



Forced Evictions

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INTRODUCTION

Every year, millions of people around the world are threatened by evictions or forcibly evicted, often leaving them homeless, landless, and living in extreme poverty and destitution. Forced evictions commonly result in severe trauma and set back even further the lives of those that are often already marginalized or vulnerable in society.

Forced eviction occurs throughout the world, in developing and developed countries alike, in the context of development or emergencies and reconstruction. Accelerating urbanization, climate change and globalization, financial and other global crises have contributed to making forced evictions even more acute and complex.

Forced evictions constitute a distinct phenomenon under international law. Many of their consequences are similar to those of arbitrary displacement and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities.

The international community has repeatedly stated that forced evictions are a gross violation of human rights, in particular the right to adequate housing.¹ This statement recognizes that human rights are interdependent, indivisible and interrelated. In addition to being a violation of the prohibition on arbitrary or unlawful interference with the home, forced evictions all too often result in other severe human rights violations, particularly when they are accompanied by forced relocation or homelessness. For instance, if no adequate alternative housing is provided, victims of forced evictions are put in life- and health-threatening situations and often lose access to food, education, health care, employment and other livelihood opportunities. Indeed, forced evictions often result in losing the means to produce or otherwise acquire food or in children's schooling being interrupted or completely stopped.

Forced evictions commonly result in people being pushed into extreme poverty and as such pose a risk to the right to life itself. They have also been found to be tantamount to cruel, inhuman or degrading treatment, particularly when carried out with violence or with discriminatory intent. During forced evictions, people are frequently harassed or beaten and occasionally subjected to inhumane treatment or killed. Women and girls are particularly vulnerable to violence, including sexual violence, before, during and after an eviction. Forced evictions may also result in indirect violations of political rights, such as the right to vote, if persons are rendered homeless. They can also have a profound detrimental psychological impact on evictees, in particular children, who have been found to suffer both short- and long-term effects.

¹ United Nations Commission on Human Rights resolutions 1993/77 and 2004/28.

In the context of forced evictions, the right to a remedy and to judicial or other accountability mechanisms, including to challenge the reasons for the forced eviction, is often denied, resulting in further human rights violations related to access to justice.

Development-based evictions are often planned or carried out to serve the “public good” or “public interest”, but do not provide protection for the most vulnerable, procedural guarantees or due process. This is the case of many development and infrastructure projects, such as large dams or mining and other extractive industries, large-scale land acquisitions, urban renewal, city beautification, or major international business or sporting events.

Problematically, evictions in the name of development in general do not benefit those most in need. For instance, rather than applying a human rights framework by which security of tenure and active, free and meaningful participation of slum dwellers in development decisions are prioritized, some countries have used slum clearance and forced evictions in an attempt to meet Millennium Development Goal 7, running counter to the spirit of the Goal, which aims to achieve significant improvement in the lives of at least 100 million slum dwellers by the year 2020.

Post-conflict and post-disaster reconstruction or the improper use of disaster risk reduction laws or housing building standards may also become an excuse for evicting and displacing people from their homes.

Evictions are not an inevitable side-effect of urbanization, development and reconstruction. They are the result of human interventions.

This Fact Sheet examines the prohibition on forced evictions under the international human rights framework, specific obligations of States and others to refrain from and prohibit forced evictions, and how, when violations of rights and obligations do occur, there can be accountability and remedies.

I. WHAT ARE FORCED EVICTIONS?

Definition

Forced eviction is “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” (Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions).

Various elements, separately or combined, define a forced eviction:

- A permanent or temporary removal from housing, land or both;
- The removal is carried out against the will of the occupants, with or without the use of force;
- It can be carried out without the provision of proper alternative housing and relocation, adequate compensation and/or access to productive land, when appropriate;
- It is carried out without the possibility of challenging either the decision or the process of eviction, without due process and disregarding the State’s national and international obligations.

Types of evictions

Forced evictions from housing and land occur in many different situations, both in urban and in rural areas, and in developing and developed countries. The scale of eviction varies from a single individual, family, group or community to a neighbourhood, large-scale displacements, and involving thousands or tens of thousands of people. Here are situations that can lead to evictions—some of which will be discussed more in detail below:

- Urban and rural development projects, such as dams or roads
- Mining, extractive and other industrial activities
- City beautification, urban renewal/transformation, including disaster prevention
- Zoning, urban and spatial planning
- “Mega” events, such as major international and sporting events
- Large-scale land acquisitions and leases
- Privatization and/or speculation in housing and land
- Lack of legal security of tenure, protective legislation or implementation

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- Changes related to housing and land in countries in transition to a market economy
 - Non-deliverance or non-recognition of titles to land and housing, including unsettled land claims
 - Slum clearance and criminalization of poverty
 - Corruption and collusion between public and private interests
 - Real estate and private business actions, including real estate mobbing and fraudulent lending
 - Land grabbing, including by armed groups and paramilitaries
 - Discriminatory laws and practices, including in relation to inheritance
 - Living in informal settlements because of poverty or because of displacement owing to natural or human causes, rural-urban migration or other causes
 - Unaffordability and gentrification
 - Defaulting on rent or mortgage payments/foreclosures
 - Domestic violence or abuse
 - Housing tenure linked to employment permits (for instance, in the case of domestic or seasonal workers)
 - Political and ethnic conflicts using eviction, housing demolition and displacement as a weapon of war, for ethnic cleansing and population transfers
 - International and non-international armed conflicts and the targeting of civilian homes, including for collective punishment
 - So-called counter-terrorism measures
 - Punitive and retaliatory "law and order" actions (see box below)

On 16 December 2008, police carried out forced evictions and widespread demolitions of homes in the Tete Settlement [Port Moresby, Papua New Guinea]. According to police statements, their actions were a response to investigations into the murder of a business man in the vicinity of the settlement. According to reports, despite complying with the police ultimatum to cooperate and the police arrests of several suspects on 18 and 19 December 2008, the police used bulldozers to demolish the homes of around 300 people in the settlement. The Government did not provide alternative accommodation or otherwise support those who were made homeless. Residents reported being given no notice to leave and that the surprise attack by the police came after they complied with the ultimatum. On 22 December 2008, the National Court granted an order in favour of residents being allowed to move back to homes in the settlement and restraining the police from causing further destruction to the properties.

Source: United Nations, "Call for Government to protect against forced eviction in Port Moresby", press release, 22 July 2009. Available from http://pacific.ohchr.org/docs/PR_PNG_220709.doc.

Common misconceptions

- **Not all evictions are prohibited under international human rights law.** The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties. For instance, it may be necessary to displace people from hazard-prone land to protect lives. Nevertheless, even under these circumstances, the evictions should be in line with national law and relevant international standards, including due process.
- **An administrative or judicial decision alone does not necessarily result in a lawful or otherwise justified eviction.** Even if a national court has ruled in favour of an eviction or if the eviction is carried out in conformity with national legislation, the situation may still constitute a forced eviction if it does not comply with international human rights standards and State-related obligations.
- **Forced evictions do not necessarily involve the use of physical force.** People may be forced to move out of their homes or off their land because of harassment, threats or other intimidation. Cutting off the water supply or electricity or other attempts to make it untenable for someone to remain in their home may constitute forced eviction. If an occupant leaves home for a period of time, whether voluntarily or owing to a natural disaster or conflict for instance, and is then not allowed to return, the situation may also amount to forced eviction.
- **Protection against forced eviction is not linked to property rights.** Regardless of the type of tenure—ownership, public or private rental, cooperative housing, collective arrangements, lease, emergency or transitional housing or informal settlements—everyone has a right to be protected against forced eviction. Expropriations that are carried out without proper justification or in breach of international law are also considered to be forced evictions.

II. THE PROHIBITION OF FORCED EVICTION UNDER INTERNATIONAL LAW

Forced evictions constitute gross violations of human rights

Forced evictions violate, directly and indirectly, the full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments, including:

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- The right to life (International Covenant on Civil and Political Rights, art. 6.1)
 - Freedom from cruel, inhuman and degrading treatment (ibid., art. 7)
 - The right to security of the person (ibid., art. 9.1)
 - The right to an adequate standard of living, including the right to adequate housing, food, water and sanitation (International Covenant on Economic, Social and Cultural Rights, art. 11, and related Human Rights Council resolutions)
 - The right to non-interference with privacy, home and family (International Covenant on Civil and Political Rights, art. 17)
 - Freedom of movement and to choose one's residence (ibid., art. 12.1)
 - The right to health (International Covenant on Economic, Social and Cultural Rights, art. 12)
 - The right to education (ibid., art. 13)
 - The right to work (ibid., art. 6.1)
 - The right to an effective remedy (International Covenant on Civil and Political Rights, arts. 2.3 and 26)
 - The right to property (Universal Declaration of Human Rights, art. 17)
 - The rights to vote and take part in the conduct of public affairs (International Covenant on Civil and Political Rights, art. 25).²

These violations can be directly or indirectly attributed to:

- **The way evictions are decided** (for instance, no consultation or participation, no information, no recourse mechanisms)
- **The way evictions are planned** (for instance, no notification, no relocation available, compensation not provided, delayed or subject to unjustified conditions)
- **The way evictions are carried out** (for instance, at night or in bad weather, no protection for people or their belongings)
- **The use of harassment, threats, violence or force** (for instance, forcing people to sign agreements, using bulldozers when people are still salvaging their belongings, ...)
- **The results of the eviction** (for instance, disruption of children's education, interruption of medical treatment, mental trauma, loss of jobs and livelihoods, inability to vote because of homelessness, no access to basic services or justice because identity and property papers were destroyed during the evictions, etc.)

