Working Paper I

Evictions, Acquisition, Expropriation and Compensation: Practices and selected case studies

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Executive Summary

As cities and towns in developing countries grow at unprecedented rates and set the social, political, cultural and environmental trends of the world, one of the most pressing challenges for the global community in the twenty-first century is sustainable urbanization. In 1950, one-third of the world's population lived in cities. Just 50 years later, this proportion had risen to one-half and will continue to grow to two-thirds, or six billion people, by 2050. Cities are the world's economic, cultural and social powerhouses, yet they also create many challenges, including population pressures and poverty. In many cities, especially those in developing countries, slum dwellers account for more than 50 per cent of the population and have little or no access to adequate shelter, water and sanitation.

In most cities, the practices of eviction, acquisition and expropriation – most often with no or inadequate consultation and compensation – are common and too rarely challenged. As we drive forward our efforts to achieve sustainable urban development, it is important to better understand the concepts and practices related to evictions, acquisition, expropriation and compensation so that – ultimately – the processes of urbanization are fair for everyone.

In the context of urban development-induced displacement, this working paper discusses the delicate matter of practices related mainly to evictions, with some references to acquisition and expropriation. One or more of these practices have been employed in each of the paper's ten case studies in which, with or without adequate consultation and compensation, the difficulties in disentangling the concepts of eviction, acquisition and expropriation, and contextualizing their relationship are recognized.

The case studies described here clearly demonstrate the variety of immediate causes of evictions depending on context and environment. For example, the inner city regeneration in Johannesburg, **South Africa,** and capital city expansion in Abuja, **Nigeria,** are African examples that demonstrate how urban development has side-effects and consequences that affect the most vulnerable people in particular.

Demolitions in **Indonesia**'s capital, Jakarta, to clear land for a flood canal, the relocation necessary to complete the Mumbai Urban Transport Project in **India,** and the urban regeneration and expansion in Shanghai, **China,** and Phnom Penh, **Cambodia,** all exemplify how urban development in the name of the "public interest" or "greater common good" often affects the most vulnerable people *disproportionately*.

Strategies to resist evictions are often employed at the grassroots level, as the case study from the **Philippines** demonstrates. Evictions may be avoided through meaningful stakeholder participation, as the Lunawa Lake Environment Improvement and Community Development Project in **Sri Lanka** shows. The Latin American case study on the expropriation of apartment buildings in Caracas, **Venezuela,** shows the global nature and scope of these practices.

Many of the case studies also illustrate the way in which domestic laws have been applied to enforce an eviction, but also how international laws, policies and guidelines governing compensation or the manner in which evictions have been carried out have not been applied, or have been in part only. In Abuja, **Nigeria**, for example, evictees in that case were not given sufficient notice, evictions were carried out during bad weather, compensation was not according to market values and alternatives to evictions were not explored.

Sri Lanka, on the other hand, has incorporated various internationally accepted resettlement safeguards and principles into their evictions policies, although there are still problems with lengthy land surveys, acquisition and valuation procedures to determine compensation, and local politicians who appear to discourage community participation in the resettlement process.

The cases also highlight differences in each country's approach to the human rights of people who are evicted, as well as a range in the level of violence used to carry out an eviction. **China**'s resettlement policy, for example, is cited by the World Bank as a model for other countries, whereas an eviction described in **Cambodia** was particularly violent and left five women injured, 13 men badly hurt, valuables confiscated and homes burned.

In all the cases, there are lessons to be learned. Community organizations, partnerships, compensation and protecting the vulnerable are among the many issues that crop up repeatedly in each case study and the manner in which these are dealt with can better inform city planners and others in their efforts to fairly and responsibly manage urbanization and urban development.

This paper initially served as a background paper for an Expert Group Meeting in March 2010, prior to the World Urban Forum in Rio de Janeiro, Brazil, and was presented at an Expert Group Meeting on Forced Evictions in September 2011 in Nairobi, Kenya. Following an extensive review process, the paper has been published with its revised title, "Evictions, Acquisition, Expropriation and Compensation: Practices and selected case studies" as a joint publication of UN-Habitat and the Global Land Tool Network.

Man saving his freezer during demolitions in Sabon Lugbe, Abuja (Nigeria) © Maartje van Eerd (2009)

Contents

List of Acronyms

ADB	Asian Development Bank
ACHR	Asian Coalition for Housing Rights
AfDB	African Development Bank
CESCR	Committee on Economic Social and Cultural Rights
COHRE	Centre on Housing Rights and Evictions
CBO	Community-based organization
FAO	Food and Agriculture Organization
GLTN	Global Land Tool Network
HIC	Habitat International Coalition
IFC	International Finance Corporation
GLTN	Global Land Tool Network
IDB	Inter-American Development Bank
ICESCR	International Covenant on Economic Social and Cultural Rights
MDGs	Millennium Development Goals
n.d.	No date, date not indicated
NGO	Non-governmental organization
NSDF	National Slum Dwellers Federation
PAPs	Project affected persons
PS	Performance standard
UN-Habitat	United Nations Human Settlements Programme
OHCHR	Office of the High Commissioner for Human Rights
OD	Operational directives
R & R Policy	Rehabilitation and Resettlement Policy
SDI	Slum/Shack Dwellers International
SIA	Social impact assessment
SPS	Safeguard policy statement
TA	Technical assistance
UNCHR	United Nations Commission on Human Rights (was replaced by the United Nations Human Rights Council in 2006)
UNDP	United Nations Development Programme
UN-ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNHCR	United Nations High Commissioner for Refugees
WB	World Bank

Key terms used in this report

Compensation (fair and just)	Compensation for any losses of and/or damage to personal, real or other property or goods, including rights or interests in property. Compensation can take many forms, including cash and/or in kind, providing they are adequate and fair. For example, cash may replace land and common property resources. Where land has been taken, those evicted should be compensated with land commensurate in quality, size and value, or better.
Compulsory purchase	Official order for acquisition or expropriation of private property for public use or benefit upon payment of fair and just compensation (UNCHS, 1992:23).
Development induced displacement	These include evictions often planned or conducted under the pretext of serving the "public good", such as those linked to development and infrastructure projects, and land-acquisition measures associated with urban renewal, slum upgrades or city beautification, and other land-use programmes, including those supported by international development assistance (UN Resolution A/HRC/4/18).
Expropriation	Government exercise of sovereignty to take ownership of land from a private owner (UNCHS, 1992:47).
Forced eviction	The permanent or temporary removal against their will of individuals, families and/ or communities from the homes and/or the land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection (CESCR, 1997, para.3).
Internally-displaced persons (IDPs)	"Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (OCHA, 1998).
Land access	Opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity, or the enjoyment of recreation and rest. Land access is obtained by direct occupation, exchange (purchase or rental), through membership of family and kin groups, or by allocation by government, other landowners or management authorities.
Land acquisition	The stage in the development process at which land required to implement a plan or project is obtained by either public or private agencies (UNCHS, 1992:72).
Land grabbing	A process of taking possession and controlling of interests over land (e.g. ownership, use rights, access rights) on purchase, lease or concession for a set period and for specific purposes. Other terms associated with land grabbing include large scale land acquisition and trans (national) land transactions.
Land rights	Socially or legally recognized entitlements to access, use and control areas of land and related natural resources (UN-Habitat, 2008:5).
Land tenure	The way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land.
Relocation	The physical transfer of individuals or groups from their usual home (place of origin) to another location (place of relocation). Relocation may be voluntary, as with the migration of people from places of origin in the search for better economic opportunities in other places e.g. rural-urban migration, or involuntary as happens with forced displacement of people due to natural disasters or violent conflict. Relocations may be temporary or permanent (GLTN 2010:156).
Resettlement	The provision of shelter, basic services and infrastructure, livelihood opportunities and security of tenure to displaced households in the place of relocation or, on return, in their places of origin
Security of tenure	Three ways of defining tenure security: (1) the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it; (2) the certainty that an individual's rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically, (3) the right of all individuals and groups to effective government protection against forced evictions (UN-Habitat, 2008:5) Land tenure systems are sets of formal or informal institutions that determine access to, and control over, land and natural resources.

1. Introduction

One of the main functions of any government is to respect, protect and fulfil the human rights of its county's citizens. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.

A state's obligation to refrain from forcibly evicting citizens from their home(s) and land, and to protect them from evictions arises from several international legal instruments. Forced evictions are a distinct phenomenon under international law; they are often linked to the absence of legally secure tenure, which is an essential element of the right to adequate housing.

This working paper forms part of a larger research synergy on evictions and security of tenure that UN-Habitat has identified as a priority and complements three other recently published studies on related topics. All of these are available to download from the UN-Habitat website.[1]

1) *Forced Evictions: Global crisis, global solutions* (UN-Habitat, 2011a). This report reviews the status of forced evictions globally through the work of UN-Habitat, the Advisory Group on Forced Evictions to the Executive Director of UN-Habitat, and other international actors. It describes and evaluates the important successes and significant challenges related to the prevention, monitoring and assessment of forced evictions. The political, normative and operational processes necessary to reverse the increase in forced evictions globally must be driven forward. This report greatly improves our understanding of forced evictions with its outline of five of the most common causes of forced evictions. These are: urban development; large-scale development projects; natural disasters and climate change; mega-events; and evictions related to economic forces and the global financial crisis. Apart from providing a succinct global overview and analysis of the state of evictions today, UN-Habitat also encourages readers to use this text as a practical tool to inform public policy decisions related to urban planning and development.

2) *Losing Your Home: Assessing the impact of eviction* (UN-Habitat, 2011b). The practice of forcibly evicting people from their homes and settlements is a growing global phenomenon and represents a crude violation of one of the most elementary principles of the right to adequate housing as defined in the Habitat Agenda and other international instruments. This is the first research of its kind and maps out existing eviction impact assessment methodologies globally. While many good practices exist in localized situations, and while some tools have been appropriated to suit the specific needs and contexts, this is the first time such practices been pulled together into a single report. The report is an important step towards understanding the tools and approaches needed to create a solid evidence base of the actual and potential losses of forced evictions and thus promoting viable alternative policies and approaches.

3) *Monitoring Security of Tenure in Cities: People, land and policies* (UN-Habitat, 2011c). This working paper presents an innovative method of ascertaining the extent to which security of tenure can be measured at three main levels: individual or household, community or settlement, and legal or policy. Targeting cities in developing countries, the methodological framework is based on the concept of a "continuum of land rights", which expresses the range of tenure relationships that exist. Hence, various options to measure tenure security at different levels are presented. The publication also reviews the experience of several agencies and individual academics in measuring tenure security. From these reviews, lessons are drawn

[1] www.unhabitat.org

and gaps are identified, which then inform the range of methods presented in the working paper. The methodological framework presented therein makes use of the SMART (specific, measurable, attainable, relevant and time-bound) principle of indicator development and reporting. One of the innovative approaches presented in the framework is a community or settlement-based security of tenure that can be mapped, assessed, evaluated and analysed. The framework also demonstrates how one can best make use of household surveys to measure the range of tenure arrangements and security of tenure. At the policy level, the results of the pilots of Legal and Institutional Framework Index (LIFI) are presented to show how LIFI can be used to measure security of tenure at various levels. It is anticipated that the methodology developed and presented in this publication would service the global reporting to the United Nations Millennium Development Goals, inform local and national security of tenure policy formulation, and contribute to ongoing regional initiatives. Among these initiatives are the African Union-led Land Policy Initiative, and the World Bank-led Land Governance Assessment Framework. Urban actors, economists, development partners working on land policies, land administration and information will find this publication of great interest.

Temporary resettlement near Kibera, Nairobi (Kenya) © Maartje van Eerd (2010)

2. Scope and methodology

2.1 Scope

This paper focuses on urban development-induced displacements. The selected laws and guiding principles referred to deal mainly with internal displacement, including evictions, and do not include refugees.

The case studies analyse the negative and positive effects of the practices highlighted in each study and focus on how to balance social rights, environmental protection and economic development. This paper will concentrate on social rights and economic development and, due to its urban focus and a lack of secondary data, less on environmental protection.

The basic principles and guidelines on development-based evictions and displacement[2] require that alternatives to eviction are explored so that they are only carried out as a last resort. Literature reviewed does not mention whether studies were done or steps were taken towards fulfilling the condition of last resort, so it is difficult to establish whether all alternatives were explored. This means any analysis of evictions needs more research before conclusions can be made.

The paper does not dwell on the causes of development-induced displacements, but investigates, through its case studies, the practice of evictions. It seeks to shed light on how, in many contexts — particularly in rapidly expanding cities — some evictions and expropriations could be done in a way that not only protects people's rights but also serves the public interest. The various stakeholders[3] involved in implementing urban development projects have found it difficult to arrive at a commonly accepted and workable definition of what constitutes "public interest" that may justify evictions. Yet, by all accounts, the number of people affected by such displacements is increasing alarmingly.

> "Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare;[4] (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.
>
> All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education."
>
> *Basic Principles and Guidelines on Development-based Evictions and Displacement, A/HRC/4/18, February 2007.*

Some countries have adopted laws and guidelines that detail the required compensation in any given context. In addition, internationally agreed United Nations' and various donor guidelines provide safeguards and measures to be taken in cases where donor and multilateral development bank funding is involved in projects that cause the displacements.

[2] These guidelines are contained in Annex I of the report of the Special Rapporteur, A/HRC/4/18.
[3] These are mainly governments, private developers, civil society, donor organizations and academics.
[4] Current guidelines are that the promotion of general welfare refers to steps taken by states consistent with their international human rights obligations, particularly the need to ensure the human rights of the most vulnerable.

Safeguarding citizens' rights while undertaking urban development projects is inherently problematic for three reasons. The first is the difficulty in defining legitimate "public interest" as a basis for evictions; the second is the global tendency to externalize some development costs, often to the detriment of the displaced population; and the third is the vast gap between the measures stipulated in various national and international laws and guidelines to protect affected populations from evictions and the reality on the ground.

2.2 Methodology

The working paper contains research based on data from secondary sources. The case study analysis is restricted to available information on the implementation of guidelines at the national and local levels. Case descriptions therefore differ in the level of detail and could have yielded much more in-depth analysis of the poverty-dynamics in displacement, social risk mitigation and resettlement with development if targeted fieldwork had been carried out. To meet the overall objectives of the research, and to ensure a geographical spread and a broad representation of the practice of eviction with some reference to acquisition and expropriation, the case studies were selected on the basis of the following criteria:

- Case studies represent various and broad practices on evictions, acquisition, and expropriation. They represent a wide range of national contexts, and a range of institutional actors.
- Case studies provide an illustrative basis for improving practices related to evictions, acquisition, and expropriation.
- Case studies highlight laws, policies and guidelines on evictions, acquisition and expropriation. Information was not always available on the local contexts and it was difficult to assess the degree to which the policy context influences compliances with international human rights law, guidelines and principles.
- Case studies focus on issues and needs of the urban poor, especially those who do not enjoy security of tenure.
- Case studies have an even geographical spread though the selected cases are from Asia, Africa and Latin America because of the available information.

Houses demarcated for demolition, Kibera, Nairobi (Kenya) © Maartje van Eerd (2011)

Table 1: Selected case studies

Region	Country	Case
Africa	South Africa	Johannesburg's Inner City Regeneration leads to forced evictions
	Nigeria	Forced evictions and alternatives to evictions in Abuja
Asia	India	Relocation and resettlement Mumbai Urban Transport Project MUTP India
	Sri Lanka	Consultative resettlement in Lunawa Lake Environment Improvement and Community Development Project
	Cambodia	Forced evictions and resettlement in Phnom Penh
	Philippines	Mapping of anti-eviction strategies in the Philippines
	China	Involuntary relocation triggered by urban regeneration and expansion in China: the case of Suzhou Creek in Shanghai
	Indonesia	Jakarta evictions and strategies to prevent forced evictions in Makassar
Latin America	Mexico	The Texcoco Airport
	Venezuela	Expropriation of apartment buildings for renters in Caracas Venezuela

Regions	Cases	Reason given	Scale (people affected)	Period	Policy	Impact
Africa	South Africa/ Johannesburg	Health and safety, non-payment, squatter resettlement	30,000 people	2004-2006	Inner City Regeneration Strategy; National Constitution	Homelessness, increased housing expenses, loss of income & employment
	Nigeria/ Abuja	Implement master plan	49 settlements threatened	2003-2005	National Constitution; Abuja Master Plan; Federal Capital Development Authority law	Potential homelessness, loss of income & employment
Asia	India/ Mumbai	City transport improvement	78,000 project affected	2001-2008	Project and state R&R policy; World Bank guidelines	Better quality housing; secure tenure; loss of income & employment, higher living expenses
	Sri Lanka/ Colombo Metro Area	Drainage improvement, flood control, expropriation	883 project affected households	2002-2009	National Involuntary Resettlement Policy, Land Acquisition Act, UN-Habitat guidelines	Better quality housing, secure tenure, employment opportunity
	Cambodia/ Phnom Penh	Squatter resettlement	120,000 70,000 threatened	1990-2008 2008	Cambodian Land Law; land and property acquisition sub decree	Landlessness, increased poverty, worse housing
	The Philippines	Market driven, beautification, redevelopment international events, infrastructure	1.2 million in all cities	1995-2008	National constitution, Urban Development and Housing Act	Homelessness
	China/ Shanghai	River cleaning and urban redevelopment expropriation	7095 project affected households	2002-2004	Land Admin Law, Urban Building Demolition and Relocation Law, ADB guidelines	Better quality housing; urban status; loss of income; alternate employment opportunities
	Indonesia/	Removal of	25,000 in	2003-	Not available	Homelessness

Regions	Cases	Reason given	Scale (people affected)	Period	Policy	Impact
	Jakarta, Makassar	informal settlements	Jakarta	2006		
Latin America	Mexico/Mexico city/ Texcoco airport	Land acquisition for new airport	4,365 *ejitatarios* and families threatened	2001	Constitution, agrarian law	Potential loss of farming land and occupation; landlessness, homelessness
	Venezuela/ Caracas	Expropriation of rented apartment buildings	Not available		National constitution, Law of expropriation due to public or social utility, presidential decrees	Potential increased housing expenses

All the cases fall into the category of "development-induced" displacement. Most are related to infrastructure development followed by city beautification, making cities attractive for investment and, related to that, land allotment for public purpose to private developer.

In Asia, there seems to be a particular convergence of "public interest" to facilitate economic liberalization and commercialization, though this trend is also evident in other regions. Market driven evictions are increasingly significant. The issue of "public interest" dominates the discussion on expropriation, especially in democratic systems. In Sri Lanka and India, expropriation proposals have repeatedly been challenged; for example, the practice of compulsory land acquisition for Special Economic Zones (SEZ) to be allocated for private sector development in India has led to political and civil society demonstrations and violent confrontations (Iyer, 2011). These led to a reconsideration of policy and proposed amendment to the land acquisition law, removing "land for companies" from public purpose.

Other motivations for evicting people include: health and safety concerns (South Africa, Venezuela); providing squatters with formal housing (South Africa); removing informal settlements from "dangerous" land (Venezuela); urban renewal projects, including commercial development, recreation areas and luxury housing (Cambodia); implementation of the master plan (Nigeria), and mega events (China).

3. The case studies

This section will present 10 cases from Africa, Asia and Latin America.

3.1. Case studies from Africa

The cases from Africa that are presented in this section are South Africa and Nigeria.

3.1.1 South Africa

Historical context

South Africa has been ambitious in its attempts to provide adequate housing for all (COHRE, 2006). Since the end of apartheid, the ANC-led government has created an impressive amount of subsidized housing and has articulated policies and laws to support access to housing by all. In terms of sheer numbers, the state's overall achievement of delivering housing has been impressive. National Housing Subsidy Scheme (NHSS) has been used to finance the construction of over 1.5 million households across South Africa between 1994 and 2003. In addition, 370,000 title deeds had been transferred to tenants of council houses in the former black townships, giving these tenants ownership of their houses for the first time (COHRE, March 2005).

However, it is estimated that 7.5 million poor people lack access to adequate housing and secure tenure (COHRE, March 2005: 6). Formal housing solutions have not kept pace with the influx of large number of people to cities, and poor migrants are increasingly finding places to live in informal settlements and dilapidated inner city buildings. In recent years, the thrust to transform cities like Johannesburg into global cities has resulted in an increase in evictions and the resettlement of inhabitants of centrally located informal settlements to peripheral townships. Also, the land tenure system is complex and conflicts over tenancy often result in evictions.

Policy and legal framework

Policy and legislation is strongly oriented towards protection of housing and tenure rights and the rule of law. Section 26 of the country's Constitution guarantees the right of access to adequate housing; it requires the state to take reasonable legislative and other measures towards realizing this right and prohibit arbitrary evictions.

South Africa has signed the ICESCR but has not yet ratified it. Its Constitution requires every court to interpret legislation as far as possible to be consistent with international law. In some landmark judgments, the courts have referred to the ICESCR and the related general comments as a valuable guide when interpreting section 26 of the Constitution. Further, as a signatory to the Habitat Agenda, South Africa is committed to providing alternative solutions when evictions are unavoidable. Section 26 requires a court order to evict people or demolish homes. It also prohibits the state from passing laws that allow arbitrary evictions. South Africa is a party to the African Charter on Human and People's Rights.

The provisions of Section 26 are strengthened by Section 25, by which the state is required to adopt appropriate measures to enable people to gain access to land on an equitable basis. It is also required to adopt legislation to ensure security of tenure or comparable redress to people whose tenure is insecure as a result of past racially discriminatory laws or practices (Chenwi, 2008(1): 16-18).

The main legislative and policy instrument meant to give effect to the state's obligations under the Constitutions is the Housing Act 107 of 1997, which sets out the roles and responsibilities of the three tiers of government. There are many policies and programmes designed at all levels of government intended to give effect to the right to housing. However, up to 2005 the focus was on provision of subsidy assistance to low-income households in order to allow them to access at least a minimum standard of accommodation (Chenwi, 2008(1): 20).

In addition to the Housing Act, a number of laws have been enacted that define the procedures and circumstances in which the eviction of various types of occupiers may occur:

- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 (PIE), which authorizes organizations to evict unlawful occupiers of land but prohibits unlawful eviction; sets out procedures for the eviction of these occupiers.
- The Interim Protection of Informal Land Rights Act, which applies to people who have informal rights to land and provides for the temporary protection of certain rights to and interests in land that are not otherwise adequately protected by law; and ensures that there is legal recognition and protection of the various kinds of land rights existing in South Africa
- National Building Regulations and Building Standards Act (no. 103 of 1977), which is often used to effect evictions, on grounds of occupier's health and safety.

The Constitution and the PIE Act, and the jurisprudence developed under them, are generally friendly to the urban poor. Evictions under the PIE Act are seldom granted without alternative accommodation (COHRE, March 2005: 40).

The role of the judiciary

South African courts have played a significant role in ensuring substantive and procedural protections to those facing evictions from their homes. They have repeatedly articulated progressive judgments. Constitutional jurisprudence is highly consistent with the international framework as it underscores most of the international standards on evictions. The courts' approach is similar to the CESCR, requiring a high level of justification for forced evictions. The judgments invariably seek to redress the plight of evicted people, calling upon national and international legislation. They also give directives to concerned authorities to fulfil their obligations of ensuring access to land and housing for the poor. Courts have an important role in enforcing the right to adequate housing, especially in the context of an eviction. Judicial oversight is crucial in ensuring that constitutional rights are adequately enforced, that evictions are justifiable and that all the relevant circumstances are taken into account before such a drastic measure (Chenwi, 2008(2): 136 -137).

The landmark judgment of the Grootboom case in 2000 has influenced policy. The national housing programme, Housing Assistance in Emergency Housing Situations, was adopted in 2004 to give effect to the judgment of the Constitutional Court in the Grootboom case. The Constitutional Court ordered the state to "devise and implement within its available resources a comprehensive and coordinated programme progressively to realize the right of access to adequate housing". The Court added that the programme must include reasonable measures "to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations" (Chenwi, 2008(1): 24).

However, the COHRE report "Any room for the poor?" (March 2005) explains that legal advice is expensive and only those assisted by a public interest law organization will have an adequate defence.

Evictions: Johannesburg case study[5]

Inequality in the provision of land, housing and basic services is a recurring theme in Johannesburg's history. The city's present-day settlement patterns, land tenure arrangements and housing conditions have been fundamentally determined by racial segregation, progressively implemented over the first 100 years of its history .

