ALTERNATIVE SOLUTIONS TO FORCED EVICTIONS AND SLUM DEMOLITIONS

Case studies from Africa, Asia, North and South America

UN⊕HABITAT
FOR A BETTER URBAN FUTURE

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HUMAN RIGHTS IN CITIES: ALTERNATIVE SOLUTIONS TO FORCED EVICTIONS AND SLUM
DEMOLITIONS - CASE STUDIES FROM AFRICA, ASIA, CENTRAL AND SOUTH AMERICA

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LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
HRBA	Human Rights-Based Approach
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, Cultural Rights
IDP	Internally Displaced Person
IOM	International Organization for Migration
NGO	Non-governmental Organization
SR	UN Special Rapporteur on the Right to Adequate Housing and Non-discrimination in this context
RTAH	The Right to Adequate Housing
UDHR	Universal Declaration of Human Rights

EXECUTIVE SUMMARY

Slum demolitions and forced evictions are a gross violation of human rights, specifically the right to adequate housing. Adopting an inhumane displacement approach not only violates human rights international standards, but also reduces the city's prosperity prospects in the medium and long term run by undermining them. Forced evictions also intensify inequality, social conflict, segregation and invariably affect the poorest, most socially and economically vulnerable and marginalized people of society, especially women and children. Without tackling the underlying reasons for slum formations, they are bound to prevail. Thus, it is imperative to implement strategies that are in line with international human rights standards to face the challenges posed by informal settlements and slums.

While strategies may vary greatly depending on the country's socio-economic environment, the alternatives mentioned and analyzed in the case studies presented herein have improved urban prosperity and thus require great consideration and scaling up of the methodologies in other regions. UN-Habitat's mandate in this context assumes paramount importance, regarding the promotion and protection of the Right to Adequate Housing for all which entails the prevention of forced evictions.

This publication showcases examples where forced eviction have been avoided in cases such as:

Vila Autodromo in Brazil, where a community planned multi-scale strategy enabled the neighborhood to successfully push their cause into the public domain

Haiti, where the government's policy has gradually formalized informal settlement as a durable solution to internal displacement

Kenya, where improved access to justice has led to local communities threatened with eviction seeking judicial protection against forced eviction and succeeding

The Philippines where alternatives to forced evictions include slum upgrading and nearby relocation, with poor communities gradually gaining access to basic services such as health, water and sanitation

Ultimately, through these four cases, this publication prescribes short-term, medium term and long-term strategies and interventions that have prevented forced evictions and mitigated the risks of evictions that have taken place.

Short-term Strategies

- Participatory emergency responses to stop forced eviction
- Data collection
  i.e.: enumeration exercises -working towards 'in-situ' slum upgrading to transform them in to regular neighborhoods of the urban fabric

Medium-term Strategies

- City-wide participatory slum upgrading and normalization of informal settlements
- Land-sharing and buy-back orporate responsibility schemes

Long-term Strategies

- Socio-economic programs offering affordable housing options to the poorest and marginalized strata of the society
- Reforms to align national legal systems with human rights international standards
- Adopting more holistic responses to planning, involving slum areas in city-wide plans
- Formulating strategic financing approaches for urban renewal (including slums)
- Improving the availability of serviced land and improving approaches to security of tenure for vulnerable groups.

HAITI

PHILIPPINES

BRAZIL

KENYA

CHAPTER 1: INTRODUCTION

Globally, poverty in urban areas is evident in the proliferation of slums and informal settlements. In 2001, 47% of the world's population lived in urban areas, and it was expected that the number would reach over 56% within the next two decades,[1] with a billion-people living in a slum.[2] Moreover, at least 2 million people in the world are forcibly evicted every year, while millions are threatened with forced evictions. These issues continue to persist despite the fact that the right to adequate housing is guaranteed to all and a prerequisite to inclusive and sustainable urban centers.

The violation of the right to adequate housing leads to spatial fragmentation and increases the risk of other human rights being compromised for groups who are discriiminated, marginalized and excluded. Furthermore, it disregards the relevance of the squatter communities and informal settlements within the urban fabric. Without tackling the underlying causes for slum formations, the evicted community will often return to the city, eventually forming new slums. Based on international best practices and respect for human rights, different strategies other than forced evictions, are available to support government's efforts to face the challenges posed by informal settlements and slums in an urban context. UN-Habitat is mandated to promote inclusive and sustainable urban development. UN-Habitat developed a unique position in addressing the challenges posed by slums through the adoption of inclusive multi-scale participatory approach to urban development, using international human rights framework and the right to adequate housing. While in some cases, evictions may respond to government's development plans for infrastructure upgrading, often aligned to extra-territorial and international policies, when the evictions are forced, the right to adequate housing and other fundamental human rights are violated, including: loss of family ties, proximity to schools, education facilities, and working opportunities; exposure to health hazards due inadequate living conditions, lack of access to basic services, etc.

It is on this premise, that this research focuses on the intervention strategies adopted by both national and international actors, especially where public interests and fundamental individual

1 UN-Habitat, State of the World Cities (2014)
2 UN Population Fund (2006:16)

human rights have been observed. Along with UN-Habitat's mandate, to support a sustainable and inclusive urban development, this report proposes innovative methodologies and appropriate policies and tools, within the framework of the international standards on the Right to Adequate Housing and a Human Rights-Based Approach to Development Cooperation and Programming.

These alternatives not only protect and comply with Human Rights, but also ultimately promote urban prosperity for all in the long-term.

Sharing innovative solutions on a global perspective is extremely important particularly when city administrators and city planners are looking for new ways forward[3]. Therefore, these forced eviction cases are presented and analyzed with a focus on strategies & interventions applied by relevant actors to avoid human rights violations, and reach common solutions between different interests. The research has been conducted with a global perspective – examining cases from different regions.

Despite the perception that Northern cities are better planned and developed, in the case of informal settlements' management, the best practices and most original solutions were found in African, Asian, and cites in South and Central America– suggesting counter argument to previous held perceptions. "This process challenges the conventional notion that we in the North know best. *We were always ready to transfer our ideas and ways of working to southern countries, through projects (…) developed and organized from the North. Here we have Southern Countries which are developing alternative solutions to the challenges of slum and informal settlements"*[4].

1.1. CASE STUDIES SELECTION AND ANALYSIS

The case studies have been selected according to two main parameters:

> The geographical and temporal distribution – most recent cases, and from different regions.

> The scientific interest within the scope of the publication – cases where gross human rights violations have been avoided and international law standards on the Right to Adequate Housing applied.

This report takes into consideration only few cases among more then twenty countries examined, few which are exemplary for the interactions between state governments (at central and local levels), international actors and local communities, and for the original solutions adopted.

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3 Michael Norton, Center for Innovation and Voluntary Action and Oxfam UK "Fishing for compliments: where next for North-South learning?"
4 Ibid

Figure 1. Analysis of multi-Stakeholders in the Case Studies

National Government
• Legislative framework protecting the Right to Adequate Housing
• National Housing Policies
• City level and urban planning project

International Law
• Domestication of international standards
• Recommendations from UN commitees and bodies regarding the implementation of the Right to Adequate Housing

Global and Macro Economic Dynamics
• International donors and humanitarian agencies, and their interventions in the country
• Relevant multinational actors and corporations

Local Community
• Formal and informal property rights
• Relevant interests at local level, historical background
• NGOs and civic society organizations' interventions
• Local leadership (village/local chiefs or administrations)

The concluding analysis emphasizes strategies that show relevant interests at stake, highlights development programs and projects implemented with respect to human rights of affected communities.

1.2. INTERNATIONAL STANDARDS OF THE RIGHT TO ADEQUATE HOUSING

Human rights protection at the center of the operations has been proven vital for urban

planning interventions, accessibility to services, cultural adequacy, security of tenure, which are essential components of the Right to Adequate Housing[5].

The Right to Adequate Housing is a component of the Right to an Adequate Standard of Living enshrined in the Universal Declaration of Human Rights (UDHR) (Article 25) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 11)[6]. They both require that States progressively realize the right to adequate housing which entails, the obligation to, inter alia, provide security of tenure, refrain from forced evictions, protect its citizens from arbitrary interference with ones' home and privacy, and to acknowledge and plan for people's participation in housing-related decision-making processes at national and community levels.

The Committee on Economic Social and Cultural Rights (CESCR), further elaborates seven components of the Right to Adequate Housing[7] in its General Comments 4 and 7 as:

Figure 2. Seven components of Adequate Housing

Affordability
The cost of housing should not compromise or threaten the attainment of other basic needs and the enjoyment of other human rights.

Habitability
Physical safety, adequate space and protection against threats to health and structural hazards.

Accessibility
Disadvantaged and marginalized groups.

Availability of Services
Materials, facilities and infrastructures; such as access to water, sanitation, etc.

Location
Close to employment, education, health-care, services, and not located in polluted or dangerous areas.

Security of tenure
Degree of security of tenure which guarantees legal protection against forced evictions and other threats.

Cultural Adequacy
Enables the expression of cultural identity of the occupants.

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5 A comprehensive analysis is offered in: UN Common Understanding on Human Rights-Based Approach to Development Cooperation and Programming (2003), www.hrbaportal.org

6   Several international treaties refer to the Right to Adequate Housing, among which the ICCPR (art 17) and the International Convention relating to the Status of Refugees (art 21).

7 UN Committee on Economic, Social, Cultural Rights, General Comments 4 (1991) and 7 (1997)

Additionally, the Right to Adequate Housing includes the Right to Non-Discrimination: which requires States to ensure de jure and de facto equality in the access to adequate housing and protection against forced evictions to all, especially most poor and marginalized. State's obligations regarding human rights fall into three categories: protect, respect and fulfill. Respectively, States are to refrain from interfering directly or indirectly with the enjoyment of the RTAH, prevent third parties from interfering with this right and adopt appropriate legislative, administrative and other measures to fully ensure the RTAH.

1.3. FORCED EVICTIONS

Increasingly, more attention is being paid to the RTAH, particularly regarding forced evictions. CESCR defines Forced Eviction as the *"[8]permanent or temporary removal against the 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"*. By ratifying human rights treaties, States commit themselves to act against and prevent forced evictions.

Should relocations be imperative, they are only justified only in the most exceptional circumstances, after all alternatives are explored in consultation with the affected community. The

most important requirements for carrying out an eviction are[9]:

Opportunity for genuine consultation with the affected community

Adequate and reasonable notice

Availability of legal remedies

Proper identification of persons carrying out the eviction

Prohibition of carrying out the eviction in bad weather or at night

Presence of government officials or their representatives during the eviction

Availability of legal aid to those in need to seek judicial redress

Availability of information on the proposed eviction in reasonable time

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8 UN CESCR General Comment 7
9 OHCHR and UN-Habitat, Fact Sheet no 21 The Right to Adequate Housing

It is also important to note that **fair and just compensation** should be provided to the affected community before the eviction takes place.[10]

In 2000, the Commission on Human Rights (now replaced by the Human Rights Council) created the mandate of the *"Special Rapporteur on the Right to Adequate Housing as a component of the Right to an Adequate Standard of Living and on the Right to Non-discrimination in this context[11]"*. In 2006, the Special Rapporteur on the Right to Adequate Housing issued the **Basic Principles and Guidelines on Development based Evictions and Displacement.** While not legally binding, they provide guidance for the implementation of the Right to Adequate Housing, especially for the State obligation for before, during, and after development-based eviction.

In August 2005, the UN Sub-Commission on the Protection and Promotion of Human Rights adopted the **"Pinheiro Principles"** that provide guidelines to ensure the right to adequate housing for IDPs and refugees. *"All refugees and displaced persons have the right to have restored any housing, land and/or property of which they were arbitrarily or unlawfully deprived"* and *"Everyone who has been arbitrarily or unlawfully deprived of housing, (…) should be able to submit a claim for restitution and/or compensation to an independent and impartial body"*.[12] At regional level, the Right to Adequate Housing is enshrined in the following:

- **American Convention on Human Rights**
- **European Convention on Human Rights**
- **African Charter on Human and Peoples' Right:** These do not refer specifically to the Right to Adequate Housing – but according to the interpretation of its monitoring body, the African Commission on Human and Peoples' Rights, charter protects the Right to Adequate Housing as a combination of basic rights expressly mentioned in the treaty (the right to life, the right to family, the right to health and the right to privacy)[13].

The countries presented in this research have ratified the following international human rights treaties, and are therefore obliged to incorporate the international law premises on their national laws:

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10 UN Commission on Human Rights Resolution 1993/77

11 UN Commission on Human Rights Resolution 2000/9 and Human Rights Council Resolution 6/27

12 "Housing and property restitution in the context of the return of refugees and internally displaced persons: Final Report of the Special Rapporteur Paulo Sergio Pinheiro" (E/CN.4/Sub.2/2005/17)

13 For a comprehensive analysis of the Right to Adequate Housing and its implications: OHCHR and UN-Habitat, Fact Sheet no 21, The Right to Adequate Housing, and Fact Sheet no 25, Forced Evictions.

Figure 3. International treaties on RTAH ratified by Brazil, Haiti, Kenya, and the Philippines

1 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

2 International Covenant on Civil and Political Rights

3 Convention on the Elimination of All Forms of Discrimination against Women

4 International Convention on the Elimination of All Forms of Racial Discrimination

5 International Covenant on Civil and Political Rights

6 Convention on the Rights of the Child

7 Convention on the Rights of Persons with Disabilities

BRAZIL

CHAPTER 2: BRAZIL
MANAGING MEGA-EVENTS
AND INFORMAL SETTLEMENTS

KEY MESSAGES FROM BRAZIL CASE STUDY

A participatory and inclusive approach to a mega-event planning ensures popular participation which can prevent negative impacts on the realization of the Right to Adequate Housing.

Popular participation and access to stakeholders and key players at the municipal and national level (multi-scale approach) is important in preventing forced evictions.

A Multi-scale Approach ensures participation and access to key players at the municipal and national level and allows local communities to engage the public administration and work in tandem as a constructive force

To actively participate in the planning process, community leaders need to build their professional capacity to play an active role in the planning process and improve their technical knowledge in the field of urban planning.

2.1. BACKGROUND

Brazil is the largest country in Latin America. Since the 1960s, it has undergone a dramatic demographic transformation largely due to the massive urbanization and economy modernization. Brazil is now one of the world's most urbanized countries with more than 80% of its inhabitants living in urban areas[14]. With regards to access to housing, Brazil represents a tremendous social unequality, with 1% of landholders owning 45% of all land.

