

PART III
SECURITY OF TENURE

*We further commit ourselves to the objectives of ... providing legal security of tenure and equal access to land to all people, including women and those living in poverty.*¹

Security of tenure – or ‘the right of all individuals and groups to effective protection from the State against forced evictions’² – is a major concern for hundreds of millions of slum dwellers and other poor people. 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 following two chapters address a range of issues linked to the increasingly prominent and fundamental issue of security of tenure. The analysis explores a wide range of questions linked to secure tenure from the primary perspective of human rights and good governance, augmented by experiences in various countries. The chapters compare and contrast various initiatives taken by states and analysts on the question of secure tenure, and seek to identify the strengths and weaknesses of the most prevalent approaches taken to procure security of tenure throughout the world. More specifically, Chapter 5 explores the scope and scale of tenure insecurity in the world and trends surrounding tenure, while Chapter 6 provides a review of policies that have been adopted to address tenure concerns.

The analysis treats the concept of security of tenure as a key component of a housing policy built upon the principles of human rights law, which seeks to achieve the goal of adequate housing for all, as elaborated upon in the Habitat Agenda. This raises a number of crucial questions, which are addressed in this part of the report:

- Are all types of housing, land and property tenure capable of providing the degree of security of tenure meant to be accorded to everyone under human rights laws?
- What makes tenure secure and insecure?
- If security of tenure is a right, how can it be enforced?
- Is there an emerging jurisprudence of security of tenure as a human right?
- Is the universal enjoyment of security of tenure as a human right a realistic possibility within a reasonable timeframe?

These and a series of additional questions clearly require greater attention by the research and legal communities, as

well as by governments, the United Nations and policy-makers. This part of the Global Report thus aims to examine contemporary approaches to security of tenure through the perspective of human rights in order to determine how initiatives in support of tenure security might achieve better outcomes once a human rights approach is embraced.

As noted in Chapter 1, 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. While some may argue about the precise date on which city and town residents became a majority, the political, legal and resource implications, coupled with the social and economic consequences of this shift, are widely recognized, even though they may still not be fully appreciated by decision- and policy-makers.

Urbanization brings with it both positive and negative prospects for the world’s cities and towns and the existing and new populations of the world’s built-up areas. In China alone, the urban population has increased by hundreds of millions of people, and this number is expected to continue to grow in the coming years as the economic boom continues. The Indian capital, Delhi, is growing by about half a million people each year, and similar urban growth is occurring throughout the developing world. Although the major part of urban growth in most cities today occurs through natural population growth or physical extension of urban areas,³ large numbers of these new urban dwellers are migrants from rural areas. Urban areas will continue to provide employment choices, standards of living and cultural options simply unavailable in the countryside. Cities will continue to exert a considerable pull factor for the world’s poor and underemployed as great numbers of people see their aspirations linked to an urban life.

It is now widely known and understood that migrants to the world’s cities do not end up as residents in upmarket or even middle-class neighbourhoods. Rather, because very few governments have sufficiently prioritized actions in support of pro-poor housing solutions for the urban poor, the formal, legal and official housing market is neither affordable nor accessible to these groups; as a result, illegal or informal land markets, slums, shanties, pirate subdivisions, pavements and park benches become the new abodes for millions of people every year. These informal self-help solutions have long been the only housing option available to the poorest in most developing world cities and, increasingly, in some developed world cities, as well.

At the same time, however, the sense of urgency

Box III. I Security of tenure: The triumph of the 'self-service city'

They all laughed: six men laughing because an outsider didn't understand their concept of landownership.

They sat in a teahouse in a dusty patch of Istanbul (Turkey), called Paşaköy, far out on the Asian side of the city.

'*Tapu var?*' a researcher asked. 'Do you have title deeds?'

They all laughed. Or, more accurately, some laughed, some muttered uncomfortably and some made a typical Turkish gesture. They jerked their heads back in a sort of half nod and clicked their tongues. It was the kind of noise someone might make while calling a cat or a bird, but at a slightly lower pitch. This indicates: 'Are you kidding?' or 'Now that's a stupid question' or, more devastatingly, 'What planet are you from, bub?'

The researcher blundered on. 'So who owns the land?' More laughter. More clicking.

'We do,' said Hasan Çelik, choking back tears.

'But you don't have title deeds?' This time they roared.

And somebody whispered: 'Why is this guy so obsessed with title deeds? Does he want to buy my house?'

To understand the squatter communities of Turkey, it is important to accept the existence of a sense of property ownership that is completely different from what exists in Europe and North America. It is a system of land tenure more rooted in the legal rights of communities than in the apparatus of title registration and the clean pieties of private property. While it may seem unruly to outsiders, it has enabled the accommodation of massive urbanization in a sensible and successful way by harnessing the power of self-building and sweat equity.

For instance, it is likely that the land under the seven-storey city hall in the neighbouring Sultanbeyli belongs to thousands of people who have no idea that they own it and have never even heard of this obscure outpost far out on the Asian side of Istanbul. That is because 70 per cent of the land in this squatter metropolis is held under *hisseli tapu* – or shared title. Today, this anachronistic form of landownership exists where parcels of land have never been divided into exact lots and ownership has never been apportioned to individuals.

So, why is this not seen as a problem by Sultanbeyli's 300,000 residents, and why do they not fear eviction at the hands of the rightful owners of their land? Perhaps the best answer is

Source: Neuwirth, 2007

that Istanbul is a 'self-service city', a place where nobody owns but everybody builds. Between 1986 and 1989, people erected 20,000 houses in Sultanbeyli and the city now boasts 150 major avenues, 1200 streets, 30,000 houses, 15 neighbourhoods, 91 mosques, 22 schools and 48,000 students.

Yet, today there is increasing pressure to formalize tenure rights. The mayor of Sultanbeyli is encouraging people to buy private title to the land that they occupy. Many residents, however, are not so sure. Indeed, many in Sultanbeyli are balking at the idea of paying a fee for their land. In the city's Akşemsettin neighbourhood, Zamanhan Ablak, a Kurd who came to Sultanbeyli in the mid 1990s, reports that his family initially paid approximately US\$1500 for their land (they registered their new right of possession with the local *muhtar*, an elected official who functions as a kind of justice of the peace). They also paid US\$120 for the city's permission to erect a new building, and approximately US\$400 towards a neighbourhood fund dedicated to installing drainage culverts and building a mosque and a school. Zamanhan, who works as a waiter in his cousin's kebab restaurant, is already protesting the fact that Sultanbeyli is charging residents US\$160 to hook into the water system. He explained his irritation with a little wordplay: the city's fee (*ruhsat* in Turkish), is nothing more than a bribe (*rusvet*). So, Zamanhan asked: '*Ruhsat, rusvet*: what's the difference?' Zamanhan and many of his fellow Akşemsettin residents do not look favourably on the idea of having to shell out more money to purchase a title deed for a parcel that was unused and unwanted when they arrived.

After all, they say, it is through their own work that Sultanbeyli and many other informal settlements have become indistinguishable from many legal neighbourhoods in Istanbul. Through a combination of political protection and dogged building and rebuilding, they have developed their own communities into thriving commercial and residential districts that are desirable places in which to live. Indeed, with Istanbul continuing to grow, it is possible that selling private titles could set off a frenzy of speculation in Sultanbeyli. Informal ownership, while perhaps legally precarious, is perhaps safer for poor people because they do not have to go into debt to formally own their houses. They build what they can afford, when they can afford it.

required to ensure adequate housing for all is distressingly absent from most government decision-making bodies. Public expenditure on housing remains minimal in virtually all countries, and private sector-led efforts to provide housing at an affordable cost have generally not achieved results (even when heavily subsidized or provided with tax incentives or other inducements to do so). As a result, governments of all political hues are turning to the market as the source of hope for housing the hundreds of millions of people who today lack access to a safe, habitable and secure home. Indeed, the market can, and must, be a crucial link in any successful housing supply chain. Most commentators are, however, sceptical about the ability of the market alone

to provide affordable and accessible homes to all sectors of society. And yet, from an analysis of the latest housing policy trends throughout the world, it is clear that the market – perhaps more than ever before – is seen by many people and governments as the 'only real solution' to solving the global housing crisis.

As a result, the global housing crisis – characterized by ever growing slums, housing price increases, conflict and disaster-induced loss of housing and property resources, and continuing forced evictions and mass displacements – continues to get worse without any sort of positive end in sight. Because of this, an equally massive response by local and national governments to address this crisis, backed by

strong efforts of the international community, might be reasonably expected. Intensive building activities of social housing and subsidized housing units, all of which could be accessed by those on low incomes, might also be expected. The activation of policy measures throughout the world specifically designed to ensure that members of particularly vulnerable groups, such as the elderly, the disabled or homeless children, have access to adequate housing which they can afford might be further anticipated. At the very least, given that housing is treated as a right under international human rights law, governments would be expected to accurately monitor the scale of housing deprivation as a first step towards the development of a more effective set of housing laws and policies that would actually result in a fully and adequately housed society. And yet, as reasonable as these and other expectations may be, global housing policy debates today can, in many respects, be boiled down to one key discussion point: the question of tenure and tenure security.

Security of tenure, of course, 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 one household's tenure will be instrumental in determining the chances that they will face forced eviction, have access to basic services such as water and electricity, be able to facilitate improvements in housing and living conditions, and be able to register their home or land with the authorities. Indeed, one's security of tenure impacts upon many areas of life and is clearly a fundamental element of the bundle of entitlements that comprise every individual's housing rights. The broad issue of security of tenure has been the subject of extensive analysis during recent years in connection with efforts such as the Global Campaign for Secure Tenure, coordinated by UN-Habitat. There is also a growing realization that the scale of insecure tenure is increasing and is likely to worsen in coming years. It is widely accepted that secure tenure is of vital importance for stability, economic development, investment and the protection of human rights. As stated by the World Bank:

Empirical evidence from across the world reveals the demand for greater security of tenure and illustrates that appropriate interventions to increase tenure security can have significant benefits in terms of equity, investment, credit supply, and reduced expenditure of resources on defensive activities.⁴

At the same time, while a great deal has been written on the clear linkages between security of tenure and the achievement of the goal of access to adequate housing for all, the fact remains that security of tenure often remains under-emphasized 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 (see Box III.1).

Thus, the following questions arise: is the renewed focus on tenure a comprehensive enough approach to solve the global housing crisis? Can security of tenure alone be considered an adequate response to the massive growth of slums and illegal settlements in the world's cities? Is the focus on security of tenure likely to be effective in a world where states refuse or are unable to allocate the funds required to house the poor majority? If we focus on security of tenure, which type of tenure provides the best and most appropriate forms of protections? Can a focus on tenure by policy-makers, without a corresponding emphasis on infrastructure improvements, service provision and proper planning, actually yield desirable results? And perhaps the most contentious questions of all: what is the proper role of the state within the housing sector, and is the growing global initiative in support of secure tenure, in practical terms, a sufficient response to the broader aim of adequate housing and housing rights for all? These and related questions are explored in the chapters that follow.

NOTES

- 1 Habitat Agenda, para 40(b).
- 2 UN-Habitat, 2006e, p94.
- 3 UN-Habitat, 2006e.
- 4 World Bank, 2003b, p8.

SECURITY OF TENURE: CONDITIONS AND TRENDS

Security of tenure is a basic attribute of human security in general

Access to land and security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable human settlements... It is also one way of breaking the vicious circle of poverty. Every government must show a commitment to promoting the provision of an adequate supply of land ... governments at appropriate levels ... should ... strive to remove all possible obstacles that may hamper equitable access to land and ensure that equal rights of women and men related to land and property are protected under the law.¹

Few issues are as central to the objective of adequate housing for all as security of tenure. While approaches towards achieving this objective vary widely, it is clear that 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. Those on the political 'Left' and those on the political 'Right' may have very different views on how, and on the basis of which policies, security of tenure can best be enjoyed by increasingly large numbers of people. Yet, very few disagree about the central importance of tenure security to the broader question of housing, slum improvement and, increasingly, the protection and promotion of human rights. Indeed, the United Nations has long and consistently expressed its concerns in this regard, repeatedly urging that special attention should be paid to improving the access of the poor to land and housing with secure tenure.²

And, yet, despite this widespread agreement, security of tenure remains extremely fragile for hundreds of millions of the urban and rural poor. Furthermore, 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. A number of additional factors contribute to these deteriorating conditions, including the rapid and continuing growth of informal

settlements and slums; structural discrimination against women, indigenous peoples and others; and displacement caused by conflict and disaster. If these global *de facto* realities are contrasted against the clear normative framework elaborating rights to secure tenure, the world faces nothing less than a severe security of tenure crisis. With more than 200,000 slums existing today globally,³ mostly located across the cities of developing countries, and with nearly 80 per cent of urban dwellers in the least-developed countries living as residents of such slums, then questions of tenure security are daily concerns affecting well over one fifth of humanity.⁴

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. It is true that many housing and urban researchers, as well as local and national government officials, do not initially view tenure concerns necessarily as an issue of human rights. Yet, the human rights movement – judges, United Nations bodies, lawyers, non-governmental organizations (NGOs), community-based organizations (CBOs) and others – have increasingly embraced and considered tenure security. This, coupled with 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 effort and approach by the global housing community, on the one hand, and the human rights community, on the other. Although the formal links between security of tenure and human rights comprise a reasonably recent policy development, the link between human rights and tenure issues stretches back to the first United Nations Conference on Human Settlements (Habitat) in Vancouver (Canada) in 1976.⁵

Thus, it appears that the difficulties faced by many within the human rights field to fully appreciate the human rights dimensions of poverty, slum life and displacement – as well as the sometimes naive and biased views on the appropriate role of law in human settlements – seem increasingly to be issues of the past. This emerging convergence between fields traditionally separated by artificial distinctions has generated a series of truly historical developments in recent years which, if continued and expanded, could arguably

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bring the objective of security of tenure for all closer than ever to universal fruition. If a balance can be struck between those favouring free market, freehold title-based solutions to insecure tenure and those who view security of tenure both as an individual and group right, as well as a key component in any effective system of land administration and land registration and regularization, it may be possible to envisage a future of much improved tenure security for the urban poor.

Indeed, viewed through the lens of human rights, among all elements of the right to adequate housing, it is clearly the right to security of tenure that forms the nucleus of this widely recognized norm. 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 consideration of security of tenure in terms of human rights implies application of an approach that treats all persons on the basis of equality. While it is true that all human rights are premised on principles of equality and non-discrimination, viewing security of tenure as a human right (rather than solely as a by-product of ownership or the comparatively rare cases of strong protection for private tenants) opens up the realm of human rights not merely to all people, but to all people of all incomes and in all housing sectors.

The rights associated with ownership of housing or land tend, in practice, to generally offer considerably higher – and, thus, in legal terms, more secure levels of tenure – protection against eviction or other violations of housing rights than those afforded to tenants or those residing in informal settlements. Thus, the right to security of tenure raises the baseline – the minimum core entitlement – guaranteed to all persons by international human rights standards. While security of tenure cannot always guarantee that forced evictions will be prohibited *in toto* (particularly in lawless situations of conflict or truly exceptional circumstances), perhaps no other measure can contribute as much to fulfilling the promise of residential security and protection against eviction than the conferral of this form of legal recognition.

Examining security of tenure simultaneously as both a development issue and as a human rights theme clearly reveals the multilevel and multidimensional nature of this status and how it relates to people at the individual or household level, the community level, the city level, and at the national and international levels.

This chapter provides an overview of the main conditions and trends with respect to tenure security in urban areas today. It provides a brief outline of various types of tenure, of variations in the levels of tenure security and a discussion of the problems of measuring tenure security. This is followed by an analysis of the scale and impacts of tenure insecurity and various types of evictions. The last sections focus on groups who are particularly vulnerable to tenure insecurity, and the reduction in tenure security often experienced in the aftermath of disasters and armed conflict.

TYPES 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.⁶ In practice, however – and, in particular, with respect to the development of policy – it may be more useful to acknowledge the wide variation in tenure categories that exist globally. Table 5.1 provides an overview of the many forms that tenure (each with varying degrees of security) can take throughout the world.

The broad categories of tenure types identified in Table 5.1 reveal the complex nature of tenure and why simple answers to the question of how best to provide security of tenure to everyone is a complicated process. One-size-fits-all policy prescriptions concerning security of tenure simply do not exist. It is correct and true to assert that all should have access to secure tenure; but determining precisely how to achieve this objective is another story all together.

Box 5.1 presents a brief overview of the variation of tenure categories typically available to the poor in urban areas of developing countries, differentiating between the formality of settlements and the physical location in the city. Yet, the common denominator for most of these tenure categories is inadequate degrees of tenure security.

It is important to note that no one form of tenure is necessarily better than another, and 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 yield favourable results. While complicated from a purely housing policy perspective, it is perhaps even more so from the perspective of human rights. For if human rights protections are meant to be equitable, non-discriminatory and accessible to all, and often capable of full implementation with a reasonably clear set of legal and policy prescriptions, this is certainly not always the case with regard to security of tenure. It can be done; but failing to realize the complex nature of tenure in any effort designed to spread the benefits of secure tenure more broadly is likely be detrimental both to the intended beneficiary and policy-maker alike.

When security of tenure ... is threatened or simply non-existent, the full enjoyment of housing rights is... impossible

One-size-fits-all policy prescriptions concerning security of tenure simply do not exist

No one form of tenure is necessarily better than another

Table 5.1

A general typology of land tenure and property rights

Source: adapted from Payne, 1997, pp52–54

Customary rights	
Tribal/collective	Members of the group or tribe controlling customary land may be entitled to a variety of rights, such as access, occupation, grazing and development, but not transfer; this can be undertaken only by the group as a whole or its accepted leaders. While rights can usually be inherited, land cannot be used as collateral for loans to individual group members.
Stool land	Allocation by chiefs of unused land near an existing settlement; common in southern Ghana. Access depends upon the chief's approval; secure.
<i>Ejidal</i> land	Land controlled either by a group of people, as in Mexico, or a co-operative.
Individual	In a few cases, as in Burundi and Burkina Faso, customary rights to a family plot may acquire a status akin to individual title. They normally revert to corporate status, however, on the death of the original owner.
Ground rent (e.g. <i>hekr</i>)	The charges made for long-term lease of undeveloped land, often by large landholders, who obtained their rights through grants made under feudal concepts. It is also used for any situation in which the rent is payable on the land as distinguished from rent payable on the building. Under the Ottoman Land Law of 1858, it enabled farmers and others to settle and develop unused land for the payment of a ground rent, or <i>hekr</i> , on registration of a claim. Secure where traditional writs still apply, but less so where active land markets operate.
Private tenure categories	
Unlimited duration (e.g. freehold, dominium, <i>mulk</i>)	Provides for full ownership of unlimited duration and the right to free enjoyment and disposal of objects providing that they are not in any way contrary to laws and regulations. The only restriction is normally that of 'eminent domain', where the state may acquire part or all of a property, provided that due process of law is observed and full compensation paid.
Finite duration (e.g. leasehold, individual)	Provides rights to the exclusive possession of land or property by the landlord (or lessor) to the tenant (or lessee) for a consideration or rent. Leases are normally for a specified period, which may vary from one week to 999 years. Long leases are practically indistinguishable from freehold, while shorter leases may be renewed subject to revised terms. The assignment of a lease by a lessee is normally permitted as with freehold.
Tribal/collective	As above, though usually for shorter periods to enable the terms and conditions to be revised in accordance with market trends.
Condominium	A form of 'horizontal ownership' common in multi-storey developments. Rights may be freehold or leasehold.
Leasehold, rent control	This form of tenure accords tenants full security and restricts the freedom of the freeholder or head leaseholder to increase rents more than a specified amount over a given period. It is extensive in cities with older high-rise apartments, such as Bombay. Since rents do not generate an economic return on investment, maintenance is often poor, and both residential mobility and new supply are limited. Key money may be required for properties that become available and this, in effect, restores a market value that can benefit outgoing tenants as much as the freeholder.
Public tenure categories	
Crown land	Originally intended to acquire for the Crown unused or unclaimed land in parts of British, Spanish, Portuguese and other colonies. Such lands were often extensive (e.g. half the land of Buganda), and were allocated to European settlers and companies with freehold or long leases.
State land	This is not significantly different from Crown land. In private domain, state land may be placed on the market through the award of leases. In public domain, state land is retained by the state for use by public organizations. It is widely used for forests, military camps, roads and other natural resources; but in Namibia, for example, it also applies in urban areas.
Public land	This consists of land acquired by government for public purposes. Compensation may be paid in acquiring it from other owners or those with rights, and sometimes acquisition is simply to enable land to be developed and/or reallocated as freehold or leasehold.
Occupancy certificates	Also known as 'certificates of rights' or ' <i>permit d'habitation</i> ', originally introduced by colonial administrations as a device to deny local populations freehold tenure and to enforce racial segregation. More recently, used by independent governments as a means of providing 'allottees' on housing projects with security of tenure, while restricting the development of freehold land and property markets.
Land record rights	Memorandum of an oral agreement between a local authority and an occupant. Provides for loans to develop the site, providing the occupant pays all dues and builds in conformity to official standards. Duration normally specified.
Islamic tenure categories	
<i>Mulk</i>	Land owned by an individual and over which he has full ownership rights. Most common in rural areas.
<i>Miri</i>	Land owned by the state and that carries <i>tassuruf</i> , or usufruct, which can be enjoyed, sold, let, mortgaged or even given away. Rights may also be transmitted to heirs (male or female), although the land cannot be divided among them. The state retains ultimate ownership and, if there are no heirs, such land reverts to the state. Also, the state retains the right of supervising all transactions pertaining to the transfer of usufruct rights and their registration.
<i>Musha</i>	Land owned collectively. It originates from the tribal practice of dividing up arable land on which the tribe settles its members and takes account of variations in land quality to ensure equality. Restricted in application to tribal areas with low population densities.
<i>Waqf</i>	Land held in perpetuity as an endowment by religious trusts and therefore 'stopped for God'. Originally established to ensure land availability for schools, mosques and other public buildings, it gradually became a means of keeping land away from extravagant heirs or acquisitive states.
Other formal tenure types	
Co-operatives	In most developing countries, these are often a device to share costs, and transfer is sometimes possible (although this does not conform to the international principles on co-operatives).
Shared equity/ownership	Not common in developing countries: the occupant buys part of the equity (30:70, 50:50, 60:40, etc.) from the freeholder and rents the remaining value. The proportion of mortgage repayments/rent can be amended at a later date, enabling the occupant to eventually acquire the freehold.
Housing association lease	Extensive in the UK, but not common in developing countries. Housing associations are non-profit organizations that provide and manage housing primarily for lower-income groups. Some also offer shared ownership. Tenancies are secure, providing rents are paid and other obligations are met.
Collective, shared or joint ownership	A small, but expanding, form of tenure in which a group pools ownership and allocates rights of alienation and price to a self-created organization. Well established in Ethiopia and Colombia, where it is used to combat external threats to security of tenure. A variation is the land pooling programmes of Thailand and the Philippines in which land parcels are re-subdivided to enable part of the plot to be developed in return for the settlers receiving security of tenure for an agreed share of the land and/or property.
Non-formal tenure types	
Squatter, regularized	Secure, possibly with services and access to formal finance; higher entry cost than before regularization.
Non-regularized	Security depends upon local factors, such as numerical strength and political support; low entry costs and limited services provision.
Tenant	Generally, the most insecure of all tenure categories and also the cheapest. A contract is unlikely. Minimal housing and services standards.
Unauthorized (or illegal) subdivisions	Land subdivision, without official approval, usually by commercial developers for sale to lower-income households seeking plots for house construction. May take place on public or private land. Now commonly the largest single tenure category in the urban areas of many countries. Legal status varies; but most occupants possess some form of title, such as the <i>hisseli tapu</i> or shared title, found in Turkey. Entry costs are usually modest due to efficient land development and refusal by developers to follow official standards and procedures. Commonly legalized and serviced after a period.
Unauthorized construction	Development on land that is legally occupied, but for which the occupant does not possess official permission to build. The offence is therefore technical or procedural, but may be classified as illegal. Security can, therefore, be less than indicated by the tenure status <i>per se</i> .
Unauthorized transfer	Widespread in public-sector projects, where original allottees transfer their rights, at a substantial profit, to another. The transfer is invariably not permitted by the allottee's contract, but is effected using a secondary contract or power of attorney, which is recognized in law. It is particularly common in Delhi. Secondary allottees are very rarely removed or punished, due to legal complications. Entry costs are relatively high as the transfer is used to realize the full market value for a subsidized unit.
Purchased customary land	In areas where customary tenure is subject to urbanization, such as Southern Africa and Papua New Guinea, illegal sales of land take place to both long-established residents and newcomers, usually kinsmen. Such sales do not enjoy legal or customary approval, but are increasingly accepted by all involved, providing occupants with security of tenure and even <i>de facto</i> rights of transfer.

