borders.

The human security approach builds upon earlier United Nations ideas on basic needs, as discussed in the Copenhagen Declaration, adopted at the 2005 World Summit on Social Development, which noted that:

> *… efforts should include the elimination of hunger and malnutrition; the provision of food security, education, employment and livelihood, primary health-care services, including reproductive health care, safe drinking water and sanitation, and adequate shelter; and participation in social and cultural life* (Commitment 2.b).

Another international legal framework that has served to enhance the human security approach is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which highlights the need to:

> *… 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* (Article 11.2).

Article 2.1 of ICESCR deals with the progressive realization of these rights, and implies that governments are legally obliged, under international law, to take steps to improve living conditions.

From the perspective of human security, it is clear that threats to urban safety and security are associated with different types of human vulnerability. These can be divided into three broad categories: chronic vulnerabilities, which arise from basic needs, including food, shelter and health; contextual vulnerabilities, arising from the socio-economic and political processes and contexts of human life; and vulnerabilities arising from extreme events, such as natural and human-made hazards. Partly because of its human rights basis and its emphasis on basic needs, the human security perspective is increasingly influencing the work of United Nations agencies, including UN-Habitat (see Box 1).

Box 1 Enhancing urban safety and human security in Asia through the United Nations Trust Fund for Human Security

In March 1999, the Government of Japan and the United Nations Secretariat launched the United Nations Trust Fund for Human Security (UNTFHS), from which the Commission on Human Security prepared the Human Security Now report in 2003, as a contribution to the UN Secretary-General's plea for progress on the goals of 'freedom from want' and 'freedom from fear'. The main objective of the UNTFHS is to advance the operational impact of the human security concept, particularly in countries and regions where the insecurities of people are most manifest and critical, such as in areas affected by natural and human-made disasters.

Growing inequalities between the rich and the poor, as well as social, economic and political exclusion of large sectors of society, make the security paradigm increasingly complex. Human security has broadened to include such conditions as freedom from poverty, access to work, education and health. This, in turn, has necessitated a change in perspective, from state-centred security to people-centred security. To ensure human security as well as state security, particularly in conflict and post-conflict areas where institutions are often fragile and unstable, rebuilding communities becomes an absolute priority to promote peace and reconciliation.

With the rapid urbanization of the world's population, human security as protecting 'the vital core of all human lives in ways that enhance human freedoms and human fulfilment' increasingly means providing the conditions of livelihood and dignity in urban areas. Living conditions are crucial for human security, since an inadequate dwelling, insecurity of tenure and insufficient access to basic services all have a strong negative impact on the lives of the urban population, particularly the urban poor. Spatial discrimination and social exclusion limit or undermine the rights to the city and to citizenship.

In this context, UN-Habitat is coordinating three UNTFHS programmes in Afghanistan, Northeast Sri Lanka and Phnom Penh, the capital city of Cambodia, all focusing on informal settlements upgrading. On the assumption that community empowerment is crucial for the reconstruction of war affected societies, all programmes have adopted the 'community action planning' method — a community-based consultative planning process — and have established community development councils as the most effective approach to improving living conditions and human security in informal settlements.

Source: Balbo and Guadagnoli, 2007

VULNERABILITY, RISK AND RESILIENCE

Vulnerability, as an analytical framework, has during recent years been increasingly used in a number of disciplines, including economics (especially in the study of poverty, sustainable livelihoods and food security), sociology and social anthropology, disaster management, environmental science, and health and nutrition. In these disciplines, vulnerability is often reduced to three fundamental 'risk chain' elements — namely, *risk*, *response* and *outcome*, while the last two elements, in particular, are determined by the extent of *resilience* at various levels (i.e. individual, household, community, city and national levels).

Vulnerability may be defined as the probability of an individual, a household or a community falling below a minimum level of welfare (e.g. poverty line), or the proba-bility of suffering physical and socio-economic consequences (such as homelessness or physical injury) as a result of risky events and processes (such as forced eviction, crime or flood) and their inability to effectively cope with such risky events and processes.

Distinctions can be made between physical vulner-ability (vulnerability in the built environment) and social vulnerability (vulnerability experienced by people and their social, economic and political systems). Together, these constitute human vulnerability.

Risk refers to a known or unknown probability distribution of events — for example, natural hazards such as floods or earthquakes. The extent to which risks affect vulnerability is dependent upon their size and spread (magnitude), as well as their frequency and duration.

Risk response refers to the ways in which individu-als, households, communities and cities respond to, or

Flooding due to heavy rain is a major concern in many cities

manage, risk. Risk management may be in the form of *ex ante* or *ex post* actions — that is, preventive action taken *before* the risky event, and action taken to deal with experienced losses *after* the risky event, respectively. *Ex ante* actions taken in advance in order to mitigate the undesirable consequences of risky events may include purchase of personal or home insurance to provide compensation in case of theft, injury or damage to property; building strong social networks able to cope with risky events or hazards; and effective land-use planning and design of buildings and infrastructure able to withstand natural hazards such as floods, tropical storms and earthquakes. *Ex post* actions may include evacuating people from affected areas; selling household assets in order to deal with sudden loss of income; providing public-sector safety nets, such as food-for-work programmes; or reconstructing damaged buildings and infrastructure.

From the point of view of policy making, the challenge with respect to risk response is to find ways of addressing the constraints faced by individuals, house-holds, communities and cities in managing risk. These constraints may be related to poor information, lack of finance or assets, inability to assess risk, ineffective public institutions and poor social networks. All of these constraints are among the determinants of *resilience*.

Resilience has been defined as the capacity of an individual, household or community to adjust to threats, to avoid or mitigate harm, as well as to recover from risky events or shocks. Resilience is partly dependent upon the effectiveness of risk response, as well as the capability to respond in the future. Pathways towards greater resilience have to address issues of institutional effectiveness, appli-cation of international human rights law and involvement of civil society.

Outcome is the actual loss, or damage, experienced by individuals, households and communities due to the occurrence of a risky event or risky process — for example, physical injury, death and loss of assets resulting from crime and violence; falling below a given poverty line and loss of income as a result of forced eviction from infor-mal housing or from premises in which informal enterprises are based; as well as damage to buildings and infrastructure resulting from natural or human-made hazards. The outcome of a risky event is determined by both the nature of the risk as well as the degree of effec-tiveness of the response of individuals, households, communities and cities to risky events.

One of the most important socio-economic determinants of vulnerability is poverty. It has even been suggested that, because of their close correspondence, poverty should be used as an indicator of vulnerability. As pointed out earlier, the urban poor are generally more exposed to risky events (such as crime, forced eviction or disasters) than the rich, partly because of their geographical location. With respect to disasters, the urban poor are more vulnerable than the rich because they are often located on sites prone to floods, landslides and pollution. The urban poor also have relatively limited access to assets, thus limiting their ability to respond to risky events or to manage risk (e.g. through insurance). Because the poor are politically powerless, it is unlikely that they will receive the necessary social services following disasters or other risky events. In addition, the urban poor are more vulnerable to the undesirable outcomes of risky events because they are already closer to or below the threshold levels of these outcomes, for example income poverty or tenure insecurity.

Another very important determinant of vulnerability is the capacity of institutions. This influences the *response* and *outcome* elements in the *risk chain* discussed above — in terms of effectiveness and severity, respectively. For the purposes of the conceptual framework currently under discussion, the term *institution* refers to any structured pattern of behaviour, including informal institutions or behaviours, which communities and households may use to maintain their equilibrium in the face of dynamic conditions such as crime and violence, forced evictions, or disasters.

Vulnerability may be used as a general framework for conceptualizing and analysing the causal relationships between risk, responses and outcomes of risky events and processes, as in much of the work on sustainable livelihoods and also as used in this report. It is a useful framework for understanding the nature of risk and risky events, the impacts or outcomes of risky events, as well as responses to risky events at various levels, including the household, community, city and national levels.

Within the context of this report, risk refers to both risky events (such as natural and human-made hazards), as well as risky socio-economic processes (such as crime, violence and the kind of social exclusion that leads to tenure insecurity and forced eviction). Outcomes of risky events and processes are the undesirable consequences of crime and violence (such as loss of assets, injury and death), of tenure insecurity and forced eviction (such as homelessness and loss of livelihoods), as well as of natural and human-made disasters (such as injury, death and damage to property and infrastructure).

Table 1 is a schematic representation of how the concept of vulnerability is used in this report as an analytical framework.

Threat to urban safety and security	Risk	Response	Outcome
Crime and violence	Specific risky events are the various types of crime and violence, such as burglary, assault, rape, homicide and terrorist attacks.	Responses may include more effective criminal justice systems, improved surveillance, community policing, better design of public/open spaces and transport systems, improved employment for youth, development of gated communities, and provision of private security services.	Key outcomes include loss of assets, injury, death, damage to property, emotional/psychological suffering or stress, fear, and reduced urban investment.
Tenure insecurity and forced eviction	Specific risky event is forced eviction, while risky socio-economic processes and factors include poverty, social exclusion, discriminatory inheritance laws, ineffective land policies, as well as lack of planning and protection of human rights.	Examples of risk responses at the individual and household levels include informal savings and social networks, and political organization to resist forced eviction and to advocate for protection of human rights. At the institutional level, responses include more effective land policies and urban planning, as well as housing rights legislation.	Outcomes include homelessness, loss of assets, loss of income and sources of livelihood. May also include physical injury or death if eviction process is violent.
Natural and human-made/technological disasters	Specific risky events (or hazards) include floods, earthquakes, hurricanes, volcanic eruptions, technological disasters and war.	Examples of major responses include *ex ante* measures such as more effective spatial design of cities and the design of individual buildings, as well as home insurance; and *ex post* measures such as emergency response systems, reconstruction of buildings and infrastructure, as well as rehabilitation of institutions in war-torn countries.	Key outcomes may include physical injury, loss of income and assets, damage to buildings and infrastructure, as well as emotional/psychological stress.