The housing deficit has been calculated to approximately 7 million units and it is primarily concentrated in the southeast and northeast regions of the country, and informal settlements are a common sight at the outskirts of every large metropolis[15].
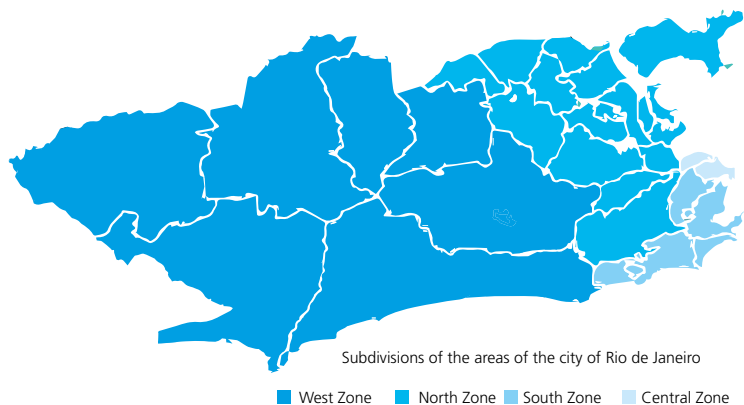
In the case of Rio de Janeiro, the second largest city in Brazil and a major economic and political centre has the highest concentration of people in the metropolitan area of the municipality[16]. According to a 2010 Census, 22% of the population lives in informal settlements (more than 1,700,000 slum dwellers).

Within the municipality, four different areas can be distinguished with regards to socio-economic classes: Southern zone in which the upper and middle-class lives; beach area on the Western part; a Northern area close to down town, and the Central Zone, further away from the city centre, where the poor and low-income people reside (Figure 1). However, urban poverty is wide spread throughout the city and slums are virtually

Figure 4. Subdivisions of the areas of the city of Rio de Janeiro[17]

Subdivisions of the areas of the city of Rio de Janeiro

■ West Zone ■ North Zone ■ South Zone ■ Central Zone

14 UNISA (above)
15 UN-Habitat, Scaling-up affordable housing in Brazil (2013)
16 Brazilian Institute of Geography and Statistics - Census 2010
17 http://contemporarycity.org/wp-content/uploads/2014/04/zonas-rio.jpg

present everywhere in the municipality, with a particular mix of wealthy zones close to poor neighbourhoods normally indicated with the dichotomy *favelas v. asphalt*, referring to the lack of asphalt roads in informal settlements.
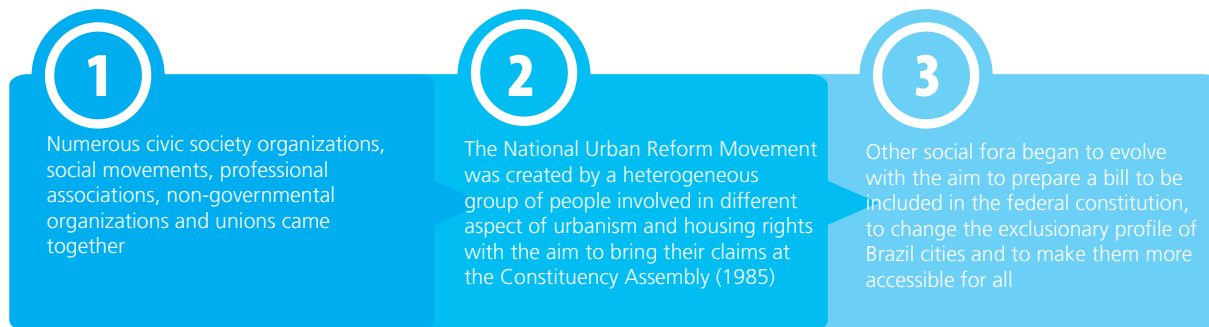
2.2. HOUSING POLICIES AND PROGRAMMES

2.2.1. National Law

Among the positive aspects of the implementation of RTAH in Brazil, the Committee notes the establishment of the National Fund for Social Interest Housing, whose main aim is to urbanize slums, build housing and improve housing conditions for low income groups. However, according to the CESCR Committee and the Special Rapporteur Brazil is facing severe challenges in implementing the Right to Adequate Housing due to:

- Persistent inequalities between different regions relating to the land reform process
- Lack of recognition of indigenous people's rights
- Lack of provision of social housing for low-income communities
- High number of people – 6 million - that still live in precarious urban settlements[18]

Furthermore, the Constitution of 1988 incorporated many new concepts ranging from environmental protection to human rights and a long Declaration of Rights, including many economic and social rights. However, the Right to Adequate Housing was not formally included. Consequently, the National Constituency Assembly witnessed the political struggle over the land regularization, where popular forces advocated for having their rights recognized (Figure 5).

Figure 5. Popular participation process that led to the inclusion of the Right to Adequate Housing in the Constitution

1 Numerous civic society organizations, social movements, professional associations, non-governmental organizations and unions came together

2 The National Urban Reform Movement was created by a heterogeneous group of people involved in different aspect of urbanism and housing rights with the aim to bring their claims at the Constituency Assembly (1985)

3 Other social fora began to evolve with the aim to prepare a bill to be included in the federal constitution, to change the exclusionary profile of Brazil cities and to make them more accessible for all

18 UN HRC, CESCR Committee, Concluding Observations, Brazil (2009)

As a result, the Constitution was amended in the year 2000 and the Right to Adequate Housing was included. A year later, the City Statute Laws were promulgated, which encompasses the democratic management of cities regulations for the municipalities to make Master Plan to fulfill the social function of properties.

Figure 6. Constitutional articles on the Right to Adequate Housing

Article 6 recognizes the right to housing as a fundamental right and in Article 5, infringement of fundamental rights and liberties is punishable by law.

Article 7 establishes what must be taken into consideration to calculate the minimum wage and includes housing as one of the basic needs of people.

Article 23 states that the Union, States and Municipal government have concurrent jurisdiction to create and implement housing construction programs and improve housing and basic sanitation conditions

Article 156 states that the municipality has powers to create and collect property taxes on urban land and buildings.

Article 182 grants the federal government the authority to expropriate land with payment on account of the social interest if that land is not productive or fulfilling its social function.

2.2.2. The City Statute Law

The City Statute Law enacted in 2001 is a commendable primary federal law relevant to the right to the city and housing issues in Brazil and institutes the legal framework for urban land reform. It sets the overall guidelines to promote urban policy that must be observed by the Union, the States, and the Municipalities.

According to the City Statute, property rights are *'subject to its social function, which must be defined in the City Master Plan'*. The objective of this process is to guarantee the full development of the social function of urban property and the right to sustainable cities and the development of the democratic management of cities.

Based on the principles of the social function of property and the democratic management of cities, the law contains regulation regarding public order and social interest which regulate the use of urban property to ensure security, for the collective and individual well-being of citizens.

It also contains provisions on instruments designed to ensure the fulfilment of the social function of property, progressive taxation over time on urban property and expropriation for urban reform purposes; criteria for municipalities to develop and apply management plans; regulatory instruments for the use and access to urban lands occupied by low-income people; democratic city management instruments (public hearing, councils and city conferences in national, state and municipal plans)[19].

According to the **City Statute Law**, urban property fulfils its social function when it meets the fundamental requirements expressed in the Master Plan, ensuring compliance with citizens' needs for quality of life, social justice and the development of economic activities. Therefore, the master plan should link the function of land ownership to the guidelines and goals of the urban policy democratically established by the municipality.

The Ministry of Cities supervises the implementation of the City Statute Law at national level and runs various social housing programs for the benefit of low-income rural and urban populations. These include programs for the efficient production of economical housing and infrastructure improvement, regularization of informal settlements, and slum upgrading programs.

Under this law municipalities are also requested to provide instruments that allow for participation of people affected by urban development measures. Each municipality with more than 20,000 inhabitants must set up a **City Master Plan**, which has to be revised under participation of civil society every ten years. An Advisory Board within the municipality is formed, in order to represents the citizens in housing issues. This Board coordinates the process of revision of the master plan and should advise the local government.

Further, municipalities may form **Citizens Housing Councils.** These councils are housing policy mechanisms present in many Brazilian cities, through which, members of society have a direct role in the urban development process. These housing councils may debate budgetary proposals, housing policies and present proposals on how the municipal funds should be allocated; while all the final decisions are made by the municipal board, citizens have an active role in the process. This power-sharing model decentralizes the authority from the city management and fosters an environment of co-management and governmental legitimacy with the stakeholders directly affected by the policies.

The Zones of Special Interest

The zones of special interest (ZEIS) originates from Article 4 of the City Statute Law and permits municipalities to designate areas of land in which different rules govern the use and the occupancy of that particular section of real property, with the objective to protect the Right to Adequate Housing. In practice, the municipality legislature designates an area as falling under the ZEIS which then permits the people living there to obtain legal title through buying, donation, adverse possession, leases and concessions by the government.

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19 Federal Law no 10/257.01 – City Statute Law

Since the Constitution and the City Statute permit citizens to bring popular initiatives to the government regarding urban matters, the residents in an informal settlements can present a popular initiative to declare their area as ZEIS. For instance, since 2004, 11835 families living in informal settlements have received legal titles to their land.

The Right to Urban Adverse Possession

Adverse possession refers to the *'right acquired by irregular residents who have taken over third party private lands and have been allowed to remain there for long period of time'.* For an individual to adversely possess a piece of land he must: (1). possess an area of minimum 250 square meters; (2) for 4 years, (3) without interruption or opposition, (4) acquire domain of it, (5) not own any other urban or rural property. To acquire official title over the land, the occupant must make a formal presentation before a specialized judge. If the applicant successfully acquires title to the land, under the City Statute Law, he has the right to pass it to his or her children.

Additionally, the City Statute Law allows for *"collective adverse possession"* in which a community of individuals can gain title to the land as a group. In these instances, communities often form resident associations and submit a claim for collective adverse possession in the names of all its members.

2.2.3. Minha Casa Minha Vida

In 2009 the Brazilian Government launched the **Minha Casa, Minha Vida** (My House, My Life) programme, to address the social housing deficit. The programme is a social housing initiative for low and middle-income families, aimed at producing new housing units by acquisition of new dwellings; acquisition of used stock; purchase of building materials; acquisition of plots; and establishment of services plots. Specific provisions within the program provide for communities, social organizations and grass roots associations the possibility to access to financial subsidy to acquire land and develop the housing supply they need for accommodating their own community.

Although the Inter-American Development Bank is presently supporting the government of Brazil by promoting direct subsidies to the poor, the financing strategy has been the least successful in the region, largely due to the difficulty of low-income populations to meet the credit requirements. Informal tenure property rights and customary rights are not yet recognized by formal financial institutions, therefore, general low-income people turn to informal sources of credit, such as self-help groups and credit associations.

2.2.4. The Accelerated Growth Programme

The Accelerated Growth Programme (PAC) is the government initiative to assure resources for

sanitation and social development infrastructures throughout the country. It was designed as a strategic plan to restore planning and recover investments in Brazil's infrastructure sector. Since 2007, it has contributed decisively to an increase in job opportunities and income generation. During its first four years, it doubled public investments in Brazil (1.62% of the GDP in 2006 to 3.27% in 2010) helping the Brazilian economy to remain active during the global financial crisis of 2008 and 2009[20].

In 2011, PAC entered its second phase, providing additional resources for the implementation of structural projects to improve the quality of life in Brazilian cities. Among these, there are projects that will be part of the responsibility matrix of the Rio 2016 Olympic Games, which will be jointly implemented by the State and the Rio de Janeiro municipality. The range of projects has a large coverage, from environmental projects - sustainable urban drainage, municipal solid waste and urban environmental sanitation – to social housing and urbanization, standardization and integration of marginal communities, strengthening urban management and urban transport and rail systems.

2.3. OLYMPIC AND PARALYMPIC GAMES IN RIO 2016

There is a delicate link between mega-events preparation and the implementation of the RTAH recommending the adoption of a participatory approach and to avoid forced evictions. Mega-events normally boost the economy of the selected city and creates new development plans and infrastructures. However, displacement and evictions are normal consequences of the implementation of urban development plans and in most cases, alternatives are not sufficiently explored or alternative housing provided[21].

Mega event hosted in Rio de Janeiro has promoted and articulated extensive urban projects, as it happened for the first time during the Pan-American Games of 2007. In 2000, during the Universal Periodic Review, the UN Human Rights Council recommended to the government of Brazil to ensure that the plans for the 2014 World Cup and the 2016 Olympic Games are implemented with respect of basic rights of most marginalized groups of the society. The bid book presented to the international Olympic Committee promised to '*make full use of the city magnificent landscape*' with the mega-event expected to '*accelerate the city's broader long-term aspirations, enhancing its social and physical fabric*'[22].

The transformation of Rio de Janeiro into an Olympic City was envisaged by clustering facilities into four zones around the city, each according to a themed policy objective, while improving the transport network between them.

The West End area of Rio, and the neighborhood

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20 Un-Habitat, Scaling Up Affordable Housing (above)
21 Report of the Special Rapporteur on the Right to Adequate Housing, Mission to Brazil (2009)
22 RIO 2016, Sustainability Management Plan

of Barra de Tijuca, where the informal settlement of Vila Autodromo is located, was among them and hosted more than 50% of all new infrastructure, thus becoming the center of Rio's booming real estate economy.

Its attractive coastline coupled with the raising land and rent prices in the city's South-end encouraged higher income groups to move into the area of Barra de Tijuca, which presented some of the fastest rate of growth in the city, with an increase of its residential population of 26% in the second half of the 90s.

In the Olympic bid book, this area is *presented as the 'naturally expanding area of Rio, the chosen location for the most of families and first home owners'*[23]. It was to host the Olympic Park, the Olympic Village and the International Broadcasting Center, together with three corridors of Bus Rapid Transit System, connecting the area to the international airport, the Olympic cluster of Deodoro, the city center and other neighborhood further West.

The areas around mega-events venues are usually designated as special legal zones in which the law of the state has been replaced by special legal regime. In the case of Brazil, although it has made gains on policy and its Master Plan, for the Olympics derogated the more integrated city's development envisaged in the original Master

Plan of the municipality and evictions were inescapable. Thus, hundreds of communities face evictions due to the event. In the case presented in this report, resistance to the eviction was not in vain and the neighborhood has been able to resist due to **strength of internal organization, linking to other communities and successfully applying a multi-scale strategy** which enable them to push their case into the public sphere.