Customary tenure arrangements

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.⁷ In some countries, the proportions are slightly different; yet, customary land remains by far the largest tenure sector (such as Botswana, where 72 per cent of land is tribal or customary, 23 per cent state land, and freehold some 5 per cent).

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. Thus, under customary tenure systems, rights to land may be characterized as:

- *User rights*: rights to use the land for residential or economic purposes (including grazing, growing subsistence crops and gathering minor forestry products).
- *Control rights*: rights to make decisions on how the land should be used, including deciding what economic activities should be undertaken and how to benefit financially from these activities.
- *Transfer rights*: rights to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.⁸

Rights are 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. However, this flexibility, as well, can be highly detrimental to the rights of poorer groups and great care must be taken in areas governed by customary land relations to ensure that these groups are adequately protected.⁹

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. This influx of migrants has frequently led to conflicts over the role of local chiefs, who traditionally allocate land to members of their community under well-established and officially recognized arrangements. It is not surprising that people living in such areas object to being considered illegal occupants of their land, even though they lack official titles to prove ownership. The inability of the local authorities or governments, as well as the unwillingness of the formal market to increase the supply of planned residential land at prices which the poor can afford, has perpetuated the dependence upon customary tenure arrangements. In many instances, urban sprawl into such areas has even led to the introduction of entirely new tenure arrangements.¹⁰

Box 5.1 Tenure categories for the urban poor

The table below outlines the main tenure options available to the urban poor. As the table indicates, most urban areas are comprised of an urban core and an urban periphery, both of which may be the location of both formal and informal neighbourhoods.

	Formal neighbourhoods	Informal neighbourhoods
Urban core	Tenements: <ul style="list-style-type: none"> • Hand-me-downs • Units built for the poor Public housing Hostels, flophouses	Squatters: <ul style="list-style-type: none"> • Authorized • Unauthorized Pavement dwellers
Urban periphery	Private rental housing Public housing	Illegal subdivisions: <ul style="list-style-type: none"> • Owner occupied • Rental Squatters: <ul style="list-style-type: none"> • Authorized (including site and service) • Unauthorized

In addition, it should be noted that in some cities camps for refugees and displaced persons complete the tenure picture.

In the urban core, most of the formal neighbourhoods outlined above do not provide the degrees of security of tenure envisaged under human rights law. Similarly, the informal areas may or may not provide for legal or quasi-legal security of tenure, although in many instances unofficial forms of security of tenure may be in place due to localized political agreements and expediency.

As with the urban core, some individuals residing in the periphery may enjoy a measure of legal or quasi-legal security of tenure; but the norm tends to be a combination of inadequate physical housing conditions coupled with inadequate degrees of tenure sufficiently strong to protect dwellers against forced evictions and secure and stable enough to encourage them to make the necessary investments in their own homes to improve conditions of housing adequacy.

Source: Davis, 2006a, p30

WHAT IS SECURITY OF TENURE?

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.

So, what is *security* of tenure? It has been described as:

*... an agreement between an individual or group [with respect] to land and residential property which is governed and regulated by a legal [formal or customary] and administrative framework. The security derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable.*¹¹

The security of the 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 preference. In effect, security of tenure may be summarized as 'the right of all individuals and groups to effective protec-

Customary systems of tenure are often more flexible than formal systems

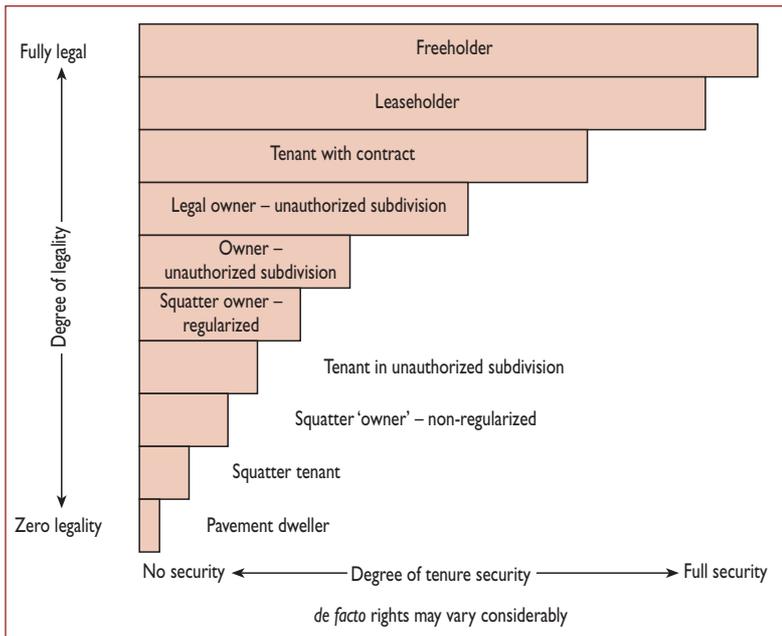


Figure 5.1

Urban tenure categories by legal status

Source: adapted from Payne, 2001e

Security of tenure often has as much to do with one's perception of security as the actual legal status

tion from the State against forced evictions'.¹² Under international law, forced eviction is defined as 'the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection'.¹³

While all persons reside with one or another form of tenure, not all tenure types are secure. Moreover, security is not necessarily only available through the formalization of tenure rights. As many analysts have asserted, 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 when, for instance, governments provide assurances against displacement or incorporate a neighbourhood within a special zone protected against evictions, such as is envisaged under the Brazilian City Statute (see Box 11.8 in Chapter 11). 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 5.1 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 5.1. 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. As noted above, the figure does not, for example, include customary or Islamic tenure categories, nor does it take into account other specific historical, political or other circumstances. Box 5.2 presents the variation of tenure categories in one specific location, Phnom Penh (Cambodia).

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. It is quite common in the developing world for informal settlements to be comprised of homes that possess varying degrees of tenure security, and that provide differing levels of rights to inhabitants depending upon a variety of factors. 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 have distinct degrees of tenure security/insecurity.

This discussion highlights the fact that security of tenure is a multidimensional, multilevelled process that is of universal validity, but which needs to be approached and acted on in a myriad of ways, many or all of which can be consistent with internationally recognized human rights. 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. While human rights law now clearly stipulates that security of tenure is a basic human right, ensuring that all who possess this right enjoy security of tenure remains a major challenge to governments and the broader international community.

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 on tenure security, or rather, in this case, different levels of tenure insecurity (see Box 5.3). Homelessness is quite often the outcome – for shorter or longer periods of time – when communities, households or individuals are evicted from their homes. However, due to the wide range of definitions of homelessness, general lack of data, and in particular comparative data, this Global Report does not include a specific discussion on the trends and conditions relating to homeless people.

Insecure tenure is not exclusively a problem facing those residing within the informal housing and land sector,

Box 5.2 Tenure types in Phnom Penh, Cambodia

In the case of Phnom Penh, nine types of tenure have been categorized, from the most to the least secure:

- 1 certificate of ownership;
- 2 certificate of possession;
- 3 government concession;
- 4 court order after dispute;
- 5 family registered book;
- 6 unauthorized occupation of private land;
- 7 unauthorized occupation of state private land;
- 8 unauthorized occupation of state public land; and
- 9 pavement/mobile dweller.

Source: Payne, 1997.

but also affects businesses and 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.

Measuring security of tenure

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 secure tenure; nor has it been possible to produce global comparative data on various institutional aspects of secure tenure.

At the same time, it should be recalled that the 156 governments¹⁴ that have voluntarily bound themselves to promote and protect the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which contains the most important international legal source of the right to adequate housing, including security of tenure, are currently required to submit reports 'on the measures which they have adopted and the progress made in achieving the observance of the rights recognized' in the Covenant.¹⁵ States are required to answer a range of specific questions on housing rights under a series of guidelines developed by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) to assist governments with their reporting obligations. Many of these questions are directly linked to security of tenure (see Box 5.4). Because the presentation of such reports is legally required of all states parties to the Covenant every five years, all governments bound by the Covenant should have in place the means and institutions required to collect comprehensive answers to these queries.

Although few, if any, governments actually collect statistics and other data on the many issues linked to security of tenure, it is clear that they are expected to do so. Yet, access to such information is vital in any society if policy and practice are to be successful in addressing realities on the ground. Placing greater emphasis on these legal duties of states could facilitate the collection of more comprehensive and reliable data on security of tenure. Among the initiatives that deserve some attention in this respect is that under-

Box 5.3 Defining homelessness

For statistical purposes, the United Nations has developed the following definition of homeless households:

households without a shelter that would fall within the scope of living quarters. They carry their few possessions with them sleeping in the streets, in door ways or on piers, or in any other space, on a more or less random basis.

In terms of national data collection, however, there is no globally agreed definition of homelessness. The result is that those (rather few) countries that are collecting data on homelessness tend to use their own (official and non-official) definitions, usually related to national legislation and policy legacies. In general, the definitions used range from narrow ones of 'rooflessness' – such as the one quoted above, embracing only those sleeping rough – to a wide range of 'broader' definitions which may include a variety of categories, based on the quality of dwellings, the risk of becoming homeless, time exposed to homelessness and responsibilities for taking alleviating action.

'Narrow' definitions are most commonly used in developing countries, while 'wider' ones are more commonly used in developed countries. Among the main reasons for this is the very fact that some of the wider definitions of homelessness used in some developed countries, i.e. defining all those 'inadequately housed' as being homeless, would categorize the vast majority of people in some developing countries as homeless.

Depending on definitions used, the following is a sample of the most common categories of conditions which may or may not be included in a given definition of homelessness: rough sleepers, pavement dwellers, occupants of shelters for homeless persons, occupants of institutions (such as persons in prisons or in long-term stays at hospitals), street children, occupants of un-serviced housing, occupants of poorly constructed and insecure housing (vulnerable sites, precarious tenancy), sharers (people who are 'doubling-up' with friends or relatives, when they really want a place for themselves), occupants of housing of unsuitable cost (i.e. people in danger of being evicted for non-payment), occupants of mobile homes, occupants of refugee and other emergency camps, itinerant groups (nomads, Roma, etc.).

Source: UNCHS, 2000b; United Nations, 1998

taken by the United Nations Housing Rights Programme (see Box 5.5).

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 no clear methodology on this yet which could produce robust information. UN-Habitat is currently collaborating with a range of partners to assess the limitations of a common monitoring strategy and to develop a common strategy for an operational method for measuring, monitoring and assessing security of tenure. In the meantime, and for global monitoring purposes, in response to its reporting responsibilities with respect to the Millennium Development Goals (MDGs), UN-Habitat has suggested that people have secure tenure when:

- There is evidence of documentation that can be used as proof of secure tenure status.
- There is either *de facto* or perceived protection from forced evictions.¹⁶

Whatever form a global system for monitoring security of tenure may eventually take, it should focus on the issues already identified by the CESCR with respect to security of tenure as a component of the right to adequate housing, as summarized in Box 5.4.

Secure tenure is an essential element of a successful shelter strategy

Box 5.4 Security of tenure: State party reporting responsibilities under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

All of the 156 states which have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) are legally required to report to the United Nations Committee on Economic, Social and Cultural Rights (CESCR), every five years, on the measures they have taken and the progress made in addressing the rights recognized in the Covenant. Among the more prominent questions which states are required to answer are the following:

Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:

- 1 the number of homeless individuals and families;
- 2 the number of individuals and families currently inadequately housed and without ready access to basic amenities, such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country); include the number of people living in overcrowded, damp, structurally unsafe housing or other conditions which affect health;
- 3 the number of persons currently classified as living in 'illegal' settlements or housing;
- 4 the number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;
- 5 the number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;

Source: United Nations Document E/C.12/1990/8, pp88–110

- 6 the number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists, as well as to assist those on such lists in finding temporary housing;
- 7 the number of persons in different types of housing tenure by social or public housing; private rental sector; owner-occupiers; 'illegal' sector; and others.

Please provide information on the existence of any laws affecting the realization of the right to housing, including ...

- 3 legislation relevant to land use; land distribution; land allocation; land zoning; land ceilings; expropriations, including provisions for compensation; land planning, including procedures for community participation;
- 4 legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc;
- 5 legislation concerning building codes, building regulations and standards and the provision of infrastructure;
- 6 legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;
- 7 legislation prohibiting any form of eviction ...
- 9 legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;
- 10 legislative measures conferring legal title to those living in the 'illegal' sector.

Box 5.5 Measuring the progressive realization of housing rights

The United Nations Housing Rights Programme is a joint initiative of UN-Habitat and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The programme was established in 2002 with the objective of supporting the efforts by governments, civil society and national human rights institutions towards the full and progressive realization of the right to adequate housing. Since its inception, the programme has focused on developing a set of housing rights indicators to facilitate monitoring and evaluating progress in achieving housing rights.

The development of indicators is grounded in the existing reporting responsibilities of states under international law (see Box 5.4) and the clarifications provided by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No 4. The activities have progressed to the development of a set of 12 housing rights indicators, which address habitability, accessibility to services, affordability, security of tenure, forced evictions, homeless populations, and legal and institutional frameworks. Furthermore, the principles for formulating a global monitoring and evaluation mechanism have been set out and will be used to test the set of indicators in a number of countries.

In the context of the ongoing reform of human rights frameworks and mechanisms within the United Nations system, this initiative seems to hold a lot of promise. In fact, the OHCHR is currently expanding this initiative and assessing the possibility of developing a more comprehensive set of indicators to streamline the reporting responsibilities of states with respect to a whole range of economic, social, cultural, civil and political rights.

Source: UN-Habitat, 2003e; UN-Habitat, forthcoming; United Nations document HRI/MC/2006/7

Realities underlying tenure insecurity

The continuing absence of real household and individual security associated with lack of security of tenure experienced in the world's growing slums and informal settlements has serious consequences for the enjoyment of human rights. But this insecurity does not stop at the doorway of the average slum dwelling. Rather, such insecurity increasingly manifests itself in the creation of conditions that may lead to more destructive forms of political instability. While there may be many other causes, questions of urban crime and insecurity, terrorism, political violence and turmoil cannot be de-linked from the fact that a large portion of humanity does not enjoy levels of security of tenure promised to them under human rights laws, political pronouncements, global campaigns and other initiatives devoted towards these ends.

The consequences of tenure insecurity are by no means peripheral concerns. Living without tenure security can mean the constant threat of (often violent) eviction; limited or no access to basic services, including water, sanitation and electricity; social exclusion and homelessness; human rights violations; reduced revenues for local government; violence against women; particularly severe problems for elderly persons, persons with disabilities, children and

other vulnerable groups; reduced investments in housing and distortions in the price of land and services; and an undermining of good governance and long-term planning. Moreover, reduced investments in housing may lead to reduced household and individual security in the home itself as structures become more prone to illegal entry by criminals. Indeed, governments that allow (or encourage) levels of tenure security to decline, that tolerate (or actively support) mass forced evictions, that fail to hold public officials accountable for such violations of human rights, and that place unrealistic hopes on the private sector to satisfy the housing needs of all income groups, including the poor, contribute towards the worsening of these circumstances. The result is even less tenure security and less social (and national) security.

If governments and global institutions are serious about security, then international security needs to be seen less as a question of military balances of power, unlawful acts of military aggression and politics through the barrel of the gun, and more as questions revolving around security at the level of the individual, the home and the neighbourhood. Such a perspective of security is grounded in human security, human rights and – ultimately – security of tenure. If governments long for a secure world, they must realize that without security of tenure and the many benefits that it can bestow, such a vision is unlikely to ever emerge.

SCALE AND IMPACTS OF TENURE INSECURITY

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. And the number of slum dwellers is projected to increase even further. Unless MDG 7 target 11 on improving the lives of at least 100 million slum dwellers by 2020 is achieved, the number of slum dwellers is projected to reach 1392 million by 2020 (see Table 5.2).¹⁷ In fact, if no firm and concrete action is taken, the number of slum dwellers may well reach 2 billion

by 2030.¹⁸ This dramatic increase in the global slum population should not come as a surprise to anyone, however. Nearly two decades ago, in 1989, a seminal work concluded:

*If present trends continue, we can expect to find tens of millions more households living in squatter settlements or in very poor quality and overcrowded rented accommodation owned by highly exploitative landlords. Tens of millions more households will be forcibly evicted from their homes. Hundreds of millions more people will build shelters on dangerous sites and with no alternative but to work in illegal or unstable jobs. The quality of many basic services (water, sanitation, waste disposal and healthcare) will deteriorate still further and there will be a rise in the number of diseases related to poor and contaminated living environments, including those resulting from air pollution and toxic wastes.*¹⁹

As indicated in Table 5.2, cities in developing countries are hosts to massive slum populations. The proportion of urban populations living in slums is highest in sub-Saharan Africa (72 per cent) and Southern Asia (59 per cent). 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 formal tenure security, or access to basic services such as electricity and water.

Table 5.3 provides rough estimates of the scale of urban tenure insecurity worldwide. While the data should be treated as indicative only, it does provide an approximation of the scale of various forms of tenure insecurity and regional variations. Table 5.3 indicates that more than one quarter of the world's urban population experience various levels of tenure insecurity, although it should be noted that the level of insecurity varies considerably. For example, many of the renters in developing countries may well have quite high levels of tenure security compared to renters in the slums of many developing countries. At the national

Reliable and comparative data on the scale of tenure insecurity are ... non-existent

More than one quarter of the world's urban population experience various levels of tenure insecurity

	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 5.2

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

Source: UN-Habitat, 2006e, pp188, 190

	Squatters (no rent)	Renters	Other	Total
Southern Africa	8	16	6	29
Rest of Africa	13	30	7	50
China	5	2	8	15
East Asia and Pacific, excluding Australasia	7	26	9	41
South and Southeast Asia	14	31	5	50
Middle East	8	28	6	42
Western Europe	2	19	4	25
North America and Australasia	1	10	4	16
Latin America and the Caribbean	11	17	6	34
World	7	17	4	28

Urban tenure insecurity, by region (percentage)

Source: Flood, 2001

level, the pattern is the same, with between 40 and 70 per cent of the population of Brazil's main cities living in irregular settlements and some 58 per cent of all households in South Africa living without security of tenure.²⁰

The situation in Cambodia deserves some special attention since everyone who returned to Phnom Penh after the collapse of the Khmer Rouge regime was a squatter:

In 1979, when people first began to emerge from the jungle into an empty, dilapidated city, they camped out in empty buildings and lit open fires to cook their rice. When all the houses and flats had been occupied, newcomers built shelters wherever they could find space, along river banks and railway tracks, on streets, in the areas between buildings and on rooftops.²¹

To formalize this situation and provide the residents with security of tenure, a new Land Law was adopted in 1992 and

Urban spatial growth ... have resulted in ... displacement of farmers, illegal land seizures and growing tenure insecurity

revised in 2001. As a result, any person who had enjoyed peaceful, uncontested possession of land for no less than five years prior to the promulgation of the law had the right to request a definitive title of ownership.²²

Having the right to request a definitive title and actually getting title are, however, two quite different things. Furthermore, many residents – particularly the poor – may qualify for title under the law but are unaware both of their status and of the procedures for requesting title. While various organizations have been working to increase that awareness, they do not have the resources to reach all of the country's families facing eviction. Even for those who are aware of their rights to possession and who can make a claim, there are further obstructions: 'Corruption has also made land titles difficult to obtain; an application for a land title can cost from US\$200 to \$700 in informal payments to government officials, a cost that is prohibitive for many.'²³ And then, even where people are aware of their rights, have made their claim and have received official documents to this effect, this does not mean that they have any security of tenure. A half-hour television documentary broadcast in Australia in October 2006 exemplified the insecurity faced by many urban residents in Cambodia (see Box 5.6).

In much of the developing world, it is not solely cities that are host to households without security of tenure. In rural areas, agricultural land provides the sole basis of income for more than half a billion people. About half of these suffer some form of serious tenure insecurity due to their status of tenant farmers, because they are landless, or due to incomplete and dysfunctional land administration systems not suited to the prevailing circumstances.²⁴ In addition, rapid economic development – leading to urban spatial growth – in countries such as China (see Box 5.7) and India have resulted in massive losses of farmland and the subsequent displacement of farmers, illegal land seizures and growing tenure insecurity. With particular regard to China, from the mid 1980s onward, large swathes of rural land near cities and towns have effectively entered the urban land market, threatening security of tenure to land and housing.²⁵ Between 1986 and 1996, 31 cities in China expanded their land area by some 50 per cent, most of this former farmland.