Table 1

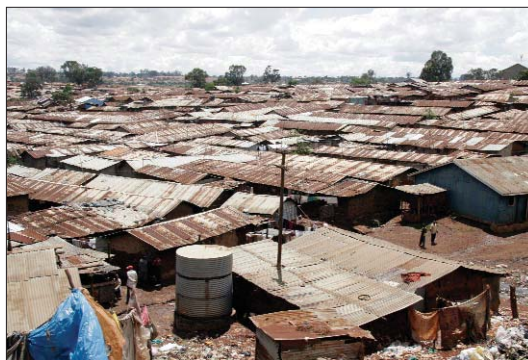**Vulnerability as a conceptual framework: Risk, response and outcome**

THE ROLE OF URBAN POLICY, PLANNING, DESIGN AND GOVERNANCE IN ENHANCING URBAN SAFETY AND SECURITY

Levels of security and safety are lowest in slums and effective planning is desperately needed

© TopFoto / ImageWorks

From the perspective of each of the three broad threats to urban safety and security addressed in the Global Report on Human Settlements 2007, there is an evident need to improve preparedness, to reduce risks and vulnerabilities, to increase the capacity for response through improved resilience, and to take advantage of the opportunities for positive urban reform and social change during the process of recovery. It should be asked, however: what is the role of the human settlements perspective (i.e. urban policy, planning, design and governance) in guiding these steps towards positive change?

Urban policy is understood as all those explicit decisions intended to shape the physical, spatial, economic, social, political, cultural, environmental and institutional form of cities. In terms of improving urban safety and security, urban policy is translated into urban planning, design, programmes and operating procedures and measures that can directly affect both the physical environment and social behaviour.

Planning is the assembly and analysis of information, the formulation of objectives and goals, the development of specific interventions, including those intended to improve urban safety and security, and the organizational processes needed to bring them to fruition. Planning takes the decisions of urban policy makers and transforms them into strategy and measures for action.

Urban design involves the design of buildings, groups of buildings, spaces and landscapes in towns and cities, in order to create a sustainable, safe and aesthetically pleasing built environment. It is limited to the detailed physical structure and arrangement of buildings and other types of physical development within space. This includes the use of building codes, for example to mandate earthquake-proof or flood-proof buildings. It may also entail the design of transport systems in ways that improve safety for women, or of streets in relation to buildings in order to minimize crime opportunities through improved visibility. Urban design is narrower than urban planning, and is often seen as part of the latter.

Both the processes of urban policy, as broadly defined, and planning are integral parts of the governance process. Governance is more than government, whether in the form of institutions or of public authorities: it is an all-encompassing process by which official and non-official actors contribute to management of conflict, establishment of norms, the protection of the common interest, and the pursuit of the common welfare. The participation of communities in crime prevention or in emergency response to natural hazards is among the most important urban governance issues identified in this report.

A significant contribution of this Global Report is its identification of the means or approaches, with many examples, through which urban policy, planning, design and governance are increasingly contributing towards the enhancement of urban safety and security, including in the area of tenure insecurity and forced evictions.

SECURITY OF TENURE: CONDITIONS AND TRENDS

Few issues are as central to the goal of adequate housing for all as security of tenure. While approaches vary widely, virtually all commentators agree that secure tenure is a vital ingredient in any policy designed to improve the lives of those living in informal settlements throughout the world. Furthermore, security of tenure is a basic attribute of human security in general: a full, dignified life, wherein all human rights can be enjoyed in their entirety. And yet, despite this widespread agreement, security of tenure remains extremely fragile for hundreds of millions of the urban and rural poor. Moreover, the security of tenure of millions of poor people throughout the world is deteriorating as land values within cities continue to rise, as affordable land becomes increasingly scarce, and as housing solutions are increasingly left to market forces.

While security of tenure is often perceived primarily as a housing or human settlements issue, interestingly, both the international human settlements community and the global human rights community have devoted increasing attention to the question of security of tenure in recent years. The growing treatment of security of tenure as a self-standing right by a range of international and national legal and other standards has led to a unique convergence of efforts and approaches by the global housing community, on the one hand, and the human rights community, on the other.

Indeed, viewed through the lens of human rights, among all elements of the right to adequate housing, the right to security of tenure is essential. When security of tenure — the right to feel safe in one's own home, to control one's own housing environment and the right not to be arbitrarily and forcibly evicted — is threatened or simply non-existent, the full enjoyment of housing rights is, effectively, impossible. The *Global Report on Human Settlements 2007* thus examines security of tenure simultaneously as both a development issue and as a human rights theme.

WHAT IS SECURITY OF TENURE?

Tenure (as distinct from security of tenure) is a universal, ubiquitous fact or status which is relevant to everyone, everywhere, every day. Yet, there is a wide variety of forms, which is more complicated than what the conventional categories of 'legal–illegal' or 'formal–informal' suggest. On the one hand, there is a whole range of intermediary categories, which suggests that tenure can be categorized along a continuum. On the other hand, the types of tenure found in particular locations are also a result of specific historical, political, cultural and religious influences. It is thus essential that policy recognizes and reflects these local circumstances.

On a simplified level, any type of tenure can be said to belong to one of six broad categories — namely, freehold, leasehold, conditional freehold ('rent to buy'), rent, collective forms of tenure and communal tenure. In
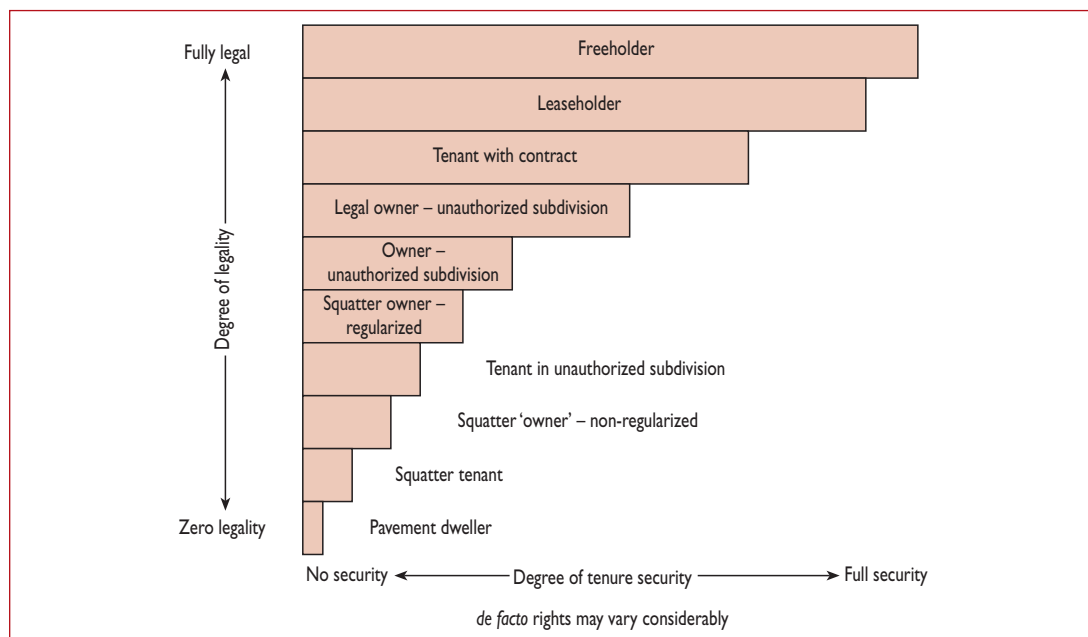
Figure 1

Urban tenure categories by legal status

Source: adapted from Payne, 2001

practice, however, it may be more useful to acknowledge the wide variation in tenure categories that exist globally. It is important to note that no one form of tenure is necessarily better than another. What matters most is invariably the degree of security associated with a particular tenure type. Tenure is linked to so many factors and variables — including, as noted above, political, historical, cultural and religious ones — that proclaiming that the formal title-based approach to tenure alone is adequate to solve all tenure challenges is unlikely to always yield favourable results.

The role of customary law in the regulation of tenure and secure tenure rights is far more widespread than is generally understood. This is particularly true in Africa, where non-customary (formal) tenure arrangements generally cover less than 10 per cent of land (primarily in urban areas), with customary land tenure systems governing land rights in 90 per cent (or more) of areas. One of the characteristics of customary tenure arrangements is that there may be no notion of 'ownership' or 'possession', as such. Rather, the land itself may be considered sacred, while the role of people is one of a

steward protecting the rights of future generations. Under customary tenure systems, rights to land may be characterized as either user rights, control rights or transfer rights. The content of these rights is normally determined by community leaders, generally according to need rather than payment.

Customary systems of tenure are often more flexible than formal systems, constantly changing and evolving in order to adapt to current realities. Traditionally, such customary tenure systems have been found mostly in rural areas. Continued population growth in urban areas, however, has often implied that urban areas have spread into areas under customary tenure systems.

Each type of tenure provides varying degrees of security. The spectrum ranges from one extreme of no *de facto* or *de jure* security, to the other end of the continuum, where those with legal and actual secure tenure can live happily without any real threat of eviction, particularly if they are wealthy or politically well connected. Security of tenure can be affected in a wide range of ways, depending upon constitutional and legal frameworks, social norms, cultural values and, to some extent, individual

Prospective tenants check the details of rental contract

© Gregor Schlaeger / VISUM / Still Pictures

preference. In effect, security of tenure may be summarized as 'the right of all individuals and groups to effective protection from the State against forced evictions'.

Security of tenure often has as much to do with one's *perception* of security as the actual legal status one may enjoy. A variety of tenure arrangements can provide tenure security. People can have *de facto* security of tenure, coupled with varying degrees of legal tenure. Governments can also recognize security of tenure, but

without officially regularizing the community concerned, and can also issue interim occupancy permits or temporary non-transferable leases that can provide forms of secure tenure. At the other end of the spectrum, governments can support laws and policies which envisage long-term leases and secure tenure through leasehold or freehold rights. As Figure 1 shows, tenure must be viewed as a spectrum with various degrees of security, combined with various degrees of legality.

In practical terms, however, the issue of tenure security may be even more complicated than that outlined in Figure 1. Security (and insecurity) of tenure takes a plethora of forms, varying widely between countries, cities and neighbourhoods, land plots and even within individual dwellings, where the specific rights of the owner or formal tenant may differ from those of family members or others. Furthermore, Figure 1 does not include customary or Islamic tenure categories, nor does it take into account other specific historical, political or other circumstances.