2.4. ALTERNATIVE SOLUTIONS

2.4.1. Vila Autodromo (Rio de Janeiro)

The community of Vila Autodromo is in the Western zone of the city, near the neighborhood of Barra de Tijuca. The area was traditionally only inhabited by fishermen, due to its proximity with Lake Jacarepagua and other small lakes. With the real estate expansion in the 1970s, the small lakes became either too polluted to allow fishing or where filled in. The fishermen then joined the workers employed in the expansion projects, such as the Jacarepagua Race Track ('Autodromo' in Portuguese) and Vila Autodromo grew as an informal settlement. In the 1990s, the community went through a process of land regularization, demanding the declaration of the area as ZEIS. The process granted most of the residents' legal titles over their homes and at the time of the relocation threats, approximately 90% of the families owned their houses[24].

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23 RIO 2016, Olympic and Para Olympic Games (2013)
24 Norwegian Institute for Urban and Regional Research, Rio de Janeiro: Favela policies and recent social mobilizations (2013)

There are discordant data regarding the number of residents in the neighborhood, but in a communication sent to the Olympic Organizing Committee in the year 2010, the state Public Defender of Rio de Janeiro claimed that there were approximately 950 families in Vila Autodromo, and 350 documented lot[25]. Over the years, through a system of voluntary work organized by the inhabitants themselves, the community of Vila Autodromo was able to guarantee a minimum of health and urban infrastructures, electricity, telephone line, etc. and in 1987 they formed the Association of Fishermen and Residents of Vila Autodromo (AMPAVA).

Vila Autodromo residents faced several attempts of removal in the past years by the municipality government, with different justifications. In 1993 the municipality administration, led by the sub-prefect of Barra de Tijuca and Jacarepagua, proposed eviction under the reason that Vila Autodromo represented an "aesthetic and environmental damage" to the region because of its proximity to Barra de Tijuca, which was rising as a new centre of the city[26]. A more recent attempt of removal happened during the preparation of the Pan-American games of 2007 and the last one in 2010, justified by the need to build an Olympic Village and International Broadcasting center for the Olympic Games RIO 2016.

Figure 7. Legislature declaring Rio de Janeiro a special legal zone

Law 12.035/2009, (The Olympic Act)
It is the first of a number of legislative measures that established the foundation of a 'system of exception' that will rule in the State and the City of Rio de Janeiro in preparation and during the Olympic Games.

Municipal decree 30.379/2009
In Rio de Janeiro, it establishes that "the executive will make all the necessary efforts to ensure that properties belonging to the municipal government are available for use if they are essential for the 2016 Rio Games, even if they are occupied by third parties".

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25 Norwegian Institute (above)
26 Ibid

As mentioned above, during the preparation of mega-events, most often states and municipalities enact specific provisions of law that derogates to normal rules and establishes exceptions justified by the particular relevance of the event.

The lack of popular participation in the planning and implementation of urban development Olympic Games projects are one of the strongest criticisms of the Olympic Plan. Lack of transparency, accountability and the participation of the local communities into the planning and design phase of the urban projects were identified as main negative aspects.

In the specific case of Vila Autodromo, special municipal acts and the federal Olympic Act have overruled both the Master Plan and other municipal laws and regulations concerning land use and urban planning.

To resist to the threats of eviction, the community decided to take a more pro-active approach and the residents association seek the collaboration with the People's Committee on the World Cup and Olympics and two federal universities of the Rio region. Jointly, they started a project to develop a "Plano Popular" - People's Plan - to upgrade the community. The Plan was developed over a ten-month process involving residents divided in various working groups and supported by a group of scholars and university students; together, they produced an integrated plan for housing upgrading, sanitation, infrastructure and environment, public services, and economic and to cultural development of the city.

As part of the strategy, a "Viva Vila Autodromo" campaign was launched in June 2012, during the Rio+20 Summit. An international demonstration of solidarity with Vila Autodromo, which is located adjacent to the official conference centre of the Rio+20, was held with the support of international NGOs. On August 16th, 2012, the Popular Plan was delivered to the Mayor of Rio de Janeiro, one month before the municipal elections. The residents did not receive any formal response, but in November 2012 the re-elected Mayor reaffirmed the decision of removing the community to make space for the Olympic Village.

The residents were presented with the alternative relocate to Parque Carioca, a newly built neighbourhood of apartment blocks, for a total of about 900 housing units, 1 km from Vila Autodromo. Since then, the municipality tried several times to convince the residents to sign up for Parque Carioca, each attempt followed by the resident's resistance backed up by the Public Defender's Office.

Lastly, on August 9th, 2013, the municipal administration lead by the Mayor of Rio de Janeiro committed to a solution that could guarantee the permanence of the community. The Mayor acknowledged the Popular Plan and announced that he was willing to start a round of negotiation based on the permanence and upgrading of

Vila Autodromo. The same day the residents' association released a public note stating that: *"After years of resistance and struggle, Vila Autodromo achieved a commitment from the Mayor: Vila Autodromo and its residents will not be removed"*[27].

A series of technical meetings began to develop a plan to upgrade the settlement and combine the Olympic needs - make paths for the Athletes to join the Olympic structures - while removing only a very limited number of families and relocating them within the community. According to data from the Plano Popular, its implementation cost approximately one third of the relocation plan envisaged by the municipality.

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27 Matthew Elliot, Rio Times, "Vila Autodromo Community Avoids Eviction", published on 13th of August 2013

HAITI

CHAPTER 3:HAITI
NATURAL DISASTERS AND IDPS' SETTLEMENTS

There are many ways to deal with informal settlements: new perspectives, such as informal settlement formalization, need to be taken into consideration in housing rights.

KEY MESSAGES FROM HAITI CASE STUDY

Forced evictions cannot be seen in a narrow sense between private owners and displaced persons, but the respect of human rights is an integral part of the humanitarian post-disaster response.

The formal landownership should not be a pre-requisite for reconstruction: authorities should de-link landownership from the right to use the land to live there.

3.1. BACKGROUND

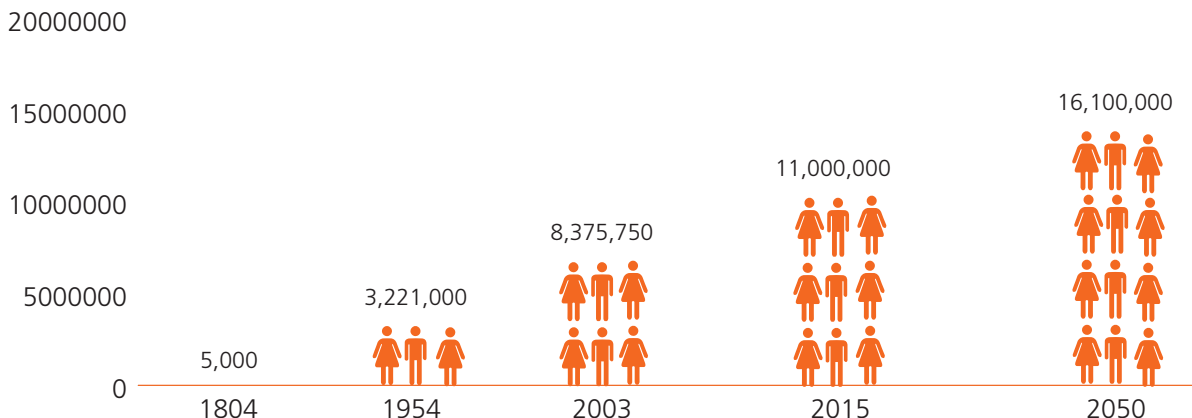Haiti is considered the poorest country in the Western hemisphere, ranking 145th out of 182 on the UN Human Development Index. It is also one of the most densely populated countries in the Americas, and suffers from housing shortage of approximately 300,000 units, prior to the earthquake in 2009.[28] Over the next 10 years, the Government of Haiti estimated that it will require up to 500,000 additional housing units to make up for the pre-earthquake housing shortage, replace stock lost during the disaster, and accommodate the high amount of expected urban growth[29].

The demographic expansion is one of the main factor impacting on the general housing situation in the country. In the year of its independence (1804), Haiti's population was estimated to be at 5,000 inhabitants. 150 years later, it had grown to 3,221,000. Between 1950 and 2005, less than 50 years later, the population almost tripled, and between 2000 and 2008.

According to official figure, from the National General Population and Housing Census, in 2003 the country had 8,375,750 inhabitants and continued to grow at a considerable rate (2.5% annually)[30]. Projections made by the same institution estimated that the population of Haiti would reach 16.1 million in 2050[31].

Figure 8. Population in Haiti projection (1804 - 2050)

28 UN Habitat, Strategic City-wide Spatial Planning: a situational analysis of metropolitan Port-au-Prince, Haiti (2009)
29 USAID, Haiti: Housing and Settlements Fact Sheet (2016)
30 UNEP, GEO Haiti, State of the Environment Report (2010)
31 UNEP (above)

The 2.5% annual population growth rate is alarming, and it is more evident in larger urban centers which include in-coming migrants from rural areas. The metropolitan area of Port-au-Prince is the attraction point, attracting 95% of the countries rural-urban migration. Population grew exploded from 800,000 in 1982 to over 2.8 million in 2010. This increase has been accompanied by a rapid urbanization process and reduced availability and/or access to basic services (water, health, sanitation, education, etc.). Before the earthquake, living space in Port-au-Prince was 1.98 m^2 per person, and 3.5 people per room[32]. Moreover, houses in Haiti are usually built in local material sand, rock and gravel access to electricity and water is generally low. The rural exodus has caused the number of dwellings to be insufficient, and existing flats and houses to be overcrowded.

Haiti is also in a subduction zone, where wind from different directions converge, and is at the heart of a tropical region with volcanic activity, exposing the country to serious environmental hazards. Regulations governing construction have not been enforced for several decades and people were allowed to build wherever they wish including hillsides, ravines, and on protected lands and areas. Factors such as massive deforestation rendered the country making it even more vulnerable.

On January 12th, 2010, Haiti was rocked by a 7.0 magnitude earthquake, the epicenter of which was just a few kilometers from Port-au-Prince. Thousands of people were displaced, and much of the already fragile infrastructure of the city was destroyed. Ten days later, a 6.1 magnitude aftershock added to the devastation –further undermining the buildings. The earthquake resulted in a massive displacement crisis, especially in Port-au-Prince and its surrounding metropolitan areas. At the peak crisis, over 1,500 camps sheltering 1.5 million IDPs were scattered across the capital. Additionally, an estimated 630,000 IDPs moved to host families in various locations around the country or went to neighboring countries[33].

Living conditions in IDP camps varied, but generally were overcrowded, with poor sanitary conditions, with high-security risks and little support for accessible durable displacement solutions. They slowly took the features of slums. IDPs households had minimal accessibility to all basic services including water (16.6%), housing (10.5%), latrines (8.6%), educations (6.5%), and health (4.1%)[34]. Only 8% of camps had water provided in the premises, not even half of them had latrines and only 4% of the camps had a waste management service[35]. By September 2014, 45,030 people were still living in 35 camps considered at risk in the event of natural disaster[36].

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32 UN-Habitat, and UNEP (above)
33 IOM (above) and Amnesty International, Fact and Figures, AMR 36/003/2014
34 UNEP (above)
35 IOM figures (September and October 2013)
36 OCHA, Midyear overview (July 2014); Haiti E-Shelter &CCCM Cluster Fact Sheet (October 2014)

3.1.1. Forced Evictions

During the ten years before the earthquake, there were very few forced evictions in the country[37]. The mass displacement provoked by the disaster pushed population towards apparently available "free" plots, and a considerable number of IDPs settled down on private owned propeties.

A few months after the disaster, landowners were concerned that the prolonged emergency could last indeterminately. Consequently, they started forcing eviction the IDPs using by armed groups acting in the name of local authorities or private landowners. Some evictions were undertaken or condoned by Haiti's authorities, while others were carried out by gangs or private landowners, without systematic support to evicted families. This led to over 16,000 households evicted from 178 camps, for a total of 60,000 people[38]. In 2013, 78,000 individuals living in camps (53% of the total IDP population) was under threat of eviction[39].

OCHA raised the alarm three months after the earthquake, reporting "strong-armed tactics" (random acts of violence, threats, home destruction, sexual violence, and illegal arrest[40]). In 2010, the Inter-American Commission on Human Rights requested the Haitian government to prohibit and protect against forced evictions and take steps to assure living environment for IDPs.