Security of tenure problems are by no means isolated to the developing world, and while they may manifest in fundamentally different ways, declines in security of tenure are visible in many of the wealthier countries (see Box 5.8). 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.²⁶ In the US, millions of tenants do not have adequate levels of secure tenure 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.²⁷ According to official figures, some 25,000 evictions are carried out annually in New York City alone.²⁸ The *Economist* publishes annual figures outlining housing price developments in a range of countries, indicating the upward trend over the past 15 years which, although

Box 5.6 When is tenure secure? The eviction of the Group 78 community in Phnom Penh, Cambodia

Residents of the Group 78 community in Phnom Penh had been living in the same location since the mid 1980s and had proof of their continuous 'peaceful and uncontested possession' of the land, as specified in Article 30 of the 1991 Land Law. Many of the residents had documents issued by the local authorities recognizing their legal occupation of the land. They thus clearly met the requirements of the Land Law. Yet, when they applied for formal title to the land in 2004, their applications were refused. They thus lodged their case to the National Cadastral Commission and the National Authority on Land Dispute Resolution. The verdict was negative. Their application was refused as their land was needed to 'contribute to city beautification and development'. The Group 78 residents were informed by the local authorities in June 2006 that they would have to move to a resettlement area on the outskirts of the city.

While the Land Law does provide for expropriation of land for the public interest, 'it is doubtful whether the purported reason of "beautification" could fulfil this requirement. If acceptable, such vague wording would render the public interest test meaningless.' A more likely explanation may have been that the evictions were related to the increasing value of their land. With land prices soaring, increasing sevenfold since the year 2000, the potential for corruption is considerable. The US ambassador to Cambodia made the following observations:

There's too many land disputes, too many rich people, greedy companies. Property is really the key to prosperity and freedom and once people are not secure in what they own, everything else falls apart... Corruption is central to everything, at all levels. I don't know of any case of where a corrupt official has really gone to gaol here – certainly not from the ruling party.

Source: ABC TV, 2006; Bristol, 2007a

Box 5.7 Increasing tenure insecurity in China

It is not surprising that a low-income country with as huge and diverse a land mass and population, and a history of tumultuous political and economic change, as China would be afflicted with problems stemming from insecure tenure. It is, nonetheless, surprising how quickly China has evolved from a country with relatively secure tenure for all during most of its history to the opposite during the last decade.

China's largely successful transition to a highly globalized mixed economy from a minimally open-command economy during the years since the Four Modernizations were announced in 1978 has much to do with this: land has become a scarce commodity. Prices now more accurately – if still incompletely – reflect the expected return on investment to alternate uses. Land prices have risen dramatically during the past decade, while the development of the legal and administrative infrastructure governing the allocation, transfer and conversion of rural and urban land has only just begun to adapt itself to existing and emerging economic pressures. As urban and industrial development have expanded westward during the past decade, problems of insecure tenure that were originally found only in the fast growing coastal cities and their suburbs can now be found throughout the country. Various groups of dwellers are particularly susceptible to insecurity of tenure to housing in China. These include:

- Farmers, whose insecurity of livelihood in the countryside forces them to migrate to the cities in search of income-

earning opportunities. Lacking an urban residence permit, and in the absence of policies supportive towards rural migrants, their security of tenure to housing remains tenuous, at best. Approximately 120 million to 150 million migrant workers live in major metropolitan centres for a large part of the year.

- Former state-sector workers who have been laid off (*xiagang*) or paid off (*maiduan*) by their employers and are living in original 'welfare' housing that they bought from their employer during earlier housing reforms.
- Non-state sector workers holding urban residence permits whose incomes do not allow them secure tenure to housing. These may be long-term city-centre residents who are, or were, employed in either collective or informal enterprises and who have been renting or subletting affordable housing from private parties or local authorities.
- Registered and non-registered urban residents of informal settlements (*chengzhongcun*), dangerous or dilapidated housing (*weijufangwu*), or housing constructed illegally or without conforming to building codes (*weifaweiguifangwu*).
- Urban workers with adequate incomes and/or political resources to maintain access to adequate housing in the event that their property is expropriated and demolished under the force of 'eminent domain'.

Security of tenure problems are by no means isolated to the developing world

Source: Westendorff, 2007

now moderating in many countries, has resulted in increasing numbers of people being unable to access the owner-occupation sector, particularly in city centres.²⁹

These various examples, of course, are a mere sampling of the degree to which security of tenure is not a reality for so many throughout the world today, in rich and poor countries alike. The scale of insecure tenure and the growing prevalence of inadequate housing conditions and slums are clearly daunting in nature and will require considerably larger and better resourced efforts than the world has witnessed to date. While political and economic interests and a range of other causes lie at the heart of the global security of tenure deficit today, the very nature of tenure itself contributes to the difficulties in building a clear global movement to ensure that all can live out their lives with secure tenure.

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

Box 5.8 Erosion of tenure protections in Canada

During the last decade, security of tenure regulations – which is a provincial government responsibility – have been eroded in many of Canada's ten provinces. In Ontario, for example, the largest province with about 40 per cent of Canada's population, 'the entire 50-year evolution of security of tenure legislation was wiped off the statute books in the late 1990s'. In Ontario in 1998, the Tenant Protection Act repealed and replaced the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act.

The previous legislation had allowed municipalities in Ontario to refuse permission for the demolition or conversion of rental apartment buildings until the rental housing supply and affordability crisis had passed. The adoption of the Tenant Protection Act repealed this provision, and it was replaced by provisions for 'vacancy decontrol'. In practice, the new legislation implies that when a unit is vacated, the rent on the unit can be set at any level: 'This accounts for the steep increases in rents, far outpacing tenant incomes.'

Another important feature of the Tenant Protection Act was that it allowed for quick and easy evictions: a tenant has five days during which to reply to an eviction notice. If tenants do not reply (i.e. they were away or did not realize that they have to submit a written intention to dispute, or if they have language problems or other pressing issues), the landlord can obtain a default order that does not require a hearing. A review of the impact of the legislation found that over half of eviction orders (54 per cent) were issued as the result of a default order. The Tenant Protection Act resulted in the number of eviction orders in the City of Toronto increasing from about 5000 at the time of the new legislation to a peak of 15,000 in 2002. Not all orders result in an eviction. The estimate is that about 3900 tenant households (about 9800 persons) are evicted annually in Toronto as a result of the Tenant Protection Act.

Source: Hulchanski, 2007

At least 2 million people are victims of forced evictions every year

Forced evictions are often accompanied by the use of excessive force ..., such as arbitrary arrests, beatings, rape, torture and even killings

section outlines the scale and impacts of three major categories of evictions: forced evictions; market-based evictions; and expropriation and compulsory acquisition. The categories are not mutually exclusive, and the real causes underlying the evictions may be very similar. For example, many cases of so-called 'expropriation for the common good' may well be a convenient way of getting rid of communities who are considered as 'obstacles to development'. Three major causes of large-scale evictions are also discussed below.

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, 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.³⁰

Forced evictions are the most graphic symptom of just how large the scale of tenure insecurity is and how severe the consequences can be of not enjoying tenure rights. Table 5.4 charts a portion of the eviction history during the last 20 years, revealing that forced evictions have often affected literally hundreds of thousands of people in a single eviction operation. The three most common types of large-scale forced evictions – urban infrastructure projects, international mega events and urban beautification – are discussed later in this chapter. 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.

While forced evictions are certainly the exception to the rule when examining governmental attitudes to informal settlements, it is clear that this practice – though widely condemned as a violation of human rights – is still carried out on a wide scale in many countries. Despite the repeated condemnation of the practice of forced evictions, millions of dwellers are forcibly evicted annually, with hundreds of millions more threatened by possible forced eviction due to their current insecure tenure status and existing urban and rural development plans that envisage planned forced evictions. 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, over the last decade, collected information about eviction cases from all over the world (see Table 5.5). Its data is not comprehensive since it collects data from a limited number of countries only, and only on the basis of information received directly from affected persons and groups and where the cases at hand are particularly noteworthy. Yet, the data indicates that at least 2 million people are victims of forced evictions every year. The vast majority of these live in Africa and Asia.

Despite the numerous efforts by those in the international human rights community to prevent evictions, the many initiatives to confer secure tenure to slum dwellers and the simple common sense that forced evictions rarely, if ever, actually result in improvements in a given city or country, this practice continues, and is often accompanied by the use of excessive force by those carrying out the evictions, such as arbitrary arrests, beatings, rape, torture and even killings. In a selection of forced evictions in only seven countries – Bangladesh, China, India, Indonesia, Nigeria, South Africa and Zimbabwe – between 1995 and 2005, COHRE found that over 10.2 million people faced forced eviction during this ten-year period.

While all regions have faced large-scale forced evictions, Africa has perhaps fared worst of all during recent years. A new study reveals that the practice of forced evictions has reached epidemic proportions in Africa, with more than 3 million Africans forcibly evicted from their homes since 2000.³¹ Some of the cases highlighted in that and other studies include the following:³²

- In Nigeria, some 2 million people have been forcibly evicted from their homes and many thousands have been made homeless since 2000 (see Box 5.9). The largest individual case occurred in Rainbow Town, Port Harcourt (Rivers State) in 2001, when nearly 1 million residents were forcibly evicted from their homes. In Lagos, more than 700,000 people have been evicted from their homes and businesses since 1990.³³

Table 5.4

A selection of major urban eviction cases since 1985

Source: COHRE (www.cohre.org/evictions); Davis, 2006a, p 102

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	Harare (Zimbabwe)	750,000

Table 5.5

Estimated number of people subjected to forced evictions by region

Source: COHRE, 2002, 2003, 2006

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.

- In Sudan, more than 12,000 people were forcibly evicted from Dar Assalaam camp in August 2006. The majority of the evictees had been previously displaced through conflict in Sudan and settled in camps in or around the capital, Khartoum. Authorities have forcibly evicted thousands of people from these camps, resettling them in desert areas without access to clean water, food and other essentials. Currently, there are about 1.8 million internally displaced persons (IDPs) in and around Khartoum.³⁴
- In Luanda, the capital of Angola, at least 6000 families have been forcibly evicted and have had their homes demolished since 2001. Many of these families, who have received no compensation, have had their property stolen by those carrying out the forced evictions and remain homeless.
- In Equatorial Guinea, at least 650 families have been forcibly evicted from their homes since 2004, when the government embarked on a programme of urban regeneration in Malabo and Bata. What is even more disturbing is that these families had title to their property. Thousands more residents are threatened by forced evictions.
- In Kenya, at least 20,000 people have been forcibly evicted from neighbourhoods in or around Nairobi since 2000.
- In Ghana, some 800 people also had their homes destroyed in Legion Village, Accra, in May 2006, while approximately 30,000 people in the Agbogbloshie community of Accra have been threatened with forced eviction since 2002.

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, which broke new ground when it held that Nigeria's:

...obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies. The right to shelter even goes further than a

*roof over one's head. It extends to embody the individual's right to be let alone and to live in peace – whether under a roof or not.*³⁵

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

Forced evictions has reached epidemic proportions in Africa

Box 5.9 Forced evictions: A sample of cases from Nigeria

During the last two decades it appears as if forced evictions have been extensively used in Nigeria as a 'tool of urban engineering' in a (largely counterproductive) effort to eliminate the growth of slums. Poverty and lack of basic services and amenities have been cited as justification for the demolition of entire communities:

- When the government of Lagos State in July 1990 demolished the homes of over 300,000 Maroko residents, it claimed that the community was prone to flooding and 'unfit for human habitation'.
- When the government of Rivers State forcibly evicted over 1 million Rainbow Town residents in 2001, it claimed that the community harboured too many criminals.
- When the government of Lagos State forcibly evicted and burned the homes of over 3000 Makoko residents in April 2005, it claimed that it was helping some private citizens to flush out undesirable squatters.
- The forced eviction of thousands of residents in Abuja by the Federal Capital City Development Authority has been presented as an effort to correct distortions to the Abuja Master Plan.
- The Lagos State government's persistent efforts to forcibly evict the Ijora-Badia community have been explained by the need to rid the community of filth, flooding and prostitution (see Box 6.21).

Additional recent cases of forced evictions have been reported from:

- Aboru Abesan, in Ikeja (Lagos State), where at least 6000 residents were rendered homeless when their homes were demolished by officials of the Federal Ministry of Housing and Urban Development in January 2005;
- Agip Waterside Community in Port Harcourt, where 5000 to 10,000 people were rendered homeless between February and April 2005 when the Rivers State government demolished their homes.

Source: COHRE, 2006, p26; Morika, 2007

Market-based evictions ... are increasing both in terms of scale ... and as a proportion of the total ... eviction tally

Market-driven displacements may also result from in situ tenure regularization, settlement upgrading and basic service provision

Market evictions ... can easily generate new homelessness and new illegal settlements

position taken on these questions under human rights law may be one way that a new approach to tenure can be encouraged, particularly when these evictions are carried out in ways clearly contrary to human rights law. Reducing or eliminating what are often referred to as 'market evictions', however, presents another set of challenges.

Evictions of those working in the informal economic sector have been registered in a range of countries. *Operation Murambatsvina* (also referred to as *Operation Restore Order*) in Zimbabwe resulted not only in the demolition of housing, but in mass evictions of informal traders as well, which, in turn, drastically increased unemployment and further undermined both the formal and informal economies in the country (see also Box 5.14). Additional large-scale evictions of informal enterprises have been reported in Bangladesh, where at least 10,868 homes and businesses were demolished in 2004, and in Nigeria, where some 250,000 traders, kiosks and residences were destroyed in 1996.³⁶

Market-based evictions

*Moralists used to complain that international law was impotent in curbing injustices of nation-states; but it has shown even less capacity to rein in markets that, after all, do not even have an address to which subpoenas can be sent. As the product of a host of individual choices or singular corporate acts, markets offer no collective responsibility. Yet responsibility is the first obligation of both citizens and civic institutions.*³⁷

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. To cite a not untypical case, it has been estimated that some 80 per cent of households in Kigali, Rwanda, are potentially subject to expropriation or market-driven evictions.³⁸ 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 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 in the eyes of 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. However, one view suggests:

*Disguising a forced eviction as a 'negotiated displacement' is usually seen as 'good governance' practice. It is less risky, in political terms, than a forced eviction; it is less brutal and, accordingly, less visible as it can be achieved following individual case-by-case negotiations. Most observers consider that the very principle of negotiating is more important than the terms of the negotiations, especially regarding the compensation issue, even when the compensation is unfair and detrimental to the occupant.*³⁹

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. Because one's informal tenure status may limit evictees from exercising rights to compensation and resettlement if they are subjected to market evictions, these processes can easily generate new homelessness and new illegal settlements. 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 on 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

International human rights standards, intergovernmental organizations, a growing number of governments and many NGOs have embraced the view that forced eviction – or, for that matter, virtually every type of arbitrary or unlawful displacement – raises serious human rights concerns and should be excluded from the realms of acceptable policy. Yet, all states and all legal systems retain rights to expropriate or compulsorily acquire private property, land or housing (e.g.

Box 5.10 Expropriation and compulsory acquisition: Examples of constitutional provisions

The 1957 Constitution of Malaysia states that 'No person shall be deprived of property save in accordance with law' and that 'No law shall provide for the compulsory acquisition or use of property without adequate compensation' (Articles 13(1) and 13(2)).

Similarly, the 1960 Constitution of Nigeria asserts that:

No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that (a) requires the payment of adequate compensation therefore; and (b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria. (Article 31(1))

A different, more nuanced, approach is taken in the 1996 Constitution of South Africa, which is formulated as follows (Article 25):

- 1 *No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*
- 2 *Property may be expropriated only in terms of law of general application:*
 - (a) *for a public purpose or in the public interest; and*
 - (b) *subject to compensation, the amount of which and the time and manner of payment*

of which have either been agreed to by those affected or decided or approved by a court.

- 3 *The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:*
 - (a) *the current use of the property;*
 - (b) *the history of the acquisition and use of the property;*
 - (c) *the market value of the property;*
 - (d) *the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and*
 - (e) *the purpose of the expropriation ...*
- 5 *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*

This very carefully worded constitutional provision is indicative of how human rights principles in South Africa have taken on added significance within the context of the recognition of property rights. The provisions attempt to ensure that those holding customary rights will enjoy protection, while reference to the 'history of its acquisition' was enshrined to ensure that land restitution rights emerging from apartheid-era racist land confiscations would not be ignored.

by using the force of 'eminent domain'). Typically, these rights of state are phrased in terms of limitations on the use of property. Box 5.10 provides some examples of how national constitutions allow for the expropriation of private property, provided that such expropriation is undertaken 'in accordance with the law'. Similar provisions are found in all jurisdictions, and even the Universal Declaration of Human Rights includes similar perspectives.

This essential conflict between the right of the state to expropriate and to control the use of property and housing, on the one hand, and land and property rights (including security of tenure), on the other, remains a vitally important issue.⁴⁰ For it is in determining the scope of both the rights of individuals and those of the state that it is possible to determine which measures resulting in eviction are truly justifiable and which are not. 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 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.

Once again, 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. Recent examples from China exemplify how expropriations 'for the common good' may be misused (see Box 5.11). A fictional case from Australia (see Box 5.12) exemplifies how such expropriations may be successfully challenged in court.

Major causes of large-scale evictions

While the previous sections have discussed the main categories of evictions, this section now takes a closer look at three of the most common causes of large-scale evictions – namely, infrastructure projects, international mega events and urban beautification initiatives.

Expropriation ... is subject to increasingly strict criteria ... to determine whether or not they are lawful

Box 5.11 Urban growth causes large-scale rural land seizures and relocations in China

Rapid urban growth in China is a major cause of forced evictions and development-related relocations of farmers or other rural dwellers as cities expand into what were previously rural areas. In addition to the development of new infrastructure, three other major causes of such evictions have been highlighted:

Economic development zones

During the early 1990s, many urban authorities set out to replicate the efforts of Shenzhen, Xiamen, Shantou and other successful export processors to attract foreign investment. This resulted in a massive investment in new 'economic development zones'. By 1996, within the areas requisitioned for construction of the zones, approximately 120,000 hectares of land remained undeveloped for lack of investment. Roughly half was agricultural land, of which half could not be converted back to agricultural use. Proper compensation to the farmers was often ignored. Nevertheless, the number of economic development zones continued to grow, exceeding 6000 by 2003. Among these, 3763 had already been ordered shut down after a series of investigations begun in the same year revealed that they had been set up on illegally seized farmland. More closures may result as investigations are pending for many of the remaining more than 2000 zones.

University cities

These are a recent variant of economic development zones in which local authorities and university officials take over suburban agricultural land for the construction of new educational and research facilities. For city officials who preside over the installation of such facilities, demonstrating that they are able to do things on a grand scale while significantly pumping up local gross domestic product is key to gaining promotions. For universities, the

attractions include economies of scale in shared educational facilities and urban networks; modernized physical plants; expanded enrolment capacity; and, typically, an opportunity to raise revenue through real estate projects within the zones. By the end of 2003, the 50 university cities already established occupied land surface equal to 89 per cent of the land occupied by all of the other universities in the country. In one of the most egregious land grab cases of this kind, city and provincial officials of Zhengzhou acquired nearly 1000 hectares of agricultural land without payment. They also hid their actions from the city office of the State Bureau of Land and Resources, from whom they were bound by law to seek approval of their planned action. Once caught in the fraud, Zhengzhou city officials directed the city office (of land and resources) to help cover up continuing efforts to bring their project to fruition. Within nine months of acquiring the land, city officials completed construction of the facilities and moved in five universities. Apparently, local officials could count on success: three other university cities had already been built in Zhengzhou City.

Villa and golf course complexes

Exclusive residential complexes have sprung up in the suburbs of China's large cities, and many of the country's 320 golf courses are among their chief amenities. Indeed, the world's largest golfing complex, Mission Hills, is sited just outside the city of Shenzhen, adjacent to Hong Kong. According to official sources, among the first 200 courses completed, only a dozen were built legally. In November 2004, the Ministry of Land and Natural Resources classified golf courses among 'the five most egregious examples of illegal land seizures in China, noting that nearly a third of the land was taken improperly and that compensation had not been paid'.

Source: Westendorff, 2007

Box 5.12 The epic struggle of the Kerrigan family

The popular 1997 Australian cult classic film *The Castle* tells the fictional story of the Kerrigan family and their epic suburban struggle to resist the compulsory acquisition of their home. Through the inimitable legal tactics of solicitor Dennis Denudo and QC Lawrence Hammill, the High Court eventually decides in favour of the Kerrigans and other neighbours similarly threatened with looming eviction, and their tenure remains secure and intact.

While the story that unfolds in *The Castle* is surely one of the best housing rights tales to be told on the big screen, this story of household resistance to expropriation by a small group of homeowners against far more powerful corporate interests is, unfortunately, the exception to a larger global rule: housing or residential justice still all too rarely prevails, even when human rights principles are raised with such eloquence before the highest courts in the land.

Yet, the very fact that such a story became a very popular movie in Australia, with a wide audience, exemplifies how housing rights and the freedom from threats of forced evictions are increasingly being acknowledged around the world. The movie also made important links to the dispossession of Aboriginal populations from their lands and the encroaching powers of big business to move ordinary people from their homes against their will.

■ Infrastructure projects

As noted above, forced evictions continue to affect millions of people every year and cause considerable human suffering, resulting in what are often gross and systematic human rights violations. Infrastructure projects, in particular, seem to be a major cause of forced evictions. One observer has noted that 'the word infrastructure is the new code word for the unceremonious clearance of the fragile shelters of the poor'.⁴¹ The number of people forcibly evicted by dams in India alone since 1950 has been estimated at 50 million.⁴² Similarly, in China, using government figures, it has been estimated that reservoirs displaced 10.2 million people between 1950 and 1989.⁴³ This figure includes some of the largest single dam eviction totals on record: Sanmenxia with 410,000; Danjiangkou with 383,000 (plans exist to raise the dam height and displace a further 225,000 people, many of whom were displaced by the original reservoir); Xinanjiang with 306,000; and Dongpinghu with 278,000.⁴⁴ More recently, and according to official sources, the Three Gorges Dam project has displaced more than 1.2 million people.⁴⁵ It has been estimated that some 4 million people are being

displaced every year through the construction of large dams, primarily in Asia. In addition, some 6 million people are being displaced annually by urban development and transportation programmes.⁴⁶ 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 worsening 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.⁴⁷

Many governments continue to believe that such large-scale mega projects will reduce poverty and raise national incomes. These same projects, however, even if bringing some benefit, are far too frequently the cause of increased poverty and major displacement. A former president of Argentina referred to mega projects as 'monuments to corruption'.⁴⁸ In another instance, during the early 1990s, in Karachi, Pakistan, the World Bank was willing to fund an 87 kilometre-long expressway (about one third of it elevated), despite strong opposition that the project design was inappropriate and expensive; would have an adverse environmental impact on the city; cause much dislocation; cause much disruption, especially in the city centre; and affect the historical buildings in the city.⁴⁹ After strong resistance by citizens' groups, the World Bank, to its credit, withdrew support for the project.