² For more information on these human rights, see the fact sheets produced by OHCHR and listed at the end of this publication.

Numerous decisions by national, regional and international human rights mechanisms have confirmed the multiple human rights violations resulting from forced evictions. For instance, the Human Rights Committee has stated that the practice of forced evictions arbitrarily interferes with the civil and political rights of the victims of such evictions, especially their rights under article 17 of the International Covenant on Civil and Political Rights (arbitrary or unlawful interference with privacy, family, home or correspondence).

When coupled with racial or ethnic discrimination, the Human Rights Committee has also found that forced eviction contravenes article 26 of the Covenant (equality before the law and non-discrimination in this context) and when affecting indigenous people and minorities contravenes its article 27 (discrimination against an ethnic, religious or linguistic minority). The Committee against Torture has found that, in certain circumstances, the burning and destruction of houses constitute acts of cruel, inhuman or degrading treatment or punishment. (See also chap. IV below.)

Forced evictions are generally discriminatory or lead to discrimination

In many instances, the victims of forced evictions are those belonging to specific groups of the population: the poorest, communities facing discrimination, the marginalized and those who do not have the clout to change the decisions and designs of the project leading to their displacement. It is often their very poverty that subjects the poor to displacement and resettlement and being perceived as targets of least resistance.

According to the Special Rapporteur on adequate housing, “forced evictions intensify inequality, social conflict, segregation and ‘ghettoization’, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.”³

Discrimination is frequently a factor in forced evictions. Discrimination means any distinction, exclusion or restriction made on the basis of various grounds which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights. It is linked to the marginalization of specific population groups and is generally at the root of fundamental structural inequalities in society. Prohibited discrimination can exist in either the public or the private sphere. Rights can be violated through the direct or indirect action or omission by States, including through their institutions

³ Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

or agencies at the national and local level, as well as in their international cooperation and assistance.

Those at heightened risk of forced eviction are often placed in such situations on account of discrimination. For instance, those in informal settlements or otherwise lacking security of tenure are often marginalized groups. Additionally, racial or ethnic groups could be targets of forced eviction specifically because of their race, ethnicity or religion.

For instance, minorities often face forced evictions as a consequence of discrimination, conflict or ethnic cleansing, or because they constitute a socially excluded, destitute or marginalized part of society. Such forced evictions have been condemned by the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture. For instance, the Committee against Torture has found that State acquiescence to the violent forced eviction of an ethnic minority community amounted to cruel, inhuman and degrading treatment. Similarly, the European Committee of Social Rights has found that forced eviction, when coupled with State complicity in measures resulting in the violation of human rights of vulnerable groups, including racial minorities, amounts to an aggravated violation of the right to adequate housing. It considered that such cases are so egregious that complaints involving such forced evictions should be expedited and require the urgent attention of all Council of Europe member States.⁴

Committee on the Elimination of Racial Discrimination, general recommendation No. 27 (2000) on discrimination against Roma

The Committee notes that State measures to improve the living conditions of the Roma should include:

- Acting firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing;
- Acting firmly against local measures denying residence to and unlawful expulsion of Roma; and
- Refraining from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.

Discrimination in access to housing, including public and private rental housing, may put certain categories of the population, such as migrants, in insecure tenure that can eventually lead to an eviction. This situation may force

⁴ See *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009.

migrants to live in the poorest, most insecure accommodation, or in informal settlements, to resort to hot-bedding (i.e., sleeping in the same bed in shifts), or to put up with abuse by employers to avoid becoming homeless. Migrants, who may not be aware of administrative and judicial mechanisms and not speak the language, can be particularly vulnerable to evictions.

Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non-citizens

State parties to the International Convention on the Elimination of All Forms of Racial Discrimination should “guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens...”.

Forced evictions violate the rights to adequate housing and to security of tenure

Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing

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.

Security of tenure means that, whether living in public or private rental accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property, everyone should enjoy the protection of the law against being arbitrarily displaced from housing and land.

The prohibition of forced evictions is a legal measure that can be taken immediately and is not dependent on resources.

Lack of title and residency in informal settlements are often used as a justification for forced evictions. However, respect for human rights is independent from a particular status, including ownership. For instance, if a State is unable to fulfil the right to adequate housing for all, it should consider various solutions, including allowing people to provide some level of housing on their own, even if this is done through the creation of informal settlements.

States are also obliged to take immediate measures aimed at conferring legal security of tenure on those persons and households currently lacking such protection, in genuine consultation with them. This obligation was restated in various inter-governmental forums and conference outcomes, including the Habitat Agenda.

We [States] further commit ourselves to the objectives of: ...

(b) Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies; ...

(n) Protecting all people from and providing legal protection and redress for forced evictions that are contrary to the law, taking human rights into consideration; when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.

Source: The Habitat Agenda.

Unfortunately, in many situations, decision makers prefer to carry out an eviction instead of addressing the core issues. Consequently, people evicted from informal settlements will join or create another informal settlement elsewhere because they do not have any other choice and the root causes of their housing situation have not been addressed.

The urban poor are not just those living in informal settlements, however. Homelessness is a serious human rights violation and can be the result of a lack of affordable housing, often on account of gentrification and speculation or other market forces and coupled with racial or ethnic discrimination. Homeless persons often have to resort to living in informal settlements, such as in tent cities, which come under threat of forced eviction. Forced eviction can also occur when public or social housing is privatized or when private landlords seek to increase rents and due process protections are not available. The criminalization of homelessness through laws and practice is another factor that exacerbates the plight of those already suffering from forced evictions.

Forced evictions can violate the right to food

With almost 870 million people chronically undernourished in 2010–12, the number of hungry people in the world remains unacceptably high.⁵ For the vast majority—smallholders or agricultural workers, herders, artisanal fishers and members of indigenous communities—access to land is a condition for the achievement of an adequate standard of living,⁶ including the right to food.

⁵ Food and Agriculture Organization of the United Nations (FAO), World Food Programme (WFP) and International Fund for Agricultural Development (IFAD), *The State of Food Insecurity in the World 2012: Economic Growth is Necessary but Not Sufficient to Accelerate Reduction of Hunger and Malnutrition* (Rome, FAO, 2012).

⁶ "Report of the Special Rapporteur on the right to food" (A/65/281).

The right to adequate food is understood as the right to have physical and economic access to food or *the means to procure it*, including by producing or purchasing it. Forced evictions can undermine the enjoyment of the right to food by depriving people of their access to the means to procure food. For example, forced evictions can lead to hunger and malnutrition when such evictions deprive people and communities of their land, water and other resources on which they depend to produce food that they eat or sell. Evicted people may lose access to jobs or social protection schemes if they are relocated far from jobs or deprived of social entitlements as residents of an area. This may leave them unable to buy food.

The minimum human rights principles applicable to large-scale land acquisitions or leases, developed by the Special Rapporteur on the right to food, prohibit forced evictions that are not consistent with international human rights standards.⁷ The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security emphasize that all forms of land, fishery and forest tenure should provide guarantees against forced evictions, including in the context of expropriation.

Forced evictions may violate international humanitarian law and constitute international crimes

Population transfers, mass expulsions, ethnic cleansing or similar practices which alter the ethnic, religious or racial composition of the population, collective punishment, and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities also constitute forced evictions.⁸

The Geneva Conventions of 1949 and their Additional Protocols of 1977 prohibit the forced displacement of the civilian population and the extensive destruction and appropriation of property not justified by military necessity in the contexts of both international and non-international armed conflict, which may also amount to forced eviction.⁹

Article 8 of the Rome Statute of the International Criminal Court includes as war crimes the extensive destruction and appropriation of property not

⁷ A/HRC/13/33/Add.2, annex, principle 2.