3.2. HOUSING POLICY PROGRAMMES

3.2.1. National Law

The "right of all citizens to a decent lodging" is recognized in Article 22 of the current Haitian Constitution. Articles 36-38 protect the right to private property and set regulations in case of expropriation. National laws are governing land use in Haiti, but hardly anyone adheres to these codes and standards: consequently, people build everywhere – in riverbeds, on the sides of watersheds, and on the coast.
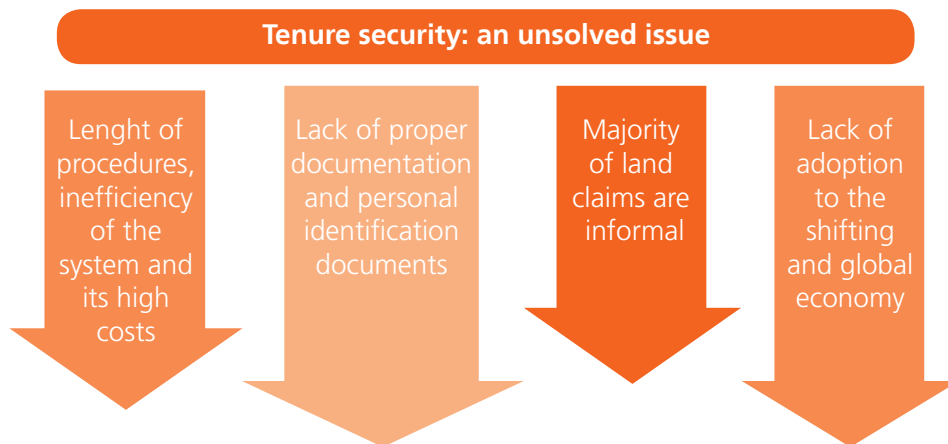
The Haitian Civil Code of 1825 (based on the French Civil Code), divides property into three classes: common, public and private. However, the lack of proper documentation makes it impossible to account for tenure as per these categories. This, further limits the government's ability to expropriate land for emergency purposes. Tenure security in Haiti was an unsolved issue before the earthquake. National laws have also been slow and reticent to respond to a modernizing and global economy – making modifications rather than radical changes. The length of the

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37 UN-HABITAT, "Strategic citywide spatial planning: A situational analysis of metropolitan Port-au-Prince, Haiti", United Nations Human Settlements Program (2009)

38 IOM (above)

39 OCHA figures (December 2013)

40 OCHA (March 2010) and Letter from Human Rights Lawyers, Law Professors and Nobel Peace Laureates to Ban Ki Moon (August 2011)

Figure 9. Tenure security: an unresolved issue

procedure, the inefficiency of the system and high costs related to it are the main reasons why most of land claims in Haiti are informal. Prior to the earthquake, less than 5% of the country's land was officially accounted for in public land records, while secondary sources of tenure, like renting, were governed by an informal contract between owners and renters. The customary system was mainly used for land transactions, creating a parallel system. In case of disputes, many could not afford court litigation; issue aggravated by the chronic lack of personal identification documents. The 2010 earthquake aggravated the complexity of the land system. Most formal land documents went missing, and the customary system

was destroyed since customary titles were not registered anywhere. Figures from IOM demonstrate the magnitude of the problem:

60% of IDP's camps were located on private properties

78% of the people living in the camps were not legal owners before the earthquake

10% of the IDPs had official titles over buildings that could be repaired or rebuilt[41]

41 IOM, Displacement monitoring matrix, Report on forced evictions (2012)

After the earthquake, Haitian government adopted a partial response regarding IDPs and forced evictions. However, this has changed with the current government, which has undertaken considerable efforts to address housing issues. In 2013 the Haitian government:

Signed and ratified the International Covenant on Economic, Social and Cultural Rights

Announced the adoption of the **National Policy on Housing and Habitat**

- Indicated that Haiti will make housing issues a priority, and will make plans for affordable housing
- Made specific reference to Article 22 of the Constitution, and Article 25 of the Universal Declaration of Human Rights
- In 2012 the government began the implementation to rehabilitate 16 districts of Port-au-Prince, offering IDPs in 6 camps sustainable housing solutions and improved living conditions through better access to basic services and income generating activities
- The project had very positive results and its replication is planned, targeting the most vulnerable groups and communities which are under threat of forced eviction[42]

3.3. ALTERNATIVE SOLUTIONS

3.3.1. Canaan settlement: new perspective on housing rights

Canaan is a large area on the outskirts of Port-au-Prince that includes three large informal settlements Canaan, Onaville, and Jerusalem, along with two planned resettlement sites. Corail Sector 3, 4 and 5, new spontaneous settlements in a northern adjacent area called St. Christophe. The area was largely uninhabited before the earthquake, but in March 2010 the Government decreed that this land was to be used to relocate victims of the earthquake and facilitate the de-congestion of certain areas of Port-au-Prince. The area was developed for the reallocation of approximately 10,000 IDPs from camps inside Port-au-Prince considered to be at high risk of flooding or other natural hazards. By September 2013, the area's population increased 14,100 households and currently is populated with 200,000 IDPs.

The initial government policy was to evict the IDPs once the urgency of the earthquake had passed. However, this was quickly reconsidered given investments made by the community including building concrete houses and structures to grant access to water and roads establish churches and schools. Instead, the government undertook a shift and recognized that the "*Canaan area presents the characteristics of a new neighborhood in need of urban planning with a long-term vision*

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42 OXFAM, Salt in the Wound, the urgent need to prevent forced evictions from camps in Haiti (2012)

rather than IDP camps". That statement marked the shift from campus closure to informal settlement formalization, a policy which has been implemented in the following months[43].

The shifting of policy in the government's strategy action represents a new perspective to take into consideration for housing rights. The government initial strategy included efforts to clear the IDPs camps by developing new housing solutions or offering incentives to leave the camps. Originally, most of funds for the shelters were dedicated to the construction of permanent homes on new settlement sites.

This initial approach did not meet the expectations, and authorities recognized that this methodology was not effective and that the needs exceeded the government and donor's financial capacity. Haitian authorities are now putting more emphasis on working on **rehabilitating** existing neighborhoods, providing access to housing finance to households, and improving infrastructures, in collaboration with residents' communities, including coordinating with external partners to prepare urban development plan and community engagement strategy for Canaan[44]. This was mainly aimed at regularizing residents and providing infrastructures for accessing essential services, with only a few families to be relocated, due to environmental

risks. The National Construction of Housing and Public Buildings Agency insists: *"We can't move them out: the idea is to reorganize the space so that people can live in"*[45].

3.3.2. Security of tenure and empowerment of local community to rebuild their homes

Security of tenure in Haiti became increasingly uncertain since the earthquake, which amplified the already existing problem. Reform of land tenure system is not only important under the poverty alleviation perspective, but also from a post-earthquake recovery perspective. Access to land and strong government support for housing rehabilitation are essential for a rapid and comprehensive recovery.

The Canaan example shows that Haitian authorities are exploring a range of durable solutions aimed at the transformation of IDP's camps into neighborhoods, and the regularization of informal settlements. After the earthquake authorities were reluctant to adopt regularization, integration, and concede property rights over the land to IDPs. Yet, four years after and with a much smaller IDP population remaining in camps – and limited places to reside elsewhere – stakeholders are more willing to consider alternative options.

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43 Inter-press Service (June 2013) and IOM-Brookings, Supporting Durable Solutions to Displacement in Haiti, (2014) and US News (January 2015) www.usnews.com

44 www.usaid.gov

45 David Odnell, Director of Construction of Housing and Public Buildings Agency, Government of Haiti, quoted on Inter Press Service (June 2013)

Figure 10. Transformation process of IDP camps into regularized and integrated neighborhoods

01
Camp regularization
- Transitioning an existing camp into a planned neighborhood, with the accordant access to tenure security and services
- standardizing displaced communities by strengthening occupancy rights and access to basic services

02
Community integration
- Transforming camps located inside the neighborhood into the surrounding neighborhood
- Completing standardization by integrating residents of the regularized site into the folds of the surrounding communities

03
Camps into communities
- Environmental assesssment
- Urban basic service improvement
- Regularization of tenure titles
- Infrastructure provision

3.3.3. UN-Habitat tools to support government to avoid evictions in Haiti

UN-Habitat's Comprehensive Strategy suggests a wider approach to the issue, with respect to IDPs fundamental human rights and a notable effort is the Enumeration Exercise: through a participatory approach, titles and rights over the land are ascertained and assigned to members of local community, with consideration to both the formal and the customary legal system. The respect of human rights is an integral part of the humanitarian post-disaster response, and the Haitian state has the responsibility to assure the respect, protection, and fulfillment of the international humanitarian standards concerning IDPs rights[46].

In her visit to Haiti in June 2011, the Special Rapporteur on the Right to Adequate Housing welcomed UN-Habitat Comprehensive Strategy for Reconstruction and Return and the efforts to establish pre-earthquake occupancy status of residents in unplanned neighborhoods, as means to strengthen tenure security, and promote
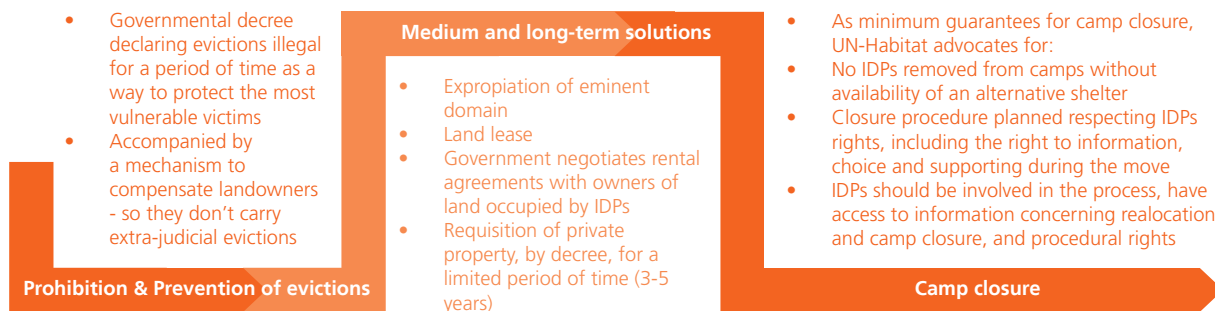
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46 UN-Habitat, Protection Cluster, House, Land and Property Working Group, Haiti (June 2015)

reconstruction and return. The Special Rapporteur noted that formal landownership should not be a pre-requisite for reconstruction. Instead, the authorities should de-link landownership from the right to use the land to live there, based on the recognition of the social function of land in the specific post-disaster context. As part of a wider strategy, UN-Habitat proposed a Comprehensive Strategy for Reconstruction and Return, starting from the key issue of stopping all planned forced evictions[47]:
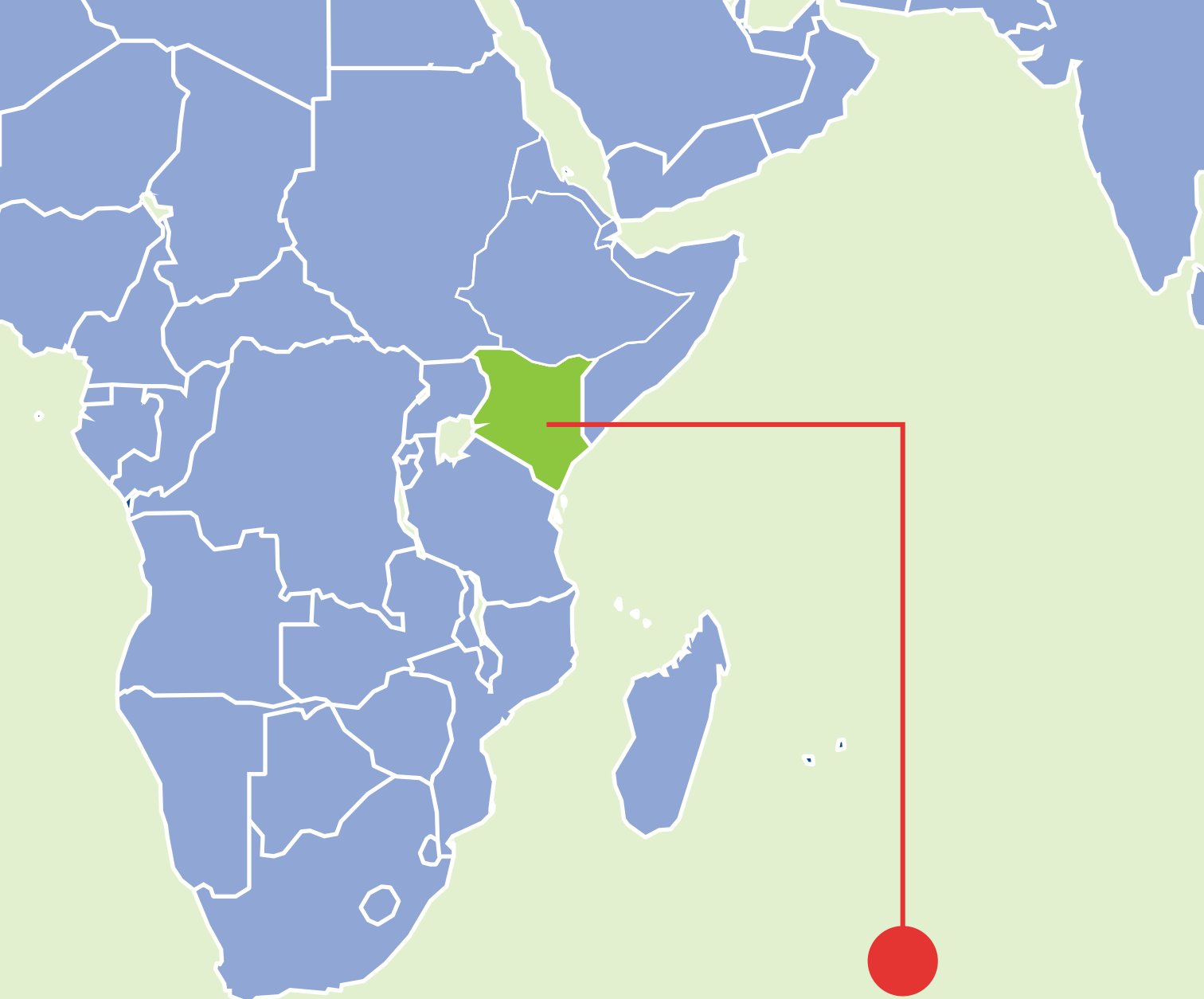
The **lack of tenure security** attracted UN-Habitat's attention, and has been identified as one of the major factors hampering reconstruction from government and individuals. Most IDP's camps are located on land whose property title is not clear – and aid organizations are not willing to invest in the development of a site if they don't have security against forced evictions by third actors claiming property of the parcel. Since most of the IDPs rente before the earthquake, or owned through customary law without their properties being registered, complicates return and reallocation. To tackle the issues of tenure insecurity and land property determination, UN-Habitat proposed a Participatory Enumeration Exercise in the metropolitan area of Port-au-Prince. It utilizes Haitian citizens to survey self-reported and locally verified tenure in a single neighborhood. The project is flexible enough to recognize both primary and secondary claims, and to serve as a bridge between formal and informal tenure system. This Exercise is particularly important in the direction of tenure security and to restore and upgrade tenure rights of IDP's, protecting them from forced evictions. As part of the exercise, forced evictions in earthquake-affected areas are monitored and tracked.