■ International mega events

International mega events, including global conferences and international sporting events such as the Olympic Games, are often the rationale behind large-scale evictions. For instance, reports indicate that some 720,000 people were forcibly evicted in Seoul and Incheon (South Korea), prior to the 1988 Olympic Games.⁵⁰ Some 30,000 were forcibly evicted in Atlanta prior to the 1996 Olympic Games. The oldest public housing project in the US, Techwood Homes, was deliberately de-tenanted because it stood in the way of a 'sanitized corridor' running through to CNN headquarters and the city centre. Half of the 800 houses were knocked down. Of the remainder, after renovation, only one fifth was reserved for poor families, and strict new credit and criminal record checks excluded many who most needed these units. The other apartments have become middle- to upper-income accommodation. Preparations for the 2004 Olympic Games in Athens were used as a pretext to forcibly evict several Roma settlements located in Greater Athens, ultimately forcing hundreds from their homes.⁵¹

A further 1.7 million people have reportedly been evicted in Beijing (China) in the run-up to the 2008 Olympic Games (see Box 5.13). Some 300,000 people have been relocated to make room for facilities directly linked to the Olympic Games. These locations have experienced the complete demolition of houses belonging to the poor, who have been relocated far from their communities and workplaces, with inadequate transportation networks. The process of demolition and eviction is characterized by arbitrariness and lack of due process, with courts reportedly often refusing to hear cases of forced evictions because of pressure on judges and lawyers by local officials. In many

cases, tenants are given little or no notice of their eviction and never receive the promised compensation, sometimes leaving the evictees homeless because of lack of or inadequate compensation.

In an attempt to reduce the negative housing impacts of the Olympic Games, the International Olympic Committee has been repeatedly urged by NGOs and others to play a firmer role in discouraging host cities from using the games as a pretext for eviction and to take eviction intentions into account in determining future hosts of the Olympics. To date, however, the International Olympic Committee has refused to take any concrete measures to facilitate greater respect for housing rights and security of tenure in connection with the Olympic Games.⁵²

■ Urban beautification

Another common type of forced evictions is carried out in the name of urban beautification, or simply cleaning up a city, often in conjunction with investment inducements. Urban beautification is in itself used as justification and legitimization of such evictions. The forced eviction operation carried out in May 2005 in Zimbabwe is a case in point. The United Nations Special Envoy described *Operation Murambatsvina* as follows in the report of the fact-finding mission to Zimbabwe to assess the scope and impact of the

1.7 million people have reportedly been evicted in Beijing (China) in the run-up to the 2008 Olympic Games

Box 5.13 Forced evictions caused or 'facilitated' by the 2008 Beijing Olympics

The mayor of Beijing has said that some 300,000 people will be relocated from sites where facilities for holding the 2008 Summer Olympics are to be constructed. This includes competition venues, the athlete's village, management facilities, green spaces, transport lines, hubs and amenities for visitors. However, if the standard for assessing the impact of the 2008 Olympics on relocations is widened to include urban development activities that were either speeded up, enlarged or facilitated by the politics of 'holding the best Olympics ever', then the impact will be much larger. Among the projects 'helped along' by the Olympics are the expansion of the capital's transportation network – including the airport, subway and light rail network; extensive demolitions in the Qianmen quarter and its planned reconstruction; the approval and construction of a central business district on the city's east side; a new round of massive public contracts and investments in the high-tech corridor of Zhongguancun; the clearance of old work unit (*danwei*) housing in the central east corridor between the second and fourth ring roads to make room for high-end residential developments, luxury shopping complexes and entertainment districts; and large environmental remediation projects, including the rustication to Hebei Province of the main facility of the Capital Steel Factory.

It has been estimated that some 1.7 million people are directly affected by demolitions/relocations in Beijing for the period of 2001 to 2008 – the high tide of Olympic preparations. This includes the mayor's estimate of those moved because of Olympic construction. By comparison, for the nine years of 1991 to 1999, demolitions/relocations directly affected 640,000 persons, or roughly 70,000 persons annually. The average for the pre-Olympic period is nearly three times larger (or 200,000 annually). Whether the 400,000 migrant workers living in the informal settlements (*chengzhongcun*) within the capital's fourth ring road have been included in the mayor's relocation estimate is unclear. In all likelihood they have not because very few migrant workers own property legally in Beijing. Moreover, because they are renters in illegally constructed buildings, they have virtually no protection against eviction or the right to a resettlement allowance. The total direct costs of holding the 2008 Olympic Games have been estimated at US\$37 billion. The actual cost is likely to be considerably higher if losses to individuals are included.

Source: Westendorff, 2007

eviction operation on human settlements issues in Zimbabwe (see also Box 5.14):

On 19 May 2005, with little or no warning, the Government of Zimbabwe embarked on an operation to 'clean-up' its cities. It was a 'crash' operation known as Operation Murambatsvina... It started in the ... capital, Harare, and rapidly evolved into a nationwide demolition and eviction campaign carried out by the police and the army... It is estimated that some 700,000 people in cities across the country have lost either their homes, their source of livelihood or both. Indirectly, a further 2.4 million people have been affected in varying degrees. Hundreds of thousands of women, men and children were made homeless, without access to food, water and sanitation, or health-care... The vast majority of those directly and indirectly affected are the poor and disadvantaged segments of the population. They are, today, deeper in poverty, deprivation and destitution, and have been rendered more vulnerable.⁵³

Operation Murambatsvina ... was raised repeatedly before the United Nations Security Council as a possible threat to international peace and security

What was unique about the Zimbabwe evictions was the scale of international outcry that emerged from many parts of the world, strenuously opposing the eviction. For perhaps the first time ever, the issue of this mass forced eviction was raised repeatedly before the United Nations Security Council as a possible threat to international peace and

security. Equally noteworthy was the appointment (also a first) by the United Nations Secretary General of a Special Envoy to examine the forced eviction programme in Zimbabwe and to suggest ways of remedying the situation. That a Special Envoy was appointed is yet another indication of the growing seriousness given to the human rights implications of forced evictions, particularly when these are large scale in nature. It remains to be seen if other Special Envoys will be appointed in the future to deal with mass forced evictions in other countries.

In one particularly large forced eviction effort, the Government of Myanmar forcibly evicted more than 1 million residents of Yangon (Rangoon). In preparation for the Visit Myanmar Year 1996 undertaken in Rangoon and Mandalay, some 1.5 million residents – an incredible 16 per cent of the total urban population – were removed from their homes between 1989 and 1994. The evictees were moved to hastily constructed bamboo-and-thatch huts in the urban periphery.⁵⁴

GROUPS PARTICULARLY VULNERABLE TO TENURE INSECURITY

While tenure insecurity may, in principle, affect anyone living in urban areas, in practical terms particular groups are more exposed than others. As noted above, it is always the poor who are evicted, and similarly it is primarily the poor who perceive lack of security of tenure as a threat to urban safety and security. In addition, many social groups are

Box 5.14 Recommendations by the United Nations Special Envoy on Operation Murambatsvina

The first ever appointment by the United Nations of a Special Envoy to address the consequences of mass forced evictions in Zimbabwe in 2005 was widely welcomed by the world's human rights community as an important precedent. The recommendations of her report were seen by many commentators to be both firm and constructive:

Recommendation 1: ... The Government of Zimbabwe should immediately halt any further demolitions of homes and informal businesses and create conditions for sustainable relief and reconstruction for those affected.

Recommendation 2: There is an urgent need for the Government of Zimbabwe to facilitate humanitarian operations within a pro-poor, gender-sensitive policy framework that provides security of tenure, affordable housing, water and sanitation, and the pursuit of small-scale income-generating activities in a regulated and enabling environment.

Recommendation 3: There is an immediate need for the Government of Zimbabwe to revise the outdated Regional Town and Country Planning Act and other

relevant Acts to align the substance and the procedures of these Acts with the social, economic and cultural realities facing the majority of the population, namely the poor.

Recommendation 5: The Government of Zimbabwe is collectively responsible for what has happened. However, it appears that there was no collective decision-making with respect to both the conception and implementation of Operation Restore Order. Evidence suggests it was based on improper advice by a few architects of the operation. The people and Government of Zimbabwe should hold to account those responsible for the injury caused by the Operation.

Recommendation 6: The Government of Zimbabwe should set a good example and adhere to the rule of law before it can credibly ask its citizens to do the same. Operation Restore Order breached both national and international human rights law provisions guiding evictions, thereby precipitating a humanitarian crisis. The Government of Zimbabwe should pay compensation where it is due for those whose property was unlawfully destroyed.

The people and Government of Zimbabwe should hold to account those responsible for the injury caused by the Operation

subjected to various forms of discrimination that may impact upon their security of tenure and/or their exposure to various forms of evictions. Moreover, the consequences of evictions may be harder to bear for some groups. What follows is a brief overview of the conditions experienced by some such vulnerable groups.

The urban poor

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. Despite a variety of well-intentioned efforts – such as campaigns to end poverty and the MDGs – all relevant indicators point to poverty levels increasing in much of the world. Likewise, global income inequalities seem to be at the highest level since measurements began. The richest 2 per cent of adults in the world now own more than half of global household wealth, and the richest 1 per cent of adults alone owned 40 per cent of global assets in the year 2000. The richest 10 per cent of adults accounted for 85 per cent of the world's total wealth, while, by contrast, the bottom half of the world's adult population owned barely 1 per cent of global wealth.⁵⁵

While national GDP levels have increased in many nations, 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 housing that is secure and affordable. The widespread housing price boom of the past 15 years in many countries, for instance, certainly benefited existing owners of homes and those able to obtain mortgages in many countries, but also priced millions out of the housing market.

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. Few of these residents can afford to buy or rent new housing in the districts where they now reside, given recent property price increases, and new and affordable rental units are far scarcer than the numbers needed.⁵⁶

In recognition of the fact that rising real estate prices have made the dream of homeownership increasingly distant for many lower-income groups, access to security of tenure takes on added significance. In many settings, enjoying tenure security is far more important to dwellers than homeownership or being providing with a title to a land plot. During recent years, there has been a major policy shift away from more conventional approaches, to informal settlements, to more simplified, innovative, cost-effective and locally driven efforts to procure security of tenure. With governments unable and/or unwilling to commit the resources required to raise levels of housing adequacy, and civil society and NGOs largely sceptical of any efforts by the

state or private sectors to improve housing conditions, it is not difficult to see how the international community has reached the view that the provision of security of tenure should be seen as a cornerstone of efforts to reduce poverty.

Tenants

If there is any particular group of urban dwellers who is under-protected and under-emphasized and frequently misunderstood, it is surely the world's tenants. While precise figures are lacking, the number of the world's tenants 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. However, if the question of tenure is viewed from the perspective of human rights, it is clear that tenants, owners and, indeed, all tenure sectors – formal and informal – should enjoy equitable treatment in terms of tenure security and protection against eviction.

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 of the lower-income groups. In Kenya, for example, the Mathare 4A slum upgrading programme fell short of its objectives because of the lack of considering the impact of upgrading on the security of tenure of tenants.⁵⁷ In terms of rental markets, there is a growing appreciation that tenure security can assist, and not hinder, in increasing the prospects of long-term rental contracts, which, in turn, can strengthen security of tenure rights in this sector. The insecurity of tenure prevalent throughout much of Latin America, for instance, is seen as a key reason why long-term tenancy arrangements are so rare in the region.

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.⁵⁸ Although faced with precisely the same circumstances that lead to their displacement (which can include crimes such as ethnic cleansing, etc.), some restitution measures have clearly favoured the restitution rights of owners over those of tenants when the time to return home arrives. While the procedures under the Commission on Real Property Claims that emerged from the Dayton Peace Accords in Bosnia-Herzegovina gave fully equal rights to both formal property owners and those holding social occupancy rights to their original homes, as did the restitution regulations of the Housing and Property Directorate in Kosovo, it remains common for former owners to be treated more favourably than tenants despite the similarity of the origins of their displacement.⁵⁹

The issue of tenants and security of tenure is also vital when examining the various policy debates under way on the

Generally, the poorer a person or household is, the less security of tenure they are likely to enjoy

Society-wide economic progress can actually reduce tenure security for the poorer sections of society

Tenants ... are frequently neglected ... in ... urban development and slum regularization initiatives, and ... in ... post-conflict housing and property restitution programmes

Control of land is particularly important for women

question of how best to ensure that tenure security can be accessible to all. For example, policies that focus on the possession of freehold title as a means of increasing security of tenure⁶⁰ tend, effectively, to leave out those who do not wish to, or who cannot, become possessors of freehold title. It is important to recall, however, that a nation's wealth is not invariably linked to the percentage of those owning property. For example, during the early 20th century when the power of the UK was at its peak, up to 90 per cent of its population were tenants. Similarly, tenants today form the majority among the population in some of the world's wealthiest countries, including Germany, Sweden and Switzerland. Tenants in these and similar countries have substantial security of tenure protections, grounded in enforceable law before independent and impartial courts, which may be a reflection of their overall share of the total population and corresponding political influence.

Women

Beyond the trends of increasing poverty and inequality, continued discrimination against women also contributes to tenure insecurity and resultant forced evictions. The World Bank notes that 'control of land is particularly important for women... Yet traditionally, women have been disadvantaged in terms of land access.'⁶¹ In many (if not most) countries, traditional law implies that women's relationship to men

defines their access to land. 'Legal recognition of women's ability to have independent rights to land is thus a necessary, though by no means sufficient, first step toward increasing their control of assets.' Without such independent recognition, including structural discrimination in the areas of inheritance and succession rights, women experience constant insecurity of tenure (as well as that of children). 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 (see Box 5.15).

Moreover, when the lack of secure tenure facilitates the carrying out of forced evictions, women are disproportionately affected, as noted by the Advisory Group on Forced Evictions (AGFE):

Indeed, for most women, the home is the single most important place in the world. Beyond shelter, it is a place of employment, where income is generated; it is a place to care for children; and it provides respite from violence in the streets. Evictions often take place in the middle of the day, when the men are away from home. Women are left to fight to defend their homes, and the evictors meet such resistance with violence, beating, rape, torture and even death. Violence and discrimination against women are not only the result of evictions; rather, they are often the cause. Domestic violence frequently drives women out of the home, effectively forcibly evicting them. In all situations, women forced from their homes and lands are further robbed of economic opportunities, ability to provide for their families' stability and means of autonomy. Women often experience extreme depression and anger in the aftermath of forced evictions. As a result of a lack of autonomy or stability, women become even further marginalized.⁶²

Box 5.15 Inheritance and gender

Inheritance is often treated as peripheral to, or semi-detached from, general debates and policy formation concerning security of tenure, land rights, land reform or regularization. However, inheritance is one of the most common ways of women acquiring land or access to land. Since women in many countries have not generally been able to purchase property or benefit from land reforms, in many cases a woman could only become a landowner by inheriting land from her husband or companion on his death.

Issues related to succession and inheritance are regulated through the civil codes in most Latin American countries, with the exception of Costa Rica and Cuba, where these have been laid down in family codes. In countries such as Panama, Honduras, Mexico and Costa Rica, absolute testamentary freedom leaves the surviving spouse defenceless in a marriage under a separate property regime.

In the Balkans, Serbia Montenegrin inheritance laws identify the surviving spouse and his/her children as the heirs of the first inheritance degree who inherit in equal parts per person. The laws also protect the spouse through a lifetime right to use the deceased's real property, or a part thereof if such request is justified by the spouse's difficult living conditions.

Under compulsory Islamic law, only one third of an estate can be bequeathed, with the remaining subject to compulsory fixed inheritance rules that generally grant women half of that which is granted to males in a similar position.

Most of Southern Africa has a dual legal system where inheritance is governed by both statutory and customary laws. In a number of countries, including Lesotho, Zambia and Zimbabwe, the constitution still allows the application of customary law in inheritance matters and courts have upheld discriminatory practice. Under customary law and with only a few exceptions, inheritance is determined by rules of male primogeniture, whereby the oldest son is the heir (the oldest son of the senior wife, in case of polygamy).

Property grabbing from widows of HIV/AIDS-affected husbands is a particularly acute problem in Southern Africa, although the act of dispossessing widows of property is a criminal offence in most countries of the region.

Source: UN-Habitat, 2006f

In many parts of Africa, for instance, women have access to land so long as they remain within their husband's and/or parents' land because 'traditional law implies that women's access to land is mediated through their relationships with men'.⁶³ Achieving security of tenure rights without a formal link to a male relative can thus still be impossible in a number of countries. Women often face disproportionate challenges in landownership even in cases where their spouses have died and they should be the *bona fide* owners (see also Box 5.16). Yet, it should be noted that legal recognition of women's ability to have independent rights to land is a necessary, although by no means sufficient, first step towards increasing their control of assets.

Other vulnerable and disadvantaged groups

A number of other groups suffer detriment and discrimination in terms of access to secure tenure and the benefits that such access can bestow. Such groups include children (including orphans, abandoned children, street children and those subjected to forced/child labour), the elderly, the chronically ill and disabled, indigenous people, members of ethnic and other minorities, refugees, internally displaced persons, migrant workers, and many others. Such groups often suffer discrimination with respect to their ability to own and/or inherit land, housing and other property (see also Box 5.16). While this Global Report does not attempt to describe the problems faced by each of these groups, Box 5.17 provides an example of the particular problems faced by migrant workers in the rapidly expanding urban areas of China.

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 technological disasters, as well as armed conflict and civil strife, are major factors threatening the security and safety of large urban populations every year. This section highlights the links between security of tenure and such disasters and conflicts.

Disasters and secure tenure

Natural and technological disasters – including earthquakes, tsunamis, storms and floods – often result in the large-scale displacement of people from their homes, lands and properties (see Part IV of this Global Report). Earthquakes alone destroyed more than 100 million homes during the 20th century, mostly in slums, tenement districts or poor rural villages.⁶⁴ 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.

This remains the case, for instance, in Sri Lanka where large numbers of those displaced by the tsunami in late 2004 are still prevented from returning to their original homes and lands.⁶⁵ Tenants and other non-owners are also facing discriminatory treatment in Aceh (Indonesia), and are not being allowed to return to their former homes and lands, even while owners are able to exercise these restitution rights. Housing and property restitution measures can be used as a means of ensuring secure tenure and facilitating the return home of all persons displaced by disaster, should this be their wish.

Box 5.16 Forced evictions and discrimination in international law

The most authoritative international instrument on forced evictions, United Nations Committee on Economic, Social and Cultural Rights (CESCR) General Comment No 7 on forced evictions, has the following to say about discrimination against women and other vulnerable individuals and groups:

Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including homeownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of Articles 2.2 and 3 of the Covenant impose an additional obligation upon governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

Source: CESCR, General Comment No 7, para 11

Box 5.17 Security of tenure for migrant workers in China

The size of the migrant workforce in China, the so-called floating population (*liudongrenkou*), may today be as high as 150 million to 200 million. It is likely to increase further to reach 300 million by 2020. With the rapid expansion of the migrant workforce, affordable housing options in the city centre or on work sites have become scarce. The overflow is now taking refuge in informal settlements (*chengzhongcun*) or urban villages. More and more, these resemble in size and form peri-urban settlements that characterized rapid urbanization processes in other developing countries during the 1950s and 1960s. The earliest of these were developed during the 1980s on the peripheries of China's faster growing major cities (i.e. Guangzhou, Shenzhen, Shanghai and Beijing).

At first, when they grew large enough to draw the attention of local authorities, they were suppressed and eventually torn down. Among the largest and most famous of these cases was *Zhejiangcun* (Zhejiang village). Before its demolition in December 1995, Zhejiang village housed a population of some 100,000 individuals and thousands of enterprises. The village governed itself, establishing health clinics, water and sanitation systems, recreational facilities, schools, etc. It also proved itself to be a major boon to Beijing residents who rented land to the village and who bought the village's prodigious output of low-cost fashionable clothing.

By 2002, more than 1 million people were living in Beijing's 332 informal settlements. The 2002 census estimated that some 80 per cent of these were migrants. Today the numbers are thought to be much larger. What is sure is that many cities around China are planning to suppress or redevelop informal settlements. In Beijing's case, the 2008 Olympics are adding urgency to this task (see Box 5.13). Since 238 of these settlements for migrant workers are being demolished before 2008, it still remains unclear where the residents will be relocated.

While these migrant workers have contributed greatly to urban development in China over the last two decades, the formal housing provision system has made little or no provision for them. Even in Shanghai, where policies towards migrants have been relatively progressive, employment and lengthy employment tenure in the city had not yet freed the migrant workers from insecurity of tenure to housing.

It is no exaggeration to say that once in the city, migrants continue to be on the move. But such mobility is not necessarily driven by the need for tenure or even amenity. Few migrants make the transition from bridge headers to consolidators after years of living in the city, a trend in migrant settlement seen elsewhere in other developing countries. Instead, most remain trapped in the private rental sector or stay in dormitory housing. Homeownership is yet to become attainable for migrants, and self-help housing is largely absent, primarily because of the attitudes of municipal authorities.

Source: Westendorff, 2007

Box 5.18 Security of tenure-related challenges in occupied Iraq

Shortly after the US-led occupation of Iraq in 2003, a number of challenges related to security of tenure were identified, including:

- housing, land and property disputes;
- illegal and arbitrary forced evictions and displacement without any effective remedies;
- homelessness and inadequate housing and living conditions;
- housing, land and property registration and titling systems;
- unauthorized or irregular occupation of abandoned private and public land, housing and property;
- inequality facing women in the exercise of housing, land and property rights;
- housing and property damage;
- pending housing privatization; and
- lack of a clear institutional framework and response.

Source: Leckie, 2003a

Security of tenure rights are increasingly seen as a key area of concern in post-conflict settings

Security of tenure is a key element for the integration of the urban poor within the city

Conflict, peace-building and security of tenure

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. In Iraq, for example, a range of such challenges was identified in the immediate aftermath of the US-led occupation of the country (see Box 5.18). The situation with respect to most, if not all, of these challenges has worsened since 2003. By December 2006, the already disastrous situation in Iraq had become far worse, resulting in a housing crisis leading to a massive growth in slums and squatter settlements, with nearly 4 million people facing displacement.⁶⁶

While the housing and tenure insecurity issues facing the people of Iraq are particularly severe, these types of issues occur in most countries engaged in, or emerging from, conflict. Consequently, addressing housing, land and property rights challenges in the aftermath of conflict is of vital importance for reconstruction and peace-building efforts.⁶⁷ This includes:

- attempting to reverse the application of land abandonment laws and other arbitrary applications of law;
- dealing fairly with secondary occupants of refugee or IDP land or housing;
- 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.⁶⁸

The United Nations and other actors have a vital role to play in ensuring that these issues are adequately and comprehensively addressed since security of tenure rights challenges are common to all post-conflict countries and territories, as

noted by the United Nations Food and Agriculture Organization (FAO):

Providing secure access to land is an important part of dealing with emergency humanitarian needs, as well as longer-term social and economic stability. Secure access to land helps victims of conflicts to have a place to live, to grow food and to earn income. Security of tenure, without fear of eviction, allows people to rebuild economic and social relationships. More broadly, it allows local regions and the country to establish their economies. It supports reconciliation and prospects for long-term peace.⁶⁹

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. Yet, much remains to be done in the area of developing a comprehensive United Nations policy on these concerns.⁷⁰ As a result, citizens in some countries or territories have seen their tenure rights taken very seriously by peace operations, while in other countries or territories, citizens facing precisely the same tenure predicaments that face victims of conflict everywhere have seen their security of tenure rights effectively overlooked.