In the early post-apartheid period in Johannesburg, the municipality delivered significant numbers of new houses, but, given the huge backlogs in infrastructure provision inherited from apartheid and the unprecedented influx of people to the Johannesburg area, the waiting period for a state subsidized house is long. In 2005, Johannesburg's housing subsidy waiting list was 250,000 – 300,000 families.

In Johannesburg, the emphasis has been on relocating informal settlement dwellers away from land perceived to be hazardous or unsuitable for development to large townships generally on the urban periphery and far from the survival opportunities that drew them in the first place.

Evictions from "bad buildings" in the inner city on grounds of health and safety were carried out for a decade without resettlement until a court ruling in 2008. The context was provided by the Johannesburg Inner City Regeneration Strategy (ICRS), aimed at creating an "African world class city" and attracting investment.

Since 1999, a number of policies and programmes have been developed under the ICRS umbrella, with heavy emphasis on attracting commercial investment back into the city. For this purpose, halting urban decay is considered to be essential, including the clearance of an estimated 235 "bad buildings", which are regarded as being at the centre of developmental "sinkholes". According to the ICRS, the elimination of these "sinkholes" in the Johannesburg Central Business District will help to increase property values, raise private-sector investment and help to transform Johannesburg into an "African world class city".

[5] Information derived from COHRE, March 2005: 41-70.

The Johannesburg City Council uses the National Building Regulations and Building Standards Act, 1977, to secure eviction orders for "bad buildings" from the High Court. Section 12 of the Building Standards Act, often cited with municipal Fire and Accommodation Establishment by-laws and the Health Act of 1977, is regularly invoked. No alternative accommodation is provided and legislation does not require a court to consider the life circumstances of anyone against whom eviction proceedings have been instituted.

Evictions were carried out at night, without notice, consultation or viable alternatives. Building conditions were appalling and the municipality's procedures were considered to be grossly unfair. In the name of safety and health, inhabitants were made homeless and left on the streets to fend for themselves. The strategy affected a minimum of 25 000 residents of the "bad buildings". The COHRE report "Any room for the poor?" expresses the view that even if the evictions are necessary, the city should instead have used the PIE Act, which ensures that mediation takes place before poor people without security of tenure are evicted from their homes. The PIE Act also requires the provision of alternatives where possible.

With *pro bono* legal support, over 400 residents from two buildings challenged the city of Johannesburg's approach.

Occupiers of 51 Olivia Road, Berea Township and others v City of Johannesburg and Others 2008 (5) BCLR 475 (CC)[6]

Facts: This case concerned an application by over 400 occupiers of two buildings in Johannesburg for leave to appeal against a decision of the Supreme Court of Appeal authorizing their eviction because the buildings were unsafe. According to the ruling, assistance with relocation to a temporary settlement area would be provided to those who desperately needed housing assistance. In seeking the eviction application, the City of Johannesburg relied on section 12(4)(b) of the National Building Regulations and Building Standards Act 103 of 1977 (NBRA), which is regularly used in Johannesburg to clear residents of residential "sinkholes" or "bad buildings" on health and safety grounds.

Decision

The Constitutional Court held that a municipality has to engage meaningfully with people before evicting them if they would become homeless after the eviction. The Court also held that, while the city has obligations to eliminate unsafe and unhealthy buildings, its constitutional duty to provide access to adequate housing means that potential homelessness must be considered by a city when it decides to evict people. The Court also found the section in the NBRA that makes it a crime to remain in buildings after an eviction notice by the city, but before any court order for eviction, to be unconstitutional. The Court thus reinforced the requirement that a court order must be obtained after all the relevant circumstances are considered.

Key points

One important point raised by this case is that the municipality should, at the very least, engage meaningfully with occupiers both individually and collectively in cases where people would become homeless as a direct result of their eviction. It should also consider the viability of alternative accommodation.

The various municipal departments also have to work together to avoid situations where, for example one department decides whether someone should be evicted and another department determines whether housing should be provided.

Any provision that compels people to leave their homes on pain of criminal sanction in the absence of a court order is contrary to the provisions of section 26(3) of the Constitution (Chenwi, 2008 (1): 81-82).

While the city has halted such evictions, it is also appealing the decision and the residents are counter-appealing the decision not to rule on the constitutionality of Section 12 (4) (b) of the Buildings Standards Act (used by the city to justify the evictions). Thus, many Johannesburg residents are still under threat of eviction.

[6] Case taken from: Chenwi, 2008(1): 81-81.

Lessons learned

With the rapid development of the economy and the consequent need for urban space, the eviction problem is serious. The South African experience shows that having **progressive laws and policies on housing rights and evictions is not sufficient**; their enforcement is the most vital issue. Though the courts play an important role in enforcing the right to adequate housing and protection from evictions, they are only remedial and not preventive.

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3.1.2 Nigeria

Historical context

In 1976, the Federal Capital Development Authority was established by Decree No. 6 and was charged with developing a new federal capital in Abuja due to intolerable living and working conditions in Lagos. Abuja was more central and had vast amounts of available land. Decree No. 51 of 12 December 1991 marked the formal transfer (Ikejiofor, 1997).

The Federal Capital Territory (FCT) has six municipal area councils: Abaji, Abuja Municipal, Bwari, Gwagwalada, Kwali and Kuje. It is an area of approximately 8,000 km^2, of which the Federal Capital City (FCC) is about 250 km^2. A federal minister with cabinet status administers it (Akor, 2010).

The whole of FCT is urban land and comes directly under the FCT minister, who is a presidential appointee. If someone wants to own land he/she applies to the minister for a Certificate of Occupancy issued by AGIS (Abuja Geographic Information System).

Land can only be held in leasehold, and the maximum term is 99 years. If land in leasehold is not developed within five years, the government can take it back to limit speculation and land lying fallow. The government can also take over land in cases of "overriding public interest" if the inhabitants are compensated for the crops, although not for the land itself.

Urbanization in Abuja

The Abuja Master Plan was created in 1979 with the philosophy of equal access and equal citizenship as two of the seven principles designed to forge a strong and united country. The original Master Plan was to have five phases developed over 25 years but because of the anticipated phenomenal growth of the city, plans were brought forward.

With the formal transfer of the capital from Lagos to Abuja in 1991, the city's population was 378,671 (Akor, 2010: 9). Since 1991, Abuja continued to grow due to a massive influx of poor people in search of work giving it the highest rate of urbanization in Nigeria. Unofficial estimates of the FCT's population, including informal settlements, vary from 3 to 7 million, while the number in the National Population Commission's Report of 2006 is 1.4 million with a growth rate of 9.3 per cent. Many people also commute to Abuja for work and have a primary residence in another area (Akor, 2010: 9).

Streetview Lugbe, Abuja (Nigeria) © Maartje van Eerd (2011)

Policy and legal framework

Nigeria ratified the International Covenant on Economic, Social and Cultural Rights in 1993. However, because the treaty has not been domesticated, Nigerian courts are not enabled to base a ruling on the obligations contained in the treaty (Fowler, 2008: 13-14).

Nigeria has ratified and domesticated the African Charter on Human and People's Rights, a key regional instrument on human rights law that entered into force in 1986. The Charter guarantees the right to adequate housing, including the prohibition against forced evictions.

Nigeria's Constitution provides fundamental human rights protections with Articles 43 and 44 protecting the right "to acquire and own immovable property". It also requires compensation to be paid if property is acquired compulsorily (Fowler, 2008: 14). However, Nigerian domestic law provides very few explicit housing rights protections. Chapter two, Article 16 (2) of the Constitution requires that "the state shall direct its policy towards ensuring (b) that suitable and adequate shelter […] is provided for all citizens". However, these provisions cannot be enforced by the courts (COHRE, 2008a: 87).

Nevertheless, Article 6 (6)(b) provides that judicial powers "shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person" (COHRE, 2008a: 88).

Land ownership and the Land Use Decree

In Nigeria, the governor controls all urban land, a situation that dates back to the Land Use Decree of 1978 which vests "all land compromised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State" (www.nigeria-law.org/ Land%20Use%20Act.htm). The governor is empowered to grant a statutory right of occupancy to any person for any purpose. Rural land, on the other hand, is vested in the Local Governments Chairman, who is also empowered to grant customary rights of occupancy over land in his jurisdiction. Hence, the decree introduced two types of rights of occupancy: statutory and customary (Ikejiofor, 2004: 29).

In accordance with section 28 of the decree, the governor can revoke a right of occupancy for an "overriding public interest". What is regarded as an overriding public interest, both in the case of statutory and customary land, is listed in section 28 (2) and (3). Section 28 (5) also provides that a right of occupancy may be revoked by the governor on the grounds of breach of any of the terms of holding by the holder of the right. A right of occupancy under the decree is both alienable and transferable, even though these can only be done with the governor's consent (sections 21, 22 and 34). A right of occupancy is also transmissible and can be left by will (section 24 and 25) (Ikejiofor, 2004: 29).

In each state, the Land Use and Allocation Committee is responsible for "advising the governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under this Act (Part 1 (2)(2)(b); and determining disputes as to the amount of compensation payable under this Act for improvements on land"(Part 1 (2)(2)(c) (www.nigeria-law.org/Land%20Use%20Act.htm).

Master plan, relocation and resettlement

With the development of the Abuja Master Plan, from the start the federal government's policy was to move all the original inhabitants of the Federal Capital Territory (FCT) to avoid a so called 'indigenes' local population claiming to be original owners of parts of the territory. It was also expected to give all Nigerians equal access to land and other benefits without any person or groups being able to insist on ancestral rights (Desmond, 2009: 6).

The Master Plan indicates that the policy direction of the federal government was that existing FCT population could remain in their present location with the exception of those

populations located within the Federal Capital City site or other required areas in the FCT (Desmond, 2009:6).

"The few local inhabitants in the area… would be resettled outside the area in places of their choice at government expense" (Gen. Murtala, 1976 in Jibril, 2006). This meant that they would be resettled in the neighbouring states. Those who opted to remain would not compensated. Those living in priority areas were to be forcibly removed.

There were many more villages in Abuja than originally thought and it was too expensive to resettle everyone. Between 1976-1979, the compensation cost was approximately USD 900,000, which, by 1981, had risen to USD 1.4 million (Mabogunje and Abumere in Abumere, 2002: 26). It was decided that others would be resettled only when development reached their villages.

The 'indigenes' villages that were not resettled have expanded in the past 30 years as 'indigenes allocated land or rented housing to so-called 'non-indigenes' who moved to Abuja for employment and were unable to access affordable formal housing. This resulted in the formation of extensive informal, unplanned and unauthorized settlements within the area designated for the capital city (COHRE, 2006).

Houses demarcated for demolition in Abuja (Nigeria) © Maartje van Eerd (2010)

Evictions: Abuja

Since 2003, the Federal Capital Development Authority (FCDA) has targeted over 49 informal settlements in Abuja for demolition, arguing that land was zoned for other purposes and, in some cases, had already been allocated to private developers. The FCDA policy provides full resettlement to indigenous population, and not to the 'non-indigeneous population, in keeping with the original intentions of the Master Plan. Because the FCDA has completed resettlement sites for indigeneous" people it refrained from evicting them. Evictions of non-indigenous' started as early as 2003. Despite the formal recognition of the 'indigenous" in the policy document, both groups in the 49 settlements are threatened with eviction. Since 2003 there have been 500 to 800 thousand people forcibly evicted in Abuja.

After pressure from civil society and publicity about the scale and harshness of the evictions, the minister began discussions in 2005. Consequently, the FCDA has attempted to count "non-

indigens" present before demolitions and offered those affected access to a plot of land in relocation sites that are currently under construction (COHRE, 2006).

Generally when FCDA wants to evict communities, it consults with the chiefs, but the affected communities are hardly involved. This is usually followed by an announcement of the proposed plan. The affected communities were classified as "indigenous" and "non-indigenous" with the "indigenous" being resettled and "non-indigenous" relocated, often without compensation. New sites have a very poor infrastructure and poor services, if any at all.

Since 2010, "non-indigenous" pay a processing fee of about USD 130 for land allocated to them, and a USD 75 survey fee. The "indigenous" communities, officially relocated by government, do not pay for any charges per square metre of land. They receive free prototype drawings of two or three bedroom appartments. They would further be required to build a home based on certain planning standards within two years or lose their rights to the relocation plot. So far, nobody has been penalized.

Government officials predetermine site selection and design of buildings, particularly for the resettled communities. There is three months' notice of eviction, but this may take some years to implement, thus giving communities some time, particularly in situations where government has provided some basic infrastructure and services. Many communities suffered colossal loss as they were taken by surprise with a final notice of two or three days.

Demolished houses in Lugbe, Abuja (Nigeria) © Maartje van Eerd (2010)

Lessons learned

After research in 2008, a coalition of NGOs, CBOs and some government officials was set up to promote secure land tenure. Its mission was to lobby to make land legally available and affordable to the urban poor and the vulnerable groups. To support the coalition's initiatives and to start a dialogue with the government on issues of tenure security a National Advisory Board (NAB) was inaugurated in November 2010. The NAB comprises of representatives of the government, private sector, the media, the judiciary, traditional and religious representatives and international experts. Its core goal is to advocate for secure tenure and access to land and affordable housing. It provides a basis for discussion with government officials at the highest level.

Currently, some communities in Abuja that have been affected by forced evictions have established their own cooperative groups. Through small contributions, they are saving money to build their houses when the government makes land available. The local coalition is attempting to enter into partnerships with microfinance institutions to see how money can be leveraged for a start-up pilot project. The coalition has selected Lugbe for a pilot project for which an action plan has been developed.

It is clear from all of the above, however, that international human rights law is not respected in Nigeria. Although Nigeria ratified and domesticated the African Charter, forced evictions are on the increase. In Abuja specifically, the capacity of civil society to pressure the government to comply with international human rights guidelines is still weak. Communities are largely unaware of their rights and there is limited access to an independent judiciary.

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Demolished houses in Abuja (Nigeria) © Maartje van Eerd (2010)

3.2 Cases studies from Asia

The cases from Asia are Indonesia, India, Cambodia, China, Sri Lanka and the Philippines.

3.2.1 Indonesia

Historical context

The vast majority of Jakarta's urban poor do not have legal security of tenure – in fact, the government has not officially registered most of the land on which they live. Until recently, most residents have had a small measure of security because they have lived on sites for decades without contestation, many have paid officials for permission to live on the sites, and many have paid land taxes and have received various government utility services.

Jakarta's Governor Sutiyoso initiated demolition drives against tens of thousands of urban poor dwellings. The Indonesian Human Rights Commission, Konmas HAM, estimates that 60,526 families were rendered homeless from 2003 to 2004 in Jakarta Province, all of which were carried out with violence. The Legal Aid Board of Jakarta and Urban Poor Consortium (UPC), an NGO from Jakarta, also report that 1,180 families were evicted in Jakarta from January to September 2006. Many of those evicted since 2003 have not received any compensation for the loss of their homes, property and lands. The authorities have also failed to provide alternatives for resettlement and rehabilitation.

In 2003, approximately 2,000 households were forcibly evicted from Jembatan Besi, West Jakarta, rendering 7,500 people homeless. The North Jakarta Municipality also demolished the homes of 550 people in Sunter Jaya Tanjung Priok, North Jakarta. In the same year, 700 houses in Kampung Baru, were demolished making 3,100 people homeless. Residents had received notice letters. There are reportedly plans for a housing and shopping complex there.

In October of 2003, police forcibly evicted 520 households at Tanjung Duren Selatan and several hundred households in Tambora in West Jakarta. Police forcibly evicted thousands more from their homes in Cengkareng, West Jakarta. Also in October, security officers and police demolished a further 429 houses on the banks of the Cipinang River, rendering some 1,800 people homeless. To clear land for the Banjir Kanal Timur (East Jakarta Flood Canal), authorities demolished 44 houses in Cipinang Muara village, 237 in Cipinang Besar Utara, and 148 in Cipinang Besar Selatan. In another operation, some 1,000 security officers evicted approximately 4,000 residents in the Muara Angke village on the Angke River.

In October 2004, some 450 people were forcibly evicted in the Pinang Ranti sub district of East Jakarta and another 200 homes were demolished in Srengseng Sawah in South Jakarta. Residents received compensation of about USD 50. Most evictees had lived there since 1991.

The North Jakarta Municipality evicted 50 fisher families from Ancol Timur, North Jakarta, in April 2004, rendering some 160 people homeless. They had lived in Ancol Timur for over 30 years and, although they had been evicted several times before, they had rebuilt their homes each time. The municipality plans to reclaim the north coast and build a housing and business area.

The Jakarta Municipal Government removed several thousand pavement vendors ahead of the presidential election in June 2004 in a month-long eviction campaign. Many vendors lost their kiosks and goods in the operation. In September 2005, the eviction of sidewalk merchants at Kampung Rambutan terminal, East Jakarta, caused clashes between merchants and security officers of East Jakarta Municipality.

The Central Jakarta Municipality mobilized 1,300 security officers to destroy 220 houses in Tanah Abang in November 2005 saying the move was to clear the area of prostitution. Police demolished the makeshift homes and kiosks as part of a plan to make the city more attractive.

In April 2006, some 500 residents were forcibly evicted in the Serpong district Tangerang. Many of the residents had bought the land in the 1950s (COHRE, 2006: 77-78).

Policy and legal framework

In 2009, COHRE submitted an *Amicus Curiae* letter to the North Jakarta District Court after the forced eviction of 347 households in Papanggo Ujung. They were evicted without any notice after having lived in that area for about 10 years. In that brief, an analysis was given of how international human rights law should apply within Indonesia regarding forced evictions. "The Constitution of the Republic of Indonesia states in Article 11(3) that "provisions regarding international agreements shall be regulated by law". Based on this constitutional mandate, Article 7(2) of Law 39 of 1999 Concerning Human Rights incorporates international human rights law into the domestic legal order: Provisions set forth in international law concerning human rights ratified by the Republic of Indonesia, are recognized under this Act as legally binding in Indonesia.

As with international human rights law generally, Article 8 of Law 39 of 1999 Concerning Human Rights stipulates that the primary responsibility to respect, protect and fulfil human rights lies with the government. These legal obligations also closely reflect the obligations to uphold, protect and fulfil human rights contained in Article 28I(4) of the Constitution. The ICESCR, ratified by the Republic of Indonesia on 23 February 2006, and other relevant international human rights treaties are therefore directly binding in Indonesia. Government agencies at all levels have the duty to respect, protect and fulfil these obligations

Slum in Jakarata, indonesie © Maartje van Eerd (2009)

Evictions: Makassar, Sulawesi

Makassar is one of the biggest cities in East Indonesia and is growing very fast. Land prices have been increasing rapidly due to local and foreign investments; land grabbing and forced evictions are a day to day threat faced by the urban poor.

In response, a planned intervention to pressure candidates running in local elections to stop these evictions was organized. Four months prior to mayoral elections in 2008, the Urban Poor Consortium (UPC), together with local NGOs and CBOs from Makassar, conducted a study in the city's poor settlements to identify the problems, needs and demands of the urban poor voters.

The demands contained in the contract were:

1. No forced evictions and a search for alternative concepts and methods.
2. Mediation of land conflicts and provision of accessible land titling for the poor.

3. Provision of accessible and good quality public services.
4. Protection of the poor's livelihoods (hawking, pedicab and waste picking).
5. Planning with environmental concerns and allowing for participation.

With this contract, the NGOs and CBOs mobilized 65,000 urban poor votes out of 70,000 voters who promised that they would vote for the candidate who would sign the contract.

About 200 representatives of recruited voters met with candidates to discuss issues and a meeting with the strongest candidate was attended by representatives of the Komite Perjuangan Rakyat Miksin, or Committee of Poor People's Endeavour (KPRM), and UPC.

The most difficult issue was evictions but candidates were convinced of the strategic importance of the principle of city development without eviction. There was a public contract signing event with the candidates, Ilham Arief Sirajuddin and Supomo Guntir.

According to UPC, after Ilham Arief Sirajuddin and Supomo Guntir were elected mayor and deputy mayor, many of the land disputes were addressed in consultation with the urban poor grassroots organization. A new land-sharing scheme is one result.

Lessons learned

A strategy of making contracts with political parties and politicians during the elections is adopted more and more by NGOs in Indonesia to prevent forced evictions and to put pressure on politicians to listen and respond to the demands of the poor. An example is the contract made in Makassar for the elections for mayor and deputy mayor. This case illustrates how civil society can play an important role. The pressure exerted on election candidates by mobilizing voters clearly influenced the candidates to stop evictions.

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Victims of forced evictions squatting on the BMW site in Jakarta (Indonesia) © Maartje van Eerd (2009)

3.2.2 India

Historical context

Indian cities contribute more than 60 per cent to the country's gross domestic product and have become the centres for investment. But turning the larger cities into "world class cities" requires space and is typically the cause for displacement of thousands of poor people. In 2004-2005 around 150,000 people were evicted in Delhi, 77,000 in Kolkata and 350,000 in Mumbai. Those who were eligible were resettled in the cities' peripheries (COHRE, 2006). However, concern for effective resettlement and rehabilitation policies was triggered by resistance to land acquisition and evictions in the Narmada Sagar Dam project and some proposed Special Economic Zones (SEZ).

Mumbai is the largest city in India with a population of about 13 million in 2001. Land values are very high and 65 per cent of residents are slum and pavement dwellers. Mass evictions in the early 1980s motivated NGOs and activists to support slum and pavement dwellers. A landmark court ruling on a PIL favouring the housing rights of Mumbai pavement dwellers in 1984 made it mandatory to provide relocation housing to evicted people. However, eligibility for relocation is based on progressively advancing cut off dates. The current cut-off date is 1995 in general and 2000 for the Mumbai Urban Transport Project.

In 1995, a new government was elected with the promise of 800,000 free houses for four million slum and pavement dwellers (Patel et al, 2002) and the Slum Rehabilitation Agency was created directly under the state's Chief Minister to implement the programme. The strategy is to provide incentives to the private sector to build houses in slums and relocation areas. Landowners or developers building houses for slum dwellers' housing cooperatives can have additional development rights (ADR) on the land and Transfer of Development Rights (TDR) to another location. They can sell land / apartments / commercial space left after accommodating slum dwellers. "Bona fide" slum dwellers get free apartments and approximately USD 360 paid to the housing cooperative for maintenance (Patel et al, 2002). Over 400,000 dwellings have been built, including housing for those affected by the Mumbai Urban Transport Project.

Policy and legal framework

The National Policy on Resettlement and Rehabilitation of Project affected Persons was adopted in 2004 and was followed by a Rehabilitation and Resettlement Policy and Bill (R&R Bill) in 2007, which is yet to be enacted. The Land Acquisition (LA) Act 1894, the main instrument for land expropriation by the government for "public purpose" is also being amended to overcome two main weaknesses: it has provision, however contested, for compensating those whose property is acquired but has no provision for relocation or rehabilitation of affected people. The proposal to link the LA and the R&R Bill is to overcome that. Dispute over "public purpose" as against the fundamental right to hold property is expected to be resolved with a clearer definition of public purpose, which excludes expropriation for companies. The R&R Bill expands the idea of compensation to that of benefits. It aims to "provide a better standard of living and make concerted efforts for providing sustainable income for the affected families" and to "integrate rehabilitation concerns into development planning and implementation processes" (R&R Bill). The Bill requires a social impact assessment, an R&R plan and consultation with affected people. It includes those without land and property rights as project-affected people and requires compensation for loss of employment and income. The purview of the Bill is not limited to land expropriation under the LA Act, but to any public or private action that displaces people (Government of India, 2007(1); Press Information Bureau, 2007).

Under the federal system, each state has its own laws on land, housing and urban development. In most cases, state policies and acts follow central government directives and models with modifications for local requirements (Banerjee, 2002).

India has an independent judiciary and courts are often approached to deal with land expropriation-related disputes, such as contesting "public purpose" and compensation. "Stay orders" and litigation can hold up development programmes for years, including housing projects for the poor. However, stay orders have prevented forced evictions and courts have passed judgments in favour of poor people under threat of eviction. These themes have been the subject of public interest litigation (PIL) filed by civil society groups against forced evictions. Courts have repeatedly taken the view that displacement is legitimate when public interest is affected and includes a relocation package (Banerjee, 2002).