Moreover, it is important to point out that different tenure systems can co-exist next to each other. This is not only the case at the national level, where a country may maintain and recognize many different types of tenure, but even at the neighbourhood or household level. The common practice of squatters subletting portions of their homes or land plots to tenants is one of many examples where individuals living on the same land plot may each

	Total slum population (millions)					Slum population as a percentage of urban population	
	1990	2001	2005	2010	2020	1990	2001
World	**715**	**913**	**998**	**1246**	**1392**	**31.3**	**31.2**
Developed regions	42	45	47	48	52	6.0	6.0
Transitional countries*	19	19	19	19	18	10.3	10.3
Developing regions	654	849	933	1051	1331	46.5	42.7
Northern Africa	22	21	21	21	21	37.7	28.2
Sub-Saharan Africa	101	166	199	250	393	72.3	71.9
Latin America and the Caribbean	111	128	134	143	163	35.4	31.9
East Asia	151	194	212	238	299	41.1	36.4
Southern Asia	199	253	276	308	385	63.7	59.0
Southeast Asia	49	57	60	64	73	36.8	28.0
West Asia	22	30	33	38	50	26.4	25.7
Oceania	0	0	1	1	1	24.5	24.1

* Commonwealth of Independent States

Table 2

The urbanization of poverty: The growth of slum populations (1990–2020)

Source: UN-Habitat, 2006, pp188, 190

have distinct degrees of tenure security/insecurity. Understanding the different categories of tenure, the varying degrees of security that each affords dwellers and how the benefits of secure tenure can be spread more extensively and equitably throughout all societies remains a major policy challenge. At the extreme end of the secure–insecure tenure continuum are the millions of people who are homeless. Even within this group, however, there is a wide range of different tenure types, with different levels of tenure insecurity.

Insecure tenure is not exclusively a problem facing those residing within the informal housing and land sector, but also affects income-generating activities within the informal enterprise sector. With as little choice within the official employment sector as they have within the official housing sector, hundreds of millions of people subsist within the informal economy, providing vital goods, services and labour to the broader society. Those working within the informal economy are increasingly facing eviction from the markets and kiosks in which they work.

The fact that there are many types of tenure and many degrees of tenure security has important implications for the development of policy and practice, not only in terms of housing policy, but also in terms of human rights and how rights relate to tenure. Having access to secure tenure cannot, in and of itself, solve the problems of growing slums, structural homelessness, expanding poverty, unsafe living environments and inadequate housing and living conditions. Nonetheless, it is widely recognized that secure tenure is an essential element of a successful shelter strategy.

SCALE AND IMPACTS OF TENURE INSECURITY

Despite the fact that an individual's, household's or community's security of tenure is central to the enjoyment of basic human rights and sustainable development, there are currently no global tools or mechanisms in place to monitor security of tenure. So far, it has been impossible to obtain household data on security of tenure; nor has it been possible to produce global comparative data on various institutional aspects of tenure security.

At the same time, it should be recalled that the more than 150 governments that have ratified the ICESCR are required to submit reports every five years 'on the measures which they have adopted and the progress made

Homeless family living rough

© Mikkel Ostergaard / Panos Pictures

in achieving the observance of the rights recognized' in the Covenant. States are in fact required to answer a range of questions which are directly linked to security of tenure. Despite this, few, if any, governments actually collect statistics and other data on the many issues linked to security of tenure. Placing greater emphasis on these legal duties of states could facilitate the collection of more comprehensive and reliable data on security of tenure.

A number of global bodies, including UN-Habitat, are wrestling with the problem of measuring the scope and scale of security of tenure, and there is yet no clear methodology on this which could produce robust information. Whatever form a global system for monitoring security of tenure may eventually take, it should focus on the issues already identified by the United Nations Committee on Economic, Social and Cultural Rights with respect to security of tenure as a component of the right to adequate housing.

While, as noted above, reliable and comparative data on the scale of tenure insecurity are globally non-existent, few would argue against the fact that the number of slum dwellers is growing, not declining. UN-Habitat has estimated that the total slum population in the world increased from 715 million in 1990 to 913 million in 2001. In fact, if no firm and concrete action is taken, the number of slum dwellers may well reach 2 billion by 2030.

As indicated in Table 2, cities in developing countries are hosts to massive slum populations. In some countries of sub-Saharan Africa, more than 90 per cent of the urban population are slum dwellers. While circumstances vary, a clear majority of those living in slums, squatter settlements,

abandoned buildings and other inadequate homes do not possess adequate levels of tenure security.

Security of tenure problems are by no means isolated to the developing world, and while they may manifest in fundamentally different ways, deterioration in tenure security is visible in many of the wealthier countries. In the UK, for instance, fewer and fewer people are able to access the property market due to rising costs and continuing declines in buyer affordability. In the US, millions of tenants do not have adequate levels of tenure security protecting them from possible eviction. Moreover, people facing eviction in the US do not have a right to counsel; as a result, the scale of evictions in the US is far higher than it would be if tenants were provided legal representation in eviction proceedings. According to official figures, some 25,000 evictions are carried out annually in New York City alone.

The scale of insecure tenure and the growing prevalence of inadequate housing conditions and slums are clearly daunting and will require considerably larger and better resourced efforts than the world has witnessed to date.

SCALE AND IMPACTS OF EVICTIONS

While insecure tenure is experienced by many largely in the realm of perceptions — although such perceptions may be experienced as very real fear, and have very concrete outcomes, such as the inability or unwillingness to improve dwellings — evictions are always experienced as very real events, with harsh consequences for those evicted. This section outlines the scale and impacts of three major categories of evictions: forced evictions; market-based evictions; and expropriation and compulsory acquisition.

Forced evictions

Large-scale forced evictions and mass forced displacement have been part and parcel of the political and development landscapes for decades as cities seek to 'beautify' themselves, sponsor international events, criminalize slums and increase the investment prospects of international companies and the urban elite. As recognized by the Global Campaign for Secure Tenure initiated by UN-

Eviction of homeless families from invaded land

© Ricardo Funari / BrazilPhotos / Alamy

Habitat in 1999, most forced evictions share a range of common characteristics, including the following:

- Evictions tend to be most prevalent in countries or parts of cities with the worst housing conditions.
- It is always the poor who are evicted — wealthier population groups virtually never face forced eviction, and never mass eviction.
- Forced evictions are often violent and include a variety of human rights abuses beyond the violation of the right to adequate housing.
- Evictees tend to end worse off than before the eviction.
- Evictions invariably compound the problem that they were ostensibly aimed at 'solving'.
- Forced evictions impact most negatively upon women and children.

Table 3 charts a portion of the world's eviction history during the last 20 years, revealing that forced evictions have often affected hundreds of thousands of people in a single operation. Other types of forced eviction may be carried out in connection with efforts to reclaim occupied public land for private economic investment. Conflict and disaster, as well as urban regeneration and gentrification measures, can also be the source of eviction. The most frequent cases of forced evictions, however, are the small-scale ones: those that occur here and there, every day, causing untold misery for the communities, households and individuals concerned.

Year(s)	Location	Number of people evicted
1986–1992	Santo Domingo (Dominican Republic)	180,000
1985–1988	Seoul (Republic of Korea)	800,000
1990	Lagos (Nigeria)	300,000
1990	Nairobi (Kenya)	40,000
1995–1996	Rangoon (Myanmar)	1,000,000
1995	Beijing (China)	100,000
2000	Port Harcourt (Nigeria)	nearly 1,000,000
2001–2003	Jakarta (Indonesia)	500,000
2004	New Delhi (India)	150,000
2004	Kolkata (India)	77,000
2004–2005	Mumbai (India)	more than 300,000
2005	Zimbabwe	750,000

Table 3

A selection of major urban eviction cases since 1985

Source: COHRE (www.cohre.org/evictions); Davis, 2006, p102

Despite the repeated condemnation of the practice of forced evictions, millions of people are forcibly evicted each year, with hundreds of millions more threatened by possible forced eviction due to their current insecure tenure status and existing urban and rural development plans. In the vast majority of eviction cases, proper legal procedures, resettlement, relocation and/or compensation are lacking. The Centre on Housing Rights and Evictions (COHRE) has collected information about eviction cases from all over the world (see Table 4), which indicates that at least 2 million people are victims of forced evictions every year. The vast majority of these live in Africa and Asia. In a selection of forced evictions in seven countries

— Bangladesh, China, India, Indonesia, Nigeria, South Africa and Zimbabwe — COHRE found that over 10.2 million people faced forced eviction between 1995 and 2005.

While all regions have faced large-scale forced evictions, Africa has perhaps fared worst of all during recent years. A recent study reveals that the practice of forced evictions has reached epidemic proportions in Africa, with more than 3 million people forcibly evicted from their homes since 2000. The most notable cases are Nigeria — where some 2 million people have been forcibly evicted from their homes since 2000 — and Zimbabwe — where some 750,000 people lost their homes, their source of livelihood or both during Operation Murambatsvina in May 2005. Not all news about evictions in Africa is bad, however. Indeed, there is evidence of a growing movement in Africa opposing evictions. In some instances, support in this regard has come from one of Africa's most important human rights institutions, the African Commission on Human and Peoples Rights.

This juxtaposition, of the large-scale global reality of often violent, illegal and arbitrary forced evictions, on the one hand, and the increasingly strong pro-human rights positions taken against the practice, on the other, captures the essence of the ongoing struggle between those favouring good governance, respect for the rule of law and the primacy of human rights, and those supporting more top-down, authoritarian and less democratic approaches to governance and economic decision making. Efforts to combine best practices on the provision of security of tenure with the position taken on these

Region	Persons evicted 1998–2000	Persons evicted 2001–2002	Persons evicted 2003–2006	Total 1998–2006
Africa	1,607,435	4,086,971	1,967,486	7,661,892
Europe	23,728	172,429	16,266	212,423
The Americas	135,569	692,390	152,949	980,908
Asia and the Pacific	2,529,246	1,787,097	2,140,906	6,457,249
Total	4,294,978	6,738,887	4,277,607	15,311,472

Notes: The data presented in this table is based on information received by the Centre on Housing Rights and Evictions (COHRE) directly from affected persons and groups and where the cases at hand are particularly noteworthy. Moreover, the data is collected from some 60 to 70 countries only (although the population of these countries amounts to some 80 per cent of the total world population). The data is thus not comprehensive in terms of representing the global scale of the practice of forced eviction. Without a doubt, the actual number of forced evictions is considerably higher than what is indicated in the table.