Figure 11. UN-Habitat Comprehensive Strategy for Reconstruction and Return steps

- Governmental decree declaring evictions illegal for a period of time as a way to protect the most vulnerable victims
- Accompanied by a mechanism to compensate landowners - so they don't carry extra-judicial evictions

Prohibition & Prevention of evictions

Medium and long-term solutions

- Expropiation of eminent domain
- Land lease
- Government negotiates rental agreements with owners of land occupied by IDPs
- Requisition of private property, by decree, for a limited period of time (3-5 years)

- As minimum guarantees for camp closure, UN-Habitat advocates for:
- No IDPs removed from camps without availability of an alternative shelter
- Closure procedure planned respecting IDPs rights, including the right to information, choice and supporting during the move
- IDPs should be involved in the process, have access to information concerning realocation and camp closure, and procedural rights
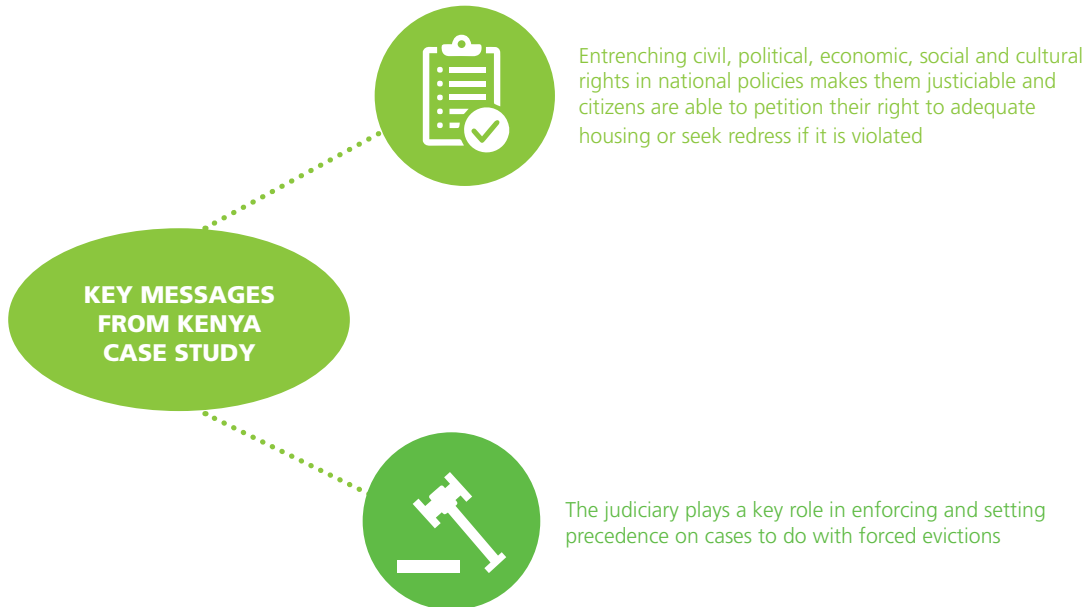
Camp closure

47 UN-Habitat, Protection Cluster, House, Land and Property Working Group, Haiti (June 2015)

KENYA

CHAPTER 4: KENYA
JUDICIAL LITIGATION TO ENFORCE THE RIGHT TO ADEQUATE HOUSING

KEY MESSAGES FROM KENYA CASE STUDY

Entrenching civil, political, economic, social and cultural rights in national policies makes them justiciable and citizens are able to petition their right to adequate housing or seek redress if it is violated

The judiciary plays a key role in enforcing and setting precedence on cases to do with forced evictions

4.1. BACKGROUND

In pre-colonial Kenya, land was mainly communally owned. Tenure relations under this customary system were controlled by some socially distinct authority i.e. an elder or spiritual leader. Such authorities were overseeing land allocation, access and management. Tenure was family based with the head of the family held rights on behalf of other family members. Property rights accrued to individuals because of the investment in their labour in exploiting these resources, and common resources were shared among the community and managed by the chosen authority.

In colonial era, this system was dismantled. Land was a major asset for the colonial government who allocated the most fertile and productive areas to Europeans settlers for economic production. Indigenous nomadic pastoralists (Kalenjiin, Masai, Samburu, and Turkana) were displaced from their original territories in the Rift Valley, and their fertile lands exploited by new settlers who recruited agricultural labourers to work in their farms. This began the history of informal settlements - slum formations and squatter hoods in Kenya which were largely ignored by the colonial government. Local authorities did not provide essential services and did not construct roads to link them to other areas of the city.

The independent government at first introduced measures of 'slum clearance', which still did not stop the proliferation of informal settlements. Instead, displaced people moved to other areas, creating new slums. Between 1971 and 1995, the estimated number of informal settlements in Nairobi grew from 50 to over 130, and their population rose to more than 1,000,000 people[48]. Moreover, farming communities took advantage of the land-buying scheme offered by President Kenyatta and bought the land they had worked on, while the competing claims over land by pastoralist tribes claiming their ancestral customary land rights remained unaddressed.

There are several other factors that contribute to the formation of slums in Kenya, these include, widespread poverty, periodic droughts, political civil unrest, a widening income gap between the rich and the poor and the lack of government commitment to the poorest groups. Additionally, the shortage of decent low- income housing and limited access to land and affordable housing further drives people to informal settlements in search of cheap accommodation.[49]

4.1.1. Lack of basic services in informal settlements

Today, slums and informal settlements are still a reality in Kenya. According to the National Bureau

48 Amnesty International, Kenya – The unseen majority: Nairobi's two million slum dwellers (2009)
49 K. Macharia, Slum clearance and informal economy in Nairobi (1992)

of Statistics, Kenya is home to 41.8 million people[50]; UN-Habitat estimates that 40% of the population in urban areas with 70% of the urban population living in informal settlements[51]. 17.2 million people lack access to clean water and even more lack access to adequate sanitation facilities[52] Nairobi slums host approximately 1.5 million people and take up 1/8 of the city land space.[53]

Over-congestion in the slums has created immense pressure on housing, space for business and other public utilities. The lack of recognition of slums as residential areas for city planning and budgeting worsened the situation, and residents have been denied a range of essential services, including water, sanitation, electricity, garbage collection, health, education, access to roads, transport, which are available in other areas of the city.

There is a sever lack of basic services in Kenyan slums. Water rationing is an acute problem, jeopardizing the health conditions of residents. Water vendors take advantage of the situation to hike the price of piped water thus increasing the cost of living. The slums lack adequate sanitation facilities to serve its immense population. This problem arises from the fact that majority of the structures were constructed without provision of

sewer lines, and toilet facilities are either lacking or so poorly maintained that they do not serve the purpose. Despite all these health hazards, slums normally lack medical facilities to respond to such health emergencies. The few clinics which are in the slum areas are mainly run by local or foreign NGOs, with the support of foreign funds.

Slums also lack adequate schools for residents despite primary education is free. Following the government's declaration of free and compulsory primary education, the number of children enrolment in school has by far outstripped the capacity of the few schools available. The consequence is mushrooming of private schools in shanties which are congested and lack basic facilities, including ventilation and playgrounds. Since these institutions are not registered by the government, there is no control over the level of education offered.[54]

4.2. HOUSING POLICIES AND PROGRAMMES

4.2.1. National Law

Up to date, Kenya still lacks national legislation on the right to adequate housing and on eviction. However, on the upraise of the most recent events involving the Syokimaiu and Eastleigh communities

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50 Republic of Kenya, National Bureau of Statists, Facts and Figures 2014
51 UN-Habitat, State of the World's Cities (2008)
52 CIA World Factbook, www.cia.gov
53 Sana, Okombo Taking stock of socio-economic challenges in Nairobi slums (2012) and Amnesty International, We are like rubbish in this country – Forced evictions in Nairobi, Kenya (2013)
54 Sana, Okombo (above)

that received widespread media attention, the Minister of Land reaffirmed his engagement in finalizing the Eviction and Resettlement Bill: *"it is prudent that we enact all the implementing legislation under the Constitution including the National Land Commission Bill, the Land Bill and the Land Registration Bill in order to have the comprehensive legal framework for the operationalization of the Eviction Guidelines"*[55]. The Constitution also provides an entry point for addressing the issue of the lack of enjoyment of the right to adequate housing.

The **Constitution of 2010** acknowledge the failure of the past land management system and calls for new legislation to be put in place to redress the previous situation. It maintains that land in Kenya should be held, used and managed

in a manner that is equitable, efficient, productive and sustainable in accordance with the principles of equitable access to land, security of land rights, sustainable and productive management of land resources.

The Constitution came into light with an exhaustive Bill of Rights. Part 2 of the Constitution is entitled "Rights and Fundamental Freedoms" and acknowledges, amongst others, the right to life, to human rights and dignity, equality and nondiscrimination, privacy, freedom of expression, right to access to information. Article 43 of the new Constitution guarantees socio-economic rights, among which the right to *'accessible and adequate housing'* for *'everyone'*, together with the right to health and education:

Figure 12. Article 43 of the Kenyan Constitution

Every person has the right:

To the highest attainable standard of health which includes the right to healthcare services, including reproductive healthcare

To accessible and adequate housing, and to reasonable standards of sanitation

To social security

To be free from hunger and to have adequate food of acceptable quality

To clean and safe water in adequate quantities

To education

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55 Communication from the Ministry to the Ambassador of the Federal Republic of Germany on the 8th June 2011

Figure 13. Land laws in Kenya

The Land Act 2012	The National Land Commission Act 2012	The Land Registration Act 2012
Community land may be held under: customary, freehold, leasehold, and other tenure system recognised by the law	Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations	Determine the form of a land register that shall be maintained, in each registration unit

In extension of the declaration of rights, the Constitution places the usual obligation to the State to protect, respect and fulfill. In doing so, the State should reserve special consideration to the groups of the society in most vulnerable situations, such as women, children, the elderly and people with disabilities inter alia.

Moreover, the principle of management of land shall also include transparent and cost-effective administration, sound conservation and protection of ecologically sensitive areas, elimination of gender discrimination in law, customs and practices related to land and property, and the recognition of local community initiatives consistent with the Constitution. According to the new Constitution, land property is classified as public, communal or private, bringing thus an end to the dual system of land tenure in the country.

The new Constitution mandatory requires the Parliament to revise, consolidate and rationalize sectorial land use laws. In furtherance of its mandate the Parliament passed into laws three bills in April 2012 that soon after became effective: The Land Act 2012, the National Land Commission Act 2012, the Land Registration Act 2012. The new laws have repealed most of the previous legislation on the matter. The new system recognizes customary rights over the land and acquisition of rights by long term possession or leases. However, it is important to note that the phenomenon of forced evictions is affecting rural and forest communities and specific guidelines and regulations for such cases are still to be put in place.

4.2.2. Forced evictions in urban informal settlements

Unrest is very common in slums and frequently rooted on land-related conflicts. The situation of uncertainty over land rights increases litigations and unrest episodes. With increasing human rights consciousness and the entrenchment of socio-economic rights in the Constitution, structure-owners and tenants now claim that they deserve legal rights as they have been living on these pieces of land for over twenty years. Yet the government has been reluctant to recognize their requests, because of fear of losing the opportunity to develop these lands once funds are available. This situation of tenure insecurity has furthermore the side effect of preventing land development: tenants and owners refrain from improving their places because of lack of tenure security and the fear of eviction.

Forced evictions are widespread in Kenyan cities. In most cases bulldozers destroy overnight the shacks of the communities, without any notice or provision of either relocation or compensation. Most often, even schools, shops and health clinics are destroyed[56]. Evictions in Kenya usually appear to be caused by enforcement of municipal planning and government orders regarding urban development plans. Slums were initially built in peripheral or marginal land when the town or city was small; subsequent city growth has engulfed such land resulting in a substantial appreciation of their value and the government needs to clear the land for urban development plans, such as railways construction or ring road bypass.

More fundamentally, the problem of forced evictions in Kenya is ingrained in the inequitable structure of land ownership. Evictions in Kenya are primarily caused by structural factors embedded in the political economy, which preclude many poor people to have access to land and to decent shelter in cities.

4.3 ALTERNATIVE SOLUTIONS

4.3.1. Medina community (garissa): preventing forced evictions

Medina community is a community of more than 1,200 individuals, was living in an informal settlement in the district of Garissa. The land was officially owned by the government; and the area was occupied by the community since the 1940s.

On December 3rd, 2010, the District Commissioner of Garissa arrived at the location with a bulldozer, some officers and an unidentified armed group to declare that the site was chosen to erect a ring road and all shelters which were falling within the construction area were to be demolished. The area designated for the ring road was marked. Without further communication, on December 24th, 2010 the Commissioner returned with administrative police officers and an unidentified

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56 Amnesty International, Stop forced evictions in Africa (September 2010)

armed group and initiated the demolition, using tear gas and physical violence to confront people resisting the eviction.

A total of 149 houses were destroyed, leaving the affected families without a choice but to sleep in open air or to build temporary shelters nearby, exposed to health risks and hazard and lack of basic facilities. Several children were forced to drop out of school since the parents moved seeking an alternative accommodation elsewhere. On February 11th, 2011, after a third assault to continue the demolitions, the petitioners, supported by a local NGO, decided to file a case for violation of the constitutional Article 43 and for violation of their basic rights, seeking an order of injunction to stop the evictions and provide them with alternative accommodation.[57] The respondents did not file any response and on November 16th, 2011, the High Court of Kenya at Embu allowed the petition for the conservatory order ruling that:

- The new Kenyan Constitution entrenches both civil and political rights and economic, social and cultural rights and makes them justiciable; and
- Under article 43 of the Constitution the petitioners have a right to adequate housing.

Figure 14. Figure 17. Court's Findings in Medina Community

The court's ruling

Evictions should be carried on in consultation with the affected community, with provision of adequate notice and with provision of an alternative relocation.

The community should be informed about the plans of urban development affecting their settlement, as per Article 35 concerning the right to information.

Forced eviction was in violation of the Right to Adequate Housing as stated in Article 43 of the Kenyan Constitution interpreted in the light of international standards.

Petitioners should have been given a reasonable notice to vacate the land and an alternative accommodation should have been provided.

The district authorities are obliged to reconstruct demolished shelters or to offer alternative accommodation with the same amenities they were enjoying before.

Due to the violent manners in which the eviction was conducted, Justice Muchelule accorded punitive damages to be paid to the community.

57 High Court of Kenya, Embu, Constitutional Petition 2 (2011), Ibrahim Sangor Osman & Ors v Minister of State for Provincial Administration and Internal Security and 3 Others (with Global Initiative for Economic, Social and Cultural Rights and 2 Others intervening as Amici Curiae)

On forced evictions violating the right to adequate housing espoused in international and national standards, the judges also referenced South African jurisprudence on the issue - the cases Twselopele Non-profit Organization & Others v City of Tshwane Metropolitan Municipality[58] and Joe Slovo Community, Western Cape, Thubelisa & Others.[59]

4.3.2. Kaptagat Dam and Ndumbuini Communities (Nairobi) : Preventing Forced Evictions

The second case involves Susan Waithera Kariuki and her community, living in a large slum on the outskirts of Nairobi, which hosts more than a thousand slum dwellers.[60] Planning permission for the erection of the settlement was never granted; despite this, the settlement remained undisturbed for over 40 years. Community sanitation facilities were erected in the settlement a few years ago thanks to the intervention of a local NGO and with the authorization of Nairobi City Council[61].