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 of the world's dwellers. While, to a certain degree, due to default – given the massive scale and lack of other options to address these massive political challenges – the international community has clearly recognized that informal settlements are here to stay, that they are important sources of employment and economic growth, and, in fact, that they are likely to grow in coming years. While the squatter invasions of unused public land so commonplace during the 1960s and 1970s have largely ceased, the existence of informal settlements is a social phenomenon few are willing to deny. Linked to this, there has been a growing recognition of a 'right to the city' as one antidote to the neglect shown towards the informal city by policy-makers the world over.

There is also growing agreement, on all points of the political spectrum, that secure tenure is a multifunctional instrument in everything, from poverty alleviation, through the protection of human rights, to the generation of assets and capital. An emerging consensus that security of tenure is a key element for the integration of the urban poor within the city can also be discerned, as can the realization that – given that security of tenure is multidimensional in nature, often varying widely between countries and within

countries, cities and even neighbourhoods and streets, as well as between and within households – ‘one-size-fits-all’ approaches to security of tenure will simply not work and should not even be attempted.⁷¹

Along with the recognition that it is within the informal sector that solutions to the global tenure crisis will need to be found, there is also a growing acceptance of the informal city by most local and national governments. While some governments – particularly those of an authoritarian or less than democratic tilt – are willing to violate international human rights norms and wantonly evict hundreds of thousands of people in a single eviction operation, this remains the exception to the rule. Of the 1 billion people living in slums today (see Table 5.2), it is likely that well under 1 per cent face forced eviction in a given year. This is certainly 1 per cent too many; but this fact shows that governments now generally accept the inevitability of the informal city much more than ever before, in spite of (or, perhaps, because of) the reality that these cities are beyond the reach of the law in so many ways. 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; but 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.⁷²

This begrudging acceptance of the informal or ‘illegal’ 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. For if law is meant to be a reflection of the society that it is designed to order and arrange, then legal systems the world over are also falling far short of their expectations. Legal systems cannot aspire to legitimacy if they exclude the majority of their population:

... laws are unjust when the poverty of the majority of people makes it impossible for them to comply with them. If, for most urban citizens, the basic tasks of daily life – building or renting a shelter, earning an income, obtaining food and water – are illegal, it would be wise for governments to change the legislation or simply to eliminate unrealistic laws. Urban legislation should be more flexible in adapting to the great variety of circumstance and the rate at which these can change.⁷³

Governments can rather easily – for a variety of reasons, most importantly the high political costs of forcibly evicting entire neighbourhoods – allow the informal city to exist. Responsible governments, however – who 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 need 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.

CONCLUDING REMARKS

As has been outlined in this chapter, the question of security of tenure is by its very nature complex, diverse and often comprised of unique attributes depending upon the particular settings considered. That security of tenure can be developed, albeit with varying degrees of protection, within all tenure types is evidence of the need for flexible policy approaches geared towards ensuring that everyone, within every society, has a sufficient degree of the security of tenure that all of their rights directly linked to their tenure status can be enjoyed in full. To a degree, this needed flexibility is now at least rhetorically apparent within the various international discussions on security of tenure policy and, to a greater or lesser degree, is equally apparent at the national level in those states that have consciously chosen to treat tenure issues increasingly in human rights terms. While many trends can be identified, the growing acceptance of the informal or ‘illegal’ city perhaps best encapsulates many of the converging trends that simultaneously seek to achieve greater degrees of tenure security, while economic and geopolitical forces that threaten security of tenure continue to dominate.

The preceding analysis reveals the challenges in determining the most effective ways of merging human rights law and principles with the practical steps, both political and legal, that will allow increasingly larger and larger numbers of people to enjoy security of tenure as a practical, legal and enforceable human right. Clearly, international human rights law now recognizes that all rights holders possess the right to security of tenure, both as a core element of the right to adequate housing and also as a key feature of a series of additional rights that are not always viewed as necessarily relevant to security of tenure, but which, in practice, very much are. To this list, of course, should be included rights to privacy, rights to the peaceful enjoyment of possessions, rights to security of the person, rights to housing and property restitution and a range of others. What is needed, therefore, in policy terms at the international and national levels is a new vision of security of tenure that combines the best practices and experiences of the housing world intrinsically with the best that can be offered by the world of human rights law and practice. The emergence of such an integral approach will most likely be beneficial to both sectors and, ultimately, to the hundreds of millions of urban dwellers who do not at present enjoy rights to secure tenure. The contours of such an integral vision are explored in the next chapter.

Laws are unjust when the poverty of the majority of people makes it impossible for them to comply with them

Security of tenure can be developed, albeit with varying degrees of protection, within all tenure types

International human rights law now recognizes that all rights holders possess the right to security of tenure

NOTES

- 1 Habitat Agenda, para 75.
- 2 Global Strategy for Shelter to the Year 2000.
- 3 Davis, 2006a.
- 4 UN-Habitat, 2003d, ppvi, 107.
- 5 See, for instance, Vancouver Declaration on Human Settlements, Recommendation B.8.c.iii; and Vancouver Action Plan, para A.3.
- 6 See, for example, UN-Habitat, 2004b, pp33–41.
- 7 World Bank, 2003b, pxxi.
- 8 FAO, 2005, p21.
- 9 Kanji et al, 2005, p3.
- 10 Payne, 2001c, p51.
- 11 UN-Habitat, 2004b, p31.
- 12 UN-Habitat, 2006e, p94.
- 13 CESCR, General Comment no 7.
- 14 As of 19 April 2007. For the latest ratification status, see www.unhchr.ch/tbs/doc.nsf/Satusfrset?Open?FrameSet.
- 15 ICESCR, Articles 16 and 17.
- 16 UN-Habitat, 2006e, p94.
- 17 *Ibid.*, p190.
- 18 UN-Habitat, 2003d, pxxv.
- 19 Hardoy and Satterthwaite, 1989, p301.
- 20 Royston, 2002, p165.
- 21 ACHR, 2001, p66.
- 22 Cambodia Land Law (revised 2001), Article 30; available at <http://cb2.mofcom.gov.cn/aarticle/?lawsofhost?country/investmthost/200612/20061203917903.html>.
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- 27 Scherer, 2005.
- 28 New York City, undated.
- 29 See www.economist.com.
- 30 UN-Habitat, 2004b, p50.
- 31 Amnesty International and COHRE, 2006.
- 32 For a more comprehensive overview of eviction cases in Africa (and other regions), see COHRE, 2002, 2003, 2006.
- 33 COHRE, 2006, p26; Morka, 2007.
- 34 IRIN News, 2007b.
- 35 *Social and Economic Rights Action Center and the Center for Economic and Social Rights versus Nigeria*, para 63.
- 36 For more information on such evictions, see www.cohre.org/evictions.
- 37 Barber, 1996, p16.
- 38 Durand-Lasserve, 2006, pp2, 4.
- 39 *Ibid.*, p4.
- 40 Allen, 2000.
- 41 Seabrook, 1996, p267.
- 42 Roy, 1999.
- 43 World Bank, 1993a, p72.
- 44 *Ibid.* See also Tyler, 1994.
- 45 See, for example, Haggart and Chongqing, 2003.
- 46 Cernea, 1996, p1517.
- 47 Jing, 1997.
- 48 Caulfield, 1998, p247.
- 49 See Hasan, 2003.
- 50 Asian Coalition for Housing Rights and Third World Network, 1989.
- 51 COHRE, 2003.
- 52 *Ibid.*
- 53 COHRE, 2005.
- 54 Davis, 2006a, p107.
- 55 Davies et al, 2006.
- 56 Westendorff, 2007.
- 57 Ngugi, 2005.
- 58 Although there are exceptions: see UN-Habitat, 2003c.
- 59 Leckie, 2003b.
- 60 de Soto, 2000.
- 61 World Bank, 2003b, pxx.
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- 63 World Bank, 2003b, pxx.
- 64 Hewitt, 1997, pp217–218.
- 65 Leckie, 2005b, pp15–16.
- 66 Luo, 2006.
- 67 See also UN doc S/2004/616, which explicitly recognizes this point.
- 68 FAO, 2005, p32.
- 69 FAO, 2005, p1.
- 70 Leckie, forthcoming.
- 71 Payne, 2001c.
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- 73 *Ibid.*, p35.

POLICY RESPONSES TO TENURE INSECURITY

Chapter 5 provided a brief overview of security of tenure and the many complex definitions and localized meanings that are associated with this term. The chapter examined the scale and impacts of tenure insecurity, the reasons why security of tenure is not yet universally enjoyed, and the social groups who are particularly affected by conditions of tenure insecurity, with a key focus on those driven from their homes by forced eviction, market evictions and other causes, including armed conflict and disaster. The analysis concluded with coverage of the ways in which the ‘illegal’ or informal city is now an increasingly accepted reality in much of the developing world. It is in these ‘illegal cities’ – now home to perhaps one quarter of humanity – that security of tenure conditions are at their worst.

As Chapter 5 showed, security of tenure is complex, multifaceted and difficult to define purely in terms of formality or informality, legality or illegality, or modern or customary law. The United Nations has grappled with the complexities of security of tenure since its earliest years as part of its broader efforts in support of peace, security, poverty reduction and human rights. Although attention was placed more on rural than urban areas during the early years, a resolution on land reform adopted in 1950, for instance, speaks of ‘systems of land tenure’ that impede economic development and ‘thus depress the standards of living especially of agricultural workers and tenants’. The resolution also urges states to institute appropriate forms of land reform and to undertake measures to ‘promote the security of tenure and the welfare of agricultural workers and tenants’.¹

The debate has moved on considerably since 1950, and there has been an ever growing recognition of the problem and how best to address it, 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, where questions of tenure, rights, policies and laws converge, 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 (and rural)

dwellers are protected by adequate degrees of secure tenure.

As discussed in Chapter 5, cities are characterized by a wide range of tenure categories, from legal categories based on statutory, customary or religious law, to extra-legal ones, such as squatting, unauthorized land subdivisions and houses constructed in contravention of official norms. 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: ‘It is essential to identify the range of statutory, customary and informal tenure categories in a town or city so that the consequences of urban policy on different tenure sub-markets can be anticipated.’² Governments and international agencies have undertaken a wide range of policies to redress problems of tenure insecurity and to remedy the often deplorable living conditions found in the world’s informal settlements.

This chapter builds on Chapter 5 and 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. The final section contains a more in-depth review of how three countries – South Africa, Brazil and India – have approached the question of security of tenure in terms of both policy and human rights.

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

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

Governments and international agencies have undertaken a wide range of policies to redress problems of tenure insecurity

Box 6.1 The Millennium Development Goals (MDGs) and security of tenure

Goal 7, target 11 of the Millennium Development Goals (MDGs) expresses the aim of achieving 'significant improvement in the lives of at least 100 million slum dwellers by 2020'. In terms of monitoring, the 'proportion of people with secure tenure' was selected as one of the indicators to measure progress in the implementation of this goal. Other indicators are related to access to safe water and adequate sanitation, as well as the structural quality of dwellings and overcrowding.

The MDGs are an important attempt to set global targets to achieve improvements in the lives of a portion of the world's slum dwellers. The global recognition of the need for such improvements and the inclusion of security of tenure issues within the monitoring process are, indeed, welcome developments.

Yet, how does this goal measure up within a human rights framework, which is based on principles of entitlement, equity and non-discrimination? It is clear that in a world of 1 billion slum dwellers, improving the lives of only 10 per cent of the world's poorest citizens has to be seen as the barest minimum that governments should aim at achieving.

Furthermore, the number of slum dwellers is not static. Projections indicate that the number of slum dwellers is set to increase to some 1.3 billion by 2020, even if MDG 7, target 11 is achieved (see Table 5.2).

Forced evictions, demolition of slums and consequent resettlement of slum dwellers create more problems than they solve

carried out successfully, can result in the provision of infrastructure, urban services and security of tenure for residents. Slum upgrading is also very much an approach that is in line with the Millennium Development Goal (MDG) on improving the lives of slum dwellers (see Box 6.1). The Cities Alliance, which through its Cities without Slums initiative, is directly linked to the quantification of this target,³ has developed a set of essential guidelines for the implementation of slum upgrading programmes (see Box 6.2).

Onsite 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. Such activities tend to destroy, unnecessarily, housing that is affordable to the urban poor. Meanwhile, the new housing provided has frequently turned out to be unaffordable. The result has been that relocated households move back into slum accommodation elsewhere. Perhaps even more serious, resettlement frequently destroys the proximity of slum dwellers to their employment sources. Thus:

*Relocation ... of slum dwellers should, as far as possible, be avoided, except in cases where slums are located on physically hazardous or polluted land, or where densities are so high that new infrastructure ... cannot be installed. In-situ slum upgrading should therefore be the norm.*⁴

Regularization and upgrading can, of course, take various forms, and initiatives that provide some measure of security without necessarily involving the provision of individual freehold titles are commonplace. For instance, some regularization efforts simply recognize the *status quo*, thus removing the threat of eviction, but not providing formal security of tenure to dwellers in the community. Such efforts, which are often more motivated by the possibility of a positive political spin for the government concerned than the rights of those affected, can be easily overturned and generally can only offer temporary protection, without the accrual of legally recognized rights. A second form of regularization is the recognition of various forms of interim or occupancy rights without the provision of formal tenure. This is a more intensive approach, which provides a higher degree of protection than simply recognizing current realities and also strengthens the negotiating possibilities of the residents of the settlement concerned.

Third, 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) are also increasingly commonplace. Such an approach focuses on negotiations between landowners and residents, rather than government regulation. Furthermore, the approach requires simplification of procedures for registering land rights. The main characteristic of this approach is that property 'becomes a political right: a right to build, a "right to the city"'.⁵ A major component of this approach is the involvement of local authorities in approving the use, location and layout of a particular residential area.

Regularization efforts that protect people against eviction, even if this falls short of legal protection and is purely political in nature, can sometimes be the preference of communities. In Karachi during the 1970s, for example, the initiation of public works in low-income settlements led to major investments in houses in expectation of regularization and the receipt of long-term leases. In many of the settlements, however, once the threat of eviction was removed, people refused to pay for land title documents.

Box 6.2 Essential ingredients for slum upgrading

The Cities Alliance notes that slum upgrading consists of a whole range of physical, social, economic, organizational and environmental improvements undertaken cooperatively and locally among citizens, community groups, private-sector actors and local authorities. It has identified the following essential ingredients for any successful national slum upgrading programme:

- 1 *Demonstrate political will:* both national and local governments must provide the vision, commitment and leadership required to sustain nationwide upgrading.
- 2 *Set national and city targets:* set clear targets and ensure public-sector accountability by engaging stakeholders in planning and monitoring results.
- 3 *Put it in the budget:* support slum upgrading as part of core business, nationally and locally.
- 4 *Implement policy reforms:* ensure necessary reforms dealing with land, finance and institutional frameworks.
- 5 *Ensure open and transparent land markets:* reform closed and opaque land markets that encourage corruption, patronage and exploitation of the urban poor, as well as constrain capital markets.
- 6 *Mobilize non-public-sector resources:* engage slum dwellers themselves, who have both the ability and the interest in promoting upgrading, and the private sector, which should be engaged as a risk-sharing partner rather than a mere contractor to the public sector.
- 7 *Prevent the growth of new slums:* facilitate access to land and services by planning realistically for future growth.

Source: Cities Alliance, 2003, p37

The work of the Sindh Katchi Abadis Authority (SKAA) in Karachi has been widely heralded for its unique approaches to regularization (see Box 6.3). 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'.⁶ In some countries in sub-Saharan Africa, for instance, communal or customary land delivery systems may not be formally recognized by the state, yet they still guarantee a reasonably good level of security. The perception of security offered through the recognition by the community itself and by the neighbourhood is often considered more important than official recognition by the state.

The city government of Brazil's largest city, São Paulo, has pursued particularly constructive policies on providing secure tenure to the urban poor for several years in a manner combining the various approaches just noted. The city government has developed a legal allotment programme that assists slum dwellers to obtain rights and register their homes. This programme sought to benefit 50,000 families in some of the poorest neighbourhoods of this city.⁷

The upgrading and regularization process, combined with the understanding of the importance of the informal sector and a growing acceptance of the informal city, together point to another trend in the security of tenure policy discussion that places considerable responsibility on community-level organizations and poor individuals to solve the often severe residential problems confronting them on a daily basis. The *Baan Mankong* (Secure Housing) programme in Thailand, for instance, enables poor communities to influ-

Box 6.3 The Sindh Katchi Abadis Authority (SKAA)

The Sindh Katchi Abadis Authority (SKAA) is responsible for the implementation of the Katchi Abadis Improvement and Regularization Programme (KAIRP) in Pakistan. This important government poverty alleviation programme has, over the years, faced a number of constraints that SKAA has successfully overcome. Among these constraints has been the lack of funds for upgrading initiatives, forcing SKAA to depend upon large foreign loans from the World Bank and the Asian Development Bank (ADB). Other constraints have been excessive costs of overheads for infrastructure developments, complicated regularization procedures and an absence of community participation.

To combat these constraints (and other obstacles), SKAA undertook a series of measures, including decentralization of the entire upgrading and regularization process; focus on user friendliness; transparency; community participation; affordable lease rates; and flexibility in designs. In SKAA's view, the three major starting points for a successful policy for low-income land supply can be summarized as:

- Low-income people are often characterized by having irregular incomes and can thus only build their dwellings in a flexible and incremental manner. This has to be acknowledged in policy and programme design. As a result, traditional standards for construction are meaningless and often directly harmful to the aspiration of the poor.
- It is essential that ways are found to identify who should be the beneficiaries of land allocations. Only those who really need plots for their own dwellings should benefit, while those who want plots for investment or speculation purposes should be excluded.
- Procedures for allocation of land should be simple, straightforward, transparent and efficient.

Source: Ismail, 2004

ence a national process of forging comprehensive solutions to problems of housing, land tenure and basic services in Thai cities. The programme, which was initiated in 2003,

Box 6.4 Upgrading with community empowerment

A comparative analysis of upgrading projects undertaken by UN-Habitat in Afghanistan, Cambodia and Sri Lanka has shown that the upgrading interventions provided people with a 'secure place to live with dignity' by improving the physical conditions and by establishing the institutional framework necessary for communities to plan future activities in a sustainable manner. All of these projects – which were supported by the United Nations Trust Fund for Human Security (see Box 1.1) – have focused on the empowerment of communities using an approach involving community action planning, community development councils and the community contracts system.

The projects had the following impact on security of tenure in the three countries:

- Increased investments in the settlements (indicating a perceived increase in security and future prospects).
- Increased ownership of the work done in the settlements (high community contributions and vigilant community surveillance).
- The involvement of registered community development councils legitimized occupancy rights (it provided a sense of belonging and confidence as well as a sense of responsibility).

Source: Balbo and Guadagnoli, 2007

- Dialogue among community development councils has strengthened the opposition to forced evictions, and has increased demands for policies focusing on the allocation of land to the poor and regularization of tenure.

The projects have demonstrated that the use of upgrading as an entry point to the empowerment of communities is effective where institutions have been fragile and unstable in post-conflict situations, and where there is no conducive environment for providing protection.

For instance, in the case of Afghanistan, a community development council was established in a settlement which did not even appear on the city map before the project started, and was later named Majboorabad 2. Residents had been threatened of evictions several times in the past, both by warlords and by the Ministry of Interior which claims the land. As the community is located near a military area, residents had been fined and even imprisoned for their 'illegal' building activities. When the residents had their community development council registered by the municipality this seemed to increase the confidence of the community at large. It implied that the government now formally accepted their former 'illegal settlement' as an 'informal settlement'.

Removing the fear of eviction was seen ... to have a much greater value than obtaining formal property documents

channels government funds, in the form of infrastructure subsidies and soft housing loans, directly to poor communities. These communities are then responsible for the planning and carrying out of improvements to their housing, environment and basic services and manage the budget themselves.⁸

As argued in Chapter 5, while the question of security of tenure and access to the registration system can be complex and cumbersome for poor communities, *in-situ* upgrading of settlements has been widely used as an entry point for improving living conditions. The practical negotiations, dialogues and interfaces undertaken between authorities and communities in a number of such settlements upgrading initiatives have in fact contributed to exploring and establishing more acceptable and viable tenure systems at the country level (see Box 6.4).

Limits of community-based upgrading and regularization

In the decades to come, programmes similar to those described above may or may not prove to have been the wisest policy route. But whether it succeeds or fails, this approach arose due to the historical and (perhaps even) structural inabilities of either the state or the market to provide safe, secure, affordable and accessible housing to everyone within a given society. Again, as if by default, governments now turn to the people themselves as the only sources of energy and resources that can hope to transform the informal city into an increasingly desirable place in which to live and work. To a degree, such an approach has much to offer: it can empower people and communities to determine their own fate; it can ensure that people are active participants within an increasingly democratic urban development process; and it can 'enable' them to build housing and communities that best suit their needs and wishes.

And yet, it can also be simply that neither the state nor the private sector are sufficiently interested in undertaking legal reforms and making the infrastructure and other investments needed to actually transform poor communities. Thus, the poor have no other option than organizing and pooling their common resources and resolving to improve the places where they reside. It would, however, be unwise to disregard the reservations raised to increasing emphasis on sweat equity: 'It would be foolish to pass from one distortion – that the slums are places of crime, disease and despair – to the opposite that they can be safely left to look after themselves.'⁹ 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 (or unwillingness) 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. 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.

Within a truly democratic city, existing in a truly democratic nation, where the rule of law and human rights flourish and are taken as seriously as they are intended to be, the importance of community-based action is, of course, beyond question. However, there is a danger in relying too heavily on the poor to help themselves without a corresponding increase in commitment by governments and the international community to develop legal and regulatory frameworks that are appropriate, that are consistent with the scale of the problem and which actually succeed in providing security of tenure for everyone, everywhere. This will only result in current trends of slum growth continuing into the future. Involving the community in the security of tenure process is one thing; but supporting policies that place an over-reliance on the community, however, is another issue entirely.