Evictions: Mumbai

Mumbai Urban Transport Project (MUTP)

The MUTP was started in 2002 to "facilitate urban economic growth and improve quality of life by fostering the development of an efficient and sustainable urban transport system including effective institutions to meet the needs of the users in the Mumbai Metropolitan Region".

The project had three components: improvement of Mumbai's rail system, improvement and extension of the road system, and resettlement and rehabilitation of affected people. A World Bank loan of USD 463 million partly funded the road and rail components, while the R&R component was partly funded by International Development Association (IDA) credit of USD 79 million. The R&R component is the largest in a World Bank project outside China. Each family was to get a 225 sq ft tenement for free or transit accommodation of 120 sq ft. with basic amenities. The R&R policy was to be implemented with the active involvement of NGOs and the full participation of affected communities.

The R&R component had five sub-components: (1) procurement of 19,200 permanent housing of 225 sq ft to resettle households displaced by the rail and road components, mainly by procurement of tenements on private land in return for TDRs and existing government land; (2) construction of 6,100 transit tenements as an immediate measure in response to a court order and purchase of already built housing from the public sector Maharashtra Housing and Area Development Authority (MHADA) to settle those in transit housing; (3) land acquisition for rail and road components under the provisions of the Land Acquisition Act for civil works and using the mechanism of TDR for resettlement projects; (4) training, monitoring and impact evaluation for resettlement; (5) operating costs, taxes and cash allowances to project affected persons (PAPs) (PAD, MUTP).

Displacement along the railway tracks due to upgrading was carried out between April 2000 and June 2001 because 10,000 slum dwellings were dangerously close to the tracks. A Mumbai High Court ruling accelerated the pace of displacement and resettlement. The project implementing agency was the MMRDA. It entrusted the Society for the Promotion of Area Resources Centre (SPARC) and its alliance partner, the CBO Railway Slum Dwellers Federation (RSDF) with preparing the baseline socio-economic survey and the resettlement action plans. SPARC and the RSDF also oversaw the rehabilitation and resettlement of project affected people.

SPARC and RSDF could quickly manage the resettlement of 10,000 households, with their consensus, first to transit accommodation and later to housing built by MHADA within a year. This was commendable by any standards. (Burra, 2001; Inspection Panel Investigation Report, 2005). The remaining 5,000 plus households moved to sites generated by using TDR.

It was assumed by the project partners that the strategy used for the rail component would work for the roads component, but that was not the case because the NGOs SPARC and Slum Rehabilitation Society had not worked in the area before. Surveying, mobilizing and relocating about 6,000 households was not easy and there were questions about the NGOs capabilities. This was especially so because many of the PAPs were middle class people with businesses and some had legal rights over the land. The challenges could not be adequately met.

In 2006, the World Bank suspended funding to the project based on the report of an Independent Inspection Panel. Complaints were about the polluted environment of relocation sites; poor quality housing construction, higher housing costs; a decline in income and living standards; no provision for rehabilitation of commercial establishments; non-functional public information centres, no participation in the preparation of the RAP and poor grievance mechanisms. Doubts were also raised about the Bank's supervision (Inspection Panel Investigation Report, 2005). The panel found that most of the complaints were justified.

The panel investigation also revealed a large increase in the number of people displaced by the MUTP, from 80,000 at appraisal (2002) to about 120,000 by 2004; and in displaced families, from 19,200 in 2002 to 23,000 in 2004, with 3,000 affected shops. There was no proportionate increase in the budget. The World Bank attributed the increase to changes in the scope of certain sub-components and said the implementation of the R&R component had gone well. It said the PAPs will receive title to their space in the resettlement area, which they did not have before and which were an important project benefit.

MUTP is part of a larger effort to build the transportation infrastructure in Mumbai and to further develop the city. As part of this effort, many tens of thousands of additional people are being resettled who are not part of MUTP. The safeguards built into Bank-financed projects were expected to be extended to other activities not financed by the Bank, especially because of government adoption of the R&R policy. However, "these hopes have not been realized, as newspapers reported early in 2005 the widespread demolition of slum dwellings not included within the Bank project, which left occupants without any place to live" (Inspection Panel Investigation Report, 2005).

Lessons learned

The lessons are to do with good urban governance. The project highlights the importance of flexibility for institutions, the significance of partnerships between a government agency and the NGO/CBO and, finally, the importance of community participation and social mobilization with special reference to women. The participatory approach takes time to be effective, especially in large, heterogeneous populations with divergent interests. For the same reason uniform packages are not likely to work.

The compromise on environmental quality of project sites is questionable but mobilizing huge amounts of land for resettlement at no financial cost to the government is commendable.

The case also highlights the importance of an instrument like the World Bank's Independent Inspection Panel, which applied international covenants of the Bank to review practices.

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3.2.3 Cambodia

Historical context

Between 1990 and 1996, housing rights organizations in Cambodia recorded 29 forced evictions of at least 4,016 families. The actual number is likely to be much higher. In Phnom Penh, the municipality claimed that the city squatters were illegal because they were allegedly occupying public and private land to which people already held land titles. According to Rabé (2009: 94), this was a dubious claim as no new land titling exercises had taken place in the 1990s and the PRK regime had declared all previous land rights invalid.

From 1991 to 1996, forced evictions were characterized by a lack of consultation before issuance of eviction notices; no adequate notice period; no just compensation; no appropriate sites for relocation; no transport to the sites; and no building materials for relocated families.

By the late 1990s, there was a change in government policies: the municipality announced that it would resettle the urban poor in a more planned and orderly manner and demonstrated a commitment to on-site slum upgrading as an alternative to resettlement. The resettlement involved between 7,500 and 9,400 families. A significant development was that authorities officially acknowledged that the resettlement sites or developing regions needed to have significant basic infrastructure, services and income generation opportunities if resettled people were to stay there. So, evictions began to involve some sort of compensation.

Another milestone for the poor was passage of a new Land Law in 2001. There are two main types of land ownership claims recognized by the Royal Government of Cambodia (2002) in the poor urban communities studied by Payne and Khemro (2004), namely public and private land. In the public domain, land is further classified into state public and state private ownership (Cambodian Land Law, 2001, Article 14: 7).[7]

But despite legal advances, the more inclusive official discourse and the promising signs of partnership between the authorities and civil society organizations, in practice it became clear that progress towards community-led development in Phnom Penh was uneven, and that there were limits to the municipality's new "pro-poor" course.

There was still little systematic planning of the resettlement sites and the relocation as such. The sites lacked basic services and access to employment opportunities, infrastructure as they are fairly isolated. Meanwhile, evictions continued to take place. Informal settlements were still considered a "blot on the landscape" and evictions were ordered in the name of campaigns to improve public health and environmental conditions, as well as the need to attract tourists and foreign investors in the city. Another justification for the continued evictions was the promotion of social order and the need for greater stability and progress within the city *(*Abstract from Rabé, 2009).

According to local NGO Sahmakum Teang Tnaut (STT), in Phnom Penh alone at least 120,000 people have been displaced since 1990. This figure amounts to almost 10 per cent of Phnom Penh's current population of 1,325,681 (2008 Census, Cambodian National Institute of Statistics, from: Bridges Across Borders et al., 2009: 17). The rate and scale of these evictions has increased over time: between 1990 and 1996, 3,100 families were displaced; between 2004 and 2008, the figure climbed to 11,480.

Conservative estimates suggest that at least 150,000 Cambodians currently live under the imminent threat of forced eviction, including 70,000 in Phnom Penh (Amnesty International,

[7] Land that can be lawfully possessed includes state land categorized as "state private land", which includes land that can be alienated by the state and may be subject to sale, exchange, distribution or transfer of rights. This is in contrast to "state public land", which is inalienable, and where possessions cannot be transformed into ownership. In principle, the revised land law fundamentally altered the rights of Cambodians, as it secured the rights to the homes and properties they occupied on the effective date of the law as long as five basic conditions of possession were fulfilled. It also provided for social land concessions for the poor, whereby "vacant lands of the state private domain may be distributed to persons demonstrating the need for the land for social purposes".

2008:7). Forced evictions occur in the context of rapid foreign investment, spiralling land prices, endemic corruption and an absence of secure land tenure for urban and rural low-income households. Causes include the granting of economic land concessions, extractive industry concessions, infrastructure development, beautification, private development projects, and land speculation. Land-grabbing and forced evictions contribute to growing landlessness, inequality in landholdings, and poor households being displaced to areas without adequate living conditions.[8]

Policy and legal framework

Laws are applied selectively or by-passed altogether. Collusion between authorities and powerful individuals who lay claims to land open the door for the issuing of dubious land titles and eviction orders, and the misuse of the legal system to prevent victims from defending their rights.[9] Communities involved in land disputes are frequently harassed and intimidated if they try to protect their land.[10]

In 2007, the Ministry of Economics and Finance and the Asian Development Bank introduced the draft sub-Decree on Land and Property Acquisition and Addressing the Socio-Economic Impacts by the State's Development Projects. Because the decree will become the definitive legal framework for governmental property expropriation in the name of public interest, the sub-decree is an opportunity to ameliorate the on-going land speculation crisis, if drafted in an effective and human rights compliant fashion. Conversely, failure to promulgate a sub-decree that meets international standards will burden Cambodia for the foreseeable future with inadequate land security, corrupt practices and land speculation. The legal analysis by a coalition of NGOs indicates that the current second draft of the Land and Property Acquisition sub-Decree, as with the previous draft, fails to ensure safeguards sufficient to ensure the Cambodia's human rights obligations are met. In particular, this affects rights related to halting, preventing and remedying forced evictions in Cambodia until the necessary institutional mechanisms are in place to ensure that evictions are carried out in accordance with international human rights standards. A number of INGOs called for a moratorium on forced evictions until the necessary legal and institutional mechanisms are in place.

A moratorium on relocation and evictions was also recommended in the final Draft National Housing Policy, which was developed through a consultative process by the Ministry of land management, Urban Planning and Construction in 2003 (LICADHO et al., 2009: 4). The draft policy also recommended various options for ensuring medium and long-term tenure security and improving housing conditions for urban poor residents dwelling in different categories of informal settlements. However, the draft National Housing Policy has not been acted upon for the last 5 years. The many positive recommendations and policy tools for protecting and fulfilling the right to adequate housing in Cambodia have not been adopted even on an interim basis (LICADHO et al., 2008). .

Cambodian law does not specifically prohibit forced evictions, but Article 44 of the Constitution, which protects the right of all Cambodian citizens, individually or collectively, to own land, contains a broad limitation to the effect that the "right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance".

Article 35 of the Constitution sets out procedures to evict those with no or insufficient title. Such evictions can only be made by a court order upon the request of the person who claims the property, and it falls on the courts to verify and validate such claims. The law, in Article 36, also provides that although courts cannot refuse to order an eviction in favour of a person who presents a valid and complete cadastral title, that is, legal ownership, a temporary

[8] Land and Housing Working Group, Land and Housing Rights in Cambodia – Parallel Report 2009, April 2009.
[9] See ibid; and Amnesty International. (2008). Cambodia: A Risky Business – Defending the right to housing.
[10] United Nations Committee on Economic, Social and Cultural Rights, '*Concluding Observations on Cambodia, 42nd Session*', 22 May 2009, para 31.

suspension may be requested by the competent authorities of the eviction "is likely to give rise to instability or to have serious social repercussions".

Social land concessions is a systematic land distribution mechanism established under the law, whereby state private land may be distributed for residential or farming purposes to the poor and homeless families. Combined, these provisions protect security of tenure and are seen as replacement of the old principle of ownership through possession. Security of tenure is also extended to indigenous people's land, providing for collective ownership of those communities. These provisions protect indigenous peoples against displacement. The sub-decree on Economic Land Concessions, signed in 2005, sets out our general conditions that must be met for a concession to be granted, which provide communities with protection against eviction. Chapter 2, Article 4, provides that "the contracting authority shall ensure that there will be no involuntary resettlement by lawful land holders and that access to private land shall be respected".

According to Article 39 of the Constitution, citizens have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts. Both the Cambodian Constitution and the Land Law have provisions for fair and just compensation in the context of confiscation or deprivation of ownership. Such compensation must be awarded in advance of expropriation. Article 5 of the Land Law provided that "an ownership deprivation shall be accrued out in accordance with the forms and procedures provided by law and regulations and only after the payment of just and equitable compensation. The "law and regulations" providing for the procedures yet have to be adopted. (Amnesty International, 2008: 0).

Evictions: Mittapheap 4 village, Sihanoukville Municipality[11]

In 2007, more than 100 families were forcibly evicted from Mittapheap 4 village in Sihanoukville Municipality. Many had lived there since the 1980s and 1990s. The basis of the eviction was an unsubstantiated claim of ownership of the land by the wife of an advisor to a government official. She never presented her alleged title to the villagers but eviction notices were issued and villagers were ordered to leave the area within one week. The villagers complained to various bodies, including the Senate Commission on Human Rights, which concluded that the land dispute had to be settled by the courts. In spite of the Commission's findings, the governor appointed a joint task force to carry out the eviction.

The eviction was particularly violent. It involved 150 members of the Royal Cambodian Armed Forces military police, police and soldiers. Five women were injured and 13 men were badly hurt. Valuables were confiscated and homes burned. The 13 wounded men were convicted for battery with injury and damaging property and were jailed for more than one year.

More than two years on, many members of the community still live under tarpaulins supplied by NGOs, near where their homes once stood. At the time of writing, the Mittapheap 4 land is empty but is fenced off.

Lessons learned

Legal protection against forced evictions is generally weak. The Cambodian Land Law, drafted with a view to secure implementation of the property rights guaranteed under the Constitution, consists of general principles that require sub-decrees and implementing regulations to be effectively applied. Since enactment in 2001, the legal framework has developed incrementally, but remains incomplete. The example given of evictions due to an unsubstantiated ownership claim shows the politicized nature of the judiciary and that there is little protection from collusion between the authorities and powerful individuals.

[11] Case derived from Land and Housing Working Group, 2009: 15-16.

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3.2.4 The Philippines

Historical context

Large-scale, forced evictions of urban poor families continue in the Philippines. Between 1995 and 2008, over 1.2 million people were forcibly evicted from their homes and most of these evictions were for urban renewal and beautification, infrastructure and large-scale development, and international events. The government has not only failed to stop forced evictions by third parties, but in most instances has forcibly evicted people though state agencies (COHRE, Nov 2008).

Policy and legal framework

The Philippines ratified the ICESCR in 1974. In November 2008, COHRE submitted a written comment for consideration by the Committee on Economic, Social and Cultural Rights in which they raised concerns about the inadequate and insecure housing conditions of the poor and the continued practice of forced evictions and displacement in the Philippines.

The international human rights law on the right to adequate housing is transposed into Philippines domestic law *inter alia* as a result of the Philippines Constitution 1987 (Article XIII) and the Urban Development and Housing Act (Republic Act 7279). These provide a basis for the implementation of the right to adequate housing as set out under Covenant law. Nevertheless, human rights violations related to the lack of effective implementation of the constitutional and legal framework continue, calling into question both the effectiveness and the adequacy of these provisions as guarantor of the Philippines' international law commitments (COHRE, Nov 2008).

Anti-eviction strategies: the Philippines

The mapping of anti-eviction strategies is a project initiated by the Huairou Commission, under their Land and Housing Campaign. It was conducted in five Asian countries: Indonesia, Cambodia, Philippines, Thailand and South Korea, where it mapped out grassroots, women driven, anti-eviction strategies.

The mapping process included a series of community forums in the different countries. In these, the strategies that worked and did not work in fighting threats and mitigating the impact of actual evictions of urban poor communities were determined. The focus was on mapping the strategies of fighting evictions resulting from infrastructure projects of government and private sectors, as well as grabbing of lands occupied by the urban poor.

The project resulted in a workshop organized in 2009 in Makassar, Indonesia, hosted by a local NGO, the KPMR, and the Urban Poor Consortium in Jakarta. In this workshop, the results of the mapping exercises were discussed.

The Partnership of Philippine Support Service Agencies (PHILSSA) was the lead group for the mapping project in the Philippines, in which Lihok-Pilipina, Bantay-Banay Network, COPE Foundation and DAMPA were also involved. The project was conducted in five regions of the Philippines in 2009, and resulted in 23 case studies.

There were several key stages in the project. A number of local forums were hosted within a number of communities that have had to fight evictions to. The aims of these forums was to jointly discuss strategies used to fight eviction; highlight the role women played in these strategies; discuss the best and worst aspects of these strategies; and to determine which strategies they would use again.

These discussions were documented both during and after forums. A small publication on anti-eviction strategies at the community level was developed which highlighted women's roles in these strategies as well as best practices. This was produced in a local language. Assistance was also given to develop a manual for the region on fighting evictions.

Two or three delegates (one staff and one or two community members attended the South-East Asian Forum on Anti-Evictions.

The mapping process identified various eviction threats for communities and community organizations in the Philippines: threats from both the government and private sector. Threats identified from the government were mostly connected to development-induced projects. Threats identified from the private sector were associated with illegal land claims by private individuals and corporations and commercial development.

Among the various responses by communities and community organizations to the eviction threats were those related to strengthening the role of the community by having community consultations and mobilizing people though awareness-raising campaigns; forming and strengthening community organizations was also done. There was also a focus on community leaders and building their capacity on land and legal matters, community research, advocacy and lobbying and negotiation skills. Links were made with other organizations such as NGOs, federations, churches, universities and lawyers.

Activities included legal actions, such as filing cases; lobbying with relevant government agencies, and dialogues with landowners (government and private sector); preparing alternatives options to evictions, for example resettlement planning and studying options for security of tenure through amongst others the Community Mortgage Programme and direct purchase options. There was also fund-raising through community contributions and external sources.

The mapping identified different types of leaders in the anti-eviction work:

1. Organizational leaders. They are active in organizational matters and activities, are elected leaders who lead in community research and information dissemination strategies and activities.
2. Campaign or advocacy leaders. They are active in planning, preparing and implementing campaigns and advocacy activities. They try to minimize the risk of violence and promote peaceful and non-violent resolution.
3. Facilitators and spokespersons. They are involved in the dialogues and negotiations with the evictors and bringing the case out in public.
4. Community and family nurturers who try to ensure the well-being of family members and vulnerable community members and make practical plans for the needs of family and community members.

Lessons learned

The mapping resulted in the following lessons learned:

Strong community organizations are important for effective responses to evictions. They need to be pro-active and plan and act for security of tenure, even without the threat of eviction.

Capacity-building in issue advocacy and para-legal work helps in planning and implementing effective anti-eviction strategies and community responses and actions need to be consolidated. As many stakeholders as possible need to be involved and broad coalitions have to be build. Dissemination and awareness-building is needed, as well as participatory community planning.

Women are effective facilitators and consensus-builders. In crisis situations, there must be strong community leadership; women leaders are effective spokespeople and promote peaceful resolutions. They also ensure that community and family well-being, especially of vulnerable members, is taken care of.

Community organizations and leaders must have firm convictions and principles to sustain them in their struggle for security of tenure. Community actions must involve participatory planning, implementation and evaluation. These actions need resources and both local resources and external support needs to be mobilized.

Dialogues with the government and the private sector are important in seeking win-win solutions; effective solutions will only be reached when all parties work together as partners.

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3.2.5 People's Republic of China (PRC)

Historical context

The Government's attitude towards resettlement has been changing since the founding of the PRC. Since 1980, China has aimed to develop good resettlement practices, learning from its legacy of failed resettlement efforts and the increasing resistance from potential resettlers. The result is that there is now an established legal and procedural system for the implementation of involuntary resettlement. This system is also substantially in accord with the World Bank's operational directive on resettlement and the Organisation for Economic Co-operation and Development (OECD) and ADB's resettlement policy and guidelines. In the past, the World Bank considered that resettlement in China worked well and even added to project benefits (World Bank, 1996). Reports have seen the World Bank cite China's policies and practices of developmental resettlement, particularly in the rural context, as a model for other developing countries (Bartolome et al., 2000). However, recent relocations have had problems.

Urban development now accounts for the majority of all Chinese resettlement. Roads, river cleaning, central city redevelopment, business districts, sports complexes and housing estates all require land. Since 1991, the Beijing Municipality alone has evicted more than 400,000 people, mostly to provide land for the 2008 Olympics. Residents have been relocated between 25 and 60 km away from the city. According to the Shanghai Statistical Bureau, the municipality relocated 40,000 households in the outskirts of the city in 2004 alone. Another 20,000 were evicted between 2005-2006 to make way for the World's Fair 2010. Eviction notices for mega global events made it clear that there was no room for negotiating on either the compensation or the resettlement option, according to the NGO, Human Rights in China.

Massive involuntary relocation began in China in the 1950s with the construction of a large number of dams. In the last three decades, China's transition from a socialist command economy to a socialist market economy has required, and continues to require, massive investment in roads, infrastructure and urban development. This in turn has required extensive land acquisition and involuntary resettlement of the original inhabitants. The number of relocated people had already reached 30 million people in 1993 (World Bank, 1993). In the last decade, urban development induced relocations alone amount to 3.7 million people.

Policy and legal framework

All urban land is owned by the state and therefore only usufruct rights rather than ownership rights are lost within cities. Any resettlement must compensate individuals for lost use rights by providing substitute housing of equal or higher standard, and by providing alternative places for doing business and the means to replace lost assets. When agricultural land is acquired for the expansion of cities, rural land acquisition, compensation and resettlement processes are adopted. Rural landowners are compensated for land, standing crops, and resettlement subsidies among others. The Decision of the Council on Deepening the Reform of Strict Land Administration stated that land acquisition compensation measures should be improved, and that if land compensation and resettlement subsidies under the current law are insufficient, provincial governments and municipalities may pay subsidies with income received from the use of state lands (Schmidt).

Article 10 of the Constitution of the PRC states that land in cities is owned by the state, while land in rural and suburban areas is owned by communes. In China, the resettlement policy consists of two parts. Rural land acquisition and resettlement is based on the Land Administration Law 1998 and relevant provincial implementation measures. Urban land requisition and relocation is based on the Urban Building Demolition and Relocation Regulation of PRC and relevant municipal implementation measures, which provide the legal structure and compensation principles for urban relocation and resettlement. The Decision of the Council on Deepening the Reform of Strict Land Administration issued in 2004 also applies. (www-wds.worldbank.org/…/RP303; ADB, 2008).

In spite of all these considerations, laws and procedures do not fully take into consideration the changing operating environment of urban China. There are several contentious issues which have led to public protests and even suicides. (i) Substantial numbers of people affected by land acquisition/ requisition are not eligible for compensation because they do not have residential permits to live in the city and are considered as illegal residents. (ii) Private retail outlets located in houses are most often not compensated for because, even though they have business licences to operate, they do not have the documentary evidence of the change of use of their building which, for evaluation purposes remains residential. (iii) Disengagement of the state from welfare support such as health, housing, provision of employment and unemployment support have marked implications for poorer resettlers, especially in the short term. (iv) In the vast majority of cases, the compensation does not reflect the market value of the evictees' homes as appraisal is based on lists of real estate prices which, in practice are outdated. (v) There is very little consultation with resettlers and hardly any monitoring of rehabilitation of affected households.(ADB, 2008; Meikle et al.; Schmidt) (vi) The evictee may apply to the People's Court for a review of the compensation but this does not prevent developers (increasingly, private companies, to whom the state has delegated powers of eminent domain) from enforcing the eviction order.

The last issue has escalated into a major problem with violent conflicts, protests and demonstrations, especially in the past year when huge volumes of stimulus funds have gone into private building projects. In January 2010, the government proposed revising its relocation rules, following a rare public campaign by leading academics. Under the proposed guidelines, residents would receive market value if their property was redeveloped. Relocation teams would be barred from cutting off water and power to residents who were resisting eviction. The rules also say houses cannot be demolished if residents have a pending lawsuit challenging an eviction. There is a fear that without strict monitoring it will be difficult to ensure compliance (Dyer, 2010).

Many of the above problems have been overcome in projects funded by international agencies like the World Bank and the Asian Development Bank (ADB). For instance, the operational directives of the World Bank and the guidelines of ADB recognize non-titled residents and have provisions for compensating them for loss of non-land assets. Both banks make consultation with and participation of affected households a necessary condition, and have a strict monitoring schedule. However, these provisions are confined to ADB projects, which represent a small fraction of projects in PRC requiring land acquisition, relocation and compensation.