⁸ See, for instance, the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I), para. 5, and the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

⁹ See, for instance, article 53 of the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, article 54 of the First Additional Protocol to the Geneva Conventions of 1949 and article 14 of the Second Additional Protocol.

justified by military necessity and carried out unlawfully and wantonly in the context of international or non-international conflicts. It clearly provides that “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory” is a war crime (art. 8 (2) (b) (viii)).

Article 7 of the Rome Statute states that deportation or forcible transfer of population is a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

“Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

Source: Rome Statute, article 7 (2) (d).

Forced evictions can cause arbitrary displacement and violate the rights of internally displaced persons and refugees

Forced displacement can be caused by conflict or other human activity as well as by natural disasters. Whether those affected are refugees or internally displaced persons, national, regional and international human rights and humanitarian law specifically protects against arbitrary and forced displacement.

According to the Guiding Principles on Internal Displacement, **internally displaced persons** (IDPs) are “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.”

Guiding Principle 6 provides the central right to protection from arbitrary displacement:

1. *Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.*
2. *The prohibition of arbitrary displacement includes displacement:*
 - (a) *When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;*
 - (b) *In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;*
 - (c) *In cases of large-scale development projects, which are not justified by compelling and overriding public interests;*
 - (d) *In cases of disasters, unless the safety and health of those affected requires their evacuation; and*
 - (e) *When it is used as a collective punishment.*
3. *Displacement shall last no longer than required by the circumstances.*

Guiding Principle 6 prohibits arbitrary displacement and requires protection from it. Such protection implies a number of procedural and other guarantees. The authorities must ensure that all feasible alternatives are explored in order to avoid displacement and, where displacement is unavoidable, measures must be taken to minimize it and its negative consequences (Guiding Principle 7.1). In addition, procedural guarantees require, inter alia: that a specific decision to take such a measure shall be taken by the responsible State authority; that those to be displaced shall have access to full information, including on compensation and relocation as relevant; that their free and informed consent shall be sought; that the authorities shall take measures to involve those affected, especially women, in decisions relating to the relocation; and that those to be displaced shall have access to an effective remedy, including the legal review of the decision (Guiding Principle 7.3).

Should displacement be unavoidable, there are a number of guarantees regarding the conditions under which it should take place, with an emphasis on the responsibility of the authorities to provide—to the greatest practicable extent—adequate accommodation, and that the displacement should be carried out in conditions of safety, and with due regard for the preservation of family unity, nutrition, health and hygiene (Guiding Principles 8 and 7.2). The overarching standard is that displacement “shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected” (Guiding Principle 8). All IDPs have the right to an adequate standard of living and, at a minimum, the competent

authorities shall provide IDPs with and ensure safe access to basic shelter and housing, regardless of the circumstances and without discrimination (Guiding Principle 18).

Guiding Principle 9 emphasizes that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

Under the Convention relating to the Status of **Refugees**, State parties are obliged to treat refugees as favourably as possible with regard to housing and in any event not less favourably than aliens generally in the same circumstances (art. 21).

In addition, refugees and internally displaced persons have a right to the protection of their property and possessions (Guiding Principle 21), to return to their homes or places of habitual residence and to the restitution of the housing and land from which they have been forcibly evicted.¹⁰ Moreover, Guiding Principles 28 to 30 provide that the authorities have a duty to establish conditions allowing IDPs to, *inter alia*, return to their homes or places of habitual residence, where they should have equal access to public services, and to assist them to recover their property and possessions to the extent possible. If this is not possible, they should assist them in obtaining “appropriate compensation or another form of just reparation.” Housing, land and property restitution is also key to achieving durable solutions for IDPs and refugees returning to their country of origin.¹¹

Following displacement some people end up living in camps or settlements. However, the majority of displaced persons live among the residents of host communities. Although persons living in displacement camps should be given special protection, they too are often subjected to forced eviction from such camps. In this context, evictions or relocations that do not comply with international human rights standards could be considered as forced evictions and contravene international law requiring special protection for displaced persons. According to Guiding Principle 15 (d), IDPs “have the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”

¹⁰ See, for instance, the “Pinheiro” Principles on housing and property restitution for refugees and displaced persons (E/CN.4/Sub.2/2005/17), principle 2.1.

¹¹ “Framework on Durable Solutions for Internally Displaced Persons” (A/HRC/13/21/Add.4) and “Durable solutions: Ending displacement in the aftermath of conflict”, Secretary-General’s Policy Committee decision 2011/20 on durable solutions, 4 October 2011.

Inter-American Commission on Human Rights expresses concern over situation in camps for displaced persons in Haiti

... The IACHR has also decided to grant precautionary measures in relation to the forcible evictions from the IDP camps. ... The IACHR also recommended that the State of Haiti adopt a moratorium on expulsions from the IDP camps until a new government can take office; offer those who have been illegally expelled from the camps a transfer to places that have minimum health and security conditions, and then transfer them if they so agree; guarantee that internally displaced persons have access to effective recourse before a court and before other competent authorities; implement effective security measures to safeguard the physical integrity of the inhabitants of the camps, guaranteeing especially the protection of women and children; train the security forces in the rights of displaced persons, especially their right not to be forcibly expelled from the camps; and ensure that international cooperation agencies have access to the camps.

Source: Inter-American Commission on Human Rights, press release N° 114/10, 18 November 2010.

IDPs have the right to freedom of movement and residence and to voluntarily choose a durable solution, namely whether to return, integrate locally in their host community or resettle in another part of the country. However, in some cases, decades after their displacement to and de facto settlement in urban peripheries, IDPs are forcibly evicted and requested to go back to their original place of residence. It is essential that such decisions remain voluntary and informed. The guarantee of freedom of movement and choice of residence of internally displaced persons is also recognized in instruments such as the Kampala Convention.¹²

Forced evictions can violate indigenous peoples' right to land

Indigenous peoples enjoy the protection not only of general human rights standards, but also of standards specifically applicable to them. These standards recognize the distinctive cultural relationship that indigenous peoples have to their lands and protect them from displacement. The United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples enjoy special protections to ensure that actions that result in dispossessing them of their lands are prevented or remedied. In this context, indigenous peoples cannot be forcibly removed from their lands without their free, prior and informed consent and after agreement on just and fair compensation

¹² African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009).

and, where possible, with the option of return. These principles have been reaffirmed by the Committee on the Elimination of Racial Discrimination.¹³

The African Commission is of the view that the Endorois' forced eviction from their ancestral lands by the Respondent State interfered with the Endorois' right to religious freedom and removed them from the sacred grounds essential to the practice of their religion, and rendered it virtually impossible for the Community to maintain religious practices central to their culture and religion.

Source: African Commission on Human and Peoples' Rights, Centre for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, communication No. 276/2003, decision of 4 February 2010.

Forced evictions have a severe impact on the rights of women

I saw my home, which my husband and I had built with labour and love across ten years, pulled down to rubble in 10 minutes. We had invested our life savings ... in the house.

Indian woman evicted from her home in Bhabrekar Nagar

Source: Centre on Housing Rights and Evictions, Violence: The Impact of Forced Eviction on Women in Palestine, India and Nigeria (2002).

While forced evictions have a detrimental impact on all, women often tend to be disproportionately affected and bear the brunt of abuse during forced evictions.

Forced eviction entails direct and indirect violence against women before, during and after the event. Frequently, women are the direct targets of psychological or physical intimidation and harassment before the eviction. Stress and anxiety linked with the threat of eviction or the eviction particularly affect pregnant women. In societies with traditionally defined gender roles, the eviction is often timed to take place when men are absent and women alone so that there will be less resistance. During evictions, verbal abuse and physical violence, including sexual violence, often take place.

¹³ See its general recommendation No. 23 (1997) on indigenous peoples. See also the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Following an eviction, women are often more vulnerable to abuse, particularly if they become homeless or forced to move to inadequate housing. The lack of shelter and privacy can lead to increased exposure to sexual and other forms of violence.

Despite their own stress and anxiety, women often attempt to recreate a secure family environment and mend the pieces of a shattered community.

In many places, women face severe discrimination relating to ownership of housing and land, including marital property, as well as inheritance. In some social and cultural contexts, housing, land and property are often understood, recorded or registered in the name of men, and women are consequently left dependent on their male relatives for tenure security. In this context, women are more exposed to eviction upon the death of their husband or father. Such discrimination can be enshrined in statutory laws as well as in customary laws and practices that fail to recognize women's equal rights to men. In some cases, a woman's decision to remain in her home or on her land may result in violence from her in-laws or even the community at large and in social exclusion. Relatives may abuse widows with impunity, as these matters are seen as a private family affair. In some situations, domestic violence can also be the cause of eviction.

The Commission on Human Rights,

... reaffirming that forced relocation and forced eviction from home and land have a disproportionately severe impact on women, including when these are committed by spouses or in-laws ...