Table 4

Estimated number of people subjected to forced evictions by region

Source: COHRE, 2002, 2003, 2006

questions under human rights law may be one way to encourage a new approach to tenure security, particularly when these evictions are carried out in ways clearly contrary to human rights law.

Market-based evictions

Another key trend shared by most countries — regardless of income — is the growing phenomenon of market-based evictions. Although precise figures are not available, observers have noted that such evictions are increasing both in terms of scale (e.g. the number of persons/households evicted annually) and as a proportion of the total global eviction tally. Market evictions, most of which are not monitored or recorded by housing organizations — which tend to restrict their focus to forced evictions — are caused by a variety of forces. These include urban gentrification; rental increases; land titling programmes; private land development and other developmental pressures; expropriation measures; and the sale of public

Non-payment of rent may lead to sale through foreclosure auction

© TopFoto / Image Works

land to private investors. Market-driven displacements may also result from *in-situ* tenure regularization, settlement upgrading and basic service provision without involvement of community organizations or appropriate accompanying social and economic measures (such as credit facilities, advisory planning or capacity building at community level), and this may give rise to increases in housing expenditure that the poorest segment of the settlement population is not able to meet. When combined with increases in land values and market pressures resulting from tenure regularization, the poorest households will be tempted to sell their property and settle in a location where accommodation costs are less. This commonly observed progressive form of displacement results in the gradual gentrification of inner-city and suburban low-income settlements.

Because market-based evictions are seen as inevitable consequences of the development process by many public authorities, and due to the fact that negotiations between those proposing the eviction and those affected are not uncommon, this manifestation of the eviction process is often treated as acceptable and even voluntary in nature. Some may even argue (albeit wrongly in many cases) that such evictions are not illegal under international law and thus are an acceptable policy option.

While all forms of eviction, forced and market-based, are legally governed by the terms of human rights law, compensation in the event of market-based evictions tends to be treated more as a discretionary choice, rather than a right of those forced to relocate. Even when compensation is provided, it tends to be limited to the value of a dwelling and not the dwelling and the land plot as a whole, with the result being greater social exclusion. In the absence of legal remedies, adequate resettlement options or fair and just compensation, market-based evictions lead to the establishment of new informal settlements in the periphery of cities, and tend to increase population pressure and density in existing informal inner-city settlements. This usually results in deterioration in housing conditions and/or increases in housing expenditure and commuting costs for displaced households.

Expropriation and compulsory acquisition

All states and all legal systems retain rights to expropriate or compulsorily acquire private property, land or housing (e.g. by using the force of 'eminent domain'). Typically, these rights are phrased in terms of limitations on the use

of property. It is important to note that while expropriation is not in and of itself a prohibited act, under human rights law it is subject to increasingly strict criteria against which all such measures must be judged to determine whether or not they are lawful. The power of states to expropriate carries with it several fundamental preconditions. When housing, land or property rights are to be limited, this can only be done:

• subject to the law and due process;
• subject to the general principles of international law;
• in the interest of society and not for the benefit of another private party;
• if it is proportionate, reasonable and subject to a fair balance test between the cost and the aim sought; and
• subject to the provision of just and satisfactory compensation.

If any of these criteria are not met, those displaced by such expropriation proceedings have a full right to the restitution of their original homes and lands.

It has been estimated that some 4 million people are being displaced every year through the construction

Eviction notice: Residents have to make way for a commercial development

© Mark Henley / Panos Pictures

of large dams, primarily in Asia. In addition, some 6 million people are being displaced annually by urban development and transportation programmes. The compensation provided to the people relocated has often been much less than promised, whether in cash, in kind or employment, and has resulted in impoverishment for many. Quite often, tensions remain high in the regions where relocations for such projects have taken place long after the resettlement officially ends.

GROUPS PARTICULARLY VULNERABLE TO TENURE INSECURITY

Poverty and inequality remain the key determinants of vulnerability from tenure insecurity. Generally, the poorer a person or household is, the less security of tenure they are likely to enjoy. While national income levels have increased in many countries, this has not always resulted in improved housing and living conditions for lower-income groups. In fact, there is some evidence that society-wide economic progress can actually reduce tenure security for the poorer sections of society as land values, speculation and investment in real estate all collude to increase the wealth of the elites, thus making it much more difficult for the poor to have access to secure and affordable housing. At the national level, the economic boom in China, for instance, has significantly reduced security of tenure. Some 50 million urban residents in China (not including migrant workers) are now highly vulnerable, often subject to eviction from the affordable homes they have occupied for decades.

If there is any particular group of urban dwellers that is underprotected, underemphasized and frequently misunderstood, it is definitely the world's *tenants*. While precise figures are lacking, their numbers may well be measured in billions. In terms of security of tenure, tenants most certainly can be provided with levels of tenure security protecting them from all but the most exceptional instances of eviction; but all too rarely are the rights of tenants and the rights of title holders to secure tenure treated equitably under national legal systems. There would seem, as well, little justification for treating tenants in a fundamentally different way from owners or title holders when regularization processes are under way within a given informal settlement. Such processes should be fair, equitable and of

benefit to all lower-income groups. In Kenya, for example, the Mathare 4A slum upgrading programme fell short of its objectives because of the failure to consider the impact of upgrading on the security of tenure of tenants. Tenants are rarely a topic of focus within global human settlements circles. Moreover, when they are, they are frequently neglected (or even treated with disdain) in the context of urban development and slum regularization initiatives, and also in the context of post-conflict housing and property restitution programmes.

Beyond the trends of increasing poverty and inequality, continued discrimination against *women* also contributes to tenure insecurity and resultant forced evictions. In many (if not most) countries, traditional law implies that women's relationship to men defines their access to land. Without independent recognition, women experience constant insecurity of tenure, partly due to structural discrimination in the areas of inheritance and succession rights. This is particularly highlighted in the context of the HIV/AIDS epidemic, as the death of a husband (or father) may lead to the eviction of the rest of the household. Although women's equal rights to housing, land, property and inheritance are well established under international human rights law, major obstacles are still inherent in policies, decision-making and implementation procedures in realizing these rights. Hence, women are disproportionately affected by gender-neutral approaches to land inheritance and are often unable to access their formal rights.

SECURITY OF TENURE IN THE AFTERMATH OF DISASTERS AND ARMED CONFLICT

Just as particular groups are more exposed to tenure insecurity; particular events are also major factors affecting security. Natural and human-made disasters — including earthquakes, tsunamis, storms and floods — often result in the large-scale displacement of people from their homes, lands and properties. Earthquakes alone destroyed more than 100 million homes during the 20th century, mostly in slums, tenement districts or poor rural villages. In some settings, the displaced are arbitrarily and/or unlawfully prevented from returning to, and recovering, their homes, and/or are otherwise involuntarily

relocated to resettlement sites despite their wishes to return home and to exercise their security of tenure rights.

Security of tenure and related housing, land and property rights issues also arise in the contexts of conflict and post-conflict peace-building. Security of tenure rights are increasingly seen as a key area of concern in post-conflict settings. Addressing housing, land and property rights challenges in the aftermath of conflict is of vital importance for reconstruction and peace-building efforts. This includes:

- attempting to reverse the application of land abandonment laws and other arbitrary applications of law;
- dealing fairly with secondary occupants of the land or housing of refugees or internally displaced persons;
- developing consistent land, housing and property rights policies and legislation;
- redressing premature land privatization carried out during conflict;
- reversing land sales contracts made under duress;
- protecting women's rights to inherit land; and
- ensuring that owners, tenants and informal occupiers of land are treated equitably.

International peace initiatives, both large and small, increasingly view these concerns as essential components of the peace-building process and as an indispensable prerequisite for the rule of law.

THE GROWING ACCEPTANCE OF THE 'INFORMAL CITY'

Perhaps the key trend at both the international and national levels is the growing recognition that informal settlements and the informal (or so-called 'illegal') city hold the key to finding ways of conferring security of tenure on all. There is also growing agreement that security of tenure is a key element for the integration of the urban poor within the city.

Governments now generally accept the inevitability of the informal city. In most instances, a sense of benign neglect exists, sometimes side by side with concrete and tested policies that actually succeed in

providing secure tenure and broader neighbourhood-wide improvements. However, often it is simply acceptance of the inevitable, and the political consequences of choosing a more active policy opposing these developments, that dominates local government approaches to these questions. This begrudging acceptance of the informal city, however, has almost invariably fallen short of what would be considered an adequate response to the social and economic conditions that lead to the emergence of such communities.

Responsible governments — that are actively seeking to comply with human rights obligations — need to do much more than simply accept that a growing portion of their populations are forced by circumstance to find housing options outside of the legally recognized realm. Governments have to acknowledge that the poor choose such options precisely because the legal housing sector does not provide them with access and options that they can afford, and which are located near employment and livelihood options.

POLICY RESPONSES TO TENURE INSECURITY

The debate on security of tenure has progressed considerably during the last decades, and there is an ever growing recognition of the issues involved and on how best to address them, particularly concerning urban land. Security of tenure issues are now routinely examined as a core concern and component, not just of sustainable human settlements and urban policies, but also as a fundamental concern of human rights. This increasingly expansive approach contributes to the emergence of more integral or multidimensional approaches to security of tenure. This, in turn, can lead to the identification of more nuanced, practical and appropriate measures designed to ensure that ever larger numbers of urban dwellers are protected by adequate degrees of secure tenure.

As discussed in Chapter 2, cities are characterized by a wide range of tenure categories. In practical terms, this implies that most people in the cities of developing countries live within a continuum in which some aspects of their housing are legal, while others are not. The existence of such a continuum has serious consequences for the development and implementation of urban policy.