Evictions: Suzhou Creek Rehabilitation in Shanghai

Suzhou Creek Rehabilitation in Shanghai, partly funded by the ADB, is an example of relocation being carried out based on PRC laws as well as ADB guidelines. Suzhou Creek Rehabilitation is a 12-year programme started in 1998 to rehabilitate the Suzhou Creek and congested area around it in the centre of Shanghai (Vollmer, 2009). The programme contributed to the government's 1990 policy of reviving Shanghai as a large international city, which resulted in rapid investment in infrastructure, environmental improvement, housing and employment centres. These investments have required the requisitioning of large amounts of land and extensive demolition and reconstruction in the city. One estimate suggests that more than 1.5 million people have already been relocated. Requisition of farmlands in the city's periphery has not only caused relocation of farmers, but has also converted many of them from a rural status to urban status as non-farm workers (Meikle et al., 2006).

Suzhou Creek Rehabilitation required the relocation of people living in the city as well as the city's periphery. The first phase of the programme was completed in 2004. The executing agency (EA) was the government-owned Shanghai Suzhou Creek Rehabilitation and Construction Company, which actively used the private sector in project implementation and

management, and the coordination and management of resettlement activities. An independent evaluation found the approach was effective (ADB, 2006).

In 1998, the EA, in collaboration with the Shanghai Academy of Social Sciences and the project preparatory Technical Assistance Team, prepared resettlement plans (RPs) for the project and eight of its nine components that had land acquisition and required resettlement. The RPs was based on the revised Land Administration Law 1999 and ADB's Involuntary Resettlement Policy. The implementation of acquisition and resettlement was also based on housing and enterprise relocation regulations, compensation standards and appraisal methods for Shanghai. The EA set up a Project Preparation Department, which was responsible for overall resettlement management, coordination and internal monitoring. District and township level implementing agencies were responsible for resettlement activities, including informing affected persons (APs) about the RP and entitlements within their jurisdiction.

Land acquisition and resettlement were carried out between 1999 and 2002, according to the schedules of civil works construction. The total permanent land acquisition for the project was 158 hectares across 11 districts of Shanghai municipality, a 39 per cent increase over the RP estimate. In all, 7,095 households were affected (6,581 were relocated, 514 were partially affected and not relocated), an increase of 168 per cent over the RP estimate. Thirty-three factories or public institutions were relocated and 845 were partially affected and not relocated. The resettlement cost amounted to USD 334 million, 48 per cent higher than estimated and 39 per cent of the total project cost. The ADB project completion report attributes this to increased amount of land acquisition and housing relocation.

Procedures for resettlement work

The project design attempted to minimize land acquisition and resettlement impacts. For people unavoidably affected, the objective was to ensure that they attained equal or better livelihood and living standards. The following broad procedures were followed:

- Preparation work: setting up and training the working group of government officials and technicians from line bureaux, preparing RP, implementation plan and action plan.
- Publicising policy and regulations: Using radio, television and print media to inform affected households and holding resettlers' meetings.
- Sample household survey: collection of information on family size, housing situation and likely compensation rates.
- Evaluation by professional valuation firms to produce detailed lists of compensation recommendations.
- Incentives such as cash bonuses offered by local authorities to encourage APs to move.
- Implementation: local authorities given a relocation deadline according to construction schedule. When APs agreed on resettlement package, they could be relocated.

Findings of the independent evaluation

Of the households affected by demolition, 80 per cent chose cash compensation and the remaining households moved to apartments in six Shanghai districts. Interviews revealed the urban APs were more satisfied than rural APs. Urban APs had moved to larger and better houses even though they were further from the city centre. Rural APs, however, now had smaller houses and also lost income from illegally constructed buildings rented to migrant workers or as shops/ workshops. They were compensated for the structures but not for loss of income. The evaluation had positive findings about income and livelihood restoration. The EA paid special attention to disadvantaged groups. The APs were satisfied with the opportunities they got for grievance redress, making re-housing choices and the consultative process on compensation.

Land acquisition and resettlement activities were implemented according to the RPs and fulfilled their purpose. The Shanghai Academy of Social Sciences found the resettlement to be successful but the independent evaluation flagged two important issues for improvement:

- The consultation and participation process occurred after decisions on compensation and resettlement options, leaving little scope for consultative decision making.
- The resettlement activities were dictated by the civil works schedules, failing to take into full consideration the interests and claims of APs.

Lessons learned

Urban land acquisition, relocation and compensation experience in the PRC show that policy and practice have evolved over several decades and have incorporated lessons from implementation. PRC is one of the few Asian countries that has a development oriented relocation policy that is considered to be a model to be followed by other countries.

Going to scale could only have been possible by decentralizing implementation responsibilities and localizing regulatory aspects. However, the interests of relocated people have often been overlooked to fulfil the requirements of private developers or project schedules, which are seen as important to achieving the objective of rapid economic development. The major issue arises not out of relocation processes themselves, but out of PRC's policy of not recognizing the rights of urban migrant workers, who are considered to be illegal residents and not eligible for state benefits or relocation compensation. Many of the limitations are overcome in projects funded by the World Bank or the ADB because the funding agency's involuntary relocation guidelines have to be observed. However, such projects have included only a small percentage of the huge numbers of displaced people in the PRC. A new phenomenon in China is the vocalization of the concern of civil society and intellectuals against coercive and inequitable relocation practices and positive responses from the state towards improving policy and practice.

The World Bank cites China's resettlement policy as a model for other countries. Nevertheless, it has some contentious aspects: 1) those without city residence permits are not eligible for compensation; 2) compensation is rarely equal to market value; and 3) those who disagree with the compensation may be apply to the People's Court for review, but this cannot stop the eviction.

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3.2.6 Sri Lanka

Historical context

In the last four decades successive governments in Sri Lanka have invested heavily in irrigation, highway and urban development projects with poverty reduction as one of the objectives. At the same time, thousands of families have been involuntarily resettled as their lands were expropriated. Resettlement programmes in infrastructure development projects are implemented under the existing legal framework: the Constitution of Sri Lanka, Land Acquisition Act, National Environmental Act, National Housing Authority Development Act and Urban Development Authority Act.

Legal and policy framework

Land acquisition takes place according to the provisions of the Land Acquisition Act 1950. The procedure for establishing compensation is lengthy and complex resulting in delays in paying compensation to affected people. This, together with inadequate information dissemination, has led to uncertainty and doubt, strong resistance to moving and legal action. This invariably causes delays in project implementation, cost escalation, and hardship for project affected people, especially those without legal tenure who are not entitled to compensation under the law (Perera, 2006).

To overcome the difficulties and ensure that affected people are treated fairly and equitably, and are not impoverished in the process, the government adopted a National Involuntary Resettlement Policy (NIRP) in 2001. The policy's main objectives are avoiding, minimizing and mitigating negative impacts of involuntary resettlement. It ensures that people adversely affected by development projects are fully and promptly compensated and successfully resettled. It also ensures they are helped to re-establish their livelihoods, deal with the psychological, cultural, social and other stresses; their grievances are redressed, and they participate in a consultative, transparent and accountable resettlement process (NIRP, 2001).

Resettlement: The Lunawa Lake Environment Improvement and Community Development Project (LEI&CDP)

This Project (LEI&CDP) was implemented between 2002 and 2009 and was the first initiative to apply the principles of the NIRP. The project aims to mitigate flood damage and environmental degradation by improving urban drainage and canal systems and at the same time improve living conditions of project-affected households. The project area of 7 km^2 stretches across two densely populated municipal councils of Moratuwa and Dehiwala/Mount Lavinia in the Colombo Metropolitan Region. The project area has a population of 85,000 or 18,112 households, 50 per cent of which are under-served, low-income slum and shanty dwellers, most of them without legal tenure (www.lunawaenv.lk).

The project implementing organizations are the two municipalities, Sri Lanka Land Reclamation and Development Corporation and the Urban Settlements Improvement Project Unit of the Ministry of Urban Development and Water Supply. Financial assistance is from the Japan International Cooperation Agency (JICA) of the Japan Bank for International Cooperation (JBIC) and technical assistance is from UN-Habitat. The Government of Sri Lanka is contributing to the cost of the rehabilitation (www.unhabitat.lk/downloads/lunawa.pdf)

Resettlement as part of community development

The upgrading and resettlement activities effectively bring together the provisions of the NIRP with the country's long experience of community participation in low-income housing programmes. They also draw from the lessons of the JBIC-assisted Greater Colombo Flood Control and Environmental Improvement Project (1990-2000). The experience gained from that project shows that the sustainability of interventions and benefits could have been

enhanced had a pro-poor, consultative approach been followed and had resettlement of households without legal tenure been included in the project (Hewawasan, 2006).

In LEI&CDP, the community development component's main objective is to upgrade under-served areas by providing basic facilities for more than 2,500 households and resettling 883 families who live on canal banks and lake bund (the minimum resettlement required for implementing drainage and environmental improvements). The project treats involuntary resettlement as a development opportunity to improve living conditions and livelihoods for project affected persons (PAPs) with their active participation. Thus, the PAPs are actually the project beneficiaries (www.unhabitat.lk/downloads/lunawa.pdf).

The resettlement is being implemented on the basis of the Resettlement Policy Framework of the NIRP and includes the following features:

- Enumeration survey in 2003 to take stock of resettlement households.
- Introduction of a resettlement package developed through a participatory process for resettlement and livelihood development.
- Awareness generation, social marketing and community development to enable households to participate effectively in the relocation planning and implementation; establishing partnerships with two NGOs to set up a Community Information Centre.
- Advisory services to PAPs for house-building, making relocation choices, linkages with banks, accessing employment in the private market and facilitating house-building through community contracting.
- Special social support to vulnerable groups.

One of the key project features was the formulation of the entitlement package. This was based on the assessment carried out by a multi-stakeholder Damage Assessment Working Group of structural damage caused by canal development and livelihood disruption. The package differs for people with and without land ownership. However, both categories of PAPs are given the option of resettling on sites provided by government or self-relocation. The project developed the concept of "bottom line entitlement". This means that people without land ownership get a minimum of a 50 m^2 parcel of serviced land in a resettlement site, free of cost, and the minimum amount required to construct a house of 35 m^2. The family could request the value of 50 m^2 serviced land, which they could buy in any location. The money was paid into a bank account as construction progressed, which also introduced poor households into the formal banking system (www.unhabitat.lk/downloads/lunawa.pdf).

PAPs with land ownership were compensated as per the Land Acquisition Act 1950, which requires the land to be surveyed by the Department of Lands and valued by the Department of Valuation at market rates. This takes two to three years, or longer if land titles are not clear. To overcome this, the Lunawa Project got permission for partial advance payment to the affected landowners. Even so, the final valuation took a long time causing frustration with some people challenging it in court (www.unhabitat.lk/downloads/lunawa.pdf).

Families have opted to resettle on project-developed sites, or have remained on the same location after regularization where possible, or have settled outside the project area.

Main challenges faced by the project

In spite of the NIRP provisions and innovations, the project-affected people had to go through the long legal procedure of the Land Acquisition Act for land surveying, acquisition and valuation, that caused a delay in project implementation and unrest among project-affected people. The project found it difficult to deal with complaints, particularly from middle and high income PAPs.

Involuntary resettlement of people without legal land rights can be difficult, but it was resolved through a participatory approach and the minimum entitlement package. The package offered better amenities to the resettled community than other residents of the project area, causing resentment among them.

Community participation, though very effective as an approach to resettlement, has not been encouraged by local politicians (Perera, 2006).

Lessons learned

The NIRP has provided the guiding principles for an equitable approach to resettlement of project-affected people: looking at resettlement as a development opportunity and using it as a means to improve the quality of life and livelihood opportunities for people. The NIRP is an excellent example of how relatively little but critical international development assistance (UN-Habitat and JBIC in this case) can foster good practice in countries.

The project has shown that involuntary resettlement should not be seen as a necessary evil but may be a development opportunity. It is critical to clearly lay down and agree on the resettlement policy and process of securing social safeguards and mitigation measures with the people who are affected by a loss of land, assets, shelter and/or potentially adverse impacts on livelihoods. The "bottom line entitlement" approach provides a sound basis for including and compensating those without legal land title. This approach is possible if people to be resettled are seen as beneficiaries rather than project-affected people. Also, offering realistic choices for resettlement is an effective strategy, especially for heterogeneous communities in an urban setting.

An effective information flow between the project team and PAPs has been an important part of the programme. Consultation with communities is time consuming and raises costs in the short term, but is critical to building consensus on controversial issues, and for long-term development objectives and sustainability. The implementing institution should have the capacity for an intensive participatory exercise.

An important lesson is that the known causes of delays, for example land survey and valuation in LEI&CDP, should be factored into implementation and made known to all stakeholders.

All the lessons above can be generalized and considered as principles for replication in Sri Lanka and other countries. In particular, the participatory and consensus building processes that result in negotiated settlements with full security of tenure and adequate land and housing are worth replicating.

Sri Lanka's National Involuntary Resettlement Policy is a good example of a national policy on resettlement, with principles and institutional responsibilities for managing involuntary resettlement rather than laying down specific requirements. The LEI&CDP has developed a detailed but simple participatory methodology that can usefully inform other projects.

Among the necessary conditions needed for the policy to be effective are openness and policy support for a flexible, area specific approach at higher (national/provincial) level; sufficient funding; institutional capacity to implement the participatory processes over a long period, ideally in the form of strategic partnerships with NGOs, CBOs, banks etc.; and a legal/project framework that allows for payment of compensation to PAPs without legal tenure.

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3.3 Case studies from Latin America

Evictions are now less frequent in Latin America than in other regions and more countries in this region have tolerant policies or regularization programmes. If the land was originally privately or communally owned (as opposed to publicly owned), it is acquired by the government to regularize it, usually with titles being given and in some cases land being upgraded. Since acquisition is for a settlement that is already there, the landowner has little opportunity to reject the transfer of land to the government, particularly if the country's policy is in favour of regularization and not eviction. The compensation paid to the original owner then becomes the battleground, and it depends on the definition in law as to what governments are allowed to pay when acquiring land (whether using or not expropriation).

Frequently, laws establish market value as the basic criteria, but with little clarity on whether this is at current use or future use value. This can become a highly contentious issue, particularly if the settlement is on prime land. Settling this issue has repercussions in land acquisition, particularly where funds are needed to pay compensation, which may imply significant subsidies. These may become a burden for government because many settlers cannot pay for them.

There is also the ethical responsibility to consider because, in many cases, the original owner already charged for the land when it was sold it to the settlers.

Establishing precedents regarding high compensations hinders governmental acquisition of land at a reasonable price, even when it needs land to offer formal alternatives to future settlers; it may stop this and other projects needed for a city. Established criteria will eventually apply also for the acquisition/expropriation of land from regularized settlers.

The key issues under discussion in Latin America focus on compensation and how to balance the needs of individuals and the collective to arrive at a fair compensation, and wether it is legitimate to compensate for future use value when that value depends on the governmental acquisition itself. Another issue under debate is whether governments should engage in acquisition of land related to informal settlers, when it should rather concentrate on fostering direct alternative access to land for them.

This section presents cases from Mexico and Venezuela.

3.3.1 Mexico

Historical context

Half of Mexico's rural land is under a communal type of ownership (51 per cent); most of it was created after the 1910 agrarian revolution and is known as *ejido* land. Today, many cities create a highly urbanized country (in 2008, 77 per cent of the population was urban) and an estimate of more than 41 per cent are surrounded by *ejido* land.

Before 1992, the only way for cities to expand onto *ejido* land was through expropriation by the federal government, with compensation paid at agricultural value. Since the 1970s, many *ejidatarios* (*ejido* peasants) on city peripheries have been subdividing their land and selling it to poor settlers and profitable land users at prices higher than the rural value.

A long-standing policy of tolerance, rare evictions, and a federal agency CORETT (created in 1974) that gives freehold titles to *ejido* settlers, has established informal occupation followed by regularization as the standard procedure for urban growth. For *ejidatarios*, the advantage was that compensations paid by CORETT's expropriation came under a special provision in the law and were higher than agricultural value, and the Bill is passed over to the settlers; this is paid regardless of what they had already paid when they bought the land in the informal market.

In 1992, the Constitution and the Agrarian Law were changed so that *ejido* land could be privatized and sold in an open market if the *ejido* assembly approved it. This has increased the expectations of the *ejidatarios* in the urban fringe; now formal housing developers can acquire *ejido* land and pay higher prices than informal settlers can; it has also pushed poor settlers into buying land further away, increasing the expected value in many places. Compensation for *ejido* land now has to be according to market value when expropriating land for any public purpose, including for an airport.

Evictions: Texcoco Airport

The airport that serves the metropolitan area of Mexico City - with its population of 19.2 million - is in the old urban area. This location is not only dangerous and a pollution hazard but there is no space for expansion; projects to build a new airport in the periphery have been discussed since the 1980s. In 2001, the federal government decided to build a new airport in a joint-venture tendered to private investors in the Texcoco area of the neighbouring Estate of Mexico.

Texcoco used to be a very large, salty lake that has, over the centuries, dried slowly; it is now an environmentally sensitive area with little agricultural value. It is currently estimated to be worth USD 0.18 per m^2. The area is one of the fastest growing in the metropolitan region and it attracts residents and industry for both formal and informal settlements.

Land prices in 2001 averaged USD 61.30 per m^2, with the lowest being USD 9.50 per m^2 for illegal subdivisions done by *ejidatarios* themselves, a practice widely extended in the area (22 per cent of the surroundings of the metropolitan area are communally owned, a substantial amount concentrated in the area). For legal reasons, the land has to remain under the control of the federal government, so it was expropriated from the *ejidatarios*, and then allocated to the investor who won the airport tender. Compensation had to be funded by the investor; the federal government would not subsidize the acquisition of land.

On the 22 October 2001, a Presidential Decree led to the expropriation of 5,591 hectares from 13 *ejidos*, involving 4,365 *ejidatarios* and their families. The federal agency in charge of calculating the compensation CABIN (now INDAABIN) established an average price of USD 1.33 per m^2 (from 0.78 to 2.72) based on the market value of land for agriculture, with a premium for location and an added financial incentive to persuade *ejidatarios* to accept it. The *ejido* communities, led by the *ejido* of San Salvador Atenco, strongly rejected the expropriation and the compensation; they argued that it was a forced eviction of peasants whose ancestors had fought a bloody revolution to get land for farming. They attracted nationwide attention from the media, environmental groups, rights advocacy organizations and various local governments controlled by opposition parties.

The discussions included all these stakeholders' interests, including the eviction of settlers who had recently bought informal plots from *ejidatarios* and for whom no compensation was planned. The media also reported that the federal government was negotiating a higher compensation for *ejidatarios* of USD 5.43 per m^2, plus some minor, in-kind compensation (support with health, education and housing programmes). Nine months of conflict engaged the media and politicians, including the Chamber of Deputies, the Supreme Court of Justice, brought in by the *ejidatarios* themselves, as well as local authorities (arguing that area was not zoned for airports) and featured some violent incidents.

As a result, the federal government withdrew the expropriation decree in August, 2002. The reasons were more political than social and environmental, but were also economic. On one hand, the airport, as a public-private investment, was not viable if the compensation to be paid increased too much. On the other hand, market prices for the *ejido* land were over and above any compensation, subdividing and selling to informal settlers and other profitable land uses created strong expectations for *ejidatarios*.

Lessons learned

The case of Mexico City's airport, as well as other high profile cases with a similar impact on the legal, political, social and economic life in Mexico, raised at least three important issues regarding evictions, expropriations, acquisitions and compensations over urban land.

The first issue is that there is a tension between the private interest and the public interest. Should the Texcoco area be preserved for environmental reasons and social housing - whether formal or informal - or should it be used for a much needed new airport? The city has limited options for an airport without similar problems but can public interest be addressed if substantial subsidies are poured into a project?

A second issue is around the single compensation rule: whether this can be applied and is the market price fair for all *ejidatarios. Ejidatarios* are selling land far beyond its agricultural value, and they can do so because the metropolitan area has expanded. *Ejidatarios* now have the legal right to sell, but this right does not have the same economic importance for *ejidatarios* who do not benefit from the location of their land, so it is an unequal re-vindication. It is also debatable whether compensation at market value is fair for society as a whole when it has to pay prices beyond its capabilities.

The third issue is a side effect of the compensation issue and is about low-income groups paying ever increasing prices to have access to *ejido* land in the area. This is not because they are competing against an airport, which clearly is nowhere near what settlers were already paying, but because expectations of *ejidatarios* in peripheral areas have increased. Also, the plots that they get have no services, and subsidies are needed to provide them when the resources could come from what they are paying to *ejidatarios*, who now have the right to charge such prices. In addition, informal settlers have no right to compensation if they are evicted, despite having paid someone who is entitled to compensation and who, in fact, is entitled to be paid twice. Who is being evicted? The land owner, the *ejidatario* in this case or the occupant, or the informal settler? If the *ejidatarios* truly want to continue farming, the value of agricultural land on the market should be enough.

The case of Mexico City's airport has tested the new rules of expropriation in a country that needs *ejido* land for social and public land uses. It is a lesson with unanswered questions, but changes the way the role of expropriation and compensation are seen. It also puts into perspective whether a negotiated acquisition of land should always be sought because agreement may never be reached. It raises the issue of who are the victims of evictions. Are they, the landholders (*ejidatarios*), exercising their property rights? Or settlers (informal and formal) who pay increasing prices to have access to land yet risk eviction? Or society as a whole, unable to locate much needed infrastructure or having to pay high prices (the airport and/or regularization)?

If international guidelines find inspiration in the Mexican case then they will have to recognize that expropriations have two or even three sides - the landholder, the occupant and the public authority- and that a fair balance is needed, understanding that not only one stakeholder has rights. There also needs to be an awareness that who the "victims of eviction" are is not always a clear issue; those who appear to be evictees can be in a position to exclude poor people from accessing land or they can charge a high fee for it.

Negotiation is not always feasible if the rules of the game favour one side more than the other. If voluntary acquisition is used instead of expropriation, then clear rules that make it fair for everyone involved are needed. One part should not bear most of the costs while another gets most of the benefits.

Another aspect international guidelines should consider is that compensation rules should be fair. This does not mean that compensation should be based on an expected future market value, but it should be an amount that allows those expropriated to be in a situation similar to the one they had before the expropriation.

Finally, the bottom line is that the public interest needs to prevail over private interest. This is a key issue when dealing with land, because alternative locations are not feasible and the collective good should prevail over an individual's.

Sources of information on Mexico

CABIN: Comisión Nacional de Bienes Inmuebles. National Commission of Real Estate Property.
CORETT: Comisión para la Regularización de la Tenencia de la Tierra. (Commission for the Regularization of Land Tenure.)
INDAABIN: Instituto de Administración y Avalúos de Bienes Inmuebles. Institute for Administration and Valuation of Real Estate Property.
Proceedings of the 1st Seminario: La Expropriación de Suelo urbano, el debate entre la propiedad y el Estado.

3.3.2 Venezuela

Historical context

Hundreds of families occupying several apartment blocks and buildings in West Caracas were threatened with forced eviction. A group of occupiers sought an injunction from the Supreme Justice Tribunal to prevent Caracas's Mayor, Juan Barreto, from taking action to remove them from occupied buildings. In recent years, the mayor has repeatedly ordered evictions from occupied buildings.

Representatives of the San Juan Bautista Temple in Caracas demand the eviction of 40 families living on land designated for the construction of a temple. The representatives allege that they have the property rights to the land and have attempted to negotiate with the families, but families have not agreed to leave.

Approximately 570 families living in Nueva Esparta, Caracas, are threatened with eviction. The area is considered to be dangerous because a viaduct is to be built close to families' homes. Four hundred families were evicted in January 2006, but the authorities have not offered any relocation sites for these people yet.

About 1,500 families are threatened with forced eviction from the lands of Ciudad Guayana, in Barrio El Llanito, called UD 329. Landless people occupied the area in early 2005 and have worked to develop the sector. They are not willing to leave the land.