Urges Governments to address the issue of forced relocation and forced evictions from home and land and to eliminate its disproportionate impact on women ...

Source: Commission on Human Rights resolution 2005/25 on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing.

Forced evictions have a severe impact on the rights of children and their development

Housing plays a crucial role in children's growth and development. While forced evictions are traumatic for anyone, they can be particularly traumatic for children and family stability. Testimonies from children describe the violence, the panic and confusion of the evictions and the experience of sleeping and managing their lives out in the open. They frequently develop post-traumatic syndromes, including nightmares, anxiety, apathy and with-

drawal.¹⁴ The demolition or the removal from their homes is a humiliating experience for the whole family, but in particular for children, who feel that they and their families are expendable and whose self-esteem takes a hit.¹⁵ In addition to the loss of their homes and the related trauma, children often lose access to schools and health care. Evictions and displacements heighten the risk of family separation, which may leave children vulnerable to trafficking and other abuses.

The eviction created panic for everyone. Children were crying. I could not see anything and felt too weak to pack or collect any belonging due to the teargas. I could only grab my children. Two of my children got sick due to the teargas and they were vomiting for two days afterwards. Today, my children are still frightened when they see a bulldozer; they ask if the bulldozer is coming to bulldoze our home again.

Kompheak, 40-year-old mother of four, evicted from Dey Krahorm in January 2009

Source: OHCHR-Cambodia, "Eviction and resettlement in Cambodia: Human costs, impacts and solutions – A study on selected urban resettlement cases", 2012.

Human rights defenders and victims of forced evictions are often targeted

As stated in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone is entitled, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

In all circumstances, including evictions and displacement, everyone should be able to:

- Conduct human rights work, form associations and non-governmental organizations (NGOs);
- Meet or assemble peacefully; seek, obtain, receive and hold information;

¹⁴ T. Rahmatullah, *The Impact of Evictions on Children: Case Studies from Phnom Penh, Manila and Mumbai* (New York, United Nations Economic and Social Commission for Asia and the Pacific and the Asian Coalition for Housing Rights, 1997).

¹⁵ See "Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari" [E/CN.4/2004/48].

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- Make complaints about official policies and acts relating to human rights and have such complaints reviewed;
 - Offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
 - Attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
 - Lawfully exercise the occupation or profession of human rights defender; solicit, receive and use resources for the purpose of protecting human rights (including funds from abroad).

Unfortunately, in many parts of the world, individuals and communities defending their human rights against evictions, their lawyers and other groups helping them are harassed, threatened and in some cases pay for their commitment with their lives. The Special Representative of the Secretary-General on human rights defenders affirmed that “the second most vulnerable group when it comes to the danger of being killed because of their activities in the defence of human rights, are defenders working on land rights and natural resources” (A/HRC/4/37).

In 2011, Ana Córdoba, a vocal activist for land rights, was shot dead by an unidentified gunman on a bus in Colombia’s second city, Medellín. “They are going to kill me, but what I want is justice,” she used to say.

Source: Constanza Vieira, “Murdered activist’s children go into exile”, Inter Press Service, 15 June 2011.

III. WHAT ARE THE OBLIGATIONS ON STATES AND THE RESPONSIBILITIES OF OTHERS?

While eviction and resettlement should be a last resort, there are times when they are unavoidable. Displacing people from derelict buildings or hazard-prone areas, for instance, may be necessary to protect their lives and human rights. In those cases, evictions must be undertaken in full conformity with human rights standards and in a manner that prevents or mitigates any negative consequences. Indeed, necessary evictions and resettlement should leave those evicted better off.

Evictions may also be decided by a court in cases of persistent non-payment of rent or mortgage despite a proven ability to pay without having to compromise on other basic rights (including food, education and access to health care). Nonetheless, even in these situations, evictions should be in line with national law and relevant international standards, including due process protections.

Given the incidence and scale of eviction and displacement in the world, human rights bodies and expert mechanisms have defined the obligations of all in detail and provided guidance on how they can be fulfilled, in particular through the following:¹⁶

- Comprehensive human rights guidelines on development-based displacement (E/CN.4/Sub.2/1997/7, annex)
- Committee on Economic, Social and Cultural Rights, general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions
- Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)
- 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 (General Assembly resolution 60/147)
- Principles on housing and property restitution for refugees and displaced persons (E/CN.4/Sub.2/2005/17 and Add.1)
- Minimum human rights principles applicable to large-scale land acquisitions or leases (A/HRC/13/33/Add.2, annex)
- Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

Examples of the use of the basic principles and guidelines on development-based evictions and displacement

The High Court of Delhi, India, used the *basic principles and guidelines on development-based evictions and displacement* to lay down that an eviction should not take place without the provision of alternative land and housing and that evictees should not be placed in a worse situation after eviction (*Sudama Singh and others v. Government of Delhi*, Judgement of 11 February 2010).

The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, adopted by the African Commission on Human and Peoples' Rights on 24 October 2011 in Banjul, refer extensively to the prohibition of forced evictions and guidance provided in the *basic principles and guidelines on development-based evictions and displacement*.

¹⁶ Available from www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx (accessed 26 August 2013).

While the purpose of this Fact Sheet is not to analyse all these obligations in detail, the following section highlights some key elements that need to be taken into account if evictions are unavoidable.

A. General obligations

The prohibition of forced evictions is of immediate effect and not dependent on resources

By ratifying human rights treaties, States commit to giving effect to the rights enshrined in these instruments within their jurisdictions. While the implementation of some obligations could require financial resources and time, others are of immediate effect and do not require resources. This includes refraining from forcibly evicting people. In this context, States must provide all, irrespective of their type of tenure, a degree of security of tenure sufficient to guarantee legal protection against forced eviction, harassment and other threats in a non-discriminatory way.¹⁷

States should not allow the existing protection of economic, social and cultural rights to deteriorate unless there are strong justifications. In many cases, removing access to or use of housing—even if substandard—or changing the protection of different forms of tenure to the detriment of the residents could be considered as a deliberately retrogressive measure. To justify such a measure, a State would have to demonstrate that it adopted it only after carefully considering all the options, assessing the impact and fully using its maximum available resources.

Furthermore, the International Covenant on Economic, Social and Cultural Rights requires States to take steps, including “through international assistance and cooperation, especially economic and technical, to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures” (art. 2).

States must take all measures to prevent the occurrence of evictions

States have an obligation to provide all, regardless of their type of tenure, a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Security of tenure, as mentioned in many international instruments and commitments, such as the Habitat Agenda,

¹⁷ See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), as well as the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

has also been shown to encourage self-investment in housing, resulting in better living conditions. It is also required to realize the right to food.¹⁸ Various methodologies can be used to measure the progress in security of tenure, for instance through the development of indicators.¹⁹

Improving security of tenure

Developed by the Special Rapporteur on adequate housing to assist States and others in addressing the current tenure insecurity crisis faced by the urban poor in an increasingly urbanized world, the “Guiding principles on security of tenure for the urban poor” (A/HRC/25/54) cover ten areas:

- Strengthening diverse tenure forms
- Improving security of tenure
- Prioritizing in situ solutions
- Promoting the social function of property
- Combating discrimination on the basis of tenure
- Promoting women’s security of tenure
- Respecting security of tenure in business activities
- Strengthening security of tenure in development cooperation
- Empowering the urban poor and holding States accountable
- Ensuring access to justice

Examples of moratoriums on evictions through laws and practice

In the Philippines, the Urban Development and Housing Act of 1992 (Republic Act No. 7279) established a three-year moratorium on evictions as part of a wider effort to “uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services, and employment opportunities”.

In 2012, some 20 mayors in France declared a moratorium on evictions for people defaulting on their rents to prevent homelessness.

States are required to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing and to prevent forced evictions. States should

¹⁸ FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, guideline 8B.

¹⁹ See, for instance, United Nations Human Settlements Programme (UN-Habitat) and Global Land Tool Network (GLTN), *Monitoring Security of Tenure in Cities: People, Land and Policies* (Nairobi, UN-Habitat, 2011).

adopt specific national strategies to fulfil the right to adequate housing that are informed by the meaningful participation of different groups in society, particularly those commonly affected by forced evictions. Such measures and plans of action should make explicit the prohibition on forced eviction and stipulate that development schemes, for example, shall not result in forced eviction. Generally, the protection against forced evictions should be part of an overall national strategy or plan of action together with related issues such as security of tenure, adequate housing, poverty reduction and access to livelihood.

Muthurwa residents granted injunction against eviction (Kenya)

The residents of Muthurwa got a temporary reprieve when, with the help of the NGO Kituo Cha Sheria, they won a temporary injunction against the trustees of the Kenya Railways Staff Retirement Benefits Scheme.