On October 29th, 2010, officers of the City Council gave verbal notice to the residents to vacate their homes within 24 hours. On the following day, an armed group together with police officials started the demolition of some houses and shacks. Affected residents were forced to rebuild temporary shelters nearby, as no alternative accommodation was provided. On November 1st, 2010 the community, supported by a local NGO and pro-bono lawyers, issued a petition against forced eviction on behalf of the residents, claiming the violation of their fundamental rights and freedom under the Constitution. It was claimed the violation of the Right to Adequate Housing as spelt in Article 43 of the Constitution. The Town Clerk claimed that the settlement was erected on road reserve, therefore on government land, and that the City Council was charged with the responsibility of planning and implementing the urban development of the city of Nairobi.

On March 4th, 2011, Justice Musinga of the High Court of Kenya allowed the petition for the conservatory order stopping further evictions. In a landmark decision, the court ruled that:

• The Court held appropriate under Articles 2(5) and 2(6) of the Constitution to regard at international law standards on the Right to Adequate Housing and on Forced Evictions in the interpretation of the Constitutional provision of Article 43 concerning the right to food, housing, health and sanitation.

• In interpreting the Constitution and the Bill of Rights, the Court shall seek to promote the

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58 2007 SCA 70 (RSA)
59 2009 [ZACC] 16
60 High Court of Kenya, Nairobi, Petition 66 of 2010 (2011), KLR 1, Susan Waithera Kariuki and 4 Others V Town Clerk Nairobi City Council and 2 Others
61 Interights, Commonwealth Human Rights Law Digest, vol 8 (Summer 2014)

values that underpin a democratic society, among which rule of law, human rights and fundamental freedom.

• The human rights of the residents, namely the right to life, to freedom, to food, to adequate housing, supersede the statutory duties of the Council with respect to the urban planning and eviction. The petitioners' fundamental right to adequate housing overrides city planning duties of the Nairobi City Council.

The Court concluded that a 24 hours' notice was unconstitutional, considered the length of time that the settlement has existed. The Council was responsible to offer an alternative adequate accommodation, in line with the international law requirements in case of eviction and urged the Government of Kenya to adopt a housing policy that would assure access to social housing for the poorest groups of the society, and to enact guidelines for evictions cases in line with international standards.

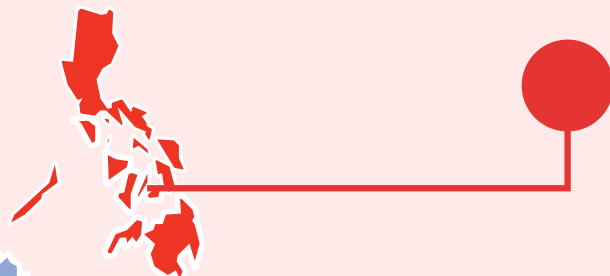**Figure 15. Figure 18. Muthurwa case and Mitu-Bell Welfare Society Case**

Following the landmark decisions examined above, more rulings have been recently delivered on the same line. Justice Lenaola in the Muthurwa case declared unconstitutional the attempt of the railway pension board to evict its pensioners and tenants from Muthurwa Estate[62].

In the well-known case Mitu-Bell Welfare Society v. The Attorney General, Kenya Airports Authority and the Commissioner of Lands, the Land Ministry tried to demolish houses of Mitumba village, near Wilson Airport, but the villagers obtained an order from the court stopping the Ministry until the legal issues were resolved. Regardless of the order, the Ministry, having given the community seven days to leave, proceeded to demolish their houses and evict them. The three respondents argued that the community had no legal right to the land and therefore could be expelled. They dismissed the community's arguments based on the constitution, including their human rights. In adjudicating the case, Justice Ngugi delivered a meaningful recommendation: *"The demolition took place at all in the face of a clear court order restraining the respondents is, even without more, a clear manifestation of disrespect not only for the constitutional authority of the court but also for the fundamental rights of the petitioners and the Constitution itself. If the state and its organs can so blatantly disrespect and disregard the sovereign will of the people as contained in the Constitution, then one fears for the establishment and maintenance of the rule of law in this country. The state and its agencies have an obligation to abide by the provisions of the Constitution, which include respect for human rights and the judicial authority of the courts. There are no two ways about it."* [63]

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62 Satrose Ayuma & 11 Others V Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 2 Others, High Court at Nairobi, Petition 65 of 2010
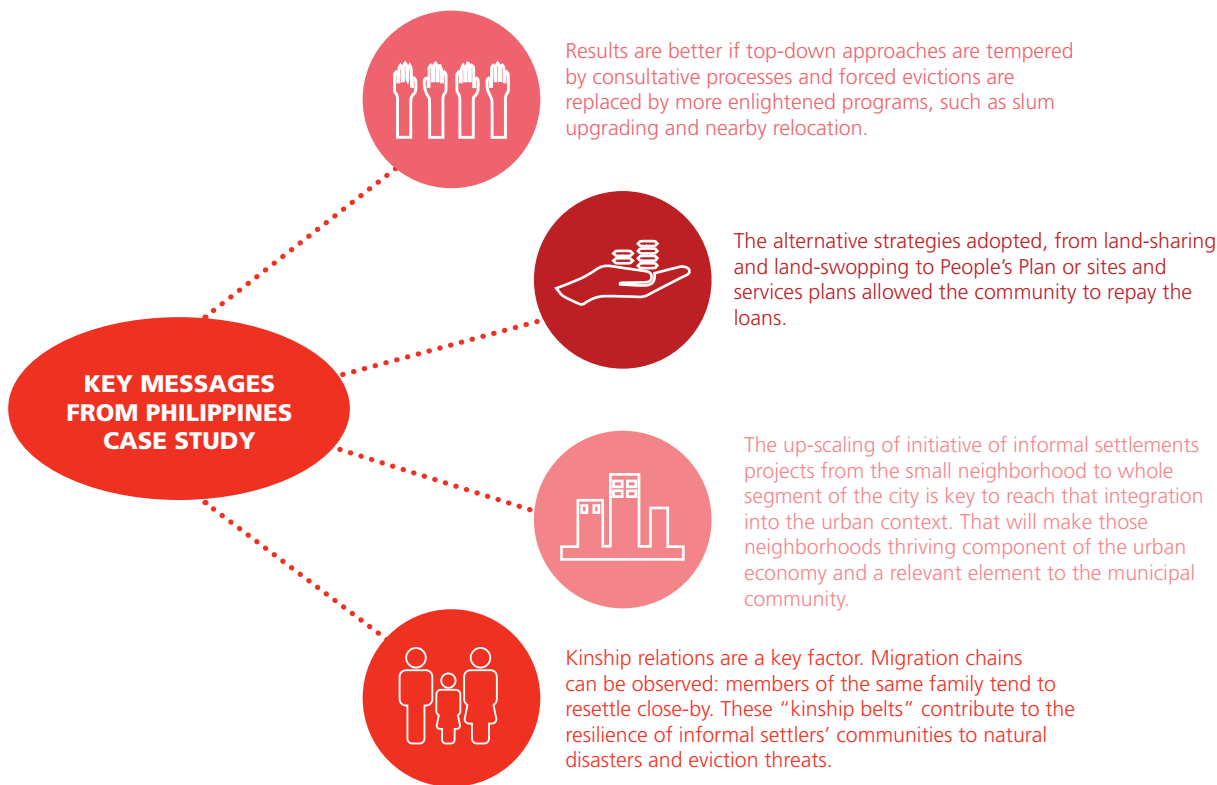63 Mitu Bell Welfare Society V Attorney General of Kenya, Kenya Airport Authority, Commissioner of Lands, High Court in Nairobi, Petition 164 of 2011

PHILIPPINES

CHAPTER 5: PHILIPPINES
RESILIENCE OF INFORMAL SETTLEMENTS TO
NATURAL DISASTERS AND FORCED EVICTIONS

Results are better if top-down approaches are tempered by consultative processes and forced evictions are replaced by more enlightened programs, such as slum upgrading and nearby relocation.

The alternative strategies adopted, from land-sharing and land-swopping to People's Plan or sites and services plans allowed the community to repay the loans.

KEY MESSAGES FROM PHILIPPINES CASE STUDY

The up-scaling of initiative of informal settlements projects from the small neighborhood to whole segment of the city is key to reach that integration into the urban context. That will make those neighborhoods thriving component of the urban economy and a relevant element to the municipal community.

Kinship relations are a key factor. Migration chains can be observed: members of the same family tend to resettle close-by. These "kinship belts" contribute to the resilience of informal settlers' communities to natural disasters and eviction threats.

5.1. BACKGROUND

The Philippines Republic has more than 7,000 islands however only eleven are habitable- as the others are prone to earthquakes and eruptions, typhoons, and giant storms. During the pre-colonial era, its settlements were mostly river line and coastal since traditional livelihood was mainly derived from fishing and marine resources. With Spanish colonization, village formation shifted to more inland centers: urbanization emerged radially situated with Manila at the center of this development. Since independence, urban population has increased, with internal rural-to-urban migrations.

At the beginning of the post-war period, more than ¼ of the total population was residing in urban areas. In the 1990s, the country urban population surged well over 29 million – almost ½ of the total population[64]. Urbanization levels show the continuing importance of Metropolitan Manila, joining the small group of mega-cities worldwide, with a population of more than 10 million[65]. Even before the outbreak of World War II, the presence of slums and squatters' communities indicated a prominent housing problem. After World War II, lack of adequate housing became more apparent in the sprawling squatters and slums settlements in Manila and other cities all over the country. At the end of the Medium-Term Development Plan 2001-2004, the government was only able to meet 24.6% of the country housing needs. In 2013, it was estimated that the total housing need, including the total housing backlog would reach 5.7 million, with 1.7 million housing units for Metro Manila alone.[66]

5.2. HOUSING POLICIES AND PROGRAMMES

5.2.1. National Law

To control the growth of informal settlements, different political administrations have responded with different policies, from evictions and criminalization, to provision of land and social housing. Quezon bought land outside Manila to resettle urban squatters.

During the twenty years of Marcos regime, squatting was considered against the law- and squatters were treated as criminals. Presidential Decree 772 imposed a penalty of imprisonment for 6 months to 1 year for those guilty of squatting – those who "unlawfully encroach on public and private land without the express consent of the landowner". The policy that followed was a mass relocation of squatters to site 30-40 km away from the city, placing them on overcrowded bunkhouses. Not only was this inhuman, but also ineffective: people once attracted by the

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64 Philippines Institute for Development Studies, Toward a strategic urban development and housing policy, (2008) and Philippines Institute for Development Studies, the Dynamics of Housing demand in the Philippines (2001)

65 United Nations, Department of Economic and Social Affairs, Population Division (2016). The World's Cities in 2016 – Data Booklet (ST/ESA/ SER.A/392).

66 Senate of the Philippines Economic Planning Office, Policy Brief Breaking New Ground: Enacting a National Land Use Policy (2013)

chances in the metropolis were attracted again. To address the criticism, Marcos established the Slum and Improvement Resettlement Program, which sought out to revamp & improve slums and squatter areas outside of Metro Manila[67]. However, due to the lack of enforcement and implementation, very few settlements were upgraded.

With the fall of Marco's regime, the 1987 Constitution came to light, containing the Right to Adequate Housing (Article 13, section 9 and 10):[68]

Figure 16. Articles 9 and 10 of the 1987 Philippines Constitution

SECTION 9

"The State shall by law and for the common good undertake, in cooperation with the private sector a continuing program 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 centers and resettlement areas".

SECTION 10

"Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban and rural dwellers shall be undertaken without consultation with them and the communities where they are relocated".

5.2.2. Urban development and housing act (udha)

The above provisions led to the enactment of the Urban Development Housing Act   that embodies the State's aim to have and continue a comprehensive urban development and housing program and to also promote the objectives of decent housing for underprivileged and homeless citizens, and housing tenure.

The Community Mortgage Program (CMP) is one novel component, utilizing an innovative system of mortgage financing whereby an undivided tract of land might be acquired by several beneficiaries through the concept of community ownership. CMP has been designed at a 3-stage loan program: land purchase, site development, and house construction. To qualify for an on-site land under the CMP, at least 70% of the community organization has to be settled in the area. NGOs are functional at all stages of the process: they inform the squatters about the legal requirements, assist them during negotiations with the owners, and offer services like legal consultation and surveying. Evidently, the CMP can be seen as is a land consolidation and upgrading scheme that gives squatters access to formal credit – assisting residents of depressed areas in purchasing the land they already occupied from the legal owners via affordable housing lands.

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67 National Housing Authority of the Philippines, Republic act no. 7279 (1992)
68 Government of the Philippines, Constitution, 1987

Figure 17. Community Mortgage Program Steps

Financing through community mortgages (3 stages or 1 time basis - depending on capability and need of the community)	Residents and landowners agree on a price	Land is paid via a credit from the National Home Mortgage Financing Corporation (to be repaid in 25 years)
1	**2**	**3**

The CMP has resulted in noticing that the sequence of planning-servicing-building-occupation (which contributes to making land scarce and expensive) has been replaced by incremental improvement of housing quality and infrastructure – mostly done by the main occupants. Another remark is that the CMP allowed owners to sell their land and revive dead capital, while also allowing squatters to buy security and preserve their settlement from the eviction threat.

The demand for CMP loans exceeded the offer, and over the years changes have been made to overcome such challenges. In 2004, the Social Housing Finance Corporation was created – under which the CMP was transferred, and the number of procedural documentary requirements have been reduced.

5.2.3. National housing agencies at decentralized level

The Housing Urban Development and Coordinating Council (HUDCC) was created in 1986 to replace the former Ministry of Human Settlement as the body on housing and urban development. HUDCC adopts a people-centered approach to housing, with the participation of local communities as a standard, accordingly to the principles of multi-sectorial approachability, sustainability, and affordability of housing finance. Under its umbrella is the National Home Mortgage Financing Corporation, the National Housing Authority (production of housing for poor communities), the Housing Land Use and Regulatory board (housing and land issues).