Policy and legal framework

The current urban land reform in Venezuela has been designed under the principles of participatory democracy and social justice. There was a serious when Presidential Decree 1.666 on land regularization was issued in 2002. The decree was created to allow the land tenure regularization process of Venezuelan informal settlements, known as *barrios*. Illegally occupied urban land throughout Venezuela is as widespread as poverty itself, which affects 60 per cent of the population. Vast areas have been illegally occupied (or invaded) by poor families for more than a century. A *de facto* tenure of the house structure, but not of the land it is on, was the only tenure instrument poor families in *barrios* could posses.[12] This legal vacuum was considerably improved by the decree and the regularization process for *barrios* has been implemented since then. One of the most important outcomes of the decree was the creation of the so-called Urban Land Committees[13] (CTU), a grassroots-led community organization, which helps *barrio* dwellers get title to the land. Over the years CTUs have become more vocal. Collective action and self-organization has been crucial for their

[12] The *de facto* ownership of the house unit did not mean that families were protected from forced evictions. The incidence of force eviction events in *barrios* were related to consolidation processes, community organization, location and the illegal occupation of private or public land, i.e. the least consolidated and poor organized a *barrio* occupying a private property in a prime urban location was, the more prone to forced eviction it would be.
[13] In Spanish: Comité de Tierra Urbana

increasing participation on different *barrio* issues, aside from the land regularization and registration process (e.g. health, education, culture, etc.). The influence of the CTUs has gone beyond *barrio* boundaries, and they have been more involved in urban land and housing issues, such as the (forced) evictions of (long-term) renters of privately-owned apartment buildings in Caracas in 2006.

The government's obligation in the process of forced evictions is to make sure that both the private and public sectors comply with the laws and decrees that protect people's rights to housing. Therefore the (municipal) government must: (a) guarantee that housing rights are not weakened by threatening, arbitrary and illegal actions; (b) preserve people's tenure security; (c) stop arbitrary evictions; and (d) provide integral care for victims of arbitrary and illegal evictions. The constitutional principles guiding these obligations are: social justice, equality, equity, solidarity, progressiveness, transparency, sustainability and participation (Decree no. 31, articles 2 and 3, Municipio Bolivariano Libertador, 2009).

The main legal provision at the national level that protects the rights of renters against forced evictions is the Law of Expropriation due to Public or Social Utility[14] (LECUPS). Based on this law, the former mayor of Metropolitan Caracas, and supporter of the government, signed an agreement for the forced acquisition of buildings in several municipalities of the Greater Caracas Metropolitan Region. The Greater Caracas Mayor's Office approved a decree on expropriation of apartment buildings fully occupied by renters for more than 10 years (16 May, 2006). Later, the provision was reformed and expanded the scope of buildings that could be expropriated to those constructed before January 1987, those that have more than three apartments rented, that have had the same inhabitants for more than 10 years, and that are located in the Greater Caracas Metropolitan Region (2 August, 2006).

The main steps to expropriation are: (a) Renters file a plea with the municipal government; (b) the Municipal Council proves the social utility of the building in question; (c) the council, complying with the procedures stipulated by the LECUPS, publishes an expropriation decree; (d) The mayor's office starts the acquisition procedure through "friendly arrangement"; (e) the property is valued; (f) the valuation will be formally communicated to the building owner (s); (g) if this is not accepted, the "friendly arrangement" will be terminated and legal action will be taken to expropriate the property; (h) while the process takes place, renters have temporary occupation of their apartments; (i) once the property is in the hands of the Metropolitan Government, the apartments will be directly sold to the occupants; (j) a socio-economic study is done to determine the paying capacities of the occupants, who, in any case, will receive a preferential loan (the elderly, sick, and incapacitated are exempt from paying for the property).

Evictions: Caracas

In November 2006, apartment building renters under threat of eviction in Caracas began to organize themselves out of the CTUs. A new organization, created earlier the same year and known as Social Renters Foundation[15] (FUSI), took the lead in the advocacy to protect the renters' right to housing. The situation was made public and the foundation asked the authorities to protect renters against forced evictions, making use of the different legal instruments that punishes any act against the fundamental right that every Venezuelan citizen has to adequate and decent housing, especially those in vulnerable conditions (Constitution of the Bolivarian Republic of Venezuela, 1999).

To proceed with the expropriation, the then mayor approved a project called Provision of Housing for Families Living as Renters in Buildings located in the Metropolitan Area of Caracas.[16] Its objective was to provide housing for those families who had rented apartments for more than ten years, by forcibly expropriating the housing units, paying the owner

[14] In Spanish: Ley de Expropiación por Causa de Utilidad Pública o Social
[15] In Spanish *Fundación Social de Inquilinos*
[16] In Spanish *Dotación de viviendas para las familias que habitan en condición de arrendatarios en inmuebles ubicados en el area metropolitan de Caracas*

compensation based on the market price of similar properties and making the units affordable for renters to buy.[17]

Despite the support of CTUs, FUSI and organization of renters (and invaders), figures provided by the Association of Real Estate Proprietors indicate that: 188 apartment buildings were expropriated in 2006 by the mayor's office, but none of the owners were compensated and no apartment was sold to the renters. One of the main reasons for this result is the arbitrary manner with which the expropriations took place. The inhabitant's legal status was in limbo because the mayor left office without compensating anyone or selling the apartments to the renters. The inhabitants now fear a new wave of forced evictions after the new mayor stated that his office has no money to compensate the owners of the buildings expropriated by the previous administration.

Lessons learned

Among the lessons learned, one is that even though the principle of social justice behind the implementation of expropriation laws was in line with the protection of the housing rights of vulnerable groups (in this case renters under threat of eviction), such laws need to be streamlined and carefully implemented to avoid arbitrariness.

In the context of Venezuela, where the political process has created a polarized society, politicization of these measures deviates from the primary goal of benefiting vulnerable groups.

Another lesson is that the introduction of CTUs as an organizational form to combat forced evictions was a positive step towards the creation of participatory and grassroots-led social processes. Advocacy of such groups is important to organize people, create awareness and negotiate with local authorities in order to influence decision-making and policy formulation at the local level.

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[17] Empty apartment buildings are also part of the mayor's expropriation policy. Some of these buildings have already been invaded by families that, for example, lost their homes in a *barrio* due to landslides.

4. Analysis of cases

The case studies demonstrate mixed experiences with eviction, acquisition, expropriation and compensation. The lessons for international organizations involved in formulating policy, guidelines and covenants can be summarized in the following points:

- Human rights issues related to evictions are known, reported and taken up by courts, but they have not been translated into action-oriented guidelines for urban development organizations to implement. Court rulings have directed institutions to plan and implement suitable housing programmes to prevent evictions and to rehabilitate those for whom there is no other option but eviction.
- There are large gaps in the translation and domestication of international covenants into national laws, which continue to be the basis for eviction, acquisition and expropriation, and deciding compensation. In some countries, a transition is seen towards more fair and equitable processes, partly influenced by international organizations. However, the laws related to compensation require substantial reform.
- Safeguarding the interests of people with no formal tenure in land acquisition cases is a partially resolved issue that needs further advocacy at international level. Livelihood restoration is also a difficult issue.
- Consultative processes must be strengthened, in spite of their time consuming nature
- The capacity-building measures implemented by international organizations for government institutions, NGOs and communities has had a positive impact, but further progress in capacity building and institutional development — at the level of central government, local authorities and civil society — is an urgent priority to cement the application of international principles and values in a sustainable way.
- Impact assessments prior to implementation are carried out for internationally funded projects, but they do not seem to have influenced project design very much. Case studies show that the accountability mechanisms international organizations have for their own policies and guidelines must be strengthened. There is a need to highlight the need for rights-based impact assessments, and work towards their systematic use in the context of development-induced displacement. The case studies featured here did not feature any literature on medium- and long-term impacts of relocation and resettlement. Lessons from these case studies would be useful to minimize immediate adverse impacts and prepare the way for positive longer-term outcomes.
- The victims of violent and visible evictions have often been treated sympathetically by the courts, and institutions and regimes have been held accountable. However, there are no instruments to deal with the increasing and silent phenomenon of market-based evictions.

4.1 Fluid policy and legal environment

The case studies demonstrate that evictions are increasing (South Africa, China), but it is difficult to generalize about the international situation because the cases give only a partial picture of current practices. However, the case studies show that evictions are less frequent in Latin America than in other regions. Also, several countries (notably China and Sri Lanka) have approved new resettlement policies that appear to incorporate many progressive safeguard elements that are in the guidelines of international financing agencies.

All countries in the case studies have either signed or ratified the ICESCR. The Philippines has transposed the provisions for the right to housing in the ICESCR into the country's constitution and the Urban Development and Housing Act. South Africa has signed the ICESCR but not yet ratified it. However, South African courts have referred to the ICESCR and the related general comments to interpret the right to adequate housing in section 26 of the country's Constitution. African countries have also signed up to the African Charter on Human and Peoples' Rights. It is difficult to establish whether these initiatives have had any explicit influence on policy. But changes in national policy in Sri Lanka, Cambodia, India and

China have been influenced by guidelines and policies of international funding agencies such as the World Bank, the Asian Development Bank and UN-Habitat (Sri Lanka).

All the countries have legal provisions for government to compulsorily acquire land, using the principle of eminent domain, to undertake development that is for the general good of the population. Internal laws and policies provide for compensation for expropriation but that does not mean people can claim the right to just compensation. The rights-based regime seems to coincide with democratic forms of government, which also allow space for consultation and participation (Venezuela, Indonesia, India, Sri Lanka, Mexico, Philippines, and South Africa).

China, on the other hand, has a legal and procedural system for involuntary resettlement that does not pay adequate attention to compensation. City governments are free to formulate their own policies and procedures within the national policy principles but a large number of affected people are not eligible for compensation because they do not have the legal right to live in the city. The numbers are large because of the need to quickly expropriate huge amounts of land to keep up with the rapid pace of urban development. For the same reason, urban relocation is increasingly being delegated or outsourced to the private sector in China. In the Chinese case study, the relocation management is outsourced to a private company that is responsible for communicating with and supporting affected people. Another company values properties for compensation. The legally accepted practice of delegating the power of eminent domain to private developers hastens development but often results in coercive eviction practices, which are accepted as a necessary evil of progress. However, academics took issue with the government on violent and threatening eviction practices by private developers, which triggered a revision of compensation rules and directives on more humane eviction practices in 2010.

A "model" resettlement policy, but with contentious compensation questions

As one of the fastest growing economies in the world, China has experienced a building boom that has been accompanied by forced evictions on a large scale. Government attitudes towards resettlement have been evolving rapidly since the founding of the People's Republic of China in 1949. Since 1980, China has aimed to develop good resettlement practices, learning from its past legacy of failed resettlement efforts and the increasing resistance from potential resettlers. There is now an established legal and procedural system for the implementation of involuntary resettlement which is substantially in accord with the World Bank's operational directive on resettlement and the OECD and ADB's resettlement policy and guidelines. The World Bank views resettlement in China as working well and even adding to project benefits (World Bank, 1996). The Bank has even cited China's policy of developmental resettlement as a model for other developing countries (Bartolome et al., 2000).

In spite of these successes, there are contentious issues surrounding compensation in particular, which have led to public protests and even suicides. These include the following:

- Substantial numbers of people affected by land acquisition / requisition are not eligible for compensation because they do not have residential permits to live in the city;
- Private retail outlets located in houses are most often not compensated because, even though they have business licenses, they do not have documentary evidence of the change of use of their building, which for evaluation purposes remains residential;
- Disengagement of the state from welfare support such as health, housing, provision of employment and unemployment support have implications for poorer resettlers, especially in the short term;
- In the vast majority of cases the compensation does not reflect the market value of the evictees' homes because appraisal is based on lists of real estate prices, which in practice are outdated;
- There is very little consultation with resettlers and hardly any monitoring of rehabilitation of affected households (ADB, 2008; Meikle et.; Schmidt, n.d.);
- An evictee who does not agree with the compensation may apply to the People's Court for review but this does not prevent the developer (increasingly, private companies, to whom the state has delegated its powers of eminent domain) from enforcing the eviction order.

Sources: Bartolome et al, 2000; ADB, 2008; Meikle et al., 2006; Schmidt, n.d.;World Bank, 1996.

South Africa, India, Sri Lanka and the Philippines particularly have an enabling legal framework, which can protect peoples' rights and ensure that due process is observed. In addition to a supportive legal framework, Venezuela and Mexico have strong and organized civil society groups, which have taken up issues of access to urban land and housing, including expropriation and eviction. South Africa has strong policies for land and housing rights incorporating the principles of ICESCR and courts have repeatedly ruled in favour of protecting peoples' rights and due process. However, the combined effect of a complex land tenure system, the aim of creating an "African World Class City" and the policy of resettling people in new low cost housing continue to induce evictions in Johannesburg. Even in Caracas, Venezuela, there are repeated attempts at evicting people from inner city rental housing and areas considered to be dangerous.

As the case studies show, development pressures invariably take precedence over the protection of rights and fair compensation, however strong the policy. Forced and violent evictions occur in all countries and, in most cases, due process, even though present in policy and law, is not applied (South Africa, Nigeria, Indonesia). Also, with rapid transformation in the urban development process (market demand, rising land prices), laws, especially related to compensation, are outdated (Nigeria). From the point of view of principles enshrined in international covenants, institutions and implementation mechanisms for ensuring human rights obligations are not in place (Cambodia).

4.2 From compensation to benefits: new ways

The practice of eviction without fair compensation or adequate resettlement options that contribute to homelessness or hardship has been mentioned in case literature (South Africa, Indonesia). In Latin American countries, the compensation debate takes on another dimension with issues such as: what is fair compensation; should future use value be considered; should government engage in acquisition of land for titling initiatives or look for other alternatives?

In India and Sri Lanka, land appropriation takes place according to the provisions of the respective Land Acquisition Acts. The process of deciding compensation is particularly complex, time consuming and contentious and leaves out those who do not have legal rights over land. In India, this is being resolved by integrating the rehabilitation and resettlement law with the Land Acquisition Act. This would enable a focus on higher standards of living and sustainable income opportunities rather than on land-based compensation alone. In Sri Lanka, the National Involuntary Resettlement Policy enables the payment of a minimum package of subsidies to project affected people who are not eligible for compensation. Based on this, the Lunawa project has developed the concept of "bottom line entitlement".

Lessons from the new National Involuntary Resettlement Policy in Sri Lanka

To ensure that people affected by development projects are treated in a fair and equitable manner, and that they are not impoverished in the process of resettlement, the Government of Sri Lanka adopted a National Involuntary Resettlement Policy (NIRP) in 2001. Its main objectives are to avoid, minimize and mitigate negative impacts of involuntary resettlement. The policy ensures that people adversely affected by development projects are fully and promptly compensated and successfully resettled. Further, they are helped to re-establish their livelihoods and to deal with the psychological, cultural, social and other stresses caused by compulsory land acquisition; their grievances are redressed; and they participate in a consultative, transparent and accountable process (NIRP, 2001).

The Lunawa Lake Environment Improvement and Community Development Project (LEI&CDP), implemented between 2002 and 2009, was the first project to apply the principles of the NIRP. In general, the project demonstrated that the NIRP is a good example of a national policy on resettlement; it outlines the principles and institutional responsibilities for managing involuntary resettlement, without laying down specific (and rigid) requirements. The LEI&CDP has also developed a detailed but simple participatory methodology, which can usefully inform the implementation of other projects. In addition, the NIRP offers a clear methodology to secure social safeguards and mitigation measures with people who are adversely affected by the project. In spite of its successes, the project had some challenges to successful implementation of resettlement. These included:

- In spite of NIRP provisions and innovations, project affected people had to go through a long legal procedure of the Land Acquisition Act for land survey, acquisition and valuation, that caused delays in project implementation and unrest among affected people. The project found it difficult to deal with complaints, particularly from middle- and high-income people.
- Involuntary resettlement of people without legal land rights can be difficult, but this was resolved through the participatory approach and the minimum entitlement package - the "bottom line entitlement".
- The resettlement package offered better amenities to the resettled community than other residents of the project area, causing resentment among the latter constituency.
- Community participation, even though very effective as an approach to resettlement, has not been encouraged by local politicians (Perera, 2005).

Sources: Perera, 2006; NIRP, 2001; www.unhabitat.lk/downloads/lunawa.pdf.

The Chinese practice is to compensate for acquisition of communally owned agricultural land in the urban periphery by paying higher than agricultural land values and considering the future use of land as urban. In Mexico, such lands (*ejido* lands) have to be compensated for according to the market value of the land, even if it is for a public purpose.

Chinese Government policy leaves scope for local government to pay top-up subsidies with income received from the use of state lands, if land compensation and resettlement subsidies under current laws are not sufficient. ADB projects in China allow for non-land based payments to project affected people who are not legal urban citizens or those who have informal businesses, and so would not receive any compensation under Chinese law.

4.3 Emerging collaborative and participatory approaches

While it has been pointed out that eviction procedures are opaque and often carried out without due legal process (Nigeria, Indonesia), the case studies have also documented some approaches where government organizations collaborate with others to work out and implement participatory and informed approaches.

An outcome of research on evictions in Abuja, Nigeria, was the formation in 2008 of a coalition of NGOs, CBOs and government departments, and a National Advisory Board that works with the national government to improve practice. The affected communities are supported to organize themselves and save for house construction.

Local NGOs and CBOs from Makassar, Indonesia, were supported by the Urban Poor Consortium, an NGO from Jakarta, to organize themselves and identify and prioritize demands, which were then converted to a contract to be signed with prospective candidates for the mayoral elections. The signatory got all the votes from informal settlements and, as mayor, is collaborating with the grass-roots organization to solve land disputes and find alternatives to evictions and relocation.

The Lunawa project (Sri Lanka) was implemented through a pro-poor participatory approach, in which relocation was a part of the project's community development component. Relocation packages were developed in consultation with the community based on the assessment of a multi-stakeholder committee and choices were given for cash compensation or relocation. The private sector is collaborating on employment generation activities.

The relocation and rehabilitation policy of the Mumbai Urban Transport project (India) was formulated by representatives from government, NGOs and CBO federations. This has been adopted as the policy of the provincial government. The relocation is being implemented through an NGO-CBO partnership with full participation by affected households at all stages, from the household survey to labour contracts for construction to allotment and transfer to the relocation site. The strength of the participatory process was established after the suspension of project funding for three months in 2006 because of dissatisfaction expressed by some affected households on facilities at the relocation site.

However, it is not easy to put in place participatory and collaborative approaches in a short period of time. The participatory approach in Sri Lanka was informed by the long experience in participatory housing strategies dating back to the Million Houses programme of 1986. Mumbai, contrary to other Indian cities, has had a long history of civil society engagement on slum eviction issues that go back to the early 1980s and that evolved from confrontation and legal action to collaboration with government. In that sense, Mumbai has a parallel with Latin American cities, where community based organizations are a political force in themselves, able to negotiate on an equal footing with government on rights, compensation, expropriation etc. backed by their long engagement in land and housing rights struggles.

As mentioned in the Sri Lanka case, participatory approaches are time consuming and difficult but are worth the trouble because of the sustainability of benefits brought about because of inclusion of stakeholders' concerns in negotiation and decision-making.

The mapping of anti-eviction strategies by NGOs in the Philippines, as part of a five country exercise supported by Huairou Commission in Asia, found that effective strategies include: capacity building and leadership development to strengthen community organization; coalition building among affected communities, community surveys, information sharing and participatory community planning, implementation and evaluation; a lead role for women; mobilization of internal and external resources; dialogue with government and private sector; partnership with stakeholders; firm conviction among community leaders to sustain the struggle for secure tenure.

4.4 Role of international agencies

From the case studies one can see that international agencies like the World Bank, Asian Development Bank and UN-Habitat have provided support for policy development at national and city level (China, India, Sri Lanka). Projects funded by international agencies and requiring land acquisition and eviction follow strict safeguard policies and guidelines, which have resulted in significant improvement in practices (India, China). However, good practices, such as a detailed socio-economic survey, participation, preparing a relocation plan, etc, are project specific. The large-scale impact of these policies in China can be attributed to the large scale of urban infrastructure project support by the World Bank and ADB.

The World Bank's Inspection Panel as a mechanism to hold itself accountable for violations of its own policies and procedures is evident in the Mumbai Urban Transport Project. The panel found a number of major lapses in project planning, execution and supervision in the relocation component, which have led to poor public information and consultation mechanisms for part of the project, as well as a poor environment, higher housing costs and loss of livelihood for the relocatees. However, the management response to this was that the lapses were minor and that the Rehabilitation and Resettlement (R&R) component had gone well. This supports the finding reported in section 3 that there is minimal commitment to environmental and social policy after projects are sanctioned.

The Asian Development Bank resorts to independent evaluations of R&R activities related to projects it funds. The independent evaluations for the project in China found it to be successful in implementing the R&R component but there were two problems: in practice, decision making was top down with little scope for consultation, and resettlement activities were dictated by the civil works schedules rather than the requirements of affected persons. The ADB has reportedly made efforts to remedy these issues in subsequent projects and its safeguard policies. The other meaningful contribution is technical assistance, which UN-Habitat has effectively provided to the Government of Sri Lanka in the Lunawa project and for national policy formulation. Implementation of technical assistance proposals has become possible because of project funding by the Japan International Cooperation Agency (JICA).

4.5 Role of NGOs, media and judiciary

COHRE has contributed significantly to documenting cases of forced evictions and policies and laws relating to housing rights and evictions. It has made evictions visible internationally and has also played a role in shaping policy and garnering support to secure the rights of evictees. Amnesty International has also flagged human rights violations.

The Philippines case touched on the Huairou Commission's support for NGOs in Asian countries to map anti-eviction strategies. This has been effective way to build understanding of key concerns among NGOs and CBOs and helped them to formulate effective anti-eviction and eviction management strategies in partnership with government. The Makassar example presented in Indonesian is one outcome of this work.

Mention is made of international NGOs calling a moratorium on evictions in Cambodia. National and local NGOs have played a key role in India, Indonesia and the Philippines in building communities' capacity to negotiate with city authorities on the basis of settlement information and their power as voters, to start savings groups to support themselves during relocation, etc. NGOs in Mumbai, India, have been supporting the housing struggles of informal settlers since the 1980s. SPARC, for instance has partnered with the federation of CBOs and government to relocate 10,000 families affected by compulsory land acquisition related to a World Bank-funded Mumbai Urban Transport Project. It has contributed significantly to involuntary relocation policy development in Mumbai and at the national and international levels.

The local and international print and television media have also contributed significantly to dissemination of information and building opinion on eviction, expropriation and compensation. Newspaper articles have provided information for some of the case studies.

The role of the judiciary has been touched on in several case studies. Civil society groups in South Africa and India have filed court cases against forced evictions and in both countries landmark judgments in favour of the evictees have been passed. The courts have repeatedly taken the view that displacement violates a number of human and constitutional rights; it can be legitimate only when due process is followed, when public interest is affected and when suitable relocation measures are implemented. Further, the courts have taken a broader view of development issues and directed concerned public institutions to develop appropriate policies and programmes for housing the population so that forced evictions can be prevented.

The judiciary has made reference to international law and housing rights covenants, national constitutions and landmark judgments delivered in the country. The judiciary has been called on to prevent specific evictions and also to seek justice for already evicted people.

4.6 Planning and regulatory framework

The planning and regulatory framework has been the cause of involuntary displacement, especially of the poor living in informal settlements. The objective of implementing the master plan (Nigeria) and removing settlers violating the land use plan has led to violent evictions. The implementation of the Inner City Regeneration Strategy of Johannesburg, South Africa, has lead to the eviction of thousands of poor people living in "bad buildings" without suitable alternatives. On the other hand, much of the informal settlement process can be attributed to non-implementation of plan provisions in the first place.

Planning for relocation and resettlement where it is inevitable is a weakness seen in all cases, except those where international agencies are involved. Case literature reports on evictions not following due process. Evictions are unplanned and take communities by surprise. The Indian, Sri Lankan and Chinese case studies were all supported by international agencies and required Social Impact Assistance, preparation of resettlement plans detailing time-bound actions to be taken before, during and after relocation along with roles, responsibilities and costs. This is shared with communities who have varying levels of participation. In the Sri Lankan and Indian studies, community groups were also involved in the planning process.

4.7 Social support for vulnerable groups

Most of the cases outline hardships caused to disadvantaged groups in the eviction process. However, only two cases explicitly mention special provisions to mitigate such hardships. In Sri Lanka, special social support is provided for vulnerable groups such as elderly, physically challenged and women-headed households. In Venezuela, the sick, the elderly and the incapacitated are exempt from paying for housing when it is reallocated after expropriation. On the other hand, the largest vulnerable group of evictees is poor people, who are invariably a large group in any case of expropriation and eviction (see impacts below).