The residents had been continually harassed by the Kenya Railways Staff Retirement Benefits Scheme, which had forced them to vacate their homes despite the lack of alternative housing. The homes of Muthurwa residents had been partially demolished, the water supply disconnected and toilets and sanitary facilities demolished.

On 17 February 2011, Justice Musinga issued a temporary injunction allowing the residents of Muthurwa to stay pending the full hearing of the case. The final judgement was delivered by the High Court of Kenya in August 2013 (Petition No. 65 of 2010).

Affordability is also an important element that States need to address to allow everyone access to adequate housing. For instance, the provision of affordable housing in the public and private market for the poor and low-income groups is a viable solution for these groups and prevents them from facing forced evictions on the basis of their inability to pay housing costs (rent, mortgage, etc.). It also offers an alternative to informal settlements.

Financial and housing crisis

The current crisis worsens affordability problems for housing and land across the world. It is also a blunt reminder that affordability concerns do not only affect the poor but also low-income groups and increasingly also middle-income groups. The discrepancy in the rise in incomes and housing and rental prices is crucial in this context, leading households to constantly fear losing their homes through defaulting on payments of their rents or mortgages.

Source: A/HRC/10/7, para. 49.

States have to protect all from forced evictions by third parties

The obligation to protect from forced evictions is of immediate effect and requires States to prevent third parties from interfering with the enjoyment of human rights, including any rights jeopardized by forced evictions. In this context, specific legislation or measures need to be adopted to ensure that the activities of private actors—such as landlords, property developers, landowners and various types of business enterprises—are compatible with human rights. States should, for instance, adopt legislation regulating the housing, rental and land markets, such as tenancy laws that protect tenants' due process, prevent discrimination and ensure human rights-compliant procedures if evictions are unavoidable.²⁰

Unlawful eviction and harassment by a landlord or an agent is considered a criminal offence in the United Kingdom under the Protection from Eviction Act of 1977.

Protection against the activities of non-State actors, including paramilitaries and other militia, that are conducive to land-grabbing and forced eviction is another well-defined obligation of the State.

A human rights-based approach is required in any situation involving evictions

The Special Rapporteur on adequate housing has called “for a combination of a humanitarian and a human rights approach to confront the situation of millions of people living in grossly inadequate housing conditions and those facing homelessness, landlessness, displacement and related violence”.

Source: A/HRC/7/16.

Poverty is both a cause and a consequence of evictions. On the one hand, the lack of options and of tenure security and the inability to afford housing may compel the poor to live in informal settlements and in fear of eviction. On the other, evidence shows that forced evictions generally result in further impoverishment or destitution.

One of the reasons for the increase in the number of urban poor is migration to cities by the rural poor and indigenous persons who are forcibly evicted from land. Indeed, the rural poor are often dependent on access to or control over land to realize their rights to an adequate standard of living, including their right to food, and when they are forcibly evicted, their other rights are violated, too.

²⁰ For more on State obligations to regulate business activities, see *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (United Nations publication, Sales No. 13.XIV.5).

In 2010, an estimated 830 million people resided in urban slums throughout the world.²¹ While urban sustainability is promoted through the provision of security of tenure and on-site upgrading, in reality informal tenancy status and marginalization often put the urban poor at heightened risk of forced evictions. And while the human rights-based approach to development should prioritize the needs of marginalized communities, in practice when forced eviction does occur, these urban poor are all too often further impoverished.

In an urban setting, evictions generally push people from city centres into the periphery with little or no access to basic services and livelihood opportunities. This entails more time wasted on transport—if available—to access services and jobs, and additional expenses. They also break the delicate social support systems in the old communities and neighbourhoods. In most situations, people will return to the place where they can earn their living and create another informal settlement from which they will eventually be evicted again, thus perpetuating a vicious circle.

The human rights-based approach to development integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The elements include links to the human rights standards, accountability to those affected for participating in decisions related to development, and non-discrimination and attention to vulnerable and marginalized groups.

Promotion of inclusiveness and participation in development:

- *While carrying out assessments and project design, have the widest possible consultations with the targeted groups been ensured?*
- *Have there been any efforts to ensure participation of the least powerful and assertive from these groups (i.e., women, people living with HIV, children, persons with disabilities, youth, non-citizens), including the creation of conditions to ensure their equal involvement in the process?*
- *Has the human rights-based approach to development been used to ensure the active, free and meaningful participation of those affected by the development processes?*
- *Have the legitimate interests of minorities been taken into account in the development of national policies and programmes including in the planning and implementing processes?*

Source: United Nations Development Programme (UNDP), *Marginalised minorities in development programming: A UNDP Resource Guide and Toolkit* (New York, May 2010), p. 114.

²¹ UN-Habitat, *State of the World's Cities 2010/2011: Bridging the Urban Divide* (London, Earthscan, 2010).

The Berea (Occupiers of 51 Olivia Road) case from South Africa provides an example of using the prohibition on forced eviction in the context of development-based displacement. Hundreds of poor families were to be forcibly evicted from their homes to make way for upscale urban development in Johannesburg. While their living conditions were indeed poor and their homes considered uninhabitable even by them, these families were to be forcibly displaced to the periphery of the city and thereby cut off from schools, health-care facilities and livelihood opportunities. In other words, the urban development of Johannesburg as originally planned would result in further impoverishing the poorest of the poor.

Using the human rights framework, these families held the authorities accountable for upholding human rights standards, including the right to adequate housing. In 2008, the Constitutional Court enforced their right to have human rights standards respected, protected and fulfilled, including not only the right to adequate housing, but also the right to benefit from development schemes and to participate meaningfully in all relevant decisions. In this case, the human rights-based approach to development was used effectively to equalize power dynamics between poor families facing forced eviction and governmental authorities, so that the families could be the architects of their own development solutions. The Court's decision allowed for the families to engage actively and meaningfully with the authorities to arrive at the provision of alternative, adequate housing. Today, these families are living in improved housing near the same schools, health-care facilities and the livelihood opportunities they came very near to losing.

*Source: See Constitutional Court of South Africa, *Occupiers of 51 Olivia Road v. City of Johannesburg and Others*, Judgement of 19 February 2008.*

B. Obligations when an eviction is unavoidable

Fully justified evictions may be permissible in exceptional circumstances

In many places, expropriations and evictions are carried out without genuine justification. "Public interest", "general welfare", "public welfare", "public good", "State interest", "national interest", "common well-being" or "serving the public good" have been commonly used to justify expropriations and evictions. While implying that the expropriation and/or

Housing professionals estimate that in most Asian cities, no more than 20 per cent of the informal settlements are on land that is genuinely needed for other urgent public development purposes, such as new roads, drainage lines, flood control projects or government buildings.

*Source: United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) and UN-Habitat, *Housing the Poor in Asian Cities – Eviction: Alternatives to the Whole-scale Destruction of Urban Poor Communities*, Quick Guides for Policy Makers, No. 4 (2008), p. 13.*

eviction of the few is for the good of the many, no other explanation is given and there is no control over such a decision.

Decisions based on such arguments need to conform to a number of conditions to protect human rights and the rule of law, for instance:

- Only exceptional circumstances justify the use of the “public interest” argument
- Be “reasonable” and carried out as a last resort when no alternative is available
- Be “proportional” (evaluation of the decision’s impact on and potential benefit for various groups, including through an eviction impact assessment)
- Need to promote general welfare and show evidence of such an outcome
- Non-discriminatory in law and in practice
- Defined in law and “foreseeable”
- Subject to control to evaluate their conformity with the constitution and the State’s international obligations
- Information on decisions and the criteria for their justification need to be public and transparent
- Subject to consultation and participation
- Effective recourse mechanisms should be available for those directly or indirectly affected.

It is fundamental to an evaluation of the reasonableness of State action that account be taken of the inherent dignity of human beings. The Constitution will be worth infinitely less than its paper if the reasonableness of State action concerned with housing is determined without regard to the fundamental constitutional value of human dignity.

Source: Constitutional Court of South Africa, Government of the Republic of South Africa & Others v. Grootboom & Others, Judgement of 4 October 2000, para. 83.

For evictions to be justified, they must be carried out (a) only in *the most exceptional circumstances*; (b) after *all feasible alternatives* to eviction that address the exceptional circumstance are explored *in consultation with the affected community*; and (c) after due process protections are afforded to the individual, group or community.²² Evictions should never be carried out in a discriminatory manner or render someone homeless or vulnerable to other human rights violations.

²² See Committee on Economic, Social and Cultural Rights, general comments No. 4 (1991) and No. 7 (1997).