This chapter turns to the question of how national and local governments, the international community and civil society have attempted to grapple with tenure insecurity, both through policy and legal measures. Several key policy and legal responses on questions of tenure security are examined, including upgrading and regularization; titling and legalization; land administration and registration; legal protection from forced eviction; and addressing violations of security of tenure rights. This is followed by a discussion of the roles and potential contributions of civil society and the international community.

UPGRADING AND REGULARIZATION

Slum upgrading and tenure regularization are perhaps the most common policy responses to illegal settlements throughout the developing world. Such processes, when carried out successfully, can result in the provision of infrastructure, urban services and security of tenure for residents. Slum upgrading is also very much in line with the Millennium Development Goal of improving the lives of slum dwellers (see Box 2). On-site upgrading is now seen as a far better option than improvements requiring relocation and eviction. In fact, there seems to be wide agreement that forced evictions, demolition of slums and consequent resettlement of slum dwellers create more problems than they solve.

Box 2 The Millennium Development Goals and security of tenure

Goal 7, target 11 of the Millennium Development Goals expresses the aim of achieving 'significant improvement in the lives of at least 100 million slum dwellers by 2020'. One of the indicators used for monitoring the realization of this target is the 'proportion of people with secure tenure'.

Land surveyor at work

© Ton Koene / Still Pictures

Regularization and upgrading can, of course, take various forms. For instance, some regularization efforts simply recognize the *status quo*, thus removing the threat of eviction, but not providing formal security of tenure to residents. A second form of regularization is the recognition of various forms of interim or occupancy rights without the provision of formal tenure. A third form, which has become increasingly commonplace, is the more official processes of regularization that recognize the legitimacy of the process by which the urban poor have acquired land for housing (without necessarily providing legal tenure rights). This approach focuses on negotiations between landowners and residents, rather than government regulation. In Karachi, Pakistan, removing the fear of eviction was seen by settlers to have a much greater value than obtaining formal property documents. Similar experiences have been reported from many other locations, as informality 'does not necessarily mean insecurity of tenure'.

It is widely recognized that the withdrawal of the state from many of the public provision sectors, coupled with the privatization of previously public goods, has had a major impact on increases in poverty and inequality during the 1980s and 1990s. The growing weakness of central and local governments in many countries means that good governance with respect to securing housing, land and property rights for all, including security of tenure, is increasingly absent. When this is combined with a lack of democratic decision making and democratic participation, as well as inappropriate regulatory frameworks that are increasingly anti-poor in orientation, the result is the cities we see today in most developing countries, i.e. cities in which growing numbers of people are forced into informality simply because they have no other option. In such contexts, upgrading and regularization will be of limited assistance.

TITLING AND LEGALIZATION

During the last few years there has been an increasing focus on titling to achieve the goal of security of tenure for all. The primary argument has been that the provision of property titles to the world's slum dwellers and those living 'illegally' will not only give them rights to land and property, but because of the ability to use land as collateral will also facilitate their access to credit.

Land titling with the provision of freehold title is closely linked to the commonly recognized process of adverse possession. The requirement that a beneficiary has to have had possession and use of the land for a specified period of time has several positive consequences. It eliminates the risk of past owners suddenly surfacing and claiming the land, while at the same time ensuring that valuable land is not left vacant.

There is no doubt that there are a number of advantages to formalizing housing through titling approaches, and that many of the characteristics of legalizing what are presently informal arrangements can have considerable benefits. This approach enables households to use their property titles as collateral in obtaining loans from formal-sector finance institutions in order to improve their homes or develop businesses. Moreover, it helps local authorities to provide services more efficiently, and to integrate informal settlements within the tax system; and it improves the efficiency of urban land and property markets. It has also been argued that such formalization will empower poor households; give them additional political influence and voice, thus strengthening democratic ideals; and may also increase the land user's investment incentives.

Titling is seen as the strongest legal form that the registration of tenure rights can take, with titles usually guaranteed by the state. It is also, however, the most expensive form of registration to carry out, requiring formal surveys and checking of all rival claims to the property. In many developing countries, local governments may be unable to muster the resources required to estab-

lish the land management and regulatory frameworks as well as institutions required to make the provision of freehold titles to all a realistic endeavour. Many observers have thus noted that other forms of registration are also possible, such as documentation of secondary use rights and other claims to land and natural resources without survey (see Box 3).

Other observers argue that tenure regularization and titling approaches can be detrimental to some households living in informal settlements, especially those who have the most vulnerable legal or social status. Among the groups most likely to face the negative consequences of such approaches are tenants or subtenants on squatter land; newly established occupants who are not considered eligible for regularization (or title); single young men and women; and female heads of households.

Perhaps one of the most obvious objections to the large-scale granting of freehold title to residents of slum settlements is that it may facilitate dispossession. The main problem occurs when one borrows money and uses the title as collateral. If the loan cannot be repaid, the moneylender has a viable claim against the asset denoted by the title. Thus, the provision of titles may, in fact, reduce rather than increase security of tenure. There is also increasing empirical evidence that full, formal tenure is neither essential nor sufficient — on its own — to achieve increased levels of tenure security, investment in house improvements or even increased property tax revenues.

To a certain extent, all of these views are correct. What is fundamental is not so much this objective, but how it is pursued and, ultimately, achieved. The most effective approach may thus be to broaden the range of legal options available. This implies implementing an incremental approach, focusing on increasing the short- and medium-term security for those living in informal settlements. The most obvious way to initiate such an approach is to ban forced evictions for a minimum period. Again, in practice, perceived tenure security in informal settlements is much more important than the precise legal status of the land.

LAND ADMINISTRATION AND REGISTRATION

The question of land administration and registration is also vital in any attempt aimed at ensuring security of tenure for all. Land administration can be defined as the way in which security of tenure rules are actually made operational and enforceable, and while linked to titling, it deals more with the administrative aspects of how tenure rights are accorded and managed by the civil authorities concerned. These processes can involve allocating rights in land, determining boundaries of land, developing processes for exchanging land, planning, valuation and the adjudication of disputes.

Once land is registered, it is entered into cadastres and registries; these documents then become vital tools for the enforcement of rights, urban planning measures and taxation. In principle, land registries can become human rights tools as well, playing a vital role in ensuring the full enjoyment of rights to housing and security of tenure.

It is important to reiterate, however, that land registration does not automatically provide security of tenure. Growing evidence points to registration processes actually contributing to a redistribution of assets towards wealthier segments of society. Moreover, in countries such as Ghana, which has had registration systems in place for well over a century, the cumbersome nature of the registration process has led to very few people actually registering land claims.

While there are many views on the importance of land registration and administration, few would disagree

Extract from the German land register

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Box 3 Towards a new approach to land registration

A new and more appropriate land registration system should include the following components:

- decentralized technical processes that are transparent and easily understood by local people;
- land information management systems that can accommodate both cadastral parcels and non-cadastral land information;
- new ways of providing tenure security to the majority through documentation of rights and boundaries for informal settlements and/or customary areas, without using cadastral surveys, centralized planning and transfer of land rights by property lawyers;
- accessible records, both in terms of their location and their user friendliness; and
- new technical, administrative, legal and conceptual tools.

Source: Fourie, 2001

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with the proposition that some appropriate, affordable, reasonably simple to update and administer, and culturally sensitive form of registering lands and homes, and of delineating land property boundaries, must be in place if security of tenure is to be treated as a right. All countries have systems in place (even if desperately outdated, under-resourced and not properly administered) for the registration of housing, land and residential property. What matters, however, is how these processes are undertaken, to what extent they facilitate security of tenure, and whether they are consistent with the relevant human rights issues involved.

And yet, hundreds of millions of urban dwellers the world over do not, at present, have their housing, land and property rights registered within an appropriate documentation system. Equal numbers rely on informal tenure arrangements that may give them some measure of protection against eviction and abuse, but may not provide them with any type of enforceable rights. Indeed, registering currently unregistered land has proven destabilizing in many countries and can quickly turn from a hopeful gesture to a source of conflict and disputes if carried out in an inappropriate manner.

Many have thus pointed to the need for new and more appropriate forms of land registration, which, in turn, can facilitate the provision of security of tenure. The main components of such a new and more flexible approach are outlined in Box 3.

Perhaps one of the strongest arguments in favour of developing proper housing, land and property registration systems hinges on the vital role that these institutions can play in remedying severe human rights violations, such as ethnic cleansing, arbitrary land confiscations, forced evictions and other crimes. As the ethnically driven forced

displacements in Bosnia-Herzegovina, Kosovo, Tajikistan and elsewhere have made clear, removing people forcibly from their homes, confiscating personal housing and property documents, destroying housing and property and cadastral records have all been used by ethnic cleansers in their attempts to alter the ethnic composition of territory and permanently prevent the return of those they forcibly expelled from their homes.

Where tenure rights were taken seriously, displaced persons were able to reclaim their homes or find some sense of residential justice, indicating that restitution may not be as infeasible as it may at first appear. For instance, an important restitution programme in Kosovo, coordinated by the United Nations Housing and Property Directorate, has provided legal clarity regarding tenure and property rights to 29,000 disputed residential properties in the province since 2000.

LEGAL PROTECTION FROM FORCED EVICTION

Parallel to the policy discussions on provision of freehold title versus other forms of tenure, various debates have been under way within the human rights community on related questions, focusing primarily on the issue of forced evictions and the human rights and security of tenure impacts that this can have upon the urban poor. This process has resulted in the fact that the practice of forced evictions is now being considered as a globally prohibited practice by human rights bodies.

In fact, during the past two decades, forced evictions have been the subject of a range of international standard-setting initiatives, and an increasing number of

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Box 4 Procedural protections when forced evictions are unavoidable

When forced evictions are carried out as a last resort and in full accordance with the international law, affected persons must, in addition to being assured that homelessness will not occur, also be afforded eight prerequisites prior to any eviction taking place. Each of these might have a deterrent effect and result in planned evictions being prevented. These procedural protections include the following:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used to be made available in reasonable time to all those affected;
- especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- all persons carrying out the eviction to be properly identified;
- evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- provision of legal remedies; and
- provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

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planned and past evictions carried out or envisaged by governments have been widely condemned. Several governments have been singled out for their poor eviction records and criticized accordingly by United Nations and other human rights bodies.