4.8 Impacts

The case studies show the socio-economic impact on affected populations, as mentioned in the literature review. In most cases, evictees face one or more of the risks mentioned in Cernea's IRR model. These include: landlessness (Nigeria), joblessness (Kenya, Indonesia, China, India), homelessness (China, South Africa), marginalization (South Africa), and increased morbidity (China, Nigeria). In spite of international covenants, conditions for affected populations in most cases are generally worse instead of better after resettlement.

Implementing organizations in Sri Lanka report that there are positive impacts on housing choices, income restoration and the living environment. However, a few better off households found the compensation to be inadequate. An independent evaluation of the Shanghai case in China also showed positive impacts perceived by project-affected people. These included a better living environment; conversion from rural to urban status; and better employment prospects in the urban context. The Mumbai case showed a positive impact on housing quality but a negative impact on family income and expenditure and employment opportunities. In the Venezuelan example, negative impacts are not mentioned because expropriation is for settlement regularization in the same place.

As a result of the expropriation in Shanghai (China) and Lunawa (Sri Lanka) the environmental improvement projects could be implemented, leading to less polluted waterways and canals and, in Sri Lanka, the lake's higher water capacity and reduced flood risk for a larger population. The Shanghai case also mentions the dramatic rise in land values and demand for land for private development following the improvement.

5. Conclusion

The case studies point to important areas for further investigation, in particular an operational definition of "public interest" and "public good" that would assist in delimiting the scope of the practices in question. It would be useful to have an enhanced understanding of compensation with a more progressive developmental approach, or a "resettlement with development" perspective, which creates future opportunities rather than reproducing past inequalities through compensation.

The case studies demonstrate the importance of strengthening civil society and building the institutional capacity to adopt and implement international human rights legislation into national legal frameworks and corresponding applicable guidelines and principles, particularly the Basic Principles and Guidelines on Development-based Evictions and Displacement.[18]

Lastly, the limitations of desk-based research are evident in the uneven collection of information across countries and regions, including the disproportionate emphasis on the practice of evictions. A recommended area for further research is targeted fieldwork with affected communities and other relevant stakeholders that investigates in more details the practices of acquisition and expropriation in particular.

In cases where projects are determined to be in the legitimate public interest, where all alternatives to relocation and resettlement have been considered and where evictions of affected populations have been found to be unavoidable, policy makers must design and make available to local authorities, their civil society partners and affected populations *"adequate inputs"* (adapted from Chris de Wet, 2006, in Oliver-Smith, 2009:13) to ensure that resettlement and compensation are implemented correctly and justly. These inputs include a complete set of instruments and "tools", such as a national legal framework and policies, agreements with developers (where applicable) on planning, implementation and cost sharing, funding, background research, careful implementation and monitoring.

5.1 Key conclusions

This section presents five concluding propositions linked to the overall research question that form the basis for further investigation and discussion.

Conclusion 1: "Public interest" should be defined at policy level. Broad agreement is needed among the different stakeholders on the working definition of legitimate "public interest" projects that may justify expropriation and evictions. This can be achieved through international expert group meetings, roundtable discussions, and the involvement of society as a whole. Very important stakeholders are the vulnerable groups in society that are often most affected.

The Guiding Principles on Internal Displacement state that the scope of the application of the prohibition of arbitrary displacement includes large-scale development projects that are not justified by compelling and overriding public interest. The question is which ultimate authority decides on the "arbitrary and compelling overriding public interest", and whether states would contemplate giving up their role to an international body.

Key questions/issues for further discussion:

- How should legitimate "public interest" be defined and by whom? How can more concrete practical guidelines to determine legitimate public interest be developed?
- How can the bargaining powers of the stakeholders be balanced to ensure that potentially affected populations can be meaningfully consulted?
- How can public interest be balanced with the interests of the affected communities?

[18] A/HRC/4/18, February 2007

Conclusion 2: There needs to be a focus on institution building.
The case studies selected for this paper have demonstrated that direct application of international policies and guidelines on resettlement and evictions is rare. Instead, application of international principles and values governing eviction, expropriation and compensation appears to occur only indirectly, through the adoption in domestic law of these international principles. This points to a key lesson: international policies and guidelines — whether those of the United Nations system, IFAs or NGOs — serve principally as inputs to policy; they are not useful as tools for local and national authorities in the planning and implementation of evictions through expropriations or other forms of resettlement. The challenge, therefore, is to support the application of these international principles not so much at the level of planning and implementation of resettlement (where they do not seem to be applied), but rather at the level of policy development and institution building (where these principles can be incorporated in new domestic laws and policies).

Key questions/issues for further investigation:

- What kind of targeted donor interventions are most effective in paving the way for greater respect for the rights of (particularly) affected poor and vulnerable groups?
- What are the appropriate tools to help anchor institutional reform and strengthen civil society to protect vulnerable groups from evictions and improve expropriation and compensation policies? Can the initiatives described in Mumbai, Sri Lanka, Abuja and the Philippines be effective in other contexts?

Conclusion 3: It is important to enhance the normative notion of compensation and its pragmatic application. International laws and guidelines have contributed to the "partial reduction of damages, costs, and losses incurred by some resettled peoples". But the implementation of guidelines in borrower nations has been "consistently problematic" (Oliver-Smith, 2009: 3). Moreover, the capacity to enforce the implementation of guidelines on resettlement and compensation is typically weak, as is (in many cases) political will, such that adoption of formal policies by borrower nations "is no assurance of adequate implementation" (Oliver-Smith, 2009: 3). The cases cited here from Kenya, Nigeria and Cambodia illustrate the persistent gap between laws and development practice in many countries.

Key questions/issues for further discussion:

- Local governments and other public authorities may find it difficult or impossible to comply with the requirements that are prescribed in international guidelines to fully compensate affected people. How can compensation be arranged that is both practical (i.e. affordable to public authorities) yet fair (for affected persons)? The "avalúo social" model illustrated in the Medellín, Colombia, "Metrocable" case may point the way to more "flexible" approaches to compensation. What are effective strategies to "domesticate" international laws and guidelines in the local context? Which institutions have a key role?
- The fundamental question related to compensation is how can material possessions and the social impact of displacement be compensated for when affected people are displaced.
- Another fundamental question is related to the acquisition, expropriation and valuation process, in which negotiation is an important tool. The outcome of the process depends upon stakeholder's power. How can poor and vulnerable groups be empowered, or how can the process be improved to protect these groups from losing out?
- In view of the fact that development–induced displacement and resettlement de-capitalises the affected communities by imposing opportunity costs in the forms of lost natural capital, lost man-made capital, lost human capital and lost social capital, how can the scope of these costs be established and included into the overall development costs? How can these costs be established?

- Benefit-sharing for those forcibly displaced (Cernea, 2009b: 51) is a potentially powerful argument that may prevent impoverishment after displacement. There remains, however, the challenge of crafting benefit sharing schemes in public goods projects that have no revenue stream.

Conclusion 4: Civil society needs to be strengthened to act on evictions. In many countries, local civil society organizations — often supported by international funds — have played a crucial role in pressing for greater rights for populations threatened by evictions, through advocacy and through quiet diplomacy and relationships with local authorities. To strengthen the voice of these groups, the efforts of international donors and multilateral development banks should focus on further capacity building of such groups, through training and support for legal awareness (in the areas of evictions and expropriation), advocacy and outreach techniques, and participatory planning, among others. Civil society needs to be strengthened to push for the domestication of the international human rights law and consequently more appropriate public policy. Civil society also needs to have strengthened negotiating powers for compensation and resettlement.

The impact of civil society actors can be felt at several levels: at the grassroots level, they help to mobilize and organize affected populations; at the national level they help to press for policy change through advocacy efforts; in the wider societal setting, they help to publicize the issues of forced evictions and rightful compensation, and they are vehicles for growing international alliances. Regular forums and dialogues between civil society and public authorities are also proving to be fruitful in (on the one hand) engaging governments and in (on the other hand) holding governments to account relative to their legal and political commitments to affected populations

Key questions/issues for further discussion:

- In some countries (India, the Philippines and South Africa), civil society organizations are already strong and organized; they liaise with governments on alternatives to evictions and are involved in enumerations in local communities and advocacy campaigns. In other countries, however, civil society actors are fighting for survival due to outside pressure, or they are still weak as a result of internal mismanagement and/or fragmentation. What different strategies are required to help strengthen and mobilize civil society actors in each environment?
- The forums for dialogue in Abuja and the eviction mapping strategies in the Philippines illustrate two initiatives that civil society actors are taking to stem a rising tide of evictions. But are these types of initiatives possible without international funds or backing? How can they become financially sustainable in a way that does not depend on international support?

Conclusion 5: Adequate compensation for households without formal titles should be included in all international guidelines and policies of International Financing Agencies. The current understanding of compensation and the inadequate impact assessments that are often carried out prior to evictions, acquisition and expropriation must be replaced by a more progressive developmental approach or 'resettlement with development' in which the co-ordinates relate to creating opportunities for the future, rather than reproducing past inequalities through compensation. Compensation then becomes a base line rather than an end.

Key questions/issues for further discussion:

- How to improve the valuation methods so that they are based on a correct establishment of what people have in terms if rights and material possessions and also incorporate the social aspect of loss, and how to make these processes more participatory?
- Should people be compensated for the increased (future) value of the land?

- How can a progressive development approach be developed that can also be described as "resettlement with development" and that places affected communities that do not have titles or material possessions at its core?
- At what level does this approach have to be developed and what are the resources and capacities required?
- What are the appropriate tools for a government to implement a progressive development approach, and particularly a government with limited resources?
- How can it be ensured that the private sector lives up to its corporate, financial and social responsibility and protects people being displaced because of their projects?

The opportunity for change can be found in best practices such as those in Sri Lanka, where eviction and relocation are seen as development opportunities and are included in a broader community development and livelihood enhancement programme. National laws such as the Brazilian City Statute and the Indian Rehabilitation and Resettlement Bill (2007) also take a developmental view of appropriation and eviction. The new safeguard policy of the Asian Development Bank includes improving the standards of living of the displaced poor and other vulnerable groups, irrespective of compensation. The safeguard policy of the African Development Bank mentions benefit sharing with displaced persons.

Forums for dialogue between government and affected people in Abuja, Nigeria

In 1976, Nigeria relocated its capital city from Lagos to a new federal capital area in Abuja. One of the policy thrusts of the Federal Capital Territory Administration (FCTA) has been the resettlement of people in traditional villages in the area designated for the new capital to neighbouring states. People already living on the land when the Federal Capital Territory (FCT) was created – generally termed "indigenous" – were allowed to remain. Their settlements have expanded in the past 30 years through indigenous allocated land or rented housing to non-indigenes who moved to Abuja for employment and were unable to access affordable formal housing. This resulted in the extensive informal, unplanned and unauthorized settlements in the area designated for the capital city. The Federal Capital Development Authority (FCDA) has targeted over 49 such settlements in Abuja for demolition, arguing that land was zoned for other purposes under the Master Plan and, in some cases, has already been allocated to private developers.

In 2008, IHS (Institute for Housing and Urban Development Studies) and Cordaid supported the formation of a coalition of NGOs, CBOs and government departments, to mitigate the effects of forced eviction and demolition on the urban poor in Abuja. The coalition is assessing the competencies of each of the partners and providing support to for them to become more effective and pro-active in the issues of forced evictions; the focus is particularly on the urban poor. Intensive dialogue is ongoing between the government and the NGOs and CBOs and the affected communities on the best approach for future exercises. The government and other coalition partners and no longer perceiving each other as "opposition". Moreover, a 15 member National Advisory Board has been set up. Its main task is to discuss with government at the highest level concerning government acceptance of the action plan to be presented by the coalition. Currently, the communities affected by forced evictions have established their own cooperative groups. Through small contributions, they are saving money to build their houses when the government makes land available. The coalition is attempting to enter into partnerships with microfinance institutions to leverage money for a pilot project.

Sources: Eerd, M. van., & Atiyaye, B. 2009; WEP, 2008.

Mapping anti-eviction strategies in the Philippines

The Huairou Commission, as part of its Land and Housing Campaign, has initiated a project to map anti-eviction strategies in five Asian countries: Indonesia, Cambodia, the Philippines, Thailand and South Korea. The project maps anti-eviction strategies by grassroots women in over 30 communities and focuses on strategies resulting from government and private sector infrastructure projects and grabbing of lands occupied by the urban poor.

In the Philippines, the Partnership of Philippine Support Service Agencies (PHILSSA) led the process, which also involved other civil society organizations, including Lihok-Pilipina, Bantay-Banay Network, COPE Foundation and DAMPA. The project was initiated in five regions, resulting in 23 case studies. The process involved:

- Hosting of local forums within a number of communities that have had to fight evictions to jointly discuss strategies used to fight eviction; highlight the role women played in these strategies; discuss the best and worst aspects of these strategies; and determine which strategies they would use again.
- Documenting these discussions during and after forums;
- Developing a small publication on anti-eviction strategies at the community level, highlighting women's roles in these strategies and best practices (in the local language);
- Preparing two or three delegates (one staff and one or two community members) to attend the South East Asian Forum on Anti-Eviction Strategies; and
- Assisting in developing manual on fighting evictions for the region.

The mapping process in the Philippines identified various eviction threats for communities and community organizations; these threats emanated from government and the private sector. The mapping resulted in the following lessons: strong community organizations are important for effective responses to evictions; community organizations need to be pro-active and plan and act for security of tenure, even without the threat of eviction; capacity-building on issue advocacy and para-legal work helps in planning and implementing effective anti-eviction strategies; community responses and actions need to be consolidated; and as many stakeholders as possible need to be involved and broad coalitions have to be built. Information dissemination is needed, as well as participatory community planning.

Sources: Personal communication with Birte Scholz via email on 18/02/2010 and 9/03/2010 and Huairou Commission, 2009.

5.2 Possible opportunities for tool development

As has been shown, the power to negotiate is very important in the process of evictions, acquisition, expropriation and compensation. It is crucial that poor and vulnerable groups are empowered to be strong in negotiations so capacity building is essential. Negotiation is also important at civil society level when pushing for governments to comply with the guidelines.

Domestication of the guidelines is also important. As was concluded (except for the work required on public interest), the guidelines that have been developed are sufficient in principal but they lack implementation. Guidelines need to be domesticated and made more concrete and implementable. Examples of works that could contribute here are the UN-Habitat Quick Guides for Policy Makers (both for Asia and Africa), and the Cambodian guide to defending land and housing rights" developed by Bridges Across Borders et al. (2009). UN-Habitat should, and already does in some instances, provide technical advice to governments on how to make their national legal frameworks compliant with international guiding principles.

To achieve "resettlement with development", more thinking is required for which the International Accountability Project et al., review (2010) could be used as a basis to develop tools. They propose (to the IFC) some key issues for their policy update:

1. Minimizing displacement and ensuring that displaced persons are project beneficiaries.
2. Protection those displaced by non-land acquisition activities.
3. Land-based compensation and livelihood restoration.

4. Freedom from coercion in negotiated settlement.
5. Guidelines for consultation and participation.
6. Upholding of human rights.

These are important issues and more work is required on developing guidelines and tools. Because benefit sharing for those forcibly displaced is a potential tool for preventing impoverishment after displacement, how can this tool be further developed and implemented? More thinking is required on this issue.

The international financing agencies included in this study all have similar safeguards and mention in their policies that resettlement should be minimized and avoided if feasible. In cases of resettlement, displaced people should be at least not worse off, some of the IFAs even state that displaced people should also share in the project benefits and their lives should be better off than before. This raises the question of how to ensure that guidelines of IFAs are harmonized with those of its member countries?

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www.fukuoka.unhabitat.org/habipress/pdf/SRL-lunawa%20lake520
www.adb.org/resettlemnt/nirp_2001.pdf

Annex 1 Contextualizing evictions and displacement

Forced evictions are "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection (CESCR, 1997, para 3). Violations of a wide range human rights may occur because of i) the *absence of lawful justification/legality* of the eviction and ii) the *improper way the eviction is carried out*.

While forced evictions in urban settings remain the main focus of this working paper, they may also be carried out in rural and remote areas because of development projects, extractive and other industrial activities, or land grabbing. In these situations, indigenous peoples and people who earn their livelihood from their land are particularly affected. Corruption and speculation on housing and land are other important reasons for many forced evictions.

Development-induced evictions

Development-induced evictions may include those resulting from an economic crisis and cases of rapid growth. They can be where prime land occupied by slums dwellers is planned to be sold off to private developers (market driven), or is to be developed for public use, such as the construction of infrastructure (economically driven). Causes can be land grabbing, urban re-development, beautification initiatives, gentrification, urban revitalization, international events, slum upgrading or land speculation and conservation, for example the establishment of parks and nature reserves. The development may be public led, private led or led in partnership (Courtland Robinson, 2003: 15-23). The clearing of slums and squatter settlements that are poorly serviced and are located in environmental sensitive areas is often legitimized by governments seeking environmental protection or protection of the poor at risk (Langford & Du Plessis, 2004). However, development-induced displacement also creates environmental problems; dam constructions and slum clearances in environmental protection zones may induce communities to squat, which often contributes to slum formation in other areas. This, in turn perpetuates the cycle of environmental degradation (Sen, 2009).

Urban development

The population of cities is rapidly increasing across the world. While this has spurred economic growth, it has also resulted in rapid urban development that is unplanned, unmanaged and where there is insufficient land, housing, services and basic infrastructure. In fact, urbanization (which includes rural-urban migration and the engulfing of rural areas by cities and towns) has led to a massive increase in the number of "slum dwellers" with nearly one billion people now living in slums globally, most without secure tenure. To address these issues, municipal governments are instituting master plans and urban "regeneration" or beautification strategies. These often incorporate forced evictions to make land available to private investors or for profitable development (UN-Habitat 2011a).

Large scale development projects

Large-scale development projects have caused some of the most egregious forced evictions because their size, scale and scope affect entire communities. During the 1980s and 1990s large-scale development resulted in an estimated 10 million people being displaced each year, rising to 15 million per year in the following decade. Large-scale projects that result in evictions, often done under the pretext of serving the "public good", may also include significant capital investment from corporations and other private sector actors. Indigenous peoples are particularly affected by these projects because their resource rich lands are often sought after. Large-scale development also leads to environmental degradation and loss of livelihoods, which increases the number of people forcibly evicted. Inevitably, these evictees have no choice but to migrate to cities to survive (UN-Habitat 2011a).

Economic-based evictions

Economic imperatives are prominent in justifying evictions. Current dynamics accompanying the liberalization of land markets in many developing countries and in countries with economies in transition include nationwide land titling programmes carried out in the name of economic and infrastructure development that increase market pressure on low-income settlements.

Increasingly, governments justify private sector-driven developments with an "overriding public interest" based on the expected jobs and a few economic multiplier effects. The outcome is often an increase in poverty, landlessness, homelessness, overcrowding, and the emergence of unplanned settlements/slums. Many of the evictions that result from market forces/dynamics are not recorded because: 1. they do not require the use of force; 2. a legal framework (not necessarily protective of property rights) is enforced; or 3. some form of compensation is paid, regardless of how fair and equitable the compensation and displacement may be. These negotiated displacements are often "disguised forced evictions", and, in most cities, the scale of market driven displacements or evictions clearly overrides that of forced evictions (Durand-Lasserve, 2006: 207-208). Oliver-Smith (2010: 32) also points out that "generally people displaced by private development are considered to be voluntary migrants, having accepted a sum of money in exchange for their land. In the dominant ideology, market transactions are seen as being entered into voluntarily by free economic actors". But, as Oliver-Smith points out, "market transactions often have the effect of disguising the difference between voluntary migration and involuntary displacement".

The involvement of private capital shifts the project goal from improving social and economic conditions to profit, which, it is argued, enhances society at large. Such enterprises are intended to increase the accumulation of capital by private interest, but they constitute and are interpreted and assisted administratively and fiscally by governments as a form of economic development as well. Oliver-Smith (2010: 31) points out that the market and public administration have, on occasion, acted together to force the displacement of populations.

The scale of evictions

Forced evictions are increasing and the estimated numbers of people involved are staggering. According to the Centre on Housing Rights and Evictions (COHRE), forced evictions affecting 18.59 million people were reported between 1998 and 2008 (COHRE Global Surveys, 8-11). In most cases, all those affected were neither given adequate notice nor adequate compensation and violence was frequently used. COHRE makes the important note that many forced evictions are not reported (COHRE, 2009a:7). The global survey only monitors evictions reported in the media or by COHRE partners and allies, so the actual number of person affected may be much higher.

COHRE also reports that almost 42 per cent of recorded forced evictions in survey 11 are urban (COHRE, 2009a: 9). This number is dwarfed by researchers' calculations on forcible displacement of populations as a result of large-scale development programmes.

The impact of evictions on affected populations

Evictions affect a broad range of residents in rural and urban areas, including the middle class. However, it is low-income populations that are often the most common victims in numbers, recurrence and impact, because of their lack of political power. For example, women, children and the elderly are affected disproportionately by forced evictions, resettlement schemes, slum clearance, civil conflict, and development projects because women-headed households typically make up a high proportion of informal settlements (UN-Habitat, 2007: 30). Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement (A/HRC/4/18).

The impact of evictions on communities and individuals includes not only a series of damages to their property, assets, social networks and livelihood, but it also involves violence that may cause physical and mental illness. Also, the vast majority of those who are resettled suffer from inadequately financed, poorly designed and incomplete resettlement projects that bear no resemblance to any honestly rendered interpretation of development (Oliver-Smith, 2009: 4-5). In other cases, only those who have legal proof of ownership are resettled and those without proof, often the poorest groups, are offered access to land that they have to buy.

UN-Habitat has published a report that maps out existing eviction impact assessment methodologies globally. While many good practices exist in localized situations, and while some tools have been appropriated to suit the specific needs and contexts, this is the first time such practices been pulled together into a single report. It is an important step towards understanding the tools and approaches required to create a solid evidence base of the actual and potential losses through forced evictions and thus promoting viable alternative policies and approaches (UN-Habitat 2011b).

Annex 2 Land acquisition

National governments often have legal instruments in place to acquire land through negotiations with the consent of the owner or, when the owner does not agree, to expropriate land for development. Compulsory land acquisition laws are sometimes use by governments, which often leads to evictions.

Whether land is owned by the state, collectives, groups or by individuals, whether it is used under formal, customary, traditional, or prescriptive rights, or whether it is squatted on or encroached upon, these legal instruments, according to Price (2008), often set the arrangements for compensation, title transfer and land clearing. These legal instruments generally have the primary objective of providing land free of encumbrances for public or private sector developments, and are generally dealt with as a subset of property or expropriation law. Compensation in those cases is usually paid for limited tangible assets for people and groups with officially recognized land and property documents. As Price says, it is problematic that national laws often do not spell out how much compensation needs to be paid and measured for those losses that are recognized by law (Price, 2008).

Acquisition and expropriation

Expropriation and compulsory acquisition have different names in different countries. "Condemnation, compulsory purchase, eminent domain, or takings" are all names for the same legal instrument "which allows states to acquire property against the will of its owner in order to fulfil some purpose of general interest" (Azuela & Herrera-Martin, 2009: 337).

Further, they note that

> "The use of expropriation power in developing countries has been associated with the displacement of millions of people from the land that was considered to be 'theirs', with the lack of recognition of property rights, the limited access to judicial remedies, and with the growing opposition to the infrastructure and urban projects for which that power is wielded" (Azuela & Herrera-Martin, 2009: 341).