1. Obligations before any eviction takes place

All alternatives to eviction have to be considered first

While there may be exceptional circumstances in certain cases, eviction is not always the only way of addressing them. Indeed, exploring all feasible alternatives to eviction is not only required by international human rights norms, such alternatives are also often less costly, and have better and more sustainable results than do evictions. These results are in large part due to the involvement of those affected by the eviction in the planning and development projects that affect their lives so profoundly.

Many alternatives to evictions have proven successful. For instance, providing security of tenure, legalizing or upgrading informal settlements can spark investment in housing; upgrading can improve dangerous or unhealthy living conditions; and land-sharing schemes can resolve land disputes between the urban poor and private landowners seeking to develop their land. Similarly, designing projects differently can reduce the number of people negatively affected by eviction or otherwise mitigate the projects' negative impact.

Alternatives to eviction

Securing tenure and then working with the poor to **upgrade** their informal settlements is one option to improve their housing and living conditions. This collaboration between authorities and communities can also be a way of ensuring better housing despite economic constraints.

Land sharing constitutes a compromise strategy for resolving land conflicts between communities that need land for housing and private landowners. "After a period of negotiation and planning, an agreement is reached to 'share' the land, where the settlement is divided into two portions. The community is given, sold or leased one portion ... for reconstructing their houses, and the rest of the land is returned to the landowner ... At the core of a land sharing process is the ability to translate needs and conflicting demands into a compromise which takes a concrete 'win-win' form, and which is acceptable to all parties involved."

Source: Housing the Poor in Asian Cities – Eviction, pp. 13 and 18.

Any project displacing people should also consider the possibility of restitution and return of the initial residents after the completion of the project.

All projects should incorporate an eviction impact assessment

Calculating the real cost to and the impact of evictions on the community and society is a prerequisite for any development project. The cost of eviction entails more than the market price of the homes the poor inhabit.²³

²³ See OHCHR and UN-Habitat, *A Loss More Significant Than They Think: A Review of Eviction Impact Assessment Methodologies* (2011).

Studies by social scientists and other experts spanning several decades point out the risks of displacement and impoverishment. For instance, the impoverishment risks and reconstruction (IRR) model considers elements such as landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property and social (community) disarticulation.²⁴

The considerably expanded research in the anthropology of resettlement has convergently concluded that the dominant outcome of displacement is not income restoration but impoverishment. The accumulated evidence is overwhelming, and it converges in many countries in Asia, Latin America, and Africa.

*Source: Michael M. Cernea, "Financing for development: benefit-sharing mechanisms in population resettlement", in *Development and Dispossession: The Crisis of Forced Displacement and Resettlement*, A. Oliver-Smith, ed. (Santa Fe, New Mexico, School for Advanced Research Press, 2009).*

Eviction impact assessments are therefore a powerful tool for designing development projects that are compliant with human rights, reach the target group and do not run counter to the initial intent. When actual costs are known, less harmful alternatives are more readily accepted. Such an evaluation is also key to ensuring all necessary measures are taken to minimize the impact of evictions that are unavoidable.

Obviously disaggregated data would be required to assess the differential impact on the different groups of the displaced population and the types of measures that can address their various needs.

Measurement of the impact needs to take into account the particular effect on each individual and group. For instance, the Special Rapporteur on violence against women notes that "while the entire family is affected by forced eviction, again it is the women who suffer most. Women will have to cope with the new circumstances, will have to fulfil their responsibilities as before, but with more limited means, and will need to work harder to make ends meet".

Source: "Economic and social policy and its impact on violence against women" (E/CN.4/2000/68/Add.5), para. 55.

If unavoidable, evictions must respect human rights and due processes

A common feature in many evictions is the lack of due process (the right to be treated fairly, efficiently and effectively by the administration of justice)

²⁴ Michael M. Cernea and Christopher McDowell, eds., *Risks and Reconstruction: Experiences of Resettlers and Refugees* (Washington, D.C., World Bank, 2000).

and meaningful recourse mechanisms. Some eviction notices explicitly state that the eviction will be carried out even if a complaint has been filed. Some courts work as a clearing house for authorities' decisions and do not consider fundamental rights that are protected by national and international law in their decisions. In many cases, houses are destroyed without a court order or without giving residents enough time to appeal against the decision to evict.

Even if there are exceptional circumstances and no feasible alternatives to meet them other than eviction, human rights and the right to due process in particular are to be respected at all stages. Due process protections include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice to all affected persons before the scheduled date of eviction; (c) information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who need it to seek redress from the courts.

All stages of the process need to be transparent. The media should be able to investigate and cover the events.

Moreover, adequate measures need to be taken to protect the complainants and their representatives against harassment and threats.

The rights to information and to meaningful consultation and participation should be respected at all stages of the process

Being informed about decisions of direct relevance to you and your family, having access to plans and projects, being able to meaningfully interact with the authorities and provide input in decision-making are basic human rights. In many cases, people that were supposed to be evicted were able to propose an alternative to the project and to remain where they were. If eviction is the only option, those evicted have a right to participate meaningfully in decisions on alternative housing, relocation and compensation. Indeed, States have an obligation to ensure the effective participation of and consultation with the affected communities and groups, such as IDPs (Guiding Principles 14 and 28), minorities or indigenous peoples, who have a right to participate in decisions affecting them and the regions in which they live.

Residents should receive a notification of the decision of eviction well in advance, and in an adequate form and language. The notification should include the justification for the decision, indicate why there is no other alternative, inform on the chronology of events and on relocation and compensation, and give information on complaint procedures. Residents should also be informed of the help they will receive to move their belongings and building material to the relocation site.

Similarly, communities in proximity of the relocation sites need to be consulted to prevent any future tension with the newly relocated residents. For example, where land and resources are scarce, relocation of an evicted or displaced community to land occupied or owned by other communities can lead to tension as well as food insecurity.

In general, any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned. This is particularly important for indigenous communities, in view of the discrimination and marginalization to which they have historically been subjected.

Source: Minimum human rights principles applicable to large-scale land acquisitions or leases (A/HRC/13/33/Add.2, annex), principle 2.

Legal and other remedies should be available at all times

All persons threatened with or subject to forced evictions have the right of access to a timely remedy, including a fair hearing, access to legal counsel and legal aid (free, if necessary). In addition, complaint or conciliation procedures led by an independent body may be put in place. Any eviction needs to be suspended as long as the case is pending before any of these bodies.

Forced evictions should not result in homelessness

Forced evictions should not result in homelessness or put people in life- or health-threatening situations. Alternative and sustainable accommodation should be provided before any eviction is carried out.

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including refraining from evicting them from the Dobri Jeliakov community so long as satisfactory replacement housing is not immediately available to them. The State party is also under an obligation to ensure that similar violations do not occur in the future.

Source: Human Rights Committee, Naidenova et al. v. Bulgaria, communication No. 2073/2011, Views adopted on 30 October 2012.

The United Nations Statistics Division distinguishes two broad categories of homelessness:

(a) Primary homelessness (or rooflessness). This category includes persons living in streets or without a shelter that would fall within the scope of living quarters;

(b) Secondary homelessness. This category may include persons with no place of usual residence who move frequently between various types of accommodation (including dwellings, shelters or other living quarters); and persons usually resident in long-term “transitional” shelters or similar arrangements for the homeless.

Source: See *Principles and Recommendations for Population and Housing Censuses, Revision 2* (United Nations publication, Sales No. E.07.XVII.8).

Relocation sites should be fully functional before the eviction takes place. Adequate relocation sites and alternative housing must comply with international human rights norms, in particular the right to adequate housing.²⁵ To be adequate, the relocation site should, at a minimum:

- Offer security of tenure and not be subject to legal disputes
- Be safe and not lead to potential conflict or tension with host communities
- Not be on a polluted site, near pollution sources or in unsafe and hazard-prone zones
- Offer houses with enough space, with water, sewerage, electricity, heating and other amenities in line with international standards
- Have access to employment, health services, schools, childcare centres and social services
- Have public transport (cost and distance should not jeopardize employment)
- Provide housing that is affordable over the long term
- Offer housing and facilities that are culturally appropriate.

In addition, “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” (Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997)).

Studies show that resettlement programmes that reduce poverty have three main characteristics: (a) the preparation of the site before relocation; (b) a location close to employment opportunities; and (c) the voluntary participation of the people involved.²⁶

²⁵ On the right to adequate housing, see OHCHR Fact Sheet No. 21 (Rev.1).

²⁶ UN-Habitat, “Participatory monitoring and evaluation of the impacts of project CMB/00/003: Phnom Penh urban poverty reduction project”.

Adequate compensation needs to be provided in advance

All Governments [should] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.

Source: Commission on Human Rights resolution 1993/77.