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.¹⁰ Issuing of freehold titles is, however, not the only way to achieve security of tenure in informal settlements. Many countries have years of experience with simpler and less expensive responses.

Countries such as Turkey, Egypt and Brazil, in particular, have seen years of official tolerance of illegal settlements followed by periodic legalization through amnesties (see Box 6.5). Such approaches are often quite pragmatic responses to political problems. Moreover, they provide varying degrees of political security of tenure, rather than legal security of tenure. In practice, however, the perception within the communities concerned may well be that their level of security of tenure is quite high (see Box III.1). However, without simultaneous regularization measures being undertaken, such legalization does not generally result in greater access to services and infrastructure, nor does it simplify the registration of housing, land and property rights.¹¹

Land titling with the provision of freehold title is closely linked to the commonly recognized process of adverse possession (see Box 6.6). This is a mechanism for awarding secure land tenure in a way that is associated with minimal institutional requirements. 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

It would be foolish to pass from one distortion – that the slums are places of crime, disease and despair – to the opposite that they can be safely left to look after themselves

Legalization through amnesties ... provide varying degrees of political security of tenure, rather than legal security of tenure

ensuring that valuable land is not left vacant. Furthermore, it ensures the exclusion of land investors and speculators. The formalizing of adverse possession rights in the way undertaken under the City Statute in Brazil, conferring security of tenure to long-time residents, may serve as a model for other countries, as well, in their efforts to reduce price speculation in land by making the conferral of such rights easier and less controversial.

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 increase the proportion of planned urban land and provide services more efficiently; it enables local governments to integrate informal settlements within the tax system; and it improves the efficiency of urban land and property markets.¹² 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.¹³

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 establish 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

Box 6.5 The legalization of Turkey's *gecekondu*

During close to 500 years of Ottoman rule, all land in Turkey was held by the Sultan. Private ownership simply meant the right to collect taxes on a particular parcel. This tradition continues in many of Turkey's cities today, and huge tracts of land remain either under federal control or owned through an ancient tradition called *hisseli tapu* (shared title) (see also Box III.1). This ownership system is, however, quite outmoded today and shares have not been apportioned; most share owners have no idea even how many other shareholders there are.

Millions of people who came to Turkey's cities over the last 50 years made use of this tradition. They took advantage of an ancient Turkish legal precept: that no matter who owns the land, if people get their houses built overnight and move in by morning, they cannot be evicted without being taken to court. This is why squatter housing in Turkey is called *gecekondu*, meaning 'it happened at night'. Many such communities have thrived under this arrangement and feature well-developed infrastructure and popularly elected governments. Today, almost half of the residents of Istanbul (perhaps 6 million people) dwell in homes that either are *gecekondu* or were when they were first constructed.

Gecekondu land invasions became a noticeable phenomenon in Turkey during the early 1940s. By 1949, the Turkish government made its first attempt to regulate such constructions by passing a law requiring municipalities to destroy the illegal dwellings. But this proved to be politically unpalatable. Only four years later, the government modified the law, allowing existing *gecekondu* to be improved and only mandating demolition of new developments. This was effectively the first *gecekondu* amnesty in Turkey. In 1966, the government rewrote that law again, granting amnesty to all *gecekondu* houses constructed over the 13 years since the previous law had been enacted. At the same time, they introduced new programmes to promote development of alternatives to *gecekondu* housing.

By 1984, the government essentially gave up the fight against already existing squatters. It passed a new law that again gave amnesty to all existing *gecekondu* communities and authorized the areas to be redeveloped with higher-density housing. Even without planning permission, squatters quickly realized that they could take advantage of the new law. They began ripping down their old-fashioned single-storey homes and building three- and four-storey ones of reinforced concrete and brick. In 1990, the government issued a new *gecekondu* amnesty, again essentially accepting all of the illegal neighbourhoods that had already been built.

Source: Neuwirth, 2007

Box 6.6 Adverse possession

Adverse possession is a legal doctrine under which a person or community in possession of land owned by someone else can acquire legal rights, including title to it, as long as certain legal requirements are complied with and the adverse possessor is in possession for a sufficient period of time, which can range anywhere from 5 to 20 years. While specific requirements may differ between countries and different legal regimes, adverse possession generally requires the actual, visible, hostile, notorious, exclusive and continuous possession of another's property, and some jurisdictions further require the possession to be made under a claim of title or a claim of right. In simple terms, this means that those attempting to claim the property are occupying it exclusively (keeping out others) and openly as if it were their own. Generally, possession must be continuous without challenge or permission from the lawful owner for a fixed statutory period in order to acquire title.

While often associated with the squatting process within the informal settlements of the developing world, adverse possession claims exist in developed countries as well. For instance, the

Land Registry in the UK receives an average of 20,000 applications for adverse possession registration every year, 75 per cent of which are successful. Under law binding until 2003, squatters in the UK could claim adverse possession of land or property following 12 years of possession. A new Land Registration Act of 2002 did not abolish adverse possession rights, but created a mechanism whereby the owner of the land concerned has a right to evict a squatter before the current possessors can gain title.^a

Similarly, adverse possession was also the main mechanism whereby most settlers in the US acquired their land.^b Today, all US states retain legal provisions upholding the ability of squatters to acquire ownership rights through continued possession of a property in good faith for a specified period.^c

Moreover, the process of adverse possession is also included in the City Statute in Brazil (see Box II.8) as a constructive means of establishing secure tenure and enforcing social equity in the use of urban property. Such rights (called *usucapião*) are defined as the right to tenure acquired by the possession of property, without any opposition, during a period established by law.^d

Adverse possession
... is a mechanism
... ensuring that
valuable land is not
left vacant

Sources: a) Parker, 2003; b) de Soto, 2000; c) Deininger, 2003; d) Imparto, 2002.

Box 6.7 Land titling programmes and internal conflict

Land titling programmes commonly involve formalization and registration of rights to land through systematic adjudication, surveying and (if necessary) consolidation of boundaries. While these titling programmes are useful in certain contexts, they often fail to increase certainty and reduce conflict. In some cases, these programme failures have resulted from the distributional consequences of land titling itself. Long-term conflict has resulted because poor or otherwise vulnerable land occupiers have been dispossessed by wealthier and more powerful groups; yet the new titleholders and state enforcement mechanisms have been unable to prevent encroachment by the former occupiers.

This state of grievance and incomplete exclusion then tends to become cyclical in environments of political instability. When a regime changes in circumstances of historical grievance, old claims often reassert themselves through acts of violence, land invasion or state-sanctioned evictions. This phenomenon challenges the economic conception that once property rights are established, there is relatively little likelihood of reversion to open access. In other cases, titling programmes provoke long-term conflict due to the fluid nature of non-state systems of land tenure. In these systems, multiple overlapping rights often co-exist in an uneasy balance, and programmes to define and regularize these rights have caused dormant internal disputes to emerge in the form of open conflict.

Source: Fitzpatrick, 2006, pp 1013–1014

Local governments may be unable to muster the resources required ... to make the provision of freehold titles to all ... realistic

Large-scale granting of freehold title to residents of slum settlements ... may facilitate dispossession

The most effective ... implies implementing an incremental approach, focusing on increasing the short- and medium-term security for those living in informal settlements

other forms of registration are also possible, such as title deeds registration, and documentation of secondary use rights and other claims to land and natural resources. These may not have the same state backing but are cheaper to undertake and maintain, and may be sufficient to protect rights at the local level.¹⁴ Furthermore, it has been noted that issuing freehold titles may lead to conflicts between individuals and communities, as 'land registries are so incomplete and inaccurate that moves to provide titles in urban or peri-urban areas may encourage or intensify disputes over who has the primary claim' (see also Box 6.7).¹⁵

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 sub-tenants 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. Furthermore, such approaches can also dramatically increase rent levels, which may displace tenants to other more affordable neighbourhoods or force them to create new slums and squatter settlements.¹⁶

It is, in fact, the very informality of informal settlements that has enabled growing urban populations to find a place in which to live. In a situation where urban populations continue to grow and urban areas expand, some observers point to potential entry problems of new urban dwellers in a formalized housing market: 'Will the new urban poor that will settle in newly urbanized areas benefit from the formalization of the land market on the urban periphery?' There is a danger that they will be confronted by a much more rigid, more regulated and better enforced pattern of landownership. It is questionable whether such new entrants into the housing market will already have the access to credit necessary to purchase land (and housing) in the open market at market prices.

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. Few observers disagree with the fact that 'tenure has invariably proved to be an important factor in stimulating investment and it may serve as the foundation for developing credit mechanisms, mortgage markets and revenues for urban development'.¹⁷ The main problem occurs when one borrows money and uses the title as collateral. If 'circumstances arise that prevent repayment, the money lender has a viable claim against the asset denoted by the title'.¹⁸ Many developing countries have relatively dysfunctional states, where powerful politicians or others may bring about dispossession of land in a variety of ways. In situations like this, the provision of titles may, in fact, reduce rather than increase security of tenure. It has been argued that the provision of formal title to the poor 'means that they must ... decide to exchange their embeddedness in one community for an embeddedness in another community'.¹⁹ It is not immediately obvious in many countries that the government is able to provide the poor with more effective protection against dispossession than what was traditionally provided through membership in a family, clan or village. Furthermore, 'experience has shown, time and again, that the urban poor either willingly sell or otherwise lose their land when given individual title'.²⁰

There is also increasing empirical evidence that 'full, formal tenure is not essential – or even sufficient, on its own – to achieve increased levels of tenure security, investment in house improvements or even increased property tax revenues'.²¹ For instance, a study of legislation introduced to enable low-income tenants to purchase their dwellings in Colombo (Sri Lanka) concluded that the residents were too poor to benefit from the initiative. They could not afford to undertake the necessary improvements without external assistance, regardless of their level of tenure security.²² Others point out that it is possible – as has been realized in India, Indonesia and Peru – to redefine the objectives of legalization since guaranteeing security of tenure does not necessarily require the formal provision of individual land titles.²³

To a certain extent, all of these views are correct. Few would argue against the aims and objectives associated with providing some form of official recognition of rights to slum dwellers who do not currently enjoy such protection. 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 (see below). This moratorium on forced evictions should be followed by the gradual introduction of some form of statutory tenure.²⁴ Again, in practice, perceived tenure security in informal settlements is much more important than the precise legal status of the land.

Box 6.8 The Global Land Tool Network

The Global Land Tool Network was initiated in 2004 with the twin objectives of increasing global knowledge, awareness and tools to support pro-poor and gender-sensitive land management; and working in selected countries to apply pro-poor and gender-sensitive tools in line with the United Nations recommendations on reform and aid effectiveness. Its broad aims are to:

- Promote a continuum of land rights, from perceived security of tenure to intermediate forms of tenure such as certificates, and including individual freehold title.
- Improve and develop pro-poor tools on land management and land tenure.
- Assist in unblocking existing initiatives.
- Assist in strengthening existing land networks.
- Improve global coordination on land.
- Assist in the development of gendered tools that are affordable and useful to the grassroots.

Source: Global Land Tool Network, www.gltfn.net

- Improve the general dissemination of knowledge about how to achieve security of tenure.

The network works through a series of partners to develop innovative, affordable and scaleable land tools. Eight priority areas have been identified for its activities, namely:

- affordable national land records management (land access and land reform);
- land administration and land governance;
- land administration approaches for post-conflict societies;
- land-use planning at the regional, national and city-wide levels;
- affordable gendered land tools (e.g. on adjudication);
- affordable and just estates administration (especially for HIV/AIDS areas);
- pro-poor expropriation and compensation; and
- pro-poor regulatory frameworks for the private sector.

As noted above, there are few more contentious and complex problems in the world than those dealing with land and secure tenure. At the same time, very few pro-poor, gender-sensitive tools exist to address land issues. As a result, while many excellent land policies have been drafted, implementation of these policies remains a profound barrier to poverty reduction and the achievement of the MDGs. The Global Land Tools Network, initiated by UN-Habitat, is a recent initiative that seeks to respond to this challenge (see Box 6.8).

LAND ADMINISTRATION AND REGISTRATION

The question of land administration and registration is also vital in any attempt aimed at ensuring that security of tenure will best serve the interests of the urban and rural poor. 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

Box 6.9 The importance of efficient land administration systems

In a recent study on access to land and land administration, focusing on rural land after violent conflict, the United Nations Food and Agriculture Organization (FAO) makes a number of observations that are relevant to urban areas as well:

... land registration is not inherently anti-poor in its impacts and ... the distributional consequences of land registration depend on the design of the registration process and of the institutions responsible for its management. Land registration systems can be set up so as to address the risk of bias against poorer and marginalized groups by considering issues of language, cost and accessibility and by recording secondary rights. Attention also needs to be paid to establishing effective accountability mechanisms for the institutions implementing land registration programmes, as well as for oversight and dispute settlement institutions.

Our work demonstrates the limitations of those approaches that assume that the 'legal empowerment of the poor' may be promoted simply by providing land titles. In reality, different models of land registration exist, local contexts vary substantially, and overlapping rights on the same piece of land may coexist. Therefore, the real issue is not embracing readily available blueprint solutions based on Western models, but rather learning how to design land registration systems that secure the land rights of poorer and more marginalized groups in specific geographic and historical contexts.

In addition, whether land titles or other registration documents improve land tenure security of local land users depends on the existence of strong local institutions that are able to uphold and defend the rights embodied in those documents. Building the capacity of local land institutions over time is therefore a key challenge.

Source: FAO, 2005, p27

Box 6.10 What are cadastres and land registries?

Cadastres and registries are key land administration instruments:

- A land registry handles information on landownership and transactions.
- The cadastre contains information on the boundaries of parcels as defined by surveys and recorded on maps. It also contains any additional information about the parcels. The cadastre provides the basis for a number of other functions, such as land-use planning, management and disposal of public lands, land valuation and taxation, provision of other public services, and generation of maps.

Source: World Bank, 2003b, p70

Comprehensive and regularly updated housing, property and land registration systems are a crucial element of ... security of tenure

boundaries of land, developing processes for exchanging land, planning, valuation and the adjudication of disputes (see Box 6.9).²⁵

While there are many views on the importance of land registration and administration, few would disagree 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 and if the quest for expanding the enjoyment of this right is to ever bear fruit. This is a view widely shared and one that is clearly consistent with the existing and longstanding approaches of states the world over. 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. Once again, the systems exist and are part and parcel of every culture and society; but what matters 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.

Although virtually never examined for their human rights components, comprehensive and regularly updated housing, property and land registration systems are a crucial element of the security of tenure process. Through registration, the legal conferral of security of tenure is made possible, a public and transparent record of ownership and dweller rights exists, and all rights relating to housing can be protected. 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. As noted above, evidence from a number of countries indicates that new creative, innovative and process-oriented approaches seem to have considerable merit compared to those that focus on large-scale provision of freehold titles. 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.²⁶

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 (see Box 6.10). 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. Indeed, it is through regularly updated and properly maintained land registries – which can function equally well in both systems of formal and customary land administration – that rights can gain recognition and, thus, stand a greater chance of enforcement in the event of competing claims or disputes over the land in question. The World Bank, among others, argues strongly for the registration of all land where previous records are out of date or do not exist at all:

*... a systematic approach, combined with wide publicity and legal assistance to ensure that everybody is informed, provides the best way to ensure social control and prevent land grabbing by powerful individuals, which would be not only inequitable, but also inefficient.*²⁷

It also highlights the importance of registering all urban land as ‘a precondition to the establishment of effective urban management’.²⁸

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. Or, as noted by one observer: ‘As land becomes scarcer, poorer and more vulnerable groups may see their claims weakened and lose access to land, leading to their increasing marginalization and impoverishment.’²⁹ 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. This has been acknowledged by many observers, who note that registration of urban land may not be feasible in the short and medium term in many countries due to the lack of resources among local authorities and the observed inability of registries to keep pace with developments on the ground. Thus, the World Bank has noted that in ‘cases where land registers are not operational or effective, it may, therefore, be desirable to establish land inventories which simply record claims of landownership and property rights without the legal authority to determine them’.³⁰

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 6.11. There are many dangers associated with such processes of registration. But there are also major dangers now in a world where so many people are not able to have their rights – even informal rights – properly recognized.

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

However, ... land registration does not automatically provide security of tenure

evictions and other crimes. Fortunately, such crimes are not committed against all of the world's urban poor; but they are, tragically, very widespread and constitute the most severe outcomes of practices that run counter to a world governed by, and based on, the principles of human rights. It is important to recall that it is through the existence of, and reliance on, such records that the housing and property restitution rights of refugees can be secured. 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. While little gain emerged from the Balkan wars of the past decade, the international community was at least unambiguous about the need to reverse ethnic cleansing and to ensure the right to housing and property restitution for everyone displaced during the conflicts in the region. Intractable political considerations aside, whenever such records are available following conflict, the task of determining housing and property rights is far easier and far more just.

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 disputed province since 2000. All but 6 per cent (1855 claims) had been fully implemented by 2006. Some 68 per cent of all claims were decided within three years.³¹ Security Council Resolution 1244, which established the United Nations Interim Administration Mission in Kosovo (UNMIK), placed a high priority on property restitution for refugees and internally displaced persons (IDPs). The resolution of property issues was also considered vital to ensuring restoration of the rule of law and stimulating economic growth and stability in Kosovo and the wider region. Early initiatives in the property rights sector culminated in the establishment, in 1999, of the Housing and Property Directorate and its independent quasi-judicial body, the Housing and Property Claims Commission, which aimed to achieve 'an efficient and effective resolution of claims concerning residential property'.³² This comprised a relatively novel development in international post-conflict peace-building operations and represented a significant step forward for the restitution of property rights of refugees and IDPs. It constituted a mass claims-processing mechanism, designed to resolve high numbers of property claims through the application of standardized proceedings.

The process was goal oriented in that its procedures and evidentiary rules were designed to facilitate optimal efficiency in the resolution and implementation of decisions in a cost-efficient manner in order to meet with the urgent desire of refugees and IDPs to return to their homes, while

Box 6.1 | 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, p16

at the same time preserving compliance with fair procedures and due process guarantees.

LEGAL PROTECTION FROM FORCED EVICTION

*... the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities.*³³

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 practice of forced evictions moving from being viewed and acted upon almost solely as an act synonymous with apartheid-era South Africa (but largely neglected elsewhere), to a globally prohibited practice that has received considerable attention by human rights bodies. In fact, during the past 20 years, forced evictions have been the subject of a range of international standard-setting initiatives, and an increasing number of planned and past evictions carried out or envisaged by governments have been widely condemned. In the past few years, governments ranging from the Dominican Republic, Panama, the Philippines and South Korea, to Turkey, Sudan and others have been singled out for their poor eviction records and criticized accordingly by United Nations and European human rights bodies. In 1990, in the first declaration that a state party had violated the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Committee on Economic, Social and Cultural Rights (CESCR) decided that the evictions that were attributable to the Government of the Dominican Republic were not merely failures to perform

The resolution of property issues was ... considered vital to ensuring restoration of the rule of law ... and stability in Kosovo

Box 6.12 Evictions as violations of international law

In its first ruling that a state party had violated the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Committee on Economic, Social and Cultural Rights (CESCR) famously decided that:

The information that had reached members of the Committee concerning the massive expulsions of nearly 15,000 families in the course of the last five years, the deplorable conditions in which the families had had to live, and the conditions in which the expulsions had taken place were deemed sufficiently serious for it to be considered that the guarantees in Article 11 of the Covenant had not been respected.

Source: UN Document E/C/12/1990/8, 'Concluding observations to the initial periodic report of the Dominican Republic', para 249

Instances of forced eviction ... can only be justified in the most exceptional circumstances

obligations, but, in fact, violations of internationally recognized housing rights (see Box 6.12).

This decision was followed a year later with a similar pronouncement concerning forced evictions in Panama, which had not only infringed upon the right to adequate housing, but also on the inhabitants' rights to privacy and security of the home. Subsequently, the Committee has decided that many state parties had, in fact, violated the terms of the ICESCR. In addition, international standards addressing the practice of forced evictions grew considerably during the 1990s, both in terms of scope, as well as in the consistent equation of forced evictions with violations of human rights, particularly housing rights. In one of its first of what have become regular pronouncements on forced evictions, the CESCR 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.'³⁴ Similarly, the former

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

Box 6.13 Are evictions ever legal?

This is perhaps the most frequently raised question with respect to housing rights under international law. For example, when taking a human rights or human security perspective, what is expected from governments and what is legally allowed when people are squatting on public lands, such as that intended for schools or some other public purpose? In practice, in some cases, proper slum upgrading initiatives cannot be carried out unless some dwellings are demolished:

- Are governments not entitled (or perhaps even required) to evict people and communities from marginal land or dangerous locations such as floodplains or landslide-prone hillsides, all in the interest of public health and safety?
- How far do the rights of governments stretch in this regard?
- To what extent can the urban poor and other dwellers, within both the informal and formal housing sectors, anticipate a social and legal reality that does not envisage the practice of forced evictions?
- When does an eviction become a forced eviction?

General Comment No 7 provides some guidance in this regard.

United Nations Commission on Human Rights has declared forced evictions as 'gross violations of human rights, in particular the human right to adequate housing',³⁵ a perspective echoed on numerous occasions by various United Nations human rights bodies and other human rights institutions.³⁶ Perhaps the most significant development occurred in 1997, when the CESCR 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 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 (see Box 6.13).

As noted earlier, a series of international standards, statements and laws has widely condemned forced evictions as violations of human rights. General Comment No 7 goes one step further in demanding 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 countries 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'.³⁷ In addition to governments, therefore, private landlords, developers and international institutions such as the World Bank and any other third parties are subject to the relevant legal obligations and can anticipate the enforcement of laws against them if they carry out forced evictions. The rules plainly require governments to ensure that protective laws are in place domestically and that they punish persons responsible for forced evictions carried out without proper

While it does not ban outright every possible manifestation of eviction, it very clearly and strongly discourages the practice and urges states to explore 'all feasible alternatives' prior to carrying out any forced evictions, with a view to avoiding or at least minimizing the use of force or precluding the eviction altogether. It also provides assurances for people evicted to receive adequate compensation for any real or personal property affected by an eviction.

In paragraph 12 of General Comment No 7, the text outlines the specific types of evictions that may be tolerated under human rights law:

Where some evictions may be justifiable, such as in the case of the persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that those evictions are carried out in a manner warranted by a law that is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

Box 6.14 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.