Expropriation has four distinct characteristics: legality, rights involved, compensation and purpose:

1. Legality. Expropriation has a legal basis since it is an act that involves a state's decision. It requires a legal framework to establish a hierarchy of one entity related to another, in this case the public entity over the occupant, and which allows for the unilateral action to take place. This does not mean that such legal provisions are created for a legitimate purpose that is in compliance with international human rights laws and guidelines. It implies that a provision is made that empowers the public entity to act. If the unilateral act is outside the legal provision then it is called dispossession. On a given land the landowner will be expropriated, but informal occupants (if any) on land will be evicted. Landowners, in principle, will be paid compensation, but whether informal occupants will receive compensation depends upon the national governments.
2. Rights involved. The nature of legality is a key point in the discussion on evictions because expropriation has to do with taking a right from an individual or group by legal means. This has two implications: one is that if a legal right violated outside a legal system then a better term would be dispossession; another is that the term expropriation cannot be used when the occupant does not have a right recognized by law, for example occupants without titles, or tenants. This last point helps to understand why evictions occur without any legal protection for someone who has a legal right (for example, when a landowner's land has been confiscated by squatters) causing expropriation, and that if such an instrument was used then a public purpose needs to be established and the compensation would need to go to the legal owner of land and not to the occupant.

3. Compensation. If compensation needs to be given to occupants then it needs a different argument and other legal instruments are called for - not expropriation - that fall under the category of subsidies. If policies and instruments need to be established to protect occupants from evictions then there is a need to understand better the nature of expropriation so that it does not prejudice those that the policy intends to benefit, ie. the owners.
4. Purpose. Expropriation can occur with or without an occupant's consent. The justification for expropriation is defined by the law and is of a general or public nature. It is usually related to a public good that will directly impact or benefit the whole or part of society. Examples include the need to build a school or a road, activities usually held under government tenure. Nevertheless, some legislation may consider purposes with an indirect impact in society, for example the need to house a specific group or to build an industry that will create jobs. These reasons create more debate than those that are more direct in nature. This does not rule out legal reasons used for a hidden agenda, such as expropriations to benefit private interest.

Compensation

When discussing compensation a distinction needs to be made between cases where land is taken from people who have evidence of rights or tenure and cases where people do not possess such proof. In the first case, according to national expropriation law, people have a right to compensation, which might be land-based compensation. When people who do not have proof of ownership are evicted, they are entitled to compensation under international law.

The United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement clearly state the right to compensation in detail:

> "When eviction is unavoidable, and necessary for the promotion of the general welfare, the state must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better….
>
> The government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of *force majeure*. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions." (A/HRC/4/18, February 2007)

Many experts (Cernea and Mathur, 2008; Oliver-Smith, 2010; Penz et al., 2011;) express concerns about the externalization of development costs. Costs are expected to be absorbed either by the environment through resource exploitation and waste processing or by the general population when social, cultural and economic disadvantages occur (Oliver-Smith, 2010: 8). Development-induced displacement and resettlement de-capitalises the affected communities imposing opportunity costs in the forms of lost natural capital, lost man-made capital, lost human capital and lost social capital. As long as this capital is not fully returned, cost externalization, the bane of sound development economics, occurs on a vast societal scale (Cernea and Mathur, 2008: 5-6). Price (2009) discusses the problem of national frameworks that, in almost all cases of the countries that were included in her study provide insufficient protection or compensation to make good the losses to those displaced and particularly neglects social aspects of loss[19]. They often compensate only a limited range of physical assets and that they do not ensure effective valuation methods to fully replace lost assets or fully recognize the claims of those land users without legal title. Nor do they replace lost livelihoods; they are not participatory, and do not recognize impoverishment risks. She further argues that they often are poorly implemented at various levels of government. (Price, 2009: 272).

Reparation measures must therefore increasingly take into consideration how to account for the lost resources and capital on the one hand, and the externalization of development costs on the other.

Significant research has been done and progress made in this area. The Impoverishment Risks and Reconstruction (IRR) model developed by Michael Cernea offers a more nuanced understanding of the consequences of the under-financing of resettlement action plans. According to Cernea, many studies have shown that compensation alone does not prevent impoverishment. There is, however, a gap in knowledge on how to finance resettlement (Cernea, 2009b: 49-50).

Consequently, Cernea proposes an increase in the use of complementary financial instruments, such as investments, in the reconstruction and development of resettlers' livelihood after the displacement phase: "financing for success in resettlement requires radically reforming current compensation norms and practices…[and] it also requires making proactive financial investments in the reconstruction of resettlers' material income base, [by] sharing project " (Cernea, 2009b: 51).

According to Cernea the novel solutions for financing resettlement and compensation evolve around:

a. The use of windfall economic rent generated by the exploitation of natural resources.
b. The use of a fraction of the projects' normal stream of benefits to reconstruct resettlers' livelihoods at higher-than-pre-displacement levels (Cernea, 2009b: 55).

Measures for channelling a percentage of projects financial benefits back to resettlers are now implemented legally and systematically in developing countries such as Brazil, China and Colombia and sporadically in some other countries (Cernea, 2009b: 58).

[19] The countries that were part of the study were Bangladesh, Indonesia, Nepal, Pakistan, the Philippines, People's Republic of China (PRC), and Vietnam (Price, 2008, 159).

Public interest in the context of expropriation, acquisition, and compensation

Many countries' constitutions and laws require that the powers of expropriation or eminent domain of states need to be restrained by a mandatory "public purpose" and just compensation clauses (Dias, 2009: 183). The discretionary valuation power of some states has been reduced, with more stringent expropriation procedures to be followed. This is, however, not the case in the majority of cities of the developing world where forced evictions take place every day. There are many human rights violations with such far reaching implications that continue to be perpetrated with relative impunity (UN-Habitat, 2011a).

Development-inducing projects may result in evictions (as a last resort), but in the absence of such projects, the intended project beneficiaries will lose out as a result of the non-implementation of the project.

Two examples, from Brazil and the United States, illustrate how governments are grappling with the instrument of public interest expropriation and the new social and judicial challenges imposed on this instrument. On the one hand, governments may use expropriation to access land for vital social and economic uses for the public good. On the other, they have to navigate the social sensitivities associated with expropriation and the legal limitations imposed on its use.

The "Estatuto da Cidade" case in Brazil illustrates how expropriation can be used as an instrument of social policy: state power to expropriate land for public purposes can be used as a powerful and beneficial tool for the vulnerable groups in society as well (Langford & Halim, 2008: 33).

The "*Estatuto da Cidade*" in Brazil:

An example of expropriation as an instrument of social policy

The law known as *Estatuto da Cidade* (Statute of the City) was approved in Brazil in 2001. It consolidates a range of instruments to sanction landowners who retain land for speculation instead of putting it to use; one of these instruments is expropriation.

The law holds that landholders are required to start development on their land within two years of buying it. If they do not, their property tax rate may be doubled each year up to a cap of 15 per cent, which can take up to five years. If landowners still choose not to develop their land, it may be expropriated by the municipality and they will be compensated at the value of the tax base and with a deferred payment deed that may take up to 10 years. The tax base is presumably the land's market value but without including expected future gains, ceased profits or compensatory interests. The land can then be developed by a municipality or private organization according to the land use established by the plan. Since it is likely that the original landholder did not develop the land because it was planned for a low-profit use, such as lower income housing, the law is more likely to benefit such income groups. Expropriation is thus conceived of as a sanction to those not giving land a social function.

It is still too soon to evaluate the effectiveness of the *Estatuto da Cidade*, as no expropriations have been implemented yet under the new law, given the length of time required for participatory planning and the local taxation cycle. However, at least in principle, through the *Estatuto da Cidade* Brazilian law introduces another way to consider the links between expropriation and eviction: instead of considering eviction as a *consequence* of expropriation, it uses expropriation to *prevent* subsequent eviction.

Sources: Azuela (2009), Instituto Polis (2002).

In the "Kelo" case in the United States, the Supreme Court ruled that expropriation to benefit private interests may be justified if it contributes to economic development as the broader public good. The "Kelo" case led to a great deal of controversy. But instead of giving rise to a broad-based anti-expropriation movement, as was expected, the case has focused greater attention on the need for careful and appropriate expropriation legislation and policy. Several years after the ruling, some observers, such as Jacobs and Bassett (see box) believe that support for well-planned and targeted expropriation policies is increasing in cases where constituencies believe such policies can help foster economic development in blighted areas.

The U.S. Supreme Court ruling in *Kelo v City of New London:*

An example of expropriation as an instrument of economic development policy

In the 1990s, New London in the state of Connecticut developed a plan for economic revitalization that required the consolidation of 115 separate properties into a single parcel. The city proposed to transfer ownership of some sections of the single parcel to a multinational company. The rationale was that the investment would create economic development, tax revenue and employment, and thus contribute a "public good" for the economically depressed city. The city approached landowners to voluntarily sell their land; 100 of the 115 landowners agreed to sell. The city then proposed the use of eminent domain on the outstanding 15 properties, based on the payment of fair market value (Jacobs and Bassett, 2010: 14).

Suzette Kelo, the lead plaintiff on behalf of the 15 property owners resisting the eminent domain, argued that the type of eminent domain proposed by the city violated the original intent of the U.S. Constitution's "takings" clause, which holds that eminent domain is intended to allow for governmental actions that create public facilities, but not for government to take private land from one owner to give to another owner (Jacobs and Bassett, 2010: 15). But in 2005, the U.S. Supreme Court ruled in favour of the city of New London, arguing that the city did not violate the terms of the takings clause in the Fifth Amendment. The Supreme Court decision sparked a fierce debate, with opponents claiming that the ruling grants governments a *carte blanche* for the compulsory transfer of private property from ordinary citizens to politically powerful real estate entrepreneurs (Lehavi and Licht, 2007: 14). Following the ruling, a majority of states enacted legislation to limit the power of eminent domain for economic development, and to put other restrictions on assembling land for major redevelopment projects.

But Jacobs and Bassett point out that, despite the worst fears of property owners and their interest groups, as well as housing rights groups, the *Kelo* case has not led to a resurgence of eminent domain cases. On the contrary, they argue that a positive outcome of the *Kelo* case is that it has led to heightened public awareness about the use of eminent domain, and to changes in planning practices: in the United States, at least, the *Kelo* decision has meant that "eminent domain will be more transparent, and planners (and the elected officials to whom they report) will become more accountable. All in all, these new laws suggest that planners need to further improve the communication techniques and processes they use for planning in general and eminent domain proceedings in particular. Few planners object to this and many embrace it" (Jacobs and Bassett, 2010: 19). Moreover, in the current economic climate, characterized by the lingering effects of the financial crisis, Jacobs and Bassett venture that the attitude towards expropriation and the public interest may anyhow be changing: "for the foreseeable future, we believe it is likely that planning in general and eminent domain in particular will be re-examined, and perhaps even witness a resurgence in support. Communities severely affected by the credit, housing, and mortgage-finance crises are being forced to re-examine eminent domain and related powers as ways to address abandoned housing and facilitate economic and social redevelopment. It is not at all clear what, if any, resistance they will experience from a citizenry wanting and needing solutions to real and seemingly ever more complex problems" (Jacobs and Bassett, 2010: 20).

Sources: Lehavi and Licht, "Squaring the eminent domain circle", Land Lines, Lincoln Institute of Land Policy, January 2007; Jacobs and Bassett, "After 'Kelo': political rhetoric and policy responses", Land Lines, Lincoln Institute of Land Policy, April 2010.

Expropriations by public entities should be seen not only as opportunistic actions to which governments can resort; they must be part and parcel of both property regimes and land policies (Azuela and Herrera-Martin, 2009: 358). The powers of expropriation and compensation can be deployed judiciously and innovatively to benefit the public interest. Governments need to redefine the conditions under which expropriations can be successful – i.e. efficient, equitable and socially accepted. This will mean that, in many cases, expropriations will be more expensive and time-consuming, as they will imply longer consultation proceedings and their success will depend on issues that have nothing to do with property rights, such as environmental concerns about certain projects (Azuela and Herrera-Martin, 2009: 358).

Innovative compensation might be attractive to cash-strapped public authorities and private developers. In the context of the "Kelo" case (but which might also have wider application in the case of private development projects), Lehavi and Licht suggest that, where possible, landowners are given a choice of compensation: 1. just compensation under current law, which is based on the pre-project fair market value; or 2. shares in some form of special purpose development corporation in proportion to the landowners' contribution. From a financial point of view, this would be equivalent to offering landowners a real option to purchase shares in the corporation for the equivalent of legally just compensation, while also granting them just compensation to cover the purchase cost (Lehavi and Licht, 2007: 18).

In the long run, the most effective protection from arbitrary expropriations is an independent judiciary that acts as a check on government power (Azuela and Herrera-Martin, 2009: 350). In the absence of that, laws, safeguards or guidelines on expropriation and corresponding compensation measures will lack enforcement unless there is significant political will at the highest government levels.

As stated at the beginning of this section, in the developing world there are many evictions taking place every day, often accompanied by human rights violations. But there is also as always a range of laws and powers that govern how these are carried out that change and develop as they are challenged legally or by communities themselves.

There are many international organizations, NGOs and CBOs, including UN-Habitat, that have prescribed guidelines, treaties and principles of law on evictions, acquisitions and resettlements that also consider the implications of compensation, human rights and the law. These will be looked at more closely in the following section.

Annex 3. Further reading

Key principles and the most relevant international human rights law, treaties and declarations applicable to this working paper.

Key guiding principles and values developed at the international level and the code of conduct of selected international financing agencies and the OECD.

Resolutions adopted by United Nations provide guidance for the elaboration of international law. With the exception of those adopted by the Security Council, such resolutions are not legally binding per se. However, they do indicate at the very least the international community's understanding of international law, and a political willingness to work towards the achievement of the respective resolutions content (UN-Habitat & OHCHR, 2002: 7).

Human rights standards have become increasingly well defined in recent years. Codified in international, regional and national legal systems, they constitute a set of performance standards against which the duty bearers at all levels of society - but especially organs of the state can be held accountable. The fulfilment of commitments under international human rights treaties is monitored by independent treaty bodies (UN, 2006: 1).

International human rights law refers to the body of international law designed to promote and protect human rights at the international, regional and national level. It comprises of treaties and customary international law. Other international human rights instruments, while not legally binding, have been recognized as a source of political obligations. Sovereign states are the typical actors in international law; they establish rules, have the obligation and duty to implement and enforce rules, and bear the responsibility to make amends for injuries resulting from violations. In recent decades, recognized actors in international law have increased to also include international organizations. For an organization to be amendable under international law it must have an "international legal personality" (Johnston, 2000: 15).

The Statute of the International Court of Justice states three sources of law applied by the Court: international conventions (treaties) that establish rules expressly recognized by contesting states, international custom, as evidence of a general practice accepted as law, and, general principles of law (Johnston, 2000: 18).

Declarations are often the first step towards codification of new legal rights. When embodied in an international convention, the declaration becomes a treaty, and signatories become obligated to implement its principles. Implementing mechanisms include provisions and rights stipulated in national constitutions, legislation, or judicial decisions, as well as governmental procedures and policies. All countries that have ratified human rights conventions are required to legislate the domestic law necessary to implement them (Johnston, 2000: 15).

Resolutions of the United Nations General Assembly are issued for the purpose of "promoting international cooperation in the political field and encouraging the progressive development of international law and its codification. Originally seen as non-binding opinions of various majorities of states on particular issues, resolutions of the United Nations General Assembly are increasingly seen as indicative of states' understanding of directions where international law is heading. Thus, domestic courts have looked to the General Assembly as evidence in part of customary law on particular issues (Johnston, 2000: 15). Some instruments entitled "declarations" were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights (http://treaties.un.org/Pages).

All human rights are equally important. The 1948 Universal Declaration of Human Rights makes it clear that human rights of all kinds - economic, civil, cultural and social - are of equal validity and importance.

The key human rights principles are:

1. Universality and inalienability
2. Indivisibility
3. Interdependence and interrelatedness
4. Equality and non-discrimination
5. Participation and inclusion
6. Accountability and rule of law

The enforcement and the realization of international human rights law is the responsibility of the state. There are three types of human rights obligations:

1. *To respect:* which means simply not to interfere with their enjoyment.
2. *To protect:* which means to take steps to ensure that third parties do not interfere with their enjoyment.
3. *To fulfil:* which means to take steps progressively to realize the right in question. This obligation is sometimes subdivided into obligations to facilitate and to provide for its realization (UN, 2006).

Table 1. The seven core United Nations International Human Rights treaties

Treaty	Adopted	State parties	Treaty body
International Covenant on Civil and Political Rights (ICCPR)	1966	155	Human Rights Committee
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	152	Committee on Economic, Social and Cultural Rights
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1965	170	Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1979	181	Committee on the Elimination of Discrimination against Women
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984	141	Committee against Torture
Convention on the Rights of the Child (CRC)	1989	192	Committee on the Rights of the Child
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)	1990	34	Committee on Migrant Workers

The international declarations on human rights are:

1. Universal Declaration of Human Rights (10 December 1948)
2. Declaration on the Elimination of Violence against Women (20 December 1993)
3. Declaration on the Right to Development (4 December 1986)
4. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (9 December 1998)
5. United Nations Millennium Declaration (8 September 2000) (UN, 2006)

2.2 International human rights declarations, treaties and guiding principles

This section presents the most important human rights declarations, treaties and guiding principles developed by the United Nations system related to evictions, acquisition, expropriation and compensation. It also includes the Human Rights Based Approach to Development, which is the normative framework of the United Nations and the framework for development-decision making developed by the World Commission on Dams.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) does not form binding international human rights law, although some see it as customary international law. It has become an authoritative human rights reference and the basis for binding international human rights instruments.

The Declaration spells out basic civil, political, economic, social and cultural rights that all people should enjoy and has been widely accepted as the fundamental norm of human rights. The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the International Bill of Human Rights (www.ohchr.org).

Evictions without due process conflict with the right of all people to have access to adequate housing. This is a human right recognized in the Universal Declaration of Human Rights, which was adopted in 1948, in article 25(1): "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

The International Covenant on Economic, Social and Cultural Rights

The right to adequate housing is also recognized in the International Covenant on Economic, Social and Cultural Rights. The Covenant was adopted by the United Nations General Assembly on 16 December 1966, and is part of the International Bill of Human Rights. It entered into force on 3 January 1976. As in 2010, the Covenant was ratified or acceded to by 160 states (http://treaties.un.org). In its article 11.(1), it states that:

> "The states party to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

The principle of "free, prior, and informed consent" (FPIC) has gained increasingly as an international norm governing development interventions, and those affecting indigenous populations in particular. It is now a key principle in international law and jurisprudence related to indigenous peoples. According to Goodland (2004:67, in: Seymour, 2008:294) the key features of FPIC are that it is: 1) freely given; 2) fully informed; 3) obtained before permission is granted to a proponent to proceed with the project, and; 4) consensual.

General Comment 4 and 7 on the Right to Adequate Housing, CESCR

The Committee on Economic Social and Cultural Rights (CESCR, the Committee) is a treaty body that monitors the implementation of the International Covenant on Economic Social and Cultural Rights. This committee publishes its interpretation of the provisions of the Covenant on Economic, Social and Cultural Rights. The right to adequate housing was addressed in General Comment 4 and General Comment 7, which were adopted by the UN Committee in 1991 and 1997 respectively.

General Comment 4 states that the right to housing should not be interpreted in a narrow sense, but that "it should be seen as the right to live somewhere in security, peace and dignity." Housing is linked to other human rights and is considered to be "adequate housing" (CESCR, 1991, Art.11 (1). Adequate shelter means: ...adequate privacy, adequate space, adequate security, adequate lightning and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at reasonable cost (Commission on Human settlements and the Global Strategy for Shelter to the year 2000, CESCR, 1991).

While adequacy is determined in part by social, cultural, climatic, ecological and other factors, the Committee identified the following aspects to the right that must be taken into

account in any particular context (CESCR, para. 8): Legal security of tenure; availability of service, material and infrastructure; affordability; habitability; accessibility; location; and, cultural adequacy. In this respect, the aspect of legal security of tenure is important. It is stated that:

> "Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups" (CESCR, 1991, para. 8a).

General Comment 4 (CESCR, 1991) acknowledges the importance of national housing policies as a means of achieving the right to adequate housing; the need for effective monitoring of the situation with respect to housing; the allocation of resources and the importance of the role of formal legislative and administrative measures. In some countries, for instance South Africa, the right to adequate housing is constitutionally entrenched.

The Committee stated that the following components would be the minimum desirable elements of a domestic legal remedy of the right to adequate housing:

1. Legal appeals aimed at preventing planned evictions or demolitions through issuance of court-ordered injunctions;
2. Legal procedures seeking compensation following an illegal eviction;
3. Complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination;
4. Allegations of any form of discrimination in the allocation and availability of access to housing;
5. Complaints against landlords concerning unhealthy or inadequate housing conditions (CESCR, 1991, para. 17).

But ratification of the International Covenant on Economic, Social and Cultural Rights, and even constitutional protections against forced evictions, provide few legal guarantees to affected populations when national (housing) legislation offers no legally enforceable housing rights protections, as the cases from Nigeria and Kenya demonstrate.

Related to the effort to provide adequate housing, international laws also address exceptional circumstances under which evictions are necessary and allowed. In this regard, the CESCR holds that instances of forced eviction are *prima facie* incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (the right to adequate housing (Art.11 (1): 1991, CESCR, para.18). "Exceptional circumstances" are defined in Fact Sheet 25 on forced evictions as:

1. Racist or other discriminatory statements, attacks or treatment by one tenant or resident against a neighbouring tenant;
2. Unjustifiable destruction of rented property;
3. The persistent non-payment of rent despite a proven ability to pay, and in the absence of unfulfilled duties of the landlord to ensure dwelling habitability,
4. Persistent antisocial behaviour that threatens, harasses or intimidates neighbours, or persistent behaviour that threatens public health or safety;
5. Manifestly criminal behaviour, as defined by law, which threatens the right of others.
6. The illegal occupation of property that is inhabited at the time of the occupation;
7. The occupation of land or homes of occupied populations by nationals of an occupying power" (OHCHR, 1996, Fact Sheet no. 25: 4).

General Comment 7 refers to article 2.1 of the International Covenant on Economic Social and Cultural Rights, which obliges states to use "all appropriate means" to promote the right to adequate housing. Also, "the state itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions. National legislation should include measures which provide the greatest possible security of tenure to occupiers of houses and land, conform to the Covenant, and are designed to control strictly the circumstances under which evictions may be carried out (CESCR, 1997, para.9).

General Comment 7 also states that "the prohibition on forced eviction does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights".

Prior to carrying out any evictions, state parties ensure that:

1. Substantial justification exists for any eviction.
2. All feasible alternatives to eviction have been explored in consultation with the affected persons with a view to avoiding, or at least minimizing, the need for force.
3. There is due process, including an opportunity for genuine consultation with those affected; there is adequate and reasonable notice, information on the proposed evictions and, where applicable, on the alternative purpose for which the land or house is to be used; government officials or their representatives are present during an eviction, especially where a group of people is involved; evictions do not take place in particularly bad weather or at night; legal remedies are provided; and, legal aid, where possible, is given to those who it to seek redress from the courts.
4. All individuals concerned have a right to adequate compensation for any property, both personal and real, that is affected.
5. Legislation is enacted to ensure effective protection from forced eviction (CESCR, 1997, para. 13-15).

Also, it states that "evictions should not result in individuals rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available" (CESCR, 1997, para. 16).

The United Nations Human Rights Council

In 1993, the United Nations Commission on Human Rights (since 2006 known as the UN Human Rights Council) affirmed that "the practice of forced evictions that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing" (UNCHR resolution 1993/77, para. 1). In 2004, the Commission reaffirmed that the practice of forced evictions violates several human rights, in particular the right to adequate housing (UNCHR resolution 2004/28, para.1).

The General Assembly of the UNCHR stated that when eviction is unavoidable the state must ensure fair and just compensation for "any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case (…)." Also cash compensation should under no circumstances replace real compensation in the form of land and common property resources (A/HRC/4/18/2007, para. 60).

The Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement (1998) define internally displaced persons as those "who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to, avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters and who have not crossed an internationally-recognized state border". According to Courtland Robinson (2003: 27), specific populations displaced by large-scale development

projects that are not justified by compelling and overriding public interests are included by implication. But to get the specific type of displacement included poses several challenges as this, according to some, "will lead to a loss of coherence in the protection regime", and "states may consider that their inclusion would give considerable scope to the international community to find pretexts to interfere in their domestic affairs (Saha in Courtland Robinson, 2003: 55).