The **National Housing Authority** is a government corporation mandated to engage in shelter production through housing development and resettlement programs; the development of public land suitable for housing, and the exercise of the right of eminent domain to acquire privately owned land for resettlement or housing development. **The Local Government** Code of 1991 decentralizes urban government and devolves the responsibility and budget for the delivery of basic services, health, etc. to the Local Government Units. Several factors continued to inhibit meaningful civil society participation –

like lack of government capacity and competing economic interests at a local level.

Despite extensive legislation, housing remains a challenge for the Philippines. Loopholes undermine legislation efficacy, together with impunity in forced eviction cases. Most social shelter projects provide only plots of land, while building the houses remain the responsibility of the residents. Even if this system suits the demand of the inhabitants whom cannot afford a 'lot & house' package, it allows as well unsafe and substandard shelters.

5.2.4. Urban planning and forced evictions on informal settlements in the philippines

In 1997, after persistent lobbying by NGOs and urban poor groups, the Ramos administration repealed the, above mentioned decree by Marcos, and with Republic Act 8368 decriminalized squatting.

UDHA declares now that forced evictions are "to be discouraged". Section 28 of the UDHA provides that as a rule, evictions are only allowed in case of occupation of dangerous areas (i.e. riversides, rail tracks, etc.), and in case of government development projects with funds already available and in obedience to court orders. The UDHA foresees that in case of authorized eviction where underprivileged or homeless are involved, the range of procedural requirements should be respected –eight requirements essential to evictions:

Notice upon the affected persons or entities at least 30 days prior to the date of eviction/demolition

Adequate consultation 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 located.

Proper identification of the persons taking part in the demolition

Execution or demolition only during regular office hours from Monday-Friday, and during good weather – unless affected families consent otherwise

Presence of local government officials or their representatives during eviction or demolition

No use of heavy equipment for demolition except for structures that are permanent and of concrete materials

Proper uniforms for members of the Philippines National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures

Adequate relocation, whether temporary or permanent

Figure 18. The role of NGOS in empowering local communities

- Civil society has a very strong role in the Philippines. The gains made in slum upgrading would not have been possible without the determined effort of civil groups. NGOs have aided urban poor communities in gaining basic services, improved infrastructures and tenure security, as well as provided leadership training. They have also established documentation databases on human rights.
- It was only after the fall of Marcos regime that NGOs acquired a new relevance. President Aquino started a reforming process towards a more democratic and decentralized government. With new opportunities for the participation of communities in political decision processes, NGOs have become a major force in the protection and promotion of Human Rights – defining the scope of human rights norms and monitoring their proper implementation.
- Some obstacles remain for an effective access of NGOs and civil organizations to the Local Development Councils. Many local governments have been slow to comply with UDHA provisions, especially regarding urban poor affairs offices. Even when NGOs and civil organizations are represented at local government level, their influence ability is very limited.

UDHA also specifies the relocation requisites, which should be done by the Local Government Unit, in coordination with the National Housing Authority, and other relevant national authorities. Failure to comply with the requirements above would give rise to criminal prosecution. Despite the provisions of law, according to a 1995 report by the CESCR Committee, large-scale evictions continue to occur frequently in the country and are estimated to have affected hundreds of thousands of persons.

5.3. ALTERNATIVE SOLUTIONS

While forced evictions continue to occur in the Philippines, the past decades have seen significant changes in government in favor of poor urban settlers. The Philippines is gradually shifting towards more moderate positions, where top-down approaches are mitigated by consultative processes. Forced evictions and relocations are replaced by slum upgrading and nearby relocation, with poor urbanities gaining access to information and basic services. Manila, Quezon City, and Cebu City provide examples of such alternative solutions. The strategies adopted range from land-sharing and to People's Plan or sites and services plans, most often utilizing the Community Mortgage Program in combination with livelihood enhancement initiatives, in order to enable the community to repay the loans.

5.3.1. Metro Manila

5.3.1.1 Tondo foreshore neighborhood

The Tondo Foreshore neighborhood is one of the largest informal settlements in south east Asia.

In 1970 the Zone One Tondo Temporary Organization (ZOTTO) developed as a federation of 20 community organizations, with the aim to resist the threat of forced evictions. ZOTTO focused its efforts on empowering local communities, identifying housing challenges and opening a dialogue with the local administration. It also established a training program for community organizers, as well as training activities to raise knowledge and capacity of residents regarding housing issues. Residents were progressively enabled to have dialogue with the local administration and confront issues like tenure security, socio-economical and legal challenges in accessing legal social housing program. Through liaisons with other NGOs and the media, ZOTTO mobilized public against Marcos "anti-squatting" law and Imelda Marcos "last campaign", and evictions stopped. In 2003 ZOTTO engaged with Manila administration and the World Bank and successfully influenced in a project that planned to clear the area, now redesigned to comprehensive human rights compliant relocation plan.

5.3.1.2 Pasig river rehabilitation program

According with the original government program plan, 80,000 families were subjection to eviction in 4 Metro Manila cities, with plans of reallocation in distant out city sites. Communities organized themselves in a resident's association to elaborate a People's Plan, that foresees a double-folded component of urban renewal defined as informal settlement upgrading, and a second component of relocation to adjacent unused sites. The project was approved by Metro Manila's local government

and is in the process of being implemented. Part of the community will stay on site and applied to acquire security of tenure through CMP, while others living in areas subject to environmental risk are now negotiating with the government for the purchase of an adjacent site for relocation.

5.3.1.3 Ibayo tipas neighborhood

This was a land acquisition case, originally owned by the Far East Bank and Trust Company, which threatened community with eviction. Families organized in a residents' association and entered negotiation with the bank for the purchase of the land under the CMP scheme, with Local Government Units involved throughout the process assisting residents (production of documentation, formal requirements, etc.). Based on the acquired security of tenure and protection against eviction, the community started developing informal settlements with basic services and infrastructures. People did everything they could to save money, including moving their home to the new plots. The work has been carried out in phases at a pace adequate working families. Today, the informal settlements have become an official neighborhood, losing all features of a slum.

5.3.2. Quenzon city

5.3.2.1. Sitjo dormitory and panama village, payatas hills

When the Marcos government resettled families evicted from inner city slums around Payatas,

it parceled up hills into relocation sites. The community struggle to buy the land they occupied since in 1993 with the creation of the Golden Shower Homeowner Association. While negotiations with the land owner began, people started housing savings, mapped and enumerated their settlements, and even paid to have a physical survey done. The community underwent the complicate procedure to acquire land titles through the CMP. This process was successful, and the experience provided evidence that acquiring improved tenure security and better physical infrastructure can transform informal settlements. The increased sense of security can inspire residents to upgrade their own housing conditions, to the extent that some of the neighborhoods are no longer tagged as urban slums.

5.3.2.2. Sitjo pajo neighborhood

A poor community tried to buy the land they occupied for 50 years. The owner of the land, the National Power Corporation (NPC), threatened to evict the community to build staff housing. NPC and the community began a negotiation process, with the assistance of local architects and universities. The resident association proposed a land-sharing plan in which the community would purchase 1.4 hectares of the land for small row houses and return the rest to NPC for their staff housing. The community 're-blocking' plan called for a slight readjustment to the existing layout. The NPC, facing with the alternative of supporting the risks and costs of demolition, agreed on the land-sharing. Nobody had to move out, and the community is undergoing the procedures to acquire the ownership over the land through CMP loans.

5.3.2.3. National government center

The National Government Center is among the largest agglomeration of informal settlers in Metropolitan Manila. The Marcos administration drew up an ambitious plan of complex government offices surrounded by parks, etc. Due to lack of funding, implementation plans were delayed, and squatters began to settle in the area. In the 80's the number of squatters increased with the fall of Marcos regime. In 1975 threats of eviction by government authorities started, and the community reacted creating the SAMA SAMA resident organization. It managed to open a dialogue with the new president Aquino, who declared 150 hectares of NGC for the establishment of a social housing project for the residents. The National Government Center Housing Project was established and SAMA SAMA was given equal representation in the project with government officials. Residents were granted leasehold titles to protect them against future forced evictions. To fight a plan to develop a commercial zone that would entail evictions of thousands, SAMA SAMA proposed a development plan as alternative. It is yet to be implemented, but forced evictions have been and self-help up-grading projects, saving-schemes and land titling are now underway in collaboration with private sectors.

5.3.3. Cebu city

5.3.3.1. Sareehay neighborhood

A small squatter community settled on land behind Cebu City Hospital, which the land owner wanted clear to develop. Negotiations between the community and the land owner took place through the local government office. A local NGO helped the community to identify land 2km away suitable for relocation. The proposal to the landowner was to relocate the community in the new area, expenses of which were to be supported by the developer - since the value of hospital land was very high, even with the compensation and expenses for buying and developing the new land, the land owner was still going to make huge profits. The land owner agreed to carry out the expenses. A site-plan was drawn by the community, and families used their buy-back money to re-build their houses. In general, most of the community improved their previous housing

5.3.3.2. Kasambagan neighborhood

When Diala Company was constructing the Cebu Business Park, it needed to quickly clear some additional land for an access road. 120 households were to be evicted. A land-swapping solution was agreed on through local government unit: in exchange for clearing the settlement, a developed plot close to the area identified, and Local Government Units assisted individuals to access the CMP to acquire land title over the new site. The relocation project involved the community, the municipality and the private developer. The private developer bought the land for swapping and paid for its development, the municipality assisted with the necessary permits and loans to the community, and the people made the plan of the new settlement and built their new houses. This case shows that when poor communities are dislocated for commercial development, it is feasible for relocation costs to be shared, avoiding the risk of new slums created elsewhere.
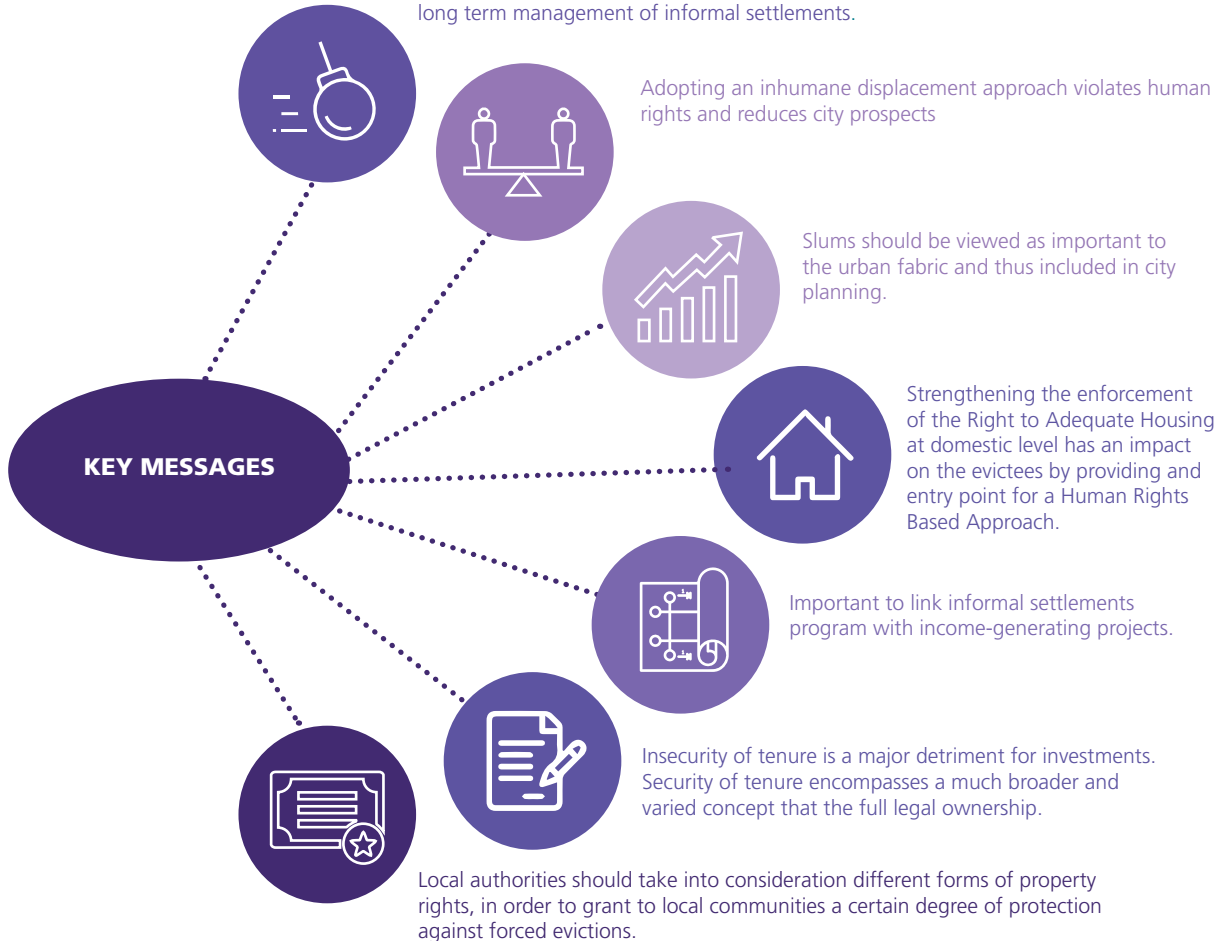
HAITI

PHILIPPINES

BRAZIL

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CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

Slum demolitions and forced evictions do not represent a successful and long term management of informal settlements.

Adopting an inhumane displacement approach violates human rights and reduces city prospects

Slums should be viewed as important to the urban fabric and thus included in city planning.

KEY MESSAGES

Strengthening the enforcement of the Right to Adequate Housing at domestic level has an impact on the evictees by providing and entry point for a Human Rights Based Approach.

Important to link informal settlements program with income-generating projects.

Insecurity of tenure is a major detriment for investments. Security of tenure encompasses a much broader and varied concept that the full legal ownership.

Local authorities should take into consideration different forms of property rights, in order to grant to local communities a certain degree of protection against forced evictions.

The case studies analyzed are examples of strategic alternatives to the challenges posed by slums in an urban context, with a long-term perspective of finding durable solutions to social housing for the most poor and marginalized groups of the society; more examples can be found in South Africa, India, Bangladesh, Australia, Ethiopia, Mexico, Cambodia, thus indicating the emerging of a global trend[69].