Compensation for housing, land and property should be provided before the eviction. It can be in addition to other measures, including relocation. The calculation of compensation has been problematic, especially when it has been based solely on the market value of the houses or shelters that poor residents have been forced to vacate. Such compensation does not allow people to rehouse themselves adequately. Nor does it include the years of saving and investment put into a house or other non-material aspects.

Fair and just compensation for all losses should include any losses of personal, real or other property or goods, including rights or interests in property and any of the economic and social losses incurred by those evicted. 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 of legal or expert assistance, medicine and medical services, and psychological and social services.

Cash compensation should in principle not 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.²⁷

Experience shows that compensation may entail a number of difficulties and grievances, including corruption. It is therefore important to ensure proper planning, clear information and transparency, as well as accessible complaint mechanisms, at all stages of the process.

All necessary measures should be taken to minimize the impact of evictions

When eviction and relocation take place, adequate measures to address the specific needs of vulnerable people must be taken, including with regard to

²⁷ See A/HRC/4/18, annex I, para. 60.

children (including their schooling), people under medical treatment (including for HIV), people with disabilities, pregnant women and older persons. When necessary, evicted persons should have access to psychological and social services. Members of the same extended family should not be separated. Communities should, as much as possible, not be separated in order to maintain their coherence and social networks. This is also important to ensure minorities and indigenous peoples enjoy their collective rights to identity, language, culture or religion.

Those who are evicted must have access to: (a) essential food, safe drinking 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.

Overcrowding and privacy—including in sanitation—must be kept in mind to prevent physical and sexual abuse of women and children.

The success of these measures needs to be assessed in the short, medium and long term through transparent and measurable means and impact assessment methodologies.

2. Obligations during evictions

Evictions should be well planned and clear procedures put in place to prevent human rights violations and to respect human dignity. For instance, they should not take place during bad weather, at night or when people are unlikely to be at home. Evictees should not be coerced to destroy their dwellings and structures and should be given the opportunity of salvaging as many belongings as possible. The evictions should not be carried out in a way that threatens the health or life of the evictees, for instance destroying structures where people are still trying to salvage their belongings.

A number of procedural requirements also need to be met, including:

- The presence of authorities
- The possibility for independent observers to be present
- A clear identification of the persons carrying out the evictions
- A formal authorization for the eviction
- The provision of clear information on the actions that will take place.

Any legal use of force must respect the principles of necessity (i.e., force should be used only if there is no other effective means of achieving a legitimate and pressing objective) and proportionality (i.e., the use of force

should be proportionate to the legitimate objective to be achieved). The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law and human rights standards have to be taken into account.

Measures should be taken to protect the evictees against assaults or threats by third parties, including gender-based violence. Possessions that are left behind need to be protected against theft and looting.

3. Obligations after the eviction has taken place

Immediately after the eviction, all relief measures, including medical facilities, need to be in place.

A number of issues need to be monitored in the short, medium and long term at the relocation site, including:

- The needs of the evictees after the eviction
- The impact of the eviction on the community, in particular on their livelihood
- Additional costs resulting from the relocation and because of the new site's location
- Sustainability and quality of the services
- Possibilities for the community to sell and transport their products
- Sustainability of the new site
- Interaction with surrounding communities
- Ensuring security of tenure.

C. Responsibilities of others

As highlighted above, States are also obliged to protect the human rights of all against third parties and non-State actors. In addition, there is an increasing understanding about the extent to which other actors in society—individuals, intergovernmental and non-governmental organizations, and businesses—have responsibilities with regard to the promotion and protection of human rights, including by not directly or indirectly contributing to forcibly evicting people.

United Nations agencies and international financial institutions

The United Nations, international financial institutions and donors may be directly or indirectly engaged in activities that will eventually result in forced evictions. These activities can be the construction of infrastruc-

ture and development projects, but also participating in the drafting and development of policies and laws related to housing and land. It is therefore essential that transparent and accountable mechanisms are put in place to ensure that no human rights violations occur as a result of these activities.

In its general comment No. 2 (1990) on international technical assistance measures, the Committee on Economic, Social and Cultural Rights also underlined that all United Nations organs and agencies involved in any aspect of international development cooperation should ensure that the rights contained in the Covenant are fully taken into account at each phase of a development project.

In recent years, reforms of the United Nations by the Secretary-General have highlighted the role and responsibilities of United Nations agencies and international financial institutions with respect to human rights. In 2003, United Nations agencies, in a common understanding, affirmed that all development programmes and assistance should realize human rights and be guided by human rights principles and standards. In this context, the previously discussed human rights-based approach is mandatory.

The World Bank, the Organisation for Economic Co-operation and Development (OECD) and regional financial institutions, such as the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank, have adopted guidelines on relocation and/or resettlement to limit the scale of human suffering associated with forced evictions.

International Finance Corporation

Performance Standard 5: Land Acquisition and Involuntary Resettlement

2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for the affected communities and persons, as well as environmental damage and adverse socioeconomic impacts in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided. However, where involuntary resettlement is unavoidable, it should be minimized and appropriate measures to mitigate adverse impacts on displaced persons and host communities should be carefully planned and implemented. ... Experience demonstrates that the direct involvement of the client in resettlement activities can result in more cost-effective, efficient, and timely implementation of those activities, as well as in the introduction of innovative approaches to improving the livelihoods of those affected by resettlement.

The World Bank Group has put mechanisms in place to look at the application of internal procedures and guidelines, such as the Inspection Panel and the Compliance Advisor/Ombudsman. Some of their cases have dealt with forced evictions.

World Bank Inspection Panel finds inadequate project design

Initially in an amount equivalent to US\$ 23.4 million, the Land Management and Administration Project was approved in February 2002. It aimed at: (a) the development of adequate national policies, a regulatory framework and institutions for land administration; (b) the issuance and registration of titles in rural and urban areas in the project provinces; and (c) the establishment of an efficient and transparent land administration system. In its investigation report,^o the Independent Panel of the World Bank found a number of shortcomings including:

Panel notes that forced evictions are not new in Cambodia, and, as noted by World Bank's Poverty Assessment in Cambodia, have been ongoing in Phnom Penh since well before preparation of Project. Since Project included major urban settlements including Phnom Penh among its Project Provinces, this was a significant reputational risk for World Bank. Panel notes that Project design did not adequately address this important problem and reputational risk.

Despite clear findings of Independent Review and repeated findings in Management supervision reports indicating inadequacy of dispute resolution mechanisms, especially when powerful parties are involved, Bank Management did not take concrete measures to address these adverse impacts.

^o Inspection Panel, "Investigation Report – Cambodia: Land Management and Administration Project (Credit No. 3650 - KH)", Report No. 58016-KH, 23 November 2010, p. 83.

Evictions entail high reputational risks for the authorities, private businesses and investors. Discontent and violence resulting directly or indirectly from evictions can have long-term consequences.

The private sector

Businesses and the private sector are important actors when it comes to housing and land. The private sector—e.g., extraction industries, real estate companies, property developers, construction firms and infrastructure providers—can undertake activities that result in forced eviction. This may be particularly true in the context of the construction of large dams and other development projects involving resource extraction such as gas and oil. Landlords, private owners, housing agencies or estate agencies can also affect the enjoyment of the right to adequate housing, for instance if they carry out forced evictions.

Recently, in the context of worldwide food and energy price increases, private investors and Governments have shown a growing interest in the acquisition or long-term lease of large portions of farmland. This can be explained by: the rush towards the production of agrofuels as an alternative to fossil fuels; the long-term strategies of certain countries to achieve food security as their populations grow and their natural resources, including water, are depleted; climate change adaptation measures; and speculation on future increases in the price of farmland.²⁸

While States retain the primary responsibility for ensuring that private actors respect human rights, according to the Guiding Principles on Business and Human Rights, business enterprises have a responsibility to respect all human rights, including the prohibition on forced eviction. The Guiding Principles were endorsed by the United Nations Human Rights Council in its resolution 17/4, making them the authoritative global standard of conduct that is now expected of all businesses with regard to preventing and addressing the human rights impact of their activities. The Guiding Principles have also been endorsed by a large number of businesses, civil society organizations, national and regional institutions, and other stakeholder groups, further solidifying their status as the key normative framework for business and human rights.

In 2011, the Committee on the Elimination of Discrimination against Women recommended that Ethiopia should “ensure that land lease contracts with foreign companies do not result in the forced eviction and internal displacement ... of local populations”.

Source: CEDAW/C/ETH/CO/6-7.

²⁸ See A/HRC/13/33/Add.2, para. 12.