The United Nations Committee on Economic, Social and Cultural Rights has declared that 'instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law'. Perhaps the most significant development occurred in 1997, when the Committee adopted what is now widely seen to be the most comprehensive decision yet under international law on forced evictions and human rights. Its General Comment No. 7 on forced evictions significantly expands the protection afforded to dwellers against eviction, and goes considerably further than most previous pronouncements in detailing what governments, landlords and institutions such as the World Bank must do to preclude forced evictions and, by inference, to prevent violations of human rights.

General Comment No. 7 demands that 'the State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions'. Furthermore, it requires states to 'ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards by private persons or bodies'. While extending protection to all persons, the General Comment gives particular mention to groups who suffer disproportionately from forced evictions, including women, children, youth, older persons, indigenous people, and ethnic and other minorities.

One of the more precedent-setting provisions of General Comment No. 7 is that 'evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights'. Governments are *required* to guarantee that people who are evicted — whether illegally or in accordance with the law — are to be ensured of some form of alternative housing.

While the overall position of the General Comment is to discourage the practice of forced evictions, it does recognize that in some exceptional circumstances evictions can be carried out. However, for these evictions to be legal and consistent with human rights, a lengthy series of criteria will need to be met in full (see Box 4).

Box 5 Violations of economic, social and cultural rights through 'acts of commission'

Violations of economic, social and cultural rights can occur through the direct action of states or other entities insufficiently regulated by states. Examples of such violations include:

- the formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
- the active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
- the active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- the adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of economic, social and cultural rights for the most vulnerable groups;
- the adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- the calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the state is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- the reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

ADDRESSING VIOLATIONS OF SECURITY OF TENURE RIGHTS

Although the development of effective remedies for the prevention and redress of violations of economic, social and cultural rights, including security of tenure, has been slow, several developments in recent years have added to the seriousness given to these rights and are evidence of the direct linkages between human rights and security of tenure. The 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, for instance, provide a great deal of clarity as to which 'acts of commission' and 'acts of omission' would constitute violations of the ICESCR (see Boxes 5 and 6). Based on these guidelines, it

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Box 6 Violations of economic, social and cultural rights through 'acts of omission'

Violations of economic, social and cultural rights can also occur through the omission or failure of states to take necessary measures stemming from legal obligations. Examples of such violations include:

- the failure to take appropriate steps as required under the Covenant;
- the failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- the failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- the failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- the failure to utilize the maximum of available resources towards the full realization of the Covenant;
- the failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- the failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- the failure to implement without delay a right which it is required by the Covenant to provide immediately;
- the failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- the failure of a state to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other states, international organizations or multinational corporations.

Rural–urban migrants and local fishermen with minimal security of tenure

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is possible to develop a framework for determining the compatibility of national and local law and policy on aspects of tenure security with the position of human rights law.

Because security of tenure and the rights forming its foundation continue to grow in prominence at all levels, it should come as no surprise that official human rights bodies, including courts, at the national, regional and international levels are increasingly scrutinizing the practices of governments with respect to security of tenure. Since 1990 the United Nations Committee on Economic, Social and Cultural Rights has issued dozens of pronouncements about security of tenure conditions in different countries.

RESPONSES BY NON-STATE ACTORS TO SECURITY OF TENURE AND FORCED EVICTIONS

A growing number of NGOs at international, national and local levels have become involved in efforts to support the provision of security of tenure and opposing forced evictions in recent years. Their efforts have ranged from lobbying national governments and delegates at international conferences and meetings, to providing advice or direct support to local communities. At the national level, the efforts of NGOs have often been supplemented by those of other civil society actors.

Acts of forced eviction — whether carried out to construct a large dam or a new road, in the context of ethnic cleansing or simply to gentrify a trendy neighbourhood — are almost invariably accompanied by attempts by those affected to resist the eviction and to stay in their homes. Although perhaps most initiatives to stop forced evictions before they occur eventually fail, there is no shortage of inspiring and courageous cases where planned evictions have been revoked and the people allowed to remain in their homes on their lands.

In addition to the numerous efforts of civil society actors, a range of international organizations have also been focusing increasing attention on security of tenure during recent years. The Global Campaign for Secure Tenure was initiated in 1999 by UN-Habitat and has two main objectives: slum upgrading through negotiation, not eviction; and monitoring forced evictions and advancing tenure rights. The campaign facilitates efforts by many member states to replace the practice of unlawful evictions with negotiation with affected populations and their organizations. Moreover, it supports the introduction of tenure systems that are favourable to the urban poor, while at the same time being feasible for local land administration authorities. The campaign works on the basis of encouraging national-level campaigns for secure tenure that focus on concrete steps to increase the enjoyment of tenure rights by those currently living in informal settlements. Despite the widespread support given to the campaign by civil society actors, donor nations have so far shown considerable reluctance to support this innovative approach. Closely linked to the Global Campaign for Secure Tenure, the Advisory Group on Forced Evictions was established by UN-Habitat in 2004 to monitor forced evictions and to identify and promote alternatives, such as *in-situ* upgrading.

Approaching the security of tenure question from a slightly different perspective, the Commission on Legal Empowerment of the Poor was established by the United Nations in 2005 and seeks to promote the extension of formal legal rights and protections to marginalized groups. Its stated aim is to 'explore how nations can reduce poverty through reforms that expand access to legal protection and economic opportunities for all'. The Commission organizes national and regional consultations all over the world to learn from the experiences of those who live and work in slums and settlements, and is thus

Land tenure conflicts over reclaimed land discourage the improvement of temporary structures

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partnering with grassroots organizations, governments and institutions.

The Cities Alliance and the Development Partners Group on Land in Kenya are other examples of initiatives that continue to promote improved security of tenure conditions across the world.

CONCLUDING REMARKS: THE ESSENTIAL ROLE OF PERCEPTION

Clearly, one of the key challenges for policy makers is sifting through these and many other views on security of tenure and determining the best approach to a given situation. It is important to point out that just as formality of tenure does not unequivocally guarantee secure tenure, informality does not necessarily mean insecure tenure. As seen above in the context of regularization, some forms of informality can provide a reasonable degree of tenure security. This is not to say that this approach should necessarily be favoured; but it goes to the core of the issue at hand, which is essentially that much of the strength of tenure security comes in the form of people's perception of the security of tenure that they believe they have.

This may appear difficult to fit together with the principles and rights of human rights law; but this is not necessarily the case. Perhaps perception and rights can go hand in hand, with the objective being a process, perhaps even a lengthy one, whereby the personal or community perception of security can slowly and steadily be transformed into a form of tenure — possibly based on freehold title and possibly not — but whereby those currently residing firmly in the informal sphere, without formal protection from eviction, gradually accrue these rights in a progressively empowering way. In this connection, it is important to remember that the *de facto* and *de jure* status of a given parcel of land may be markedly different. Four major factors seem to contribute to people's perception of the level to which they are protected from eviction. These include the:

- length of occupation (older settlements enjoy a much better level of legitimacy and, thus, of protection than new settlements);
- size of the settlement (small settlements are more vulnerable than those with a large population);
- level and cohesion of community organization; and
- support that concerned communities can get from NGOs and other organizations.

Security of tenure must be seen as a prerequisite, or an initial step, in an incremental tenure regularization process, focusing particularly as it does on the protection, as opposed to the eviction, of irregular settlement occupants and not on their immediate regularization in legal terms. As the varying points of view mentioned above conclusively show, the security of tenure debate is alive and well. Realistically speaking, the main point for the hundreds of millions of people currently living without security of tenure is, perhaps, not whether they are the owners of freehold title to a piece of land or not. More importantly, it is about being able to live a life where their rights to security of tenure are treated as seriously as human rights law says that they should be.

ENHANCING TENURE SECURITY AND ENDING FORCED EVICTIONS

Ensuring that everyone enjoys the legal and physical protection provided by security of tenure will continue to be one of the major challenges facing policy and law-makers in the coming years. Forced evictions are the most visible manifestation of tenure insecurity. The number of people falling victim to forced evictions each year runs into several millions, and the human costs associated with such evictions are staggering. Evicted people not only lose their homes and neighbourhoods, but they may also be forced to leave behind personal possessions since little warning is given before bulldoz-ers or demolition squads destroy their settlements. Forced evictions are inevitably traumatic: they cause injury; they affect the most vulnerable; and they place victims at risk of further violence. Evictees often lose their sources of livelihood since they are forced to move away from areas where they had jobs or sources of income. In particular, women evictees face unique challenges, suffering disproportionately from violence before, during and after a forced eviction. Women also often have to manage multiple responsibilities as the primary caretakers of children, the sick and the elderly in situations of forced eviction and homelessness.

All of these consequences of forced evictions are directly linked to the theme of the *Global Report on Human Settlements 2007: Enhancing Urban Safety and Security*: from a range of aspects of physical security of the person, to job security and social security, to the very notion of security of the home itself. Furthermore,

evictions that result in homelessness are a serious threat to most, if not all, aspects of human security.

This chapter provides an overview of the main elements of a human-rights based approach to security of tenure, focusing on a comprehensive understanding of the interrelationships between housing, land and property rights. It calls for enhanced efforts to support and develop innovative approaches to tenure, taking into account the wide range of experiences from all over the world, and it calls for enhanced efforts to combat homelessness. This is followed by a discussion of the roles and potential contri-butions of local authorities and an overview of how the obligations of non-state actors can be clarified and strengthened. The last part of the chapter provides a set of recommendations for future action to end forced evictions and enhance security of tenure.

A HUMAN RIGHTS–HUMAN SECURITY APPROACH TO SECURITY OF TENURE

What is needed in the coming years is a more nuanced approach to security of tenure. Such an approach must combine the laws and principles of human rights and jurisprudence with the best of the tried and tested approaches to secure tenure. Thus, it must incorporate the positive attributes of each view of tenure within a consolidated package — a new and more refined set of

Poor supply of urban land through formal channels often leads to expanding squatter settlements

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measures that can be employed to steadily increase the degree to which security of tenure is enjoyed by everyone. The eventual emergence of such an integrated approach to the question of tenure should be given serious consideration by governments and international agencies. Such an approach may stand the best chance yet of gaining and maintaining tenure security for the world's poorest and most vulnerable groups.