Alternatives to forced evictions explored in these case studies have been, for example, de-linking security of tenure to full ownership and considering lesser forms of rights over the land (rental agreements, right to use the land, ownership of structures and adverse possession); recognizing the right of communities who have been settling on a parcel of land for a long time (protecting them from forced eviction even without legal ownership); upgrading and relocation schemes with forms of lease to squatters, in order to encourage and boost investments in developing the settlement; the municipality and the local community joining together in the implementation of the resettlement plan, subsidized by the government, with local communities designing and building the new settlement. The case studies analyzed above demonstrate that a wide array of alternative solutions to forced evictions is an effective response to the challenges posed by informal settlements in an urban context. As common features of the cases examined, the crucial and interrelated aspects of effective development and implementation of informal settlements upgrading programs are:

- Security of tenure (in a very broad sense)
- Governance and institutional arrangements
- Public participation and effective contribution to society
- Up-scaling at city planning level

Below we have grouped them into the following strategies:
- Short term strategies (0-12 months)
- Medium term strategies (0-36 months)
- Long term strategies (3 years+)

6.1. SHORT TERM STRATEGIES (0-12 MONTHS)

Short term strategies encompass emergency interventions to immediately stop illegal and arbitrary evictions, and programs aiming at gathering information regarding the informal settlements and its residents, to design appropriate programs. The government can prohibit forced evictions through emergency legislation. A moratorium decree is a temporary measure, never permanent; to be used when authorities seek medium and long-term housing alternatives. Under moratorium, judicial or administrative organs are not allowed to undertake evictions from private land. The moratorium should be followed by a mechanism to compensate landowners, discouraging those way extra-judicial evictions, with a procedure to compensate and identify existing ownership and legitimate owners.

69 UN-HABITAT, Forced evictions: Global Crisis, Global Solutions (2011)

While this kind of intervention falls into the exclusive domain of the State's sovereignty, other stakeholders can play a key role in information gathering and assessment of the informal settlements. Collecting data on vulnerable communities living in informal settlements/environmentally dangerous areas is essential to designing and/or negotiating resettlement or upgrading options – with tools available such as the Eviction Impact Assessment (EvIA) and the Participatory Enumeration Exercise[70].

6.1.1. Participatory enumeration exercise

The Participatory Enumeration Exercise adopts a participatory approach that considers both formal and customary rights and has the objective to ascertain titles and rights over the land by members of the local community[71]. As shown by the Haiti case study, after a natural disaster, the implementation of a Participatory Enumeration Exercise provides the necessary foundation for the implementation of reconstruction programs by local and international actors.

6.1.2. The community mortgage program

The Community Mortgage Program (CMP) utilizes a novel system of mortgage financing whereby an undivided tract of land might be acquired by several beneficiaries through the concept of community ownership. The Philippines case illustrates how a land consolidation and upgrading scheme that gives squatters access to formal credit, and assisting residents helped squatters in purchasing the land they already occupied from the legal owners via affordable housing lands - and at the same time allowed owners to sell their land and revive dead capital.

Kinship relations were also a key factor in the examples above. Existing social capital networks allowed residents to engage in collective action so that they could bring some physical order into their new communities. Cooperation, shared needs, etc. brought them together while they negotiated through bureaucratic layers and procedures. Community organization and leaders played a vital role in terms of motivating residents to engage with local administration, elaborate and propose alternatives, and contribute to its implementation. These 'kinship belts' contributed to the resilience of informal settlers' communities to natural disasters and eviction threats.

6.2. MEDIUM-TERM STRATEGIES (0-36 MONTHS)

While relocation is sometimes necessary due to environmental risks, there is a consensus towards alternative solutions aiming at improving the living conditions in the slum; as the case studies illustrate,

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70 OHCHR and UN-HABITAT, Losing your home - Assessing the Impact of Eviction (2011)
71 OHCHR and UN-Habitat (above) indicates also the Housing Rights Violation Matrix and the Impoverishment Risk and Reconstruction Model as relevant information gathering tools

medium-term programs might include a wide range of options, from formalization of informal settlement, to land-sharing, land-swopping, buy-back and site and services schemes. National and international efforts should support the solutions that local communities are seeking, recognizing the investments that resident families are making in informal settlements.

6.2.2. Slum upgrading

Slum upgrading is a key strategy in national poverty alleviation. At its most basic, slum upgrading initiatives focus on the improvement of physical services such as roads and drainage, and frequently improve the quality of the housing. It starts with urban managers integrating slums in broader city-wide planning and urban development processes. Ultimately, the most useful approach is the one that takes account of changes to urban governance so that community capital can be maintained and improved long-term, with civil society heavily involved in partnership with the government.

Furthermore, interventions concerning a defined informal settlement need to be framed within the general policy environment of cities, adopting a multi-sectorial and integrated approach with emphasis on spatial planning and design and addressing issues of social and spatial segregation in the city. For example, in Haiti, Canaan area was largely uninhabited before the earthquake. In March 2010, the Government decreed it was to be used to relocate victims of the earthquake to

de-congestion the capital. The initial policy was to evict the IDPs once the urgency had passed. However, taken into account the considerable investments done by the community, the government opted for rehabilitation and upgrading of the camp to effectively turn it into a neighborhood integrated in the urban scheme. In the last decades squatters have become active and relatively successful participants in the struggle for urban land. Despite increasing competition, many settlements have survived for 30 years or more and the persistence as well as the emergence of many new ones offer a challenge to sociologists and pose several problems to politicians and city planners. The role of squatter colonies is becoming fundamental for the metropolitan economy, which seems to be always more heavily subsidized by their existence.

- In the case of Vila Autodromo, Brazil, community planning was a powerful political strategy that helped in bringing different residents groups together and bridge diverging interests. In front of the prospect of removal, the residents' association contacted other organizations to search for ways of confronting the municipality. The plan demonstrated that there was no incompatibility between the construction of the future Rio Olympic Park, the community existence and the environmental preservation of Barra de Tijuca, where the community is located, and that the community was willing to restructure itself. The political strategy was to send a message that the community was

ready to adapt to formal requirements, and that was organized and had a technical viable alternative plan.

• In the case of Sareehay in Cebu City, Philippines, the government, the municipality and the local community joined in the implementation of the resettlement plan. New land was provided by the government at subsidized costs, the city puts in place site infrastructures, as it does in all municipal areas, and local communities designed the new settlement, building their own houses.

6.3. LONG-TERM STRATEGIES (3+ YEARS)

Property rights are an insufficient mechanism for regulating access to land in the metropolis and the proliferation of squatting, implying that a large-scale violation of these rights can no longer be seen as a temporary anomaly that will disappear in the course of development.

Long-term policies should target the root causes of slum formations, with the implementation of socio-economic programs offering affordable housing options to the poorest and most marginalized of the society, combined with structural reforms to align national legal system with international human rights standards.

The Kenyan case studies show that strengthening the enforcement of the Right to Adequate Housing at a domestic level will have an impact on the evictees by providing an entry point for Human Rights-Based Approach to the question. The new Kenyan Constitution of 2010 includes

in Article 43 the right to 'accessible and adequate housing' for 'everyone'. Since its entry into force, local communities threatened with eviction have tested the justifiability of the Right to Adequate Housing, seeking judicial protection against forced eviction in court. Kenyan judges accepted a Human Rights-Based Approach to the issue of forced evictions reaffirming the duty of the States to protect, respect and fulfill human rights of individuals, ruling in favor of the evicted communities.

The Right to Adequate Housing is a fundamental right under international law, and with different mechanisms that rule the application of international norms into domestic legal system, there is a general trend in favor of the application of international guarantees on human rights into internal legal system- with precedence over the national legislation.

The judiciary has a central role in assuring that there is a framework respecting human rights within which all other common law are implemented. Human rights define the formation of the domestic common law and judicial courts have the responsibility to correctly interpret the regulations.

In both Kenya case studies, evicted communities have been supported by local or foreign NGOs in meeting the financial and technical requirements to face a judicial litigation. This last aspect involves the issue of legal empowerment of local communities with their right to access to justice. Judicial protection is strictly linked to the right

to access to justice for poor and marginalized groups without granting access to such services, judicial guarantees remain a prerogative of only the wealthy sectors of society.

6.3.1. Tenure security

Land and tenure security is the main concern in all the examples. Without some form of security, residents of informal settlements felt they had no base upon which to build a permanent livelihood. Security of tenure is not necessarily equated to fully titled ownership; however, it has numerous benefits. Including, individuals who have confidence in their rights over a parcel of land are more willing to invest in the land development or the structures upon it; and it enables individuals to leverage their capital to access credit, thus indirectly benefit development. Insecurity of tenure, on the other hand, it is a major detriment of investments. The case studies show that a remarkable entrepreneurial spirit exists among squatters, along with financial potential. When faced with the permanent threat of eviction, people rarely invest in productive assets, and restrict themselves to small-scale trade and economic activities. It is also very relevant in the aftermath of natural disasters, since there tend to be large numbers of displaced people coupled with an urgent need to invest in new construction. Unless people have assurance of exclusive title on a piece of land, otherwise they are generally reluctant to invest in rebuilding new constructions or repair previous ones.
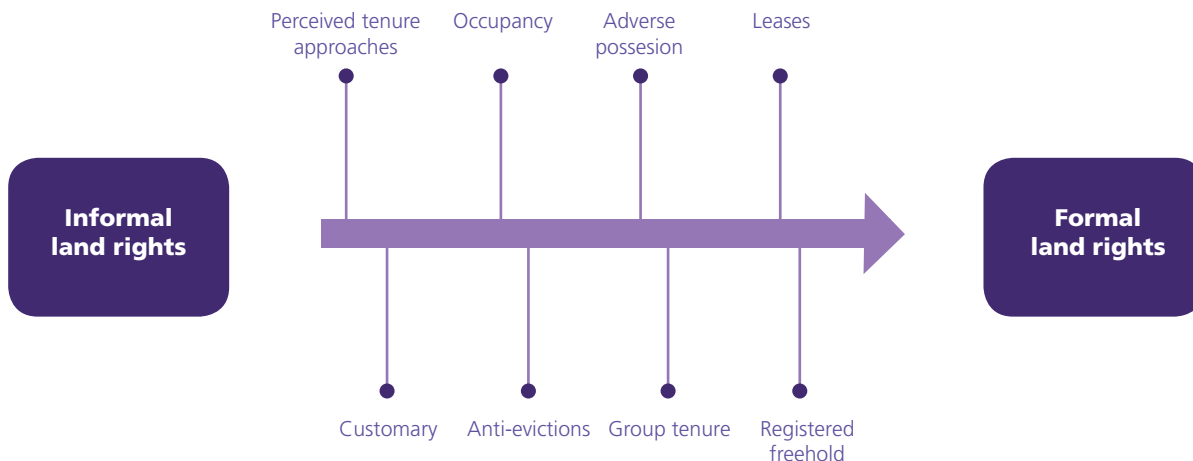
As mentioned by the former Special Rapporteur on the Right to Adequate Housing during her visit to Haiti, security of tenure encompasses a much broader and varied concept that the full legal ownership.

- In Haiti, after the natural disaster, it was recommended to local authorities to de-link security of tenure to full ownership and take into consideration lesser forms of rights over the land, such as rental agreements, right to use the land, ownership of structures and adverse possession[72].

- In the Kenyan study cases, the judiciary recognized *the right of communities who were settling on a parcel of land for a long time*, granting them protection against forced eviction, even without legal ownership of the land.

- In the Philippines, as part of upgrading and relocation schemes, local authorities established a form of lease for ten years to squatters, with the aim to encourage and boost investments in developing the settlement.

6.3.1.2. Continuum of land rights

UN-Habitat has developed a strategic position in improving land management and security of tenure for all. As part of the Global Land Tool Network, a continuum of land rights is established to take into consideration different forms of property rights, with concern to the protection of most vulnerable social groups. In

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72 Special Rapporteur on the Right to Adequate Housing, Mission Report, June 2011

Figure 19. Continuum of Land Rights

this context, security of tenure is intended not only as full legal ownership, but in the broader sense of continuum of tenure, encompassing all different nuances between full ownership and simple use of the land: tenants' rights, structures' owners, long term user's rights, etc., all cover an essential role while dealing with the challenges posed by informal settlements and slums, within the framework of varied and diverse schemes[73].

6.3.3. Integration of livelihood

Despite the notable physical transformation of targeted areas, insufficient attention has been given to the economic capacity of informal settlers to maintain their physical assets in the long term, and the integration of livelihood enhancement programs is vital for the successful outcomes. Communities in informal settlements are often on the knife-edge of poverty, and without external support they will not be able to maintain their properties.

Interventions related to defined informal settlements need to be framed within the general policy environment of cities. Slums should be seen as economic urban assets, part of the urban fabric and included in city planning. A

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73 UN-Habitat, Securing Land and Property Rights for all, www.unhabitat.org

vital step to make neighborhoods a component of the urban economy and relevant element to the municipal community is the up-scaling of initiative concerning informal settlements projects, whether a relocation or land-sharing or slum upgrading, from the small neighborhood to the whole segment of the city, in order to reach integration into the urban context.

Linking slum programs with income-generating opportunities enables the local community to maintain their assets and improve their living conditions in the long term.

- Both Haiti and the Philippines case studies highlight the importance of linking informal settlement programs with income-generating projects; either facilitating access to formal credit, to official work licenses, or offering concrete job opportunities in the form of social cooperatives. In Quezon City, CMP loans were accompanied by livelihood enhancing initiatives and skill-based training opportunities. Local organizations started livelihood programs in the form of social cooperatives in order to enable local communities to repay the loans and maintain their houses.

Slums and informal settlements are a challenge for both the municipality and the residents. The same way demolition and eviction of local community are but a partial response to the problem that does not address the underlying causes is not a solution. A more effective and long-term approach would encompass comprehensive solutions, which range from relocations according to international standards to slum upgrading and formalization of informal settlements. This approach not only respects the human rights standards as spelt in international conventions concerning the Right to Adequate Housing, but also ensures slum's long-term potential to contribute to urban prosperity prospects.

This publication focuses on the strategies used by both national and international actors, to combat forced evictions; especially, where public interests and fundamental individual human rights have been observed. It presents best practices of alternative solutions to forced evictions from four geographically and politically different countries in Africa, Asia, North and South America.

The featured case studies are from Brazil, Philippines, Haiti and Kenya. While the strategies utilized may vary greatly depending on the country's socio-economic environment, the alternatives presented herein have improved urban prosperity. Therefore, they require great consideration and scaling up of the methodologies in other regions.

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