Source: CESCR, General Comment No 7, para 15

safeguards. 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. With respect to the rights of women, the text asserts that:

*Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.*³⁸

One of the more precedent-setting provisions of General Comment No 7 declares that ‘evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights’.³⁹ The General Comment makes it incumbent on governments 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. This would be consistent with other provisions (i.e. that ‘all individuals have a right to adequate compensation for any property, both personal and real, which is affected’, and that ‘legal remedies or procedures should be provided to those who are affected by eviction orders’).⁴⁰ If governments follow the provisions of the General Comment, therefore, no one should ever be forced into the realms of homelessness or be subjected to violations of their human rights because of facing eviction, notwithstanding the rationale behind such evictions.

The Committee is also critical of the involvement of international agencies in development projects that have resulted in forced evictions, and stresses that:

... international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination

*against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of person without the provision of all appropriate protection and compensation.*⁴¹

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 6.14).

In essence, therefore, General Comment No 7 and the numerous international standards preceding and following it recognize that forced evictions are not an acceptable practice under human rights law. At the same time, the international legal instruments realistically acknowledge that under truly exceptional circumstances, after having considered all possible alternatives and in accordance with a detailed series of conditions, some types of eviction may be permissible. It is to this question that we now turn.

Many states have enacted domestic legislation reflecting the sentiments of standards such as those found in international law as a means of implementing their various international obligations in recognition of housing rights and security of tenure. National constitutions from all regions of the world and representing every major legal system, culture, level of development, religion and economic system specifically address state obligations relating to housing. More than half of the world’s constitutions refer to general obligations within the housing sphere or specifically to the right to adequate housing (see Box 6.15). If human rights linked to and indispensable for the enjoyment of housing rights are considered,⁴² the overwhelming majority of constitutions make reference, at least implicitly, to housing rights.

Domestic laws also increasingly recognize rights linked to security of tenure. The Republic of the Philippines’ Urban Development and Housing Act provides an example of national legislation dealing with the discouragement of forced evictions, the due process necessary to ensure that an

Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights’

Box 6.15 Constitutional recognition of housing rights

Constitutional clauses from a cross-section of countries reveal that national laws can, and often do, recognize and enshrine housing rights:

Armenia (Article 31): every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The state shall provide the essential means to enable the exercise of these rights.

Belgium (Article 23(3)): everyone has the right to enjoy a life in conformity with human dignity... These rights include, in particular, the right to adequate housing.

Honduras (Article 178): all Hondurans have the right to decent housing. The state shall design and implement housing programmes of social interest.

Mexico (Article 4): every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary supports to reach the said goal.

Nicaragua (Article 64): Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The

state shall promote the fulfilment of this right.

The Philippines (Article 13(9)): the state shall by law, and for the common good, undertake, in cooperation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas.

Portugal (Article 65(1)): everyone shall have the right for himself and his family to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy.

Russian Federation (Article 40(1)): each person has the right to housing. No one may be arbitrarily deprived of housing.

South Africa (Article 26(1)): everyone has the right to have access to adequate housing. The state must take reasonable progressive legislative and other measures to secure this right.

Spain (Article 47): all Spaniards have the right to enjoy decent and adequate housing.

eviction is not arbitrary, and the requirement that relocation and resettlement be offered to evictees (see Box 6.16). The legislation in a number of other countries has similar provisions. The following list comprises a small sample of the many diverse ways in which governments have legislated in favour of security of tenure rights:

- **Brazil:** the Statute of the City is grounded in the 'social function of the city' and guarantees 'the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations' (see also Box 11.8).⁴³
- **France:** the 1990 Law 90/449 on the right to housing provides an example of how national legislation mandates public provision of affordable housing for those in need.
- **India:** The 1984 Madhya Pradesh Act No 15 (Slum Dwellers Protection Act) confers tenure to landless persons in urban areas who had settled on land plots of less than 50 square metres for a prescribed period.
- **Tanzania:** the 1999 Land Act recognizes the tenure rights of those residing in informal settlements. Residents in unplanned urban settlements have their rights recorded and maintained by the relevant land allocating authority and that record is registered. All interests on land, including customary land rights that exist in the planning areas, are identified and recorded; the land rights of peri-urban dwellers are fully recognized and rights of occupancy issued; and upgrading plans are prepared and implemented by local authorities with the participation of residents and their local community organizations. Local resources are

mobilized to finance the plans through appropriate cost-recovery systems.⁴⁴

- **Trinidad and Tobago:** the 1998 Regularization of Tenure Act establishes a Certificate of Comfort that can be used to confer security of tenure on squatters as the first step in a process designed to give full legal title to such persons.⁴⁵
- **Uganda:** the 1995 Constitution and the 1998 Land Act together confer security of tenure through ownership rights (including customary law ownership) or perpetual lease rights on lawful and *bona fide* occupiers of land. Certificates of occupancy of the land are also made accessible under the laws.⁴⁶
- **United Kingdom:** the 1977 Protection from Eviction Act creates various offences for anyone who unlawfully evicts residential occupiers from their homes, and provides an example of how a government can protect housing rights from forms of interference other than interference by the state.

ADDRESSING VIOLATIONS OF SECURITY OF TENURE RIGHTS

*... our level of tolerance in response to breaches of economic, social and cultural rights remains far too high. As a result, we accept with resignation or muted expressions of regret, violations of these rights... We must cease treating massive denials of economic, social and cultural rights as if they were in some way 'natural' or inevitable.*⁴⁷

Box 6.16 The Republic of the Philippines' Urban Development and Housing Act

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways and other public places, such as sidewalks, roads, parks, and playgrounds;
- when government infrastructure projects with available funding are about to be implemented; or
- when there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- notice upon the affected persons or entities at least ... 30 days prior to the date of eviction or demolition;

- adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- presence of local government officials or their representatives during eviction or demolition;
- proper identification of all persons taking part in the demolition;
- execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- no use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- adequate relocation, whether temporary or permanent.

Source: Republic of the Philippines, 1992 Urban Development and Housing Act (Republic Act No 7279), Section 28

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 graphic 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' (see Box 6.17) and 'acts of omission' (see Box 6.18) would constitute violations of the ICESCR. Based on these guidelines, it 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. This is a positive development and, yet, is one more additional indication that a combined approach to this question between the human settlements and human rights communities is beginning to bear fruit. Much of the pioneering work in this regard has been carried out by the CESCR. As mentioned earlier, since 1990 the Committee has issued dozens of pronouncements about security of tenure conditions in different countries. Box 6.19 provides an overview of a cross-section of these statements to give an idea of the extent of progress made in addressing security of tenure as a core human rights issue.

Despite the work of the CESCR, the human rights dimensions of security of tenure are not yet widely enough

Official human rights bodies ... are increasingly scrutinizing the practices of governments with respect to security of tenure

Box 6.17 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.

Source: Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guideline 14

Box 6.18 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.

Source: Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guideline 15

Of all ... domestic-level judicial approaches to ... security of tenure, ... South African courts that have taken the most interesting route

understood by those making international and national policies in this area. Furthermore, a range of courts have been addressing these links for decades. For instance, although under the European Convention on Human Rights there is no general right to a home, as such, many cases have dealt with the question of forced evictions and issues of security of tenure (see Box 6.20). These and related

sentiments can also be found in the decisions of national courts in many countries. Of all the domestic-level judicial approaches to the question of security of tenure, it is the South African courts that have taken the most interesting route. A number of recent court cases in South Africa exemplify how the right to security of tenure is increasingly gaining recognition at the national level internationally (see Box 6.26).

Box 6.19 United Nations Committee on Economic, Social and Cultural Rights (CESCR) statements on state compliance with the right to security of tenure

Canada (1993): the CESCR is concerned that the right to security of tenure is not enjoyed by all tenants in Canada. The Committee recommends the extension of security of tenure to all tenants.

Mexico (1993): the CESCR recommends the speedy adoption of policies and measures designed to ensure adequate civic services, security of tenure and the availability of resources to facilitate access by low-income communities to affordable housing.

Dominican Republic (1994): the government should confer security of tenure to all dwellers lacking such protection at present, with particular reference to areas threatened with forced eviction. The CESCR notes that Presidential Decrees 358-91 and 359-91 are formulated in a manner inconsistent with the provisions of the Covenant and urges the government to consider the repeal of both of these decrees within the shortest possible timeframe.

The Philippines (1995): the CESCR urges the government to extend indefinitely the moratorium on summary and illegal forced evictions and demolitions and to ensure that all those under threat in those contexts are entitled to due process. The government should promote greater security of tenure in relation to housing in accordance with the principles outlined in the CESCR's General

Comment No 4 and should take the necessary measures, including prosecutions wherever appropriate, to stop violations of laws such as RA 7279.

Azerbaijan (1997): the CESCR draws the attention of the state party to the importance of collecting data relating to the practice of forced evictions and of enacting legislation concerning the rights of tenants to security of tenure in monitoring the right to housing.

Nigeria (1998): the CESCR urges the government to cease forthwith the massive and arbitrary evictions of people from their homes and take such measures as are necessary in order to alleviate the plight of those who are subject to arbitrary evictions or are too poor to afford a decent accommodation. In view of the acute shortage of housing, the government should allocate adequate resources and make sustained efforts to combat this serious situation.

Kenya (2005): the state party should develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made.

Source: Office of the United Nations High Commissioner for Human Rights, www.ohchr.org/english/bodies/cescr/index.htm

Box 6.20 Security of tenure case law: European Court of Human Rights

Among the many cases addressed by the European Court of Human Rights, perhaps the most prominent is the inter-state complaint case of *Cyprus versus Turkey* (1976) which addressed evictions as a violation of the right to 'respect for the home', and thus provided significant protection against this violation of internationally recognized housing rights.

In *Akdivar and Others versus Turkey* (1996), the court found that 'there can be no doubt that the deliberate burning of the applicants' homes and their contents constitutes ... a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of possessions'.

In the case of *Spadea and Scalabrino versus Italy* (1995), the court opined that the failure of the public authorities to evict elderly tenants from the homes owned by the applicants was not a violation of the right to peaceful enjoyment of possessions – in effect, protecting the rights of the tenants to remain in the accommodation.

In *Phocas versus France* (1996), the court held that there had been no violation of Article I of Protocol No I in the case where the applicant's full enjoyment of his property had been subjected to various interferences due to the implementation of

urban development schemes since the said interference complied with the requirements of the general interest.

In *Zubani versus Italy* (1996), a case concerning expropriation, the court held that there had been a violation of Article I of Protocol No I since no fair balance had been struck between the interest of protecting the right to property and the demands of the general interest as a result of the length of the proceedings, the difficulties encountered by the applicants to obtain full payment of the compensation awarded and the deterioration of the plots eventually returned to them.

In *Connors versus United Kingdom* (2004), the court stated clearly that:

... the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards ... and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of ... the Convention.

CIVIL SOCIETY RESPONSES TO SECURITY OF TENURE AND FORCED EVICTIONS

A growing number of non-governmental organizations (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. Among the most prominent NGOs that have been working at the international level for several years are the Asian Coalition for Housing Rights (ACHR), the Centre on Housing Rights and Evictions (COHRE) and the Habitat International Coalition (HIC). At the national level, the efforts of NGOs have often been supplemented by those of other civil society actors, including local universities, as in the case of Pom Mahakan in Bangkok (see Box 11.6).

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 are 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.

A few examples of strategies against planned evictions are summarized below. Any number of additional examples of strategies against planned evictions could be provided; but even this cursory examination reveals that evictions can be

prevented by using a wide range of measures, all of which are premised on the human rights of the persons and communities affected:⁴⁸

- *Zambia*. Some 17,000 families (at least 85,000 people) were spared planned eviction in 1991 due to the efforts of a local women's rights organization, the Zambia Women and Shelter Action Group (ZWOSAG). Basing claims on international human rights standards on eviction in negotiations with government officials, ZWOSAG was able to obtain a suspension order from the minister for local government and housing, who went on national television and radio to announce the suspension, and who urged local authorities throughout Zambia to refrain from carrying out forced evictions.
- *Nigeria*. The Social and Economic Rights Action Center submitted complaints to the World Bank Inspection Panel, attempting to prevent mass evictions in Lagos that would result from the World Bank-funded Lagos Drainage and Sanitation Project (see also Box 6.21).
- *Brazil*. As discussed in Chapter 11, anti-eviction campaigners utilize 'special social interest zones' (urban areas specifically zoned for social housing) as a means of preventing evictions. Moreover, the efforts of the national housing movements have also had a major impact on policies related to security of tenure (see Box 6.27).
- *The Philippines*. Various strategies have been employed to halt evictions before they are carried out. In addition to community organizing and popular mobilization, the use of the media, lobbying efforts, the use of human rights arguments based on international law and other measures, as well as legal strategies based on the 1992

Acts of forced eviction ... are almost invariably accompanied by attempts by those affected to resist the eviction and to stay in their homes

Urban Development and Housing Act have occasionally been successful.

- *Thailand.* Several evictions have been prevented or considerably reduced in scale through an eviction prevention technique referred to as ‘land sharing’, where the land owner of a slum agrees to resettle the current residents onsite in exchange for full use of a large segment of the land concerned.
- *Pakistan.* The Urban Resource Centre regularly prepares alternative plans to government plans involving eviction as a means of preventing evictions.

RESPONSES OF INTERNATIONAL ORGANIZATIONS TO TENURE INSECURITY AND FORCED EVICTIONS

The Global Campaign for Secure Tenure ... facilitates efforts ... to replace the practice of unlawful evictions with negotiation with affected populations and their organizations

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. So far, the campaign has been introduced in cities across the world, including Casablanca, Durban, Manila, Mumbai, Kingston (Jamaica), and Ouagadougou (Burkina Faso).

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 is built around a series of organizing principles. These include protecting and promoting housing rights for all; opposing forced evictions; secure residential tenure; gender equity; partnership; negotiated resettlement; open land markets; promoting legislative reform and sustainable shelter policies; and land availability.⁴⁹

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. The campaign’s guidelines on undertaking national campaigns for secure tenure⁵⁰ provide a useful synopsis of the steps required for successful local-level activities. These include, for instance, initial consultations with stakeholders, diagnosis of local tenure security (including the preparation of city protocols, situation analyses and security of tenure action plans), launching of national campaigns, media activities and, finally, implementation of national security of tenure action plans. 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. While it may be too soon, therefore, to determine how successful the campaign has been in expanding the enjoyment of secure tenure, the concentrated and coordinated efforts of the campaign – the first initiative of its kind –

Box 6.21 Resisting forced evictions: The Ijora-Badia community in Lagos, Nigeria

In July 1996, residents of 15 Lagos slum communities, with a total population of 1.2 million people, learned of plans by the Lagos state government to forcibly evict them from their homes and businesses as part of the Lagos Drainage and Sanitation Project. Evictions started in the Ijora-Badia community in 1997, when bulldozers demolished the homes of more than 2000 people.

Prior to the July 1996 eviction announcement, the Social and Economic Rights Action Center (SERAC) was already working within the Ijora-Badia community, providing basic human rights education and improving the community’s capacity to communicate with various government institutions. In an effort to address the eviction threat, SERAC increased its support to the targeted slum communities. Working with community leaders, women, youth and associations, SERAC organized a number of initiatives, including outreach and sensitization meetings; group discussions; a legal clinic; training workshops; and disseminated information material within and beyond the target communities. Experienced leaders and organizers from other communities with first-hand experience in resisting evictions were brought in to share their knowledge and experience.

Following a series of consultations and investigations, the Lagos state government renewed its effort to forcibly evict the Ijora-Badia community on 29 July 2003, with the demolition of

another part of the Ijora-Badia settlement. Now, however, the residents were better organized, mobilized and determined to keep their homes, and the demolitions were halted due to vehement resistance.

On 1 August 2003, SERAC filed a lawsuit on behalf of the Ijora-Badia residents, also seeking an order of injunction restraining the relevant authorities from continuing the demolitions pending a resolution by the courts. In disregard of the pending lawsuit and the order of injunction (which was granted by the court on 19 August), the demolitions continued on 19 October 2003, leaving over 3000 people homeless, mostly women and children.

In a dramatic turn of events, however, research revealed that a significant portion of the Ijora-Badia lands had been acquired by the federal government of Nigeria in 1929. This finding had profound implications for the community. In a SERAC-backed petition to the federal government, the Ijora-Badia community demanded immediate action to save their homes and land. As a result, the Minister of Housing and Urban Development notified the Lagos state government of its legal ownership of the Ijora-Badia land and directed it to keep away from the Ijora-Badia land while accepting responsibility to upgrade and redevelop Ijora-Badia for the benefit of its people.

Box 6.22 The Advisory Group on Forced Evictions (AGFE)

The Advisory Group on Forced Evictions (AGFE) was established in 2004 following a resolution of UN-Habitat's Governing Council. The AGFE reports directly to the executive director of UN-Habitat, and provides advice on alternatives to forced evictions. In its first two biannual reports, the AGFE has documented more than two dozen cases of imminent or ongoing unlawful evictions in several countries and has successfully engaged in conciliatory activities to propose alternatives.

During the first four fact-finding and conciliatory missions undertaken by the AGFE, it was instrumental in developing alternatives to unlawful evictions:

- In Rome, the authorities set a moratorium on forced evictions.
- In the Dominican Republic, a commission was established to discuss the enactment of an eviction law.

Source: UN-Habitat, 2005d, 2007

- In Curitiba, the AGFE was requested by the municipality to assess housing rights violations, advise stakeholders on practices in line with international human rights laws and standards, and develop an action plan to prevent further evictions. The AGFE organized a public hearing on unlawful evictions that put pressure on stakeholders to find alternative solutions. As a consequence, the local authorities began to resettle families and provide them with alternative sites and building materials.
- In Ghana, the AGFE supported the government's plan to relocate the Old Fadima slum community, which had been threatened with forced eviction for a long time, and to build low-cost housing for them based on the beneficiaries' consent. The AGFE helped pave the way for the recently launched intervention of UN-Habitat's Slum Upgrading Facility that will enable 1000 poor families to get better housing.

towards achieving security of tenure for all have to be seen in a positive light.

Closely linked to the Global Campaign for Secure Tenure, the Advisory Group on Forced Evictions (AGFE) was established in 2004. The objective of the AGFE is to monitor forced evictions and to identify and promote alternatives, such as *in-situ* upgrading and other alternative options. Evictions and relocations, if unavoidable, must be undertaken in a manner that conforms to international human rights standards and the United Nations guidelines on development-based displacement⁵¹ (i.e. such relocation should only be undertaken following negotiated settlements with the individuals and communities concerned, and should include provision of alternative land with long-term security of tenure). The AGFE is comprised of individuals from civil society organizations, local authorities, central government and professionals in developing and developed countries. It is supported by a network of representatives from organizations in the fields of human settlement, law, tenure policy and human rights (see Box 6.22).

Approaching the security of tenure question from a slightly different perspective, the Commission on Legal Empowerment of the Poor was established in 2005 and seeks to promote the extension of formal legal rights and protections to marginalized groups (see Box 6.23). Its stated aim is to 'explore how nations can reduce poverty through reforms that expand access to legal protection and economic opportunities for all'.⁵² 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 partnering with grassroots organizations, governments and institutions. One major goal that has emerged through these discussions is how to transform the legal system from an obstacle to an opportunity for poor and otherwise disempowered communities.

The Cities Alliance is another institution that continues to promote improved security of tenure conditions across the world. A global coalition of cities and their development partners committed to scaling up successful approaches to poverty reduction, the alliance brings cities

The Commission on Legal Empowerment of the Poor ... seeks to promote the extension of formal legal rights and protections to marginalized groups

Box 6.23 The Commission on Legal Empowerment of the Poor

The Commission on Legal Empowerment of the Poor is the first global initiative to focus specifically on the link between exclusion, poverty and law. The commission was launched in September 2005 by a group of developing and industrialized countries, including Canada, Denmark, Egypt, Finland, Guatemala, Iceland, India, Norway, Sweden, South Africa, Tanzania and the UK, and has a mandate to complete its work in 2008.

The commission focuses on four thematic issues: access to justice and the rule of law; property; labour rights; and entrepreneurship. Its working methods include:

- compiling an inventory of lessons learned from those governments that have sought to extend legal protection to the

informal sector;

- generating political support for broad reforms that will ensure legal inclusion and empowerment;
- exploring reforms that will underpin the broadening of access to property rights;
- examining which structures can best promote economic growth;
- identifying ways to support other development approaches; and
- producing a comprehensive set of practical and adaptable tools that will guide reforms at the country level.

Source: Commission on Legal Empowerment of the Poor, 2006a, 2006b; www.undp.org/legalempowerment

Box 6.24 Land-sector harmonization, alignment and coordination for poverty reduction in Kenya

The Development Partners Group on Land in Kenya brings together the government, bilateral donors, and a range of United Nations and civil society organizations for the purpose of developing a common approach to some of the most challenging land-related issues in Kenya. The main reason for the establishment of the group was the realization that there was an urgent need for harmonization among the various programmes undertaken in the land sector in Kenya in order to avoid overlapping or divergent approaches among development partners. The group was officially formed in July 2003 and channelled support to the National Land Policy Formulation Process through a basket fund arrangement.

In line with this new agenda on aid effectiveness, the Development Partners Group on Land aims to deliver and manage aid to the land sector in Kenya and to meet the principles of harmonization, alignment and coordination. In its activities and cooperation with other stakeholders, the group strives to achieve consensus and support around the policy direction of the govern-

Source: UN-Habitat, www.unhabitat.org/content.asp?typeid=24&catid=283&id=1603

ment instead of pursuing diverging agendas. The emphasis of the group is on three areas:

- strengthening government capacity to develop and implement land-related policies and programmes;
- aligning donor support with government priorities as set out in its poverty reduction strategy; and
- avoiding duplication and overlap in aid initiatives.

The support of the group is now expanding to cover the main activities run by the Ministry of Land, such as the land policy process, the development of a pro-poor land information management system, the implementation of the recommendations of the Ndungu Commission on illegal allocation of public land, and the development of forced eviction guidelines in Kenya. Since its establishment, the donor group has supported the government with investments worth US\$10 million in the land sector.

SECURITY OF TENURE AND HUMAN RIGHTS: EXAMPLES FROM SOUTH AFRICA, BRAZIL AND INDIA

All countries have policies and laws in place that affect the degree to which the population concerned has access to legal security of tenure. In some countries, the explicit human rights dimensions of security of tenure have become part and parcel of the prevailing laws, practices and values. Recent developments in three developing countries that stand out in this respect – South Africa, Brazil and India – are discussed below.