But why would an integrated approach, based on human rights, be any better than what has been attempted in the past? First, it is important because states are already legally bound by a whole series of human rights obligations. Second, when access to secure tenure is viewed through the lens of human rights, it becomes clear that the right to security of tenure is perhaps denied to more people than any other basic human right.

The principles of a human rights-based approach are, in fact, found within the existing law of most countries. These principles may not always be subject to full compliance or enforcement; but as legal principles, there is no disputing the fact that they are in place. Indeed, all legal systems — common law, civil law, Roman-Dutch law, Islamic law, customary law and others — address the question of tenure and the degrees of security accorded to each type of recognized and informal tenure arrangements.

If security of tenure is to be treated as a right, it is clear that a range of existing human rights form the legal and normative basis for the existence of this right. While numerous rights form the foundation upon which the right to security of tenure rests, the most fundamental are perhaps the right to adequate housing, the right to be protected against forced evictions, the right not to be arbitrarily deprived of one's property, the right to privacy and respect for the home, and the right to housing and property restitution.

Examining security of tenure within the context of the above-mentioned recognized human rights also meshes well with treating security of tenure as a core element within the concept of human security. This implies taking a more all-encompassing vision of human rights as they relate to the tenure issue.

In the realm of housing and land policy, property rights approaches have often proven inadequate in fully achieving the objective of universal access to a place to live in peace and dignity. Indeed, on their own, property rights are often seen as undermining the pursuit of this goal. In some situations, a focus on property rights alone may serve (as a concept, as well as in law, policy and practice) to justify a grossly unfair and unequal *status quo*. In other instances, what are referred to as property rights are confused with housing and land rights, effectively usurping them in an effort to give an impression that all residentially related human rights requirements can be met via property rights.

As one means of addressing these questions and, in effect, of overcoming the limitations of the concept of 'property rights', the more inclusive terminology of housing, land and property (HLP) rights has been suggested as a far better term with which to describe the residential dimensions of the property question, set within a human rights framework. Treating what are traditionally referred to as 'property rights' as the more all-encompassing 'HLP rights' promotes a unified and evolutionary approach to human rights and all of their associated residential dimensions. Moreover, such an approach — grounded deeply in the indivisibility and interdependence of all rights — allows all of the rights just noted to be viewed as a consolidated whole in broad support of security of tenure initiatives.

While HLP rights are each unique and complex legal and human rights concepts, they are, at the same time, closely related to one another and, to a certain degree, overlap. In general terms:

- Housing rights are the rights of 'everyone' to have access to a safe, secure, affordable and habitable home.
- Land rights cover those rights related directly to the land itself as distinct from purely the structure built on the land in question.
- Property rights concern the exclusive user and ownership rights over a particular dwelling or land parcel.

Each of these terms is important; but none of them captures in their entirety the full spectrum of rights associated with the right to a place to live in peace and dignity, including the right to security of tenure. What people in one country label as 'land rights' may be precisely the same thing as what citizens of another country call 'housing rights'. 'Property rights' in one area may greatly assist in protecting the rights of tenants, while in another place property rights are used to justify mass forced evictions.

An integrated, comprehensive approach based on the notion of HLP rights holds the best promise for marshalling resources and assets towards improving the lives of lower-income groups. Treating HLP rights simultaneously as human rights concerns and development concerns is both practical and has universal applicability. In fact, this approach can provide one of the clearest examples of how a rights-based approach to development actually looks in practice and how security of tenure can be treated increasingly as a core human rights issue.

At the end of the day, what matters most is not necessarily the formality associated with the tenure levels enjoyed by dwellers, but the *perception* of security, both *de facto* and *de jure*, that comes with that tenure. By treating security of tenure as part of the broader human rights equation, dimensions of security, rights, remedies and justice are automatically incorporated into the analysis.

As discussed above, the international legal foundations of the human right to adequate housing are designed to ensure access to a secure, adequate and affordable home for all people in all countries. The long recognition of this right under international human rights law, however, has yet to sufficiently influence national policy, law and practice on housing rights; as a result, few rights are denied as frequently, on such a scale and with the degree of impunity as housing rights. Whether in terms of outright homelessness, forced evictions and other forms

of displacement; life-threatening, unhealthy and dangerous living conditions; the destruction of homes during armed conflict; systematic housing discrimination against certain vulnerable groups (particularly women); campaigns of 'ethnic cleansing'; or any number of other circumstances where housing rights are denied, few would argue against the view that the universal enjoyment of housing rights remains a very long-term proposition.

In essence, states are obliged to *respect*, *protect* and *fulfil* all human rights, including the housing rights of homeless persons. The obligation to respect human rights requires states to refrain from interfering with the enjoyment of rights. The obligation to protect requires states to prevent violations of such rights by third parties, such as landlords or private developers. If the exercise of these two obligations does not result in the access by everyone to an adequate home, then the obligation to fulfil becomes relevant, requiring states to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of states to take such steps, to the maximum of its available resources, to achieve the universal enjoyment of housing rights, would not comply with human rights principles. So, while states are not necessarily required to build homes for the entire population, they are required to undertake a whole range of steps, both positive and negative in nature, grounded in human rights law, which are designed to ensure the full realization of all human rights, including the right to adequate housing by the homeless.

THE NEED FOR INNOVATIVE APPROACHES TO TENURE

The major lesson learned from a variety of tenure initiatives taken in preceding decades is simply that flexible and innovative approaches to providing security of tenure are more advisable than approaches grounded in ideology and the generation of capital. Any successful initiative to provide tenure will need to be based on a recognition that innovation is required for many reasons, not the least of which is the fact that there are many diverse types of tenure and varying degrees of legality and *de facto* and *de jure* protection associated with both. The majority of urban dwellers in developing countries have some form of *de*

Squatter settlements are a typical example of tenure insecurity

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facto security to the housing and land that they occupy. The actual legal status of their housing and land occupancy may not even be clear to the occupants themselves. What matters in the everyday life of the majority of urban dwellers is their perception of security.

Experience shows that settlements upgrading approaches, which include the granting of full freehold title, may, in fact, result in an increase in informal settlements rather than a decrease. This may occur because granting such titles implies that households acquire an asset that can be sold at a high price in the formal land market. Many households may thus be encouraged to sell, realize the capital value, and move on to another informal settlement, perhaps even hoping to repeat the process. Furthermore, traditional slum upgrading approaches also tend to ignore the situation of tenants. Granting of full title to 'owners' in settlement upgrading schemes often

leads to market evictions of tenants. Again, the result is often the same: the poorest are forced to relocate to other informal settlements.

The main question faced is thus how to increase security of tenure without forcing the poor to relocate to more peripheral locations where lack of employment opportunity may worsen their poverty. Although no universally applicable answers to these questions exist, experience indicates that the main focus should be on providing forms of tenure that are sufficiently secure to ensure protection from eviction.

So, which types of tenure provide such levels of security? Again, there are no universally applicable answers. In addition to the most obvious solution (i.e. a moratorium on forced evictions; see below), several options have been successfully employed. Among these are temporary occupation licences, communal or individual leases, community land trusts, communal ownership, customary tenure and others.

A recent survey revealed that certificates of use or occupancy, community land trusts and other forms of what could be called intermediate forms of tenure provide a valuable means of increasing legitimacy. The survey also exposed that tenure issues cannot be isolated from other related policies of urban land management. It is essential to offer a wide range of tenure options so that the diverse and changing needs of households can be met on a long-term basis through competition. Linking innovative approaches such as these with HLP rights could truly create the basis for an entirely new approach to ensuring security of tenure for all.

A range of innovative approaches to providing tenure is used in Brazil. One of these — 'use concessions' — implies that the government transfers the right to use property for residential purposes to families settled on public land without the transfer of property title. Such measures can provide the population with security of tenure and impede forced eviction, and can also be a mechanism for guaranteeing the social purpose of public land, thus avoiding real estate speculation since such land is not 'privatized'. Similarly, 'special social interest zones' can now be declared in urban areas in Brazil. These zones are efficient tools for municipalities to avoid forced evictions. Such zones are typically declared in areas where there are a high number of conflicts related to ownership of land or housing that may result in forced evictions of low-income groups. This provides legal guarantees to social

groups living within the zone and recognizes these as residential areas for low-income groups.

On the basis of the wisdom associated with innovative approaches to the security of tenure question, it is appropriate to consider a 'twin-track' approach to improving tenure security. First, implementation of such innovative approaches can improve living conditions for current slum dwellers. And, second, the revision of regulatory frameworks can reduce the need for future slums by significantly improving access to legal land and housing.

SUPPORTING THE VITAL ROLE OF LOCAL GOVERNMENT

The role of local government in diagnosing security of tenure conditions and then acting to provide security of tenure to all, within the shortest possible time frame, is a vitally important component of any successful security of tenure policy. Yet, despite the fact that decentralization policies in many countries have led to the transfer of responsibilities for urban management to local governments, land management still tends to depend upon central or federal governments. In general, national governments are still responsible for the regulation of land tenure, taxation systems and the registration of property rights and transactions. Furthermore, the administration of these tends to fall under the responsibility of central government agencies operating at the regional level, rather than that of local governments. The main problem with this central government control over land management, however, is that they 'generally lack the financial and administrative resources to ensure effective implementation of their policies throughout the country. At the same time, intermediate-level management agencies with genuine decision-making power are generally weak or absent.'

If the goal of security of tenure for all is to become a reality, it is essential that the transfer of responsibilities from central to local governments is accompanied by increasing levels of financial and other resources at the local government level. The City Statute in Brazil is one example of how local governments can more effectively play a supportive role in expanding tenure security.