A selection of the Guiding Principles on Internal Displacement (UN Doc E/CN.4/1998/53/Add.2):

1. Every human being shall be protected against arbitrarily displacement.
2. Alternatives must be explored to avoid and minimize displacement.
3. Proper accommodation is provided to the displaced persons so that the displacement leaves them with satisfactory health, safety, nutrition and hygiene conditions, also family members are not to be separated.
4. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters the following guarantees shall be in place:
    a. A specific decision needs to be taken by the state empowered by law to order such measures.
    b. Full information provision on displacement, compensation and relocation.
    c. Free and informed consent of those to be displaced should be sought
    d. Involvement in planning and management of their relocation of affected communities, particularly women.
    e. Law enforcement measures, where required have to be carried out by competent legal authorities.
    f. The right to an effective remedy (UN Doc E/CN.4/1998/53/Add.2).

Arbitrary displacement includes displacement in cases of large-scale development projects that are not justified by compelling and overriding public interest (principle 6).

The UN Guiding Principles on Internal Displacement are also applicable to natural disaster induced displacement. But there is not an existing normative framework applicable to environmental displacement specifically and it is acknowledged that such a framework needs to be developed in order to protect the rights of individuals affected by natural disasters.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

The above basic principles and guidelines were adopted by UN General Assembly resolution 60/147 of 16 December 2005. The right to full and effective reparation includes:

1. Restitution: should restore the victim to the original situation before the gross violations.
2. Compensation: for physical or mental harm, lost opportunities, including employment and costs for legal expert assistance.
3. Rehabilitation: should include medical and psychological care as well as legal and social services.
4. Satisfaction: should include: measures aimed at cessation of violations, verification of the facts and full disclosure of the truth etc, search for whereabouts of disappeared.
5. Guarantees of non-repetition: effective civilian control of military and security forces; strengthening of an independent judiciary, reviewing and reforming laws contributing or allowing for gross violations of human rights.

The Principles on Housing and Property Restitution for Refugees and Displaced Persons

Another important milestone in the field of displacements are the Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles'), which were endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. The Principles are the result of a seven-year process which initially began with adoption of Sub-Commission resolution 1998/26 on Housing and property restitution in the context of the return of refugees and internally displaced persons in 1998. This was followed from 2002-2005 by a study and proposed principles by the Sub-Commission Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro.

The Pinheiro Principles provide restitution practitioners, as well as States and UN and other agencies with a consolidated text relating to the legal, policy, procedural, institutional and technical implementation mechanisms for housing and property restitution. As such, the Principles provide specific policy guidance regarding how to ensure the right to housing and property restitution in practice and for the implementation of restitution laws, programmes and policies, based on existing international human rights, humanitarian, refugee and national standards" (FAO et al., 2007: 10).

Special Procedures: the Special Rapporteurs

The "Special Procedures" is a mechanism established by the Commission on Human Rights (in 2006 assumed by the Human Rights Council) to examine, monitor, advise and publicly report on human rights situations in specific countries or territories. Persons appointed to the special procedures are independent experts (mandate holders) known as Special Rapporteurs, representatives, special representatives, independent experts or members of working groups (OHCHR, 2008, 107).

By its resolution 2000/9 of 17 April 2000, the Commission on Human Rights appointed a Special Rapporteur, who is currently Raquel Rolnik. Her mandate focuses particularly on the effects of mega-events on the right to adequate housing, on post-disaster and post-conflict reconstruction, and on the impact of climate change on the right to adequate housing, migrants and housing, and social inclusiveness (UN Doc A/63/275, 13 August 2008).

Basic principles and guidelines on development-based evictions and displacement

Development induced displacements can be defined as the removal for the purposes of modernization and industrialisation - of particular groups of people, often indigenous and marginalized peoples, from geographic regions to which they have cultural and historical ties. At the core of development-induced displacement is the loss of land and home. (Commission on Human Rights, Economic, Social and Cultural Rights, report of the Special Rapporteur Miloon Kothari, 2004, UN Doc E/CN.4/2004/48, para 27). In this report (para 30-34) development-induced displacement was observed as growing in scale as a result of processes of economic globalization.

In 1997, the United Nations developed the Comprehensive Guidelines on Development-based Displacement (E/CN.4/Sub.2/1997/7/annex). It contains specific guidelines to prevent forced evictions and general obligations of the state in cases where there are no alternatives. The specific preventive obligations included the obligation of the state to prevent homelessness, to adopt appropriate measures of law and policy, to explore all alternatives and to expropriate only as a last resort. In addition, legal remedies are listed for people threatened with forced eviction and in cases where evictions are unavoidable the guidelines state that affected communities are entitled to compensation, the right to restitution and return, right to resettlement and they also list the criteria under which resettlement should take place.

In 2007, an international workshop resulted in the "Basic Principles and Guidelines on Development-Based Evictions and Displacement" (UN Doc A/HRC/4/18). These specifically focus on evictions carried out under the pretext of serving a "public good". In these guidelines the term "public good" is introduced as a justification for development-based evictions. Development-based evictions are in this document defined as:

> "evictions often planned or conducted under the pretext of serving the "public good", such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly, environmental purposes. Such activities also include those supported by international development assistance" (A/HRC/4/18, para. 8).

The Basic Principles and Guidelines provide guidance on measures and procedures to ensure that development-based evictions are not undertaken in violation of existing human rights standards and do "not constitute forced evictions" (A/HRC/4/18, para.10). The focus is to prevent forced evictions, but in cases where they are unavoidable it outlines actions states should take and the remedies in terms of compensation, restitution and the right to return.

Food and Agriculture Organization (FAO) guidelines

FAO (2008) has developed guidelines for compulsory acquisition of land and compensation. Known as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO, 2012), these guidelines were developed in a consultation with United Nations' agencies, government officials, civil society organizations, private sector representatives, international organizations and academics. One on-going discussion is on how far these guidelines, that have a rural and peri-urban focus, are also applicable to urban areas.

FAO's position is that guidelines for compensation should be based on the principles of equity and equivalence. The principle of equivalence is crucial because, according to FAO, "affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition" (FAO, 2008:23). This principle of equivalence is to prevent corruption and not to distort land markets. Whether this is also applicable to urban areas and also to poorer groups in society is still under debate.

FAO also acknowledges that financial compensation on the basis only the loss of land rarely puts those affected in the same position as before the acquisition. In some countries, therefore, there is additional compensation or subsidies to reflect the compulsory nature of the acquisition. In practice, the FAO guidelines state that given that acquisition is to support development, there are strong arguments for compensation (FAO, 2008: 23). Whether a pro-poor component can and should be included in the acquisition process is still under debate.

FAO's guiding principles for compulsory acquisition and compensation:

1. Equivalence: people should receive compensation that is no more or no less than the loss resulting from the compulsory taking of their land.
2. Balance of interests: the process should safeguard the rights of people who lose ownership or use rights while ensuring that the public interest is not jeopardized.
3. Flexibility: the law should be specific enough to provide clear guidelines, but flexible enough to determine an appropriate equivalent compensation in specific cases.
4. Compensation should address both *de facto* and *de jure* rights in an equitable manner.
5. Fairness and transparency: the negotiating powers of the acquiring agency and affected people should be as equal as possible (FAO, 2008: 23-24).

The principles of equity and equivalence, according to FAO (2008:24), can only be established through negotiations in a market economy. Negotiations between the acquiring agency and the people on the land should establish the amount of compensation to be paid. The question is how we can expect vulnerable groups to be capable of gathering sufficient information and evidence to support their claim for fair compensation and to resist market pressures. Also the question remains what is meant with "some form of fair payment".

The Committee on World Food Security (CFS) officially endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO, 2012). In doing so, members state subscribe to a set of principles and internationally accepted standards for responsible practices. Countries can then use the Guidelines as they develop their own strategies, policies, legislation and programmes in collaboration with other land actors including government authorities, the private sector, civil society and citizens at large.

Declaration on the Right to Development (DRD)

The United Nations General Assembly adopted the DRD in 1986 in its resolution 41/128.

The right to development is an inalienable right by virtue of which every person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (article 1.1 Declaration on the Right to Development, 1986). Under the declaration, states (as the duty-bearers) have the primary responsibility for the creation of national and international conditions favourable to the realization of the Right to Development (article 3).

2.3 International frameworks

The following section presents the internationally developed frameworks related to displacement that include relevant components that for improving guidelines and practices governing evictions, acquisition, acquisition and compensation.

The Human Rights Based Approach to Development (HRBA)

A human rights based approach is a conceptual framework for human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The approach identifies right holders and their entitlement and corresponding duty bearers and their obligations, and works to strengthen the capacities of right-holders to make their claims and of duty-bearers to meet their obligation.

A human rights based approach focuses on the realization of the rights of the excluded and marginalized populations, and those whose rights are at risk, building on the premise that a country cannot achieve sustained progress without recognizing human rights principles as core principles of governance (UN, 2006: 15-16).

The United Nations Development Group (UNDG) adopted the Statement of Common Understanding on Human Rights-Based approaches to Development Cooperation and Programming in 2003. Its purpose is to ensure that UN agencies, funds and programmes apply a common Rights-Based Approach to common programming processes.

It has as common principles that all programmes for development cooperation should work towards the progressive realization of human rights and that human rights standards and principles from the Universal Declaration of Human Rights and other human rights instruments should guide all development cooperation (http://hrbaportal.org).

The World Commission on Dams (WCD)

The WCD is not part of the United Nations system, but as their report is an influential framework for development decision-making it is included here. In 2000, the WCD published its report on dams that was based on more than two years of study, dialogue and reflection by the Commission, the WCD secretariat, the WCD stakeholders' forum and hundreds of individual experts and affected people. The Commission identified the following core values for deciding on proposed water and energy development projects: equity; efficiency; participatory decision making; sustainability; and accountability. The WCD proposed that, firstly, the rights context for a proposed project needs to be clarified as an essential step in identifying those legitimate claims and entitlements that may be affected by the project or its alternatives. After that, the assessment of risk adds an important dimension to understanding how, and to what extent, a project may impact on people's rights. This approach then can lay the basis for a greatly improved and significantly more legitimate decision-making on water and energy resource development. The WCD has developed a framework, which builds upon international recognition of human rights, the right to development and the right to a healthy environment. Within this framework the Commission developed seven strategic priorities and related policy principles:

1. Gaining public acceptance.
2. Comprehensive options assessment.
3. Addressing existing dams.
4. Sustaining rivers and livelihoods.
5. Recognizing entitlement and sharing benefits.
6. Ensuring compliance.
7. Sharing rivers for peace, development and security (WCD, 2000: xxvii-xxxv).

The IASC Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disasters

The Inter-Agency Standing Committee (IASC) is an inter-agency forum for coordination, policy development and decision-making involving key United Nations and non-UN humanitarian partners. It was established in 1992 in response to a UN General Assembly Resolution on strengthening of humanitarian assistance. Principles of the IASC Operational Guidelines on Human Rights and Natural Disasters are:

1. People affected by natural disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against.
2. States have the primary duty and responsibility to provide assistance to persons affected by natural disasters and to protect their human rights.
3. Organizations providing protection and assistance to persons affected by natural disasters accept that human rights underpin all humanitarian action. In situations of natural disaster they should therefore respect the human rights of those affected and advocate for the promotion and protection of those rights to the fullest extent.
4. Organizations providing protection and assistance in situations of natural disasters should be guided by these Operational Guidelines in all of their activities.
5. All communities affected by a natural disaster should be entitled to easy accessible information concerning: (a) the nature and level of disaster; (b) the possible risk mitigation measures; (c) early warning information; and (d) information on ongoing assistance, recovery efforts and their entitlements. They should be consulted and given the opportunity to take charge of their own affairs.
6. These Operational Guidelines seek to improve the practical implementation of international instruments protecting human rights. They shall not be interpreted as restricting, modifying or impairing the provisions of international human rights or, where applicable, international humanitarian and refugee law.

7. Organizations providing protection and assistance shall endeavour to have adequate mechanisms to ensure that the Operational Guidelines are applied and that human rights are protected (Brookings-Bern, 2008: 17-18).

The IASC Framework

The IASC Framework on Durable Solutions for Internally Displaced Persons in Situations of Natural Disasters provides guidance for various contexts, including natural disasters. It clarifies the concept of a durable solution, provides guidance on the process and conditions necessary to achieve it, provides guidance on the process and conditions necessary to achieve it, and criteria for determining to what extent a durable solution has been achieved. A durable solution is achieved when "internally displaced persons no longer have specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement" (OHCHR, 2011).

2.4 Policies of international financing agencies and others

The international financing agencies presented below all have policies on involuntary resettlement that are fundamentally similar, differing only in procedural details.

One challenge facing resettlement is harmonizing the policies of the financing agencies with those of the developing member countries. Crucial is the development of a single, overarching law on involuntary resettlement, which many countries have not yet developed.

World Bank

The World Bank has two main safeguard policies on displacement, evictions and resettlement: the Involuntary Resettlement Policy and the Indigenous People's Policy. Both aim to prevent or mitigate unnecessary harm and loss to people and their environment.

The Involuntary Resettlement Policy

The objectives of the World Bank's Operational Policy (OP) and Bank Procedure (BP) 4.12, which replaced Operational Directive (OD) 4.30, are:

1. Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable project designs.
2. Unavoidable resettlement activities should be conceived and executed as sustainable development programmes, providing sufficient investment resources to people displaced by the project to share in its benefits. Displaced people should be adequately consulted and should have opportunities to participate in planning and implementing resettlement programmes.
3. Displaced people should be helped to improve their livelihoods and living standards or to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the start of the project, whichever is higher (http://web.worldbank.org).

The operational policy covers direct economic and social impacts that both result from Bank-assisted projects, and are caused by two factors: a. the involuntary taking of land resulting in relocation or loss of shelter; loss of assets or access to assets; or loss of income sourced per means of livelihood, whether or not the affected persons must move to another location; or b. the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

To address the impacts, borrowers have to prepare a resettlement plan or policy framework.

The Indigenous Peoples Policy

The Indigenous Peoples Policy (OP/BP 4.10) requires that (amongst others):

1. For all investment projects in which indigenous peoples are present, or have collective attachment to the project area, the Bank's Task Team (TT) consults with the regional unit responsible for safeguards, and with the legal department throughout the project cycle.

2. When a project affects indigenous peoples, the TT assists the borrower in carrying out free, prior, and informed consultation with affected communities about the proposed project throughout the project cycle, taking into consideration the following:
   a. "Free, prior, and informed consultation" is consultation that occurs freely and voluntarily, without any external manipulation, interference, or coercion, for which the parties consulted have prior access to information on the intent and scope of the proposed project in a culturally appropriate manner, form, and language.
   b. Consultation approaches recognize existing indigenous peoples organizations (IPOs).
   c. The consultation process starts early to allow for time to understand and incorporate concerns and recommendations of indigenous peoples into the design; and
   d. A record of the consultation process is part of the project files (http://web.worldbank.org).

A problem is that the Bank does not correct the drop in livelihoods after displacement and it thereby implicitly fails to reach its policy objective (Cernea, 2010, personal communication).

The World Bank Inspection Panel

The Inspection Panel was set up in 1993 as an independent forum for people who feel that they have been adversely affected by Bank projects as a result of the Bank's lack of compliance with its own policies (The Inspection Panel, 2009: ix). The panel's limitation is that it only deals with complaints by affected people. It is not mandated to investigate violations not filed by affected communities.

The International Finance Corporation (IFC)

The IFC is part of the World Bank group. It followed involuntary the Bank's resettlement policy OD 4.30 prior to adopting its own Sustainability Policy and Performance Standard 5. The Performance Standards cover issues such as labour and biodiversity.

Performance Standard 5's objectives on land acquisition and involuntary resettlement are:

1. To avoid or at least minimize involuntary resettlement wherever feasible by exploring alternative project designs.
2. To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
3. To improve or restore the livelihoods and living standards of displaced people.
4. To improve living conditions among displaced people through provision of adequate housing with security of tenure at resettlement sites. (http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

Some critics say that the IFC shifted from World Bank policies to the Performance Standards by abbreviating the Involuntary Resettlement and Indigenous Peoples policies, and they claim the policies were condensed into one document, thereby sacrificing important requirements. The contraction diluted critics' consent and made standards less exacting and less protective of the affected communities (Cernea, personal communication, 2010).

Critics ask why the IFC has "standards" for lending to the private sector are below the Bank's standards for public sector, state-financed projects. Private sector projects are for profit by definition and standards of compensating for harm and losses imposed by large private enterprises and corporations on small private (and often poor) land owners should be at least as high as the Bank's standards for public projects (Cernea, personal communication, 2010).

The Equator Principles

In 2006, about 40 financial institutions worldwide, representing more than 80 per cent of global project financing, adopted the Equator Principles. These principles follow IFC social and environmental performance standards, including those on involuntary resettlement.

The Equator Principles is a "voluntary code that depends on the commitment and transparency of each signatory financial institution" (Price, 2009: 275). "Their application resulted in project-specific supplementary measures being designed to top up national legal and regulatory frameworks and not, as yet, a substantive revision of the legal normativity of a member country. The involuntary resettlement policies are applied through the policy and legal frameworks of the borrower countries. This brought certain international policy principles into contention with national laws". As examples (Price, 2009: 276) mentions the policy principle that lack of formal title to land is not a bar to compensation has been resisted by certain national governments opposing this provision if it runs counter to national law. This contention has led to negotiated, project-specific agreements topping up provisions for those lacking formal title. Alternatively "negotiated, project-specific agreements may specify that those displaced who have a "legalisable" land title can be compensated, assisted and "legalized' under a process set forth in the resettlement plan".

The Asian Development Bank (ADB)

ADB's policy on involuntary resettlement became effective in 1996 and, according to Price (2003), draws on the World Bank's OD 4.30.

The ADB's Safeguard Policy Statement (SPS) was implemented in 2010 and sets out the policy objectives, scope and triggers, and principles for three key safeguards: environmental safeguards, involuntary resettlement safeguards, and indigenous peoples' safeguards.

The SPS superseded the three safeguard policies including the 1995 Policy on Involuntary Resettlement. The ADB Involuntary Resettlement Safeguards do not per se deal with evictions, but the former are triggered by expropriation due to development investment projects in the forms of involuntary acquisition of land and involuntary restrictions on land use or on access to legally designated parks and protected areas, mitigated by compensation.

The objectives of the involuntary resettlement safeguards are as follows:

1. To avoid involuntary resettlement wherever possible.
2. To minimize involuntary resettlement by exploring project and design alternatives.
3. To enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels.
4. To improve the standards of living of the displaced poor and other vulnerable groups (ADB, 2009: 17).

The involuntary resettlement safeguards cover physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of:

1. Involuntary acquisition of land, or;
2. Involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary (ADB, 2009: 17).

The characteristics of the new approved SPS are:

1. The "involuntary resettlement safeguards are contained in the SPS.
2. The SPS defines displaced persons in a project area in terms of (i) persons with formal legal rights, (ii) persons without formal legal rights but recognized under national laws, and (iii) persons without formal legal rights. For the first two categories, the SPS requires the borrower/client to provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost

land and structures, adequate compensation for partially damaged structures, and relocation assistance. For the third category it is required to compensate them for the loss of assets other than land and for other improvement to the land at full replacement cost. There is a provision for secured tenure to relocation land.

3. The principle of compensation is guided by the objectives of the involuntary resettlement safeguards, which include enhancing or at least restoring the livelihoods of all displaced persons in real terms relative to pre-project levels, and improving the standards of living of the displaced poor and other vulnerable groups" (Biswanath Debnath, 2009, summary of expert group meeting on guidelines for evictions, expropriation and compensation, and ADB, 2009: 45).

Also, the borrower/client is required to conduct a socio-economic survey with the census office to identify all people who will be displaced by the project and to assess the project's socio-economic impacts (ADB, 2009: 46). A resettlement plan should be prepared in advance.

Currently, as part of the SPS, ADB is trying to harmonize its safeguard policies with those of its member countries. Technical assistance is provided to assist its developing member countries in strengthening their own safeguard systems and in enhancing their implementation capacity to address environmental and social issues.

The African Development Bank (AfDB)

The AfDB's involuntary resettlement policy covers involuntary displacement and resettlement caused by Bank-financed projects and applies they result in relocation of people or loss of shelter in the project area, assets being lots or livelihoods affected.

In 1995, the Bank released its revised Guidelines on Involuntary Displacement and Resettlement in 2003. The Bank's policy on involuntary resettlement is to ensure that when people must be displaced they are treated equitably and share in the benefits of the projects (AfDB, 2003: 9).

The policy has the following key objectives:

- To avoid involuntary resettlement where feasible, or minimize resettlement impacts where population displacement is unavoidable, exploring all viable project designs.
- To ensure displaced people get resettlement assistance, preferably under the project, so their standards of living, income earning capacity and production are improved.
- To provide explicit guidance to Bank staff and borrowers on the conditions regarding involuntary resettlement in bank operations to mitigate the negative impacts of displacement and resettlement and establish a sustainable economy and society.
- To set up a mechanism for monitoring the performance of involuntary resettlement programmes in Bank operations and remedying problems as they arise so as to safeguard against ill-prepared and poorly implemented resettlement plans.

Principles to prepare and evaluate involuntary resettlement are:

- The borrower should develop a resettlement plan that ensures displacement is minimized, and displaced people get assistance before, during and after their physical relocation. The aim of the plan is to improve displaced persons former living standards, income earning capacity, and production levels.
- Displaced persons and host communities should be meaningfully consulted early in the planning process and encouraged to participate in the planning and implementation of the resettlement programme.
- Particular attention should be paid to the needs of disadvantaged groups among those displaced.
- Resettlers should be integrated socially and economically into host communities so that adverse impacts on host communities are minimized.
- People should be compensated at "full replacement" cost before their move or before land and related assets are taken or project activities start, whichever occurs first.

- The total cost of the project should include the full cost of all resettlement activities, factoring in the loss of livelihood and earning potential (AfDB, 2003: 9-11).

The Inter-American Development Bank (IDB)

The Involuntary Resettlement Policy of IDB, OP-710, was approved in 1998 (IDB, 1999: preface). It has two main principles guiding any resettlement operation:

1. Every effort should be made to avoid or minimize the need for involuntary resettlement.
2. When displacement is unavoidable, a resettlement plan must be prepared to ensure affected people get fair and adequate compensation and rehabilitation (ADB, 1999:6).

The IDB principles that should guide any resettlement programme are (IDB, 1999:1-4):

- Avoid or minimize population displacement.
- Ensure community participation.
- Regard resettlement as an opportunity for sustainable development.
- Define criteria for compensation.
- Provide compensation at replacement cost.
- Compensate for the loss of customary rights.
- Provide economic opportunities for the displaced population.
- Provide an acceptable level of housing and services.
- Address security issues.
- Consider host populations in resettlement plans.
- Obtain accurate information.
- Include resettlement costs in overall project costs.
- Consider the appropriate institutional framework.
- Establish independent monitoring and arbitration procedures.

The Organization for Economic Cooperation and Development (OECD)

Established in 1961, the OECD currently has 34 member countries. In 1991, it adopted a series of "good practice" guidelines on development aid and the environment, including its Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects. These call on designers and implementers to ensure people displaced by a project benefit from the changes. Donors and developing-country planners are advised on the elements to consider in preparing a resettlement action plan, how to involve the community, and effective sequencing of steps in planning and implementation (OECD, 1992: 4).

This working paper focuses on urban, development-induced displacements of people and forms part of a larger research synergy on housing rights and security of tenure that UN-Habitat has identified as a priority. This paper complements other studies published by UN-Habitat on related topics, most recently Forced Evictions: Global crisis, global solutions; Losing Your Home: Assessing the impact of eviction; and Monitoring Security of Tenure in Cities: People, land and policies.

Ten case studies are featured from around the world. They illustrate one or more of the practices employed in evictions and clearly demonstrate the variety of immediate causes of evictions depending on context and environment. Each case varies with regard to the consultation and compensation involved, and each highlights the difficulties in disentangling the concepts of eviction, acquisition and expropriation, and contextualizing their relationship.

Some of the case studies illustrate the way in which domestic laws have been applied to enforce an eviction; others focus on international laws, policies and guidelines governing compensation or the manner in which evictions should be carried out. Differences in each country's approach to the human rights of people who are evicted, as well as the range in the level of violence used to carry out an eviction, are explained.

Finally, some conclusions are presented as a starting point for further discussion and investigation. These should be of particular interest to people affected by evictions and displacements, and by those whose work focuses on improving the rights of evictees and on advocacy, or whose projects and programmes may lead to displacements.