South Africa

In terms of legal frameworks recognizing the importance of security of tenure, South Africa has few parallels when it comes to prohibiting and regulating the practice of evictions. South Africa's first democratic election took place in 1994. The newly elected government, under an interim constitution, set up the Land Claims Court with a Land Commission to replace an Advisory Commission. This meant that black South Africans who had been forcibly removed and been dispossessed of their land during the apartheid era could institute a claim for the return of their land or compensation.⁵³

The new 1996 South African Constitution contains several important provisions relating to tenure that became contested litigation areas during the last ten years.⁵⁴ These include:

- section 25, which provides for protection of property rights, protection against arbitrary deprivation of property, compensation for expropriation of property

South Africa has few parallels when it comes to prohibiting and regulating the practice of evictions

together in a direct dialogue with bilateral and multilateral agencies and financial institutions, promotes the developmental role of local governments and helps cities of all sizes to obtain more coherent international support. By promoting the positive impacts of urbanization, the alliance helps local authorities to plan and prepare for future growth, assists cities in developing sustainable financing strategies, and attracts long-term capital investments for infrastructure and other services. Cities Alliance supports cities to prepare city development strategies, which are action plans for equitable growth in cities and their surrounding regions, developed and sustained through participation, to improve the quality of life for all citizens.

Another initiative that deserves some attention is the work of the Development Partners Group on Land in Kenya. The group focuses on promoting secure tenure for disadvantaged groups and the development of sustainable land information management systems. It also supports productive investments in urban and rural areas. The group represents an innovative approach to land-sector coordination in line with international declarations calling for greater harmonization, alignment and coherence in the field of international technical cooperation (see Box 6.24).

Box 6.25 Key legislation on security of tenure adopted in South Africa since 1996

- Restitution of Land Rights Act (No 22 of 1994)
- Land Reform (Labour Tenants) Act (No 3 of 1996)
- Communal Property Associations Act (No 28 of 1996)
- Interim Protection of Informal Land Rights Act (No 31 of 1996)
- Extension of Security of Tenure Act (No 62 of 1997)
- Housing Act (No 107 of 1997)
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (No 19 of 1998)
- Communal Land Rights Act (No 11 of 2004)

Box 6.26 Security of tenure case law in South Africa

In terms of national-level judicial approaches to the question of security of tenure, three recent court cases in South Africa stand out.

In *Grootboom*, the first case under the South African Constitution to address the complex questions of forced eviction, relocation and security of tenure, the Constitutional Court asserted in 2001 that:

- 1 *The state is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive. These policies and programmes must be reasonable both in their conception and their implementation. The formulation of a programme is only the first stage in meeting the state's obligations. The programme must also be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the state's obligations.*
- 2 *In determining whether a set of measures is reasonable, it will be necessary to consider housing problems in their social, economic and historical context and to consider the capacity of institutions responsible for implementing the programme. The programme must be balanced and flexible and make appropriate provision for attention to housing crises and to short-, medium- and long-term needs. A programme that excludes a significant segment of society cannot be said to be reasonable. Conditions do not remain static and therefore the programme will require continuous review.*
- 3 *Effective implementation requires at least adequate budgetary support by national government. This, in turn, requires recognition of the obligation to meet immediate needs in the nationwide housing programme. Recognition of such needs in the nationwide housing programme requires it to plan, budget and monitor the fulfilment of immediate needs and the management of*

crises. This must ensure that a significant number of desperate people in need are afforded relief, though not all of them need receive it immediately. Such planning, too, will require proper cooperation between the different spheres of government.

In what has been described as a win-win case, in *Modderklip* (in 2004), the Supreme Court of Appeal held that the state had breached its constitutional obligations to both the landowner and the unlawful occupiers by failing to provide alternative land to the occupiers upon eviction. The court thus consolidated the protection extended to vulnerable occupiers in the *Grootboom* case by stipulating that they were entitled to remain on the land until alternative accommodation was made available to them.

In the *Port Elizabeth Municipality* case, the South African Constitutional Court (in 2005) ruled that:

It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society, as a whole, is demeaned when state action intensifies rather than mitigates their marginalization. The integrity of the rights-based vision of the constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence. Hence the need for special judicial control of a process that is both socially stressful and potentially conflictual (para 18)

Section 6(3) [of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, which gives effect to sec 26(3) of the constitution] states that the availability of a suitable alternative place to go to is something to which regard must be had, not an inflexible requirement. There is therefore no unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless alternative accommodation or land is made available. In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme. (para 28)

and (in section 25(5)) requires that 'the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis';

- section 25(6), which provides that 'A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.'

Furthermore, and responding to the fact that many millions of South Africans had been forcibly removed from their homes during the apartheid period, section 26 of the constitution now provides that:

- 1 *Everyone has the right to have access to adequate housing.*
- 2 *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive*

- realization of this right.*
- 3 *No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.*

Moreover, during the years since the adoption of the 1996 South African Constitution, the South African Parliament has adopted a series of key legislation dealing with various aspects of security of tenure (see Box 6.25). Accordingly, those suffering in circumstances of insecure tenure are in a dramatically stronger position legally than they were a decade ago. Court decisions have given them substantive protection under the constitution and an ability to obtain orders that the authorities produce constitutionally viable and acceptable plans for fulfilling their obligations. Eviction law has changed dramatically and new cases are developing a substantive rights jurisprudence and not merely interpreting procedural protections.

The next key shift occurred with the so-called *Grootboom* case, when the Constitutional Court⁵⁵ – while not following the High Court’s order that shelter should be mandatory for children⁵⁶ – held that in failing to provide for those most desperately in need, an otherwise reasonable local authority housing policy was still in breach of the constitution. Thus, the decision stressed that the state is obliged to act to progressively improve the housing conditions in South Africa. The state is not only required to initiate and implement programmes, it is also required to ensure that policies and programmes are well directed and that they are well implemented. Other recent cases, such as the *Port Elizabeth Municipality* and *Modderklip* cases, build on this case and highlight the goal of avoiding evictions and stress the obligations to provide alternative and appropriate accommodation when evictions are unavoidable (see Box 6.26).

These legislative efforts, however, have not always succeeded in achieving the results sought. Besides the fact that forced evictions have clearly not been eradicated from South Africa, efforts to provide security of tenure through the formalization process have also clearly fallen short of expectations. One analysis points out the following lessons from South Africa’s experience with formalization to date:

- *Formalization of property rights through titling does not necessarily promote increased tenure security or certainty and in many cases does the opposite.*
- *Formalization of property rights does not promote lending to the poor.*
- *Rather than giving their property the character of ‘capital’, formalization could expose the poor to the risk of homelessness.*
- *The urban and rural poor already have some access to credit.*
- *Formalization through registered title deeds creates unaffordable costs for many poor people.*

- *Informal property systems currently support a robust rental market that is well suited to the needs of the poor.*
- *Formalization via title deeds for individual property can very quickly fail to reflect reality.*
- *The poor are not homogenous and those in the extra-legal sector should be differentiated according to income and vulnerability status.*⁵⁷

Moreover, and tellingly, during recent years South Africa has witnessed accelerated urbanization and increased rural impoverishment, in addition to substantial increases in the price of land in the main urban areas where people are looking for houses and seeking jobs. The post-apartheid state deserves credit for a housing programme that has provided in excess of 1 million houses since 1994. The extent of the continuing challenge with respect to providing secure tenure is apparent from a recent survey, which records that notwithstanding the number of houses built, the number of households in the nine largest urban areas without formal shelter has increased from 806,943 in 1996 to 1,023,134 in 2001 and 1,105,507 in 2004.⁵⁸

Brazil

The approval of the new democratic Constitution of Brazil in 1988 and the collapse of the national social housing system in 1996 led to the development of new policies and programmes targeting the situation of the population living in informal urban settlements. The promotion of the ‘right to the city’ and the right to housing were major components of these new initiatives.

Under the constitution, all municipalities of more than 20,000 residents are required to formulate master plans incorporating the constitutional principles linked to the ‘right to the city’. These norms were significantly bolstered by the adoption in 2001 of the innovative City Statute (see Box 11.8). Property rights are regulated according to the special constitutional provisions addressing rural and urban land, indigenous peoples’ and Afro-descendants’ lands, and private and public land. As for property rights over urban land, the municipalities have jurisdiction to issue laws supplementing state and federal legislation as applied to local matters, such as environment, culture, health and urban rights. All municipalities are required to develop a master plan as the basic legal instrument for urban development and to ensure that both the city and the property owners fulfil their legal and social functions according to the law. The municipalities may also promote legislation and/or regulations as required for control, utilization, urbanization and occupation of urban land.

National programmes to support the production of social housing, land regularization and slum upgrading have been implemented by the Ministry of the Cities created in 2003. Civil society, social movements and NGOs have been leading the implementation of such policies together with the federal government, and consistent with the principles and instruments provided by the City Statute. The process of

The state is obliged to act to progressively improve the housing conditions in South Africa. It is also required to ensure that policies and programmes are well directed and that they are well implemented

Municipalities ... are required to formulate master plans incorporating the constitutional principles linked to the ‘right to the city’

Box 6.27 Participatory housing policies and legislation in Brazil

Various groups in Brazil have carried out innovative, independent and self-organized efforts to address housing and land rights. The most common experiences involve co-operatives, associations or other self-help efforts aimed at building or improving housing in urban areas. Since the 1980s, such efforts have been organized under the National Forum on Urban Reform, which is an umbrella organization of popular movements, professional organizations and non-governmental organizations (NGOs) in the areas of housing, urban management, urban transportation and sanitation. Among the major achievements of the forum is the development of a Platform for Urban Reform, which seeks to realize housing and land rights and to combat poverty and social inequalities. This platform was underwritten by 131,000 voters and presented by various organizations to Congress in 1987 as part of the process leading up to the adoption of the new constitution of 1988.

In some cities, the forum is represented through local or regional forums, which deals with the following issues:

- actions in the defence of the 'right to the city' and of communities whose housing rights are threatened with forced displacement by the implementation of projects for development or the promotion of tourism and/or infrastructure construction or improvement;
- participation in programmes and projects for land regularization in informal and irregular urban settlements;
- organization of counselling and capacity-building on public rights and policies for popular leadership and organizations; and
- participation in city management processes.

Among the major achievements of the National Forum was the approval of the City Statute and its contribution to the establishment of the Ministry of Cities in 2003. The National Forum also played a major role in both the first and the second National City conferences, held in 2003 and 2005, respectively. The first confer-

Source: Marques, 2007

ence led to the establishment of the National City Council in 2004. The council is a consultative body responsible for proposing guidelines and goals for public policies addressing national urban development, housing, sanitation and transportation. It also provides guidelines and recommendations for the application of the City Statute and initiates national and regional plans for territorial organization.

Another result of the organization of the urban social movements was the approval of a bill creating the National Social Housing System and the National Fund. The proposal for this new law was presented in 1988 and was signed by 1 million voters, as is required for such popular initiatives. It proposed the creation of an articulated national housing system composed of an executive public authority: the Ministry of the Cities; the Federal Savings Bank as its operational agent; the National City Council and the National Social Housing Fund; housing councils and funds created at the municipal and state levels; and housing co-operatives and community associations. The law reflecting the demands of this popular initiative was approved by the Federal Senate in 2005 (Law No 11.124/2005) and established the National Housing System to facilitate access to rural and urban land and adequate housing by the poor people through implementation of a policy of subsidies. This law provides for the transfer of funds now used to repay the foreign debt to municipal and state programmes to subsidize housing and land for the low-income population.

The National Social Housing Fund is managed by a council composed of 22 representatives, of whom 10 are from the governmental sector and 12 are from the non-governmental sector (social movements, the private housing sector, trade unions, professional entities, universities and NGOs). The council members are entitled to approve the annual plan of financial investment for housing programmes, considering the resources available in the National Fund; to establish criteria for the municipalities, states, housing co-operatives and associations to access these financial resources; and to monitor the full application of such resources.

There are still many structural obstacles of a conceptual, political, institutional and financial nature to be overcome before the legal concessions become a reality

implementing national policies and legislation concerning the promotion of land and housing rights by the federal government and the civil society is assisted by specific policies and programmes, such as the National Policy to Support Sustainable Urban Land Regularization, established in 2003 by the Ministry of the Cities; the National Social Housing System and its Social Housing Fund, approved in 2005; and the National City Conferences, held in 2003 and 2005 (see Box 6.27).⁵⁹

Brazil continues to face serious land-access problems both in urban and rural areas, as can be seen from the many and varied conflicts over land possession. Despite the fact that the federal government has managed to advance significantly in formulating comprehensive national housing and land policies and in creating the essential legal-institutional bases, some programmes are isolated and ineffective, and have little significant impact on the Brazilian reality.

There are still many structural obstacles of a conceptual, political, institutional and financial nature to be

overcome before the legal concessions become a reality. Recent statistics show that the Brazilian housing deficit has increased over the last decade from 5.4 million housing units in 1991 to 6.7 million in 2000 – an increase of 22 per cent in only ten years. Furthermore, it continues to grow at a rate of 2.2 per cent per year. In 2000, the urban housing deficit was estimated at 5.4 million units. Paradoxically, according to the 2000 census, there are 4.8 million unoccupied residences in the cities.⁶⁰

India

In India, the national housing policy of 1994 states that central and state governments must take steps to avoid forced evictions. Moreover, they must encourage *in-situ* upgrading, slum renovation and other initiatives with the provision of occupancy rights. When evictions are unavoidable, the policy states that the government 'must undertake selective relocation with community involvement only for

Housing rights in India are an extraordinary example of practice departing sharply from the law

For decades, the quest for security of tenure has ... been an illusive one

Box 6.28 Security of tenure case law: India's Supreme Court

In 1978, the Supreme Court first found in the case of *Maneka Gandhi versus Union of India* that the right to life provisions in the Indian Constitution (Article 21) must be taken to mean 'the right to live with dignity'.

Building on this conclusion, in the 1981 case of *Francis Coralie Mullin versus Union Territory of Delhi*, the Supreme Court asserted that: 'We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing, and shelter over the head.'

In what has become clearly the most celebrated Indian case in this regard, known colloquially as the Bombay Pavement Dwellers Case, the Supreme Court expanded further on the right to life provisions in the constitution, even while the decision ultimately allowed the eventual eviction of the pavement dwellers concerned. In the 1985 case of *Olga Tellis versus Bombay Municipal Corporation*, a constitutional bench of the Supreme Court declared that 'Eviction of petitioners from their dwellings would result in the deprivation of their livelihood... The right under Article 21 is the

right to livelihood because no person can live without the means of living'.

Reaching a similar conclusion, in the case of *Ram Prasad versus Chairman, Bombay Port Trust*, the Supreme Court directed the relevant public authorities not to evict 50 slum dweller families unless alternative sites were provided for them.

In the case of *Ahmedabad Municipal Corporation versus Nawab Khan Gulab Khan and Ors*, in 1997, the Supreme Court stated that it:

is the duty of the State to construct houses at reasonable rates and make them easily accessible to the poor. The State has the constitutional duty to provide shelter to make the right to life meaningful ... the mere fact that encroachers have approached this court would be no ground to dismiss their cases. Where the poor have resided in an area for a long time, the State ought to frame schemes and allocate land and resources for rehabilitating the urban poor.

the clearance of sites which take priority in terms of public interest'. Work has been ongoing for the development of a national slum policy.⁶¹ Added to these favourable policies, a series of judicial decisions in India has also been supportive of housing rights and tenure claims. For more than two decades, the Indian Supreme Court has issued a range of far-reaching decisions relying both on the right to life provisions found in the constitution, as well as other norms to protect the housing rights of dwellers (see Box 6.28).⁶²

Law, policy and jurisprudence do not always mesh with reality. One third of Mumbai's slum dwellers are evictees,⁶³ and, clearly India's recent economic boom has not distributed the benefits equally. Housing rights in India are an extraordinary example of practice departing sharply from the law. India has ratified the ICESCR without any reservation, and the ICESCR has been referred to in scores of judgements of India's Supreme Court. Furthermore, there is no doubt whatsoever that it is enforceable in Indian courts. Nevertheless, wave after wave of brutal demolitions have taken place, without notice or justifiable reason, in inclement weather, and without compensation or rehabilitation. The Commonwealth Games proposed to be held at Delhi in 2010 initiated the largest ever displacement from Delhi in the year 2000. There are no records available of the number of homes demolished; but NGOs estimate that over 200,000 people have been evicted. From the Yamuna Pushta area alone, 150,000 people were brutally evicted in order to create parks and fountains.⁶⁴

With a population of about 15 million people, Mumbai has half of its population living in slums. They occupy only 8 per cent of the city's land. Formally, those who were listed in the 1976 census of slums were eligible to be covered by slum improvement schemes and also eligible for an alternative plot in case of evictions. This introduced the concept of a cut-off date. Later, the electoral rolls of 1980 were adopted as the cut-off. This was then shifted to

1985, to 1990 and later to 1995. In 2003, 86,000 families in and around the Sanjay Gandhi National Park were evicted despite being covered by the cut-off dates under the orders of the High Court, which took the extreme step of using helicopters and deploying retired military officers to evict the poor inhabitants.⁶⁵ Along these lines several massive demolitions took place in Mumbai. Between November 2004 and February 2005 alone, more than 300,000 people were rendered homeless when over 80,000 homes were smashed.

CONCLUDING REMARKS

This chapter has provided a brief overview of some of the most prevalent types of policy responses that have been employed towards the objective of enhancing security of tenure. The overview yields a range of conclusions. One is perhaps more notable than the others: in spite of all the various approaches taken over the past decades, there can be no doubt that failure, rather than success, has been the norm with respect to addressing the goal of security of tenure for all. Were it otherwise, the world would not face a security of tenure crisis where hundreds of millions of people live without any form of officially recognized or legally secure tenure.

For decades, the quest for security of tenure has, in many respects, been an illusive one. Though all political creeds adhere to views supporting the opinion that security of tenure must lie at the centre of any realistic efforts to improve the lives of the world's 1 billion slum dwellers, the policies that intend to achieve this aim vary widely. Views focusing on titling propose that formalizing slums through the provision of individual land titles will be the most effective way of raising standards of living, of creating assets and of improving housing conditions. Another view is that title-

based approaches are far too expensive to undertake, and when they are attempted, they have the net result of reducing rather than increasing tenure security. Still others favour maintaining customary land tenure arrangements because they are seen as culturally appropriate, grounded deeply in the history of the area concerned, and because they work and are more equitable than approaches based on modern law and private property rights.

Clearly, one of the key challenges for policy-makers is sifting through these and many other views on security of tenure and divining the best approach to a given situation. Before looking at several approaches, 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 one'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 may not necessarily be 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:

*A squatter, or resident of an illegal subdivision, for example, may enjoy no legal rights of occupation, use or transfer, but can still feel physically sufficiently secure, because of numerical strength or political support, to invest in house building and improvement.*⁶⁶

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 third-sector organizations, such as NGOs.⁶⁷

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 the irregular settlement occupants and not on their immediate regularization in legal terms. Approaches that try to achieve security of tenure are the only ones that will meet the immediate and longer-term needs of the populations. As these varying points of view 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.

Just as formality of tenure does not unequivocally guarantee secure tenure, informality does not necessarily mean insecure tenure

Much of the strength of tenure security comes in the form of one's perception of ... security

NOTES

- 1 General Assembly Resolution 401(V).
- 2 Payne, 2001 d.
- 3 See Millennium Declaration, Article 19.
- 4 UN-Habitat, 2003d, pxxviii.
- 5 Durand-Lasserve, 1998, p245.
- 6 Durand-Lasserve and Royston, 2002, p6.
- 7 Prefecture of São Paulo, 2003, p8.
- 8 See Boonyabanha, 2005; Shack and Slum Dwellers International, 2004.
- 9 Seabrook, 1996, p197.
- 10 de Soto, 2000.
- 11 Durand-Lasserve, 1998.
- 12 Payne, 2001c, p51.
- 13 Cousins et al, 2005.
- 14 Kanji et al, 2005.
- 15 Payne, 2001a, p23.
- 16 Payne, 1997, p46.
- 17 *Ibid*, p26.
- 18 Bromley, 2005, p6.
- 19 *Ibid*, p7.
- 20 Payne and Majale, 2004, p54.
- 21 Payne, 1997, p26.
- 22 Payne, 1997.
- 23 Durand-Lasserve, 1998, p244.
- 24 Payne and Majale, 2004.
- 25 FAO, 2005, pp22–24, 26.
- 26 Cousins et al, 2005; Huggins and Clover, 2005.
- 27 World Bank, 2003b, pxxix.
- 28 *Ibid*, p50.
- 29 Kanji et al, 2005, p3.
- 30 World Bank, 2003b, p50.
- 31 Housing and Property Directorate/Housing and Property Claims Commission, 2005.
- 32 UNMIK Regulation 1999/23, Preamble.
- 33 UN doc E/CN.4/Sub.2/1993/8.
- 34 CESCR, General Comment No 4, para 18.
- 35 Commission on Human Rights, Resolution 1993/77.
- 36 See COHRE, 1999; UN-Habitat and OHCHR, 2002; UN-Habitat, 2002, 2005a, 2005b.
- 37 CESCR, General Comment No 7, paras 8–9.
- 38 *Ibid*, para 10.
- 39 *Ibid*, para 16.
- 40 *Ibid*, para 13.
- 41 *Ibid*, para 17; and CESCR, General Comment No 2, para 6 and 8(d).
- 42 Including the right to freedom of movement and to choose one's residence; the right to privacy and respect for the home; the right to equal treatment under the law; the right to human dignity; the right to security of the person; certain formulations of the right to property or the peaceful enjoyment of possessions.
- 43 Polis, 2002.
- 44 McAuslan, 2002, pp34–35.
- 45 *Ibid*, p36.
- 46 *Ibid*, p36.
- 47 Alston, 1993.
- 48 For more comprehensive survey of strategies, see COHRE, 2000.
- 49 UN-Habitat, 2003b.
- 50 *Ibid*.
- 51 Contained in Annex I of UN Document E/CN.4/Sub.2/1997/7.
- 52 Commission on Legal Empowerment of the Poor, 2006a.
- 53 See section 121 of the (interim) Constitution of the Republic of South Africa, Act 200 of 1993; and Restitution of Land Rights Act 22 of 1994.
- 54 Constitution of the Republic of South Africa, Act 108 of 1993, Chapter 2 (the Bill of Rights).
- 55 *Government of the Republic of South Africa and Others versus Grootboom and Others*.
- 56 *Grootboom versus Oostenberg Municipality and Others*.
- 57 Cousins et al, 2005.
- 58 South Africa Cities Network, 2006.
- 59 Kahanovitz, 2007.
- 60 Marques, 2007.
- 61 Banerjee, 2002.
- 62 Baxi, 1982.
- 63 See, for instance, Jacquemin, 1999; Eviction Watch India, 2003; Gonsalves, 2005.
- 64 *Hindustan Times*, 2005.
- 65 Indian People's Human Rights Commission, 2000.
- 66 Payne, 1997, p8.
- 67 *Ibid*, p7.