STRENGTHENING AND CLARIFYING THE HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS

Whereas human rights law has traditionally been seen largely as a set of rules governing the acts and omissions of states (see Boxes 4 and 5), in fact, this legal domain creates a very considerable degree of obligations requiring non-state actors to act in accordance with internationally recognized human rights principles. Principle 1 of the United Nations Global Compact commits private sector companies to 'support and respect the protection of international human rights within their sphere of influence'. Some companies have begun making tentative steps in the direction of preventing evictions. The principle of corporate complicity in human rights abuses may assist in clarifying the responsibilities of companies with respect to evictions and security of tenure. Complicity can take three forms:

- *Direct complicity* occurs when a company knowingly assists a state in violating human rights.
- *Beneficial complicity* suggests that a company benefits directly from human rights abuses committed by someone else.
- *Silent complicity* describes the way in which human rights advocates see the failure by a company to raise the question of systematic or continuous human rights violations in its interactions with the appropriate authorities.

RECOMMENDATIONS FOR FUTURE ACTION

There is no doubt that considerable progress has been made in recent years on the question of security of tenure. At the same time, there is a compelling need to move the security of tenure agenda forward. The scale of forced evictions or of market-based evictions should still not be underestimated. Furthermore, it is crucial to recognize the forced evictions paradox that exists today, where a firm normative framework for addressing forced evictions exists and is constantly being improved, and yet the scale of eviction continues to grow.

Goal		Steps
1	Prevent any detrimental discrimination with respect to housing	• Prohibit all forms of housing discrimination in law. • Strictly enforce such provisions with respect to tenancy and sale agreements. • Prevent any actual or perceived attempt at neighbourhood segregation.
2	Increase the scale of enjoyment of the right to security of tenure	• Develop quick and affordable measures for conferring title to slums and popular settlements currently without security of tenure. • Make public commitments to allow existing communities to continue to exist. • Expand national land and housing registration systems to allow for the inclusion of new tenure rights of the poor.
3	Ensure affordable housing to all	• Introduce or expand housing subsidy programmes to ensure that low-income groups are not forced to spend a disproportionate percentage of their income on satisfying housing requirements. • Develop rent regulation policies to protect low-income groups against unreasonable rent increases that they cannot afford.
4	Increase public expenditure on low-income housing programmes	• Ensure that public expenditure is commensurate with national housing requirements. • Ensure that a reasonable portion of international development assistance, as appropriate, is earmarked for housing construction or improvements.
5	Identify and allocate affordable land for low-income housing settlements	• Set annual benchmarks for identifying land for eventual use and/or allocation to low-income groups. • Develop longer-term plans for land allocation and distribution (particularly of state land) with a view to accurately addressing future housing needs.
6	Cease arbitrary forced evictions and other displacements	• Prohibit, in law, the practice of arbitrary forced evictions and other displacement. • Rescind any existing eviction plans. • Provide restitution and/or compensation to individuals subjected to arbitrary forced evictions or displacement in the past.
7	Provide infrastructure to existing low-income settlements	• Allocate sufficient public funds to providing infrastructure, including roads, water and sanitation systems, drainage, lighting and emergency life-saving systems. • Provide subsidies and/or incentives to the private sector to provide relevant infrastructure and services.
8	Encourage the formation of community-based organizations	• Promote community organizing as a key means of neighbourhood and housing improvement. • Protect the rights of community-based organizations to act in a manner that they deem fit to achieve improvements in housing and neighbourhood living conditions.
9	Promote housing finance programmes for the poor	• Provide assistance to low-income groups and encourage them to develop self-controlled housing finance and savings programmes.
10	Ensure the protection of all women's rights	• Ensure that women's rights to inherit housing, land and property are fully respected.
11	Promote special programmes for groups with special needs	• Develop special housing policies for vulnerable and other groups with particular housing needs, including the disabled, the elderly, minorities, indigenous peoples, children and others.
12	Provide stimulants to the private sector to construct low-income housing	• Develop tax credit programmes and other stimulants for the private sector to encourage the construction of low-income housing.

Table 5

A framework for developing housing, land and property (HLP) rights-based housing and urban policies

It is necessary to recognize that there are no universal solutions to providing security of tenure and that challenges in this regard tend to be solved in different ways in different locations. Rather, the goal must be to identify appropriate forms of secure tenure. Depending upon circumstances, there are a number of such acceptable forms of secure tenure, and the merits of innovative policies are clear. There is also a pressing need to simplify the process of providing security of tenure, but in ways that are acceptable to the communities involved and fully consistent with human rights principles. The main focus of this report is that an integrated approach grounded in HLP rights is one such way of unifying the various approaches to providing security of tenure.

Clearly, much more needs to be accomplished in the quest for secure tenure for all. At present, there are, in fact, hundreds of measures that can be adopted to strengthen ongoing processes in support of security of tenure and against forced eviction. The following sub-sections thus outline some areas for priority action.

Develop housing, land and property (HLP) rights-based housing and urban policies

For a start, there is a need for housing policies that are more consciously pro-poor and pro-human rights. Such policies can be developed generically at the international level and subsequently applied within nations everywhere. A framework for such policies is outlined in Table 5. This comprehensive framework includes relevant elements from international law, all of which have direct implications for enhancing security of tenure or ending forced evictions. It should be noted that the steps indicated in the table may not be applicable in all locations.

Support the awareness-raising work of local institutions and organizations

Experience from all over the world highlights the importance of local institutions and actors when it comes to protecting the housing rights of the poor. NGOs and community-based organizations in particular play essential roles in awareness-raising about HLP rights at national and local levels. In many instances, such organizations are the only support mechanism available to slum dwellers when they are threatened by forced eviction. Even if there are laws protecting the housing rights of slum dwellers, this is not much help to people who are unaware of their rights, or unable to make use of appeal mechanisms where these exist. International cooperation activities should thus increasingly encourage the formation of local organizations or institutions and enhance their capacities and/or support their activities.

Promoting residential justice

Every year, millions of people end up as refugees, internally displaced persons and evictees, whether due to development projects, city beautification schemes, armed conflict, natural and human-made disasters, or other factors. Virtually all of these individuals are entirely innocent victims of circumstances beyond their control, and for many their wish to return to their original homes is never achieved. And, yet, every legal system in the world clearly gives all human rights victims the right to an effective remedy. This principle, however, is still too rarely applied to the displaced.

Renewed energy to achieve the restoration and the restitution of the housing rights of the world's 50 million

Residents protesting against the demolition of an apartment building

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or more displaced persons would considerably strengthen the seriousness accorded to security of tenure rights. Whenever refugees and internally displaced persons themselves express a wish to return to their original homes, international standards now clearly provide for rights entitling them to reclaim, repossess and re-inhabit these homes.

Applying international criminal law to forced evictions

Although violations of housing, land and property rights are not always considered as seriously as violations of other human rights, recent developments involving the prosecution of war criminals and those who have committed crimes against humanity will enable the international community to hold those ordering forced evictions and other housing rights violations accountable. Armed conflicts result in thousands and sometimes millions of individuals being forcibly evicted from their homes or forced to flee their homes for their own safety, despite protection under international humanitarian law expressly prohibiting such evictions unless the security of the inhabitants can only be assured through temporary displacement. Since the violent conflicts in the Balkans, Rwanda, East Timor and elsewhere, considerable attention has been devoted to creating international courts and commissions entrusted with bringing those individuals responsible for war crimes and crimes against humanity to justice.

HLP rights violations carried out during armed conflicts can now act as one of the grounds on which to
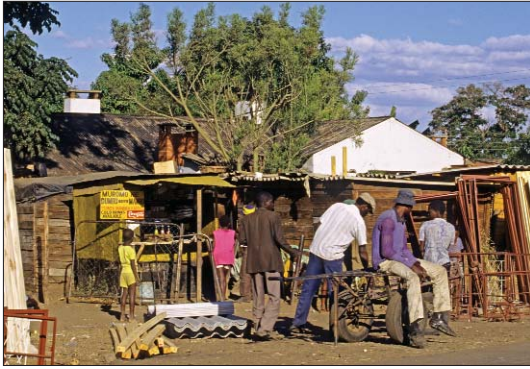
Informal market stalls demolished during a so-called 'clean-up' operation

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base complaints for justice. If HLP rights are to be taken seriously, there are strong grounds on which to discourage the impunity almost invariably enjoyed by violators of these rights. Whether it is those who advocate ethnic cleansing, those who sanction violent and illegal forced evictions, those who call for laws and policies that clearly result in homelessness, or those who fail to end systematic discrimination against women in the land and housing sphere — all those promoting such violations should be held accountable.

A global moratorium on forced evictions

Examples the world over have shown that forced evictions are not an inevitable consequence of economic development, nor are they the necessary price of progress or an adjunct to civic infrastructure improvements. While some evictions may be impossible to avoid, the overwhelming majority of the forced evictions already carried out and those that are planned can be prevented and ultimately made unnecessary. An initial global moratorium on forced evictions, therefore, over a period of five years could be one concrete means for ending a practice that patently violates a range of recognized human rights.

United Nations member states could proclaim such a moratorium at a future United Nations General Assembly session. During the five-year moratorium period, each state would cease carrying out forced evictions, review domestic legislation on these practices, carry out any legislative reform required to adequately protect people against forced eviction, all the while taking a series of well-financed and concerted series of steps to confer security of tenure on all of the world's communities currently without such security. This initial five-year period would see national security of tenure action plans developed in all member states.

A global mechanism to monitor the realization of housing rights

As noted above, there is a glaring lack of accurate and comprehensive data on security of tenure and forced evictions. This is so despite the fact that all state parties to the ICESCR are required, by international law, to submit such data to the United Nations Committee on Economic, Social and Cultural Rights every five years. Although several different efforts are already under way to collect such data, it is time for the establishment of a mechanism to collect a comprehensive set of data on the progressive realization of HLP rights. The effort to design and implement a set of housing rights indicators by the United Nations Housing Rights Programme is an important step in this direction.

Perhaps the time for addressing this in a more compressive manner has arrived, with the ongoing reform of the human rights framework and mechanisms within the United Nations system, including that of treaty bodies, in general, and the reporting procedure, in particular. It has been argued that use of appropriate indicators for assessing human rights implementation could contribute to streamlining the reporting process, make it more transparent and effective, reduce the reporting burden, and, above all, improve follow-up on the recommendations and concluding observations of the United Nations Committee on Economic, Social and Cultural Rights at the national level.

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