IV. MONITORING AND ACCOUNTABILITY IN THE CONTEXT OF FORCED EVICTIONS

Mechanisms of accountability are crucial for ensuring that States abide by their obligations in relation to the prohibition on forced eviction. Monitoring takes place at national, regional and international levels, and involves a variety of actors, such as the State itself, NGOs, national human rights institutions (NHRIs) and international human rights mechanisms. While these mechanisms are important and useful to have real human rights impact on the ground, the role of civil society cannot be understated. These mechanisms are most effective when civil society and the affected communities engage with them and thereby leverage their power to bring about positive change at the local level.

A. National accountability and monitoring

Legislative protections and judicial remedies

Legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals.²⁹ Indeed, the prohibition on forced eviction is strengthened when protections are incorporated into domestic law. Such protections range from an explicit right to adequate housing and the prohibition on forced eviction to tenancy regulation and due process procedures for those threatened with eviction.

The Constitution of South Africa provides an example of a constitutional right to adequate housing and a corresponding prohibition on forced eviction. The Constitution also makes clear that the content of constitutionally protected human rights should be informed by international standards.

Constitution of South Africa (art. 26)

Everyone has the right to have access to adequate housing.

The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

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

²⁹ Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant.

In this context, a notable example of enforcing housing rights at the national level came from the **Constitutional Court of South Africa** in the case of *Port Elizabeth Municipality v. Various Occupiers* in 2004. There, the Constitutional Court considered whether a small community could be evicted from an informal settlement on private land. Under South African law, evictions must be found to be “just and equitable” in the given circumstances. Relying on the right to adequate housing guaranteed by the Constitution, the Court held that since the community would be rendered homeless if evicted, courts should be reluctant to approve eviction orders even from private land.

Other constitutions may not have an explicit right to adequate housing, but may refer to international treaty obligations as binding national law or have directive principles of State policy that can be used to inform the content of legally binding social rights.

Use of the directive principles in the Constitution of India

The Directive Principles of State Policy, embodied in part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy. They refer to the right to an adequate means of livelihood. They have been used by the courts to interpret legally enforced rights in a manner that protects against forced eviction.

Maneka Gandhi v. Union of India (1978): a seminal case in which the Supreme Court stated that the right-to-life provisions in the Constitution must be taken to mean “the right to live with dignity”.

Francis Coralie v. Union Territory of Delhi (1981): in which, building upon *Maneka Gandhi*, the Supreme Court stated that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter.

Olga Tellis v. Bombay Municipal Corporation (1985): in which the Supreme Court held that forced eviction would result in a deprivation of the ability to earn a livelihood – referring to the Directive Principles in the Constitution as a means to interpret the justiciable right to life. It further noted that the ability to earn a livelihood was essential to life and thus the forced evictions would result in a violation of the right to life as embodied in article 21 of the Constitution.

Ram Prasad v. Chairman, Bombay Port Trust (1989): in which the Supreme Court directed the relevant public authorities not to evict 50 slum dweller families unless alternative sites were provided to them.

In the United Kingdom, the Protection from Eviction Act of 1977 demonstrated how legislation can be used to protect from forced eviction. It offers four key areas of protection. First, it creates criminal liability for unlawful eviction or harassment. Second, the occupancy by a tenant must be respected by the landlord. Third, a court proceeding is necessary prior to any eviction. And, finally, in the event of an eviction, the Act requires proper and timely notice to be given.

Germany, Constitution of the Land of Brandenburg (1992), article 47 on housing:

(1) Within the framework of its powers, the Land shall be obliged to provide for the realization of the right to adequate housing, in particular through the promotion of homeownership and through social house-building schemes, tenant protection and rent subsidies.

(2) Eviction from a place of abode may only be executed if alternative accommodation is available. In weighing up the interests, particular attention shall be paid to the importance of the accommodation being fit for human habitation.

National human rights institutions

NHRIs advise the Government and recommend policy or legislative changes, handle complaints, undertake investigations, encourage the ratification and implementation of international human rights treaties, and provide training and raise public awareness.³⁰ NHRIs sometimes have quasi-judicial functions and a mandate to contribute to the development of legislation. Most are called commissions or ombudsmen.

The Public Defender of Georgia has raised the issue of forced evictions and the inappropriate procedures related to them in various reports.³¹

National human rights commissions and the prohibition on forced eviction

The Kenya National Commission on Human Rights has a specific programme to monitor the realization of economic, social and cultural rights; promote them; address violations of these rights; and conduct research and produce reports on issues related to their enjoyment. As part of this focus, the Commission has notably been working on forced evictions and informal settlements. It has also been working with ministries and organizations active in housing to develop national guidelines to prevent and remedy forced evictions.

Source: Kenyan National Commission of Human Rights (www.knchr.org).

Civil society organizations and communities

Communities, neighbourhood associations, civil society organizations and national and international NGOs have played a crucial role in raising awareness and monitoring forced evictions in various circumstances. In many instances, they have been able to hold the authorities or financial

³⁰ See General Assembly resolution 48/134 on national institutions for the promotion and protection of human rights ("Paris Principles").

³¹ See, for instance, "The situation of human rights and freedoms in Georgia 2010" and "Report on the human rights situation of internally displaced persons and conflict-affected individuals in Georgia, January – July, 2010".

institutions accountable for their actions. But they have also been key actors in proposing alternatives to forced evictions and changing behaviours.

Enumerations to fight evictions: We, the invisible

One of the earliest examples of an enumeration of informal settlements was the “people’s census” of pavement dwellers in Bombay (Mumbai), India. A description of this was published in 1985 as We, the invisible – a census of pavement dwellers. This enumeration was initiated and jointly organized by the Society for Promotion of Area Resource Centres (SPARC) and the Society for Participatory Research in Asia (PRIA), in response to a striking paradox:

*It is a paradox that pavement dwellers are highly **visible** on the one hand – no one in the city of Bombay can have failed to see them – but virtually **invisible** on the other. [...]*

In the course of the enumeration process, meetings were held involving pavement dwellers to discuss and debate issues such as why the census was important and how the information was to be used. People were kept informed at all stages of the process. The census questionnaires used were explained to people in order to clear up any fears and suspicions. Each area received a copy of their data and a version of the report in their own language. The aim was to use the gathered information to dispel various negative myths about the pavement dwellers and in so doing for them to achieve “legitimate” visibility. They were convinced that the information would force the hand of the authorities to recognize the pavement dwellers and “somehow stave off the demolition of their homes” (SPARC and PRIA 1988).

Source: UN-Habitat and GLTN, Count Me In: Surveying for tenure security and urban land management (2010), p. 15.

Thailand: Land sharing in Bangkok

The small, canal-side squatter community of Klong Lumnoon was far from everything when the people first moved there in 1984. But by 1997, the area was gentrifying and the landowner decided to evict them and develop the land commercially. Some residents accepted the cash the landlord offered and moved away. But 49 households who worked nearby and had nowhere else to live struggled to stay and entered into a long and bitter eviction struggle with the landowner.

Eventually, the residents linked with Bangkok’s large network of canal-side communities, who showed them how to organize, how to deal with the district canal authorities and helped them to form a savings group. Some senior community leaders from the network helped to negotiate a compromise land-sharing solution, in which the landowner agreed to sell the people a small portion of the land for their housing, in exchange for their returning the rest.

With the District Office acting as mediator, the people even managed to haggle the landowner down to a below-market selling price of just \$21 per square metre for their part of the site. After registering as a cooperative, the community took a loan from the Community Organizations Development Institute (CODI), an agency of the Thai Government, to buy the land collectively.

The people at Klong Lumnoon then worked with young architects from CODI to design an efficient layout for the 49 houses and to develop four low-cost house models for the households who will have to rebuild. The first three models were designed with rooms which can be finished later, after the households have paid off their land and housing loans and have some cash or building materials to spare.

The people also reserved four plots in the new layout for a community centre, which the people designed in close collaboration with the young architects. The community centre, which the people built themselves, also has a day-care centre. All the work of planning and building the infrastructure was done by the people themselves, with subsidy support from CODI's Baan Mankong Community Upgrading Programme.

Source: Housing the Poor in Asian Cities – Eviction, p. 19, based on www.codi.or.th.

B. Regional accountability

Forced evictions have been condemned by regional human rights mechanisms, such as:

- The African Commission on Human and Peoples' Rights, through the consideration of articles 14, 16 and 18 (1) of the African Charter on Human and Peoples' Rights and the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights³²
- The Inter-American Commission on Human Rights, through the consideration of articles 11 and 21 of the American Convention on Human Rights³³
- The European Court of Human Rights, through the consideration of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 1 of its Protocol 1³⁴

³² See, for instance, *the Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, communication No. 155/96, Judgement of May 2002.

³³ See, for instance, *Al Aro, Intuango v. Colombia*, Report No. 75/01, Case No. 12.266 (10 October 2001).

³⁴ See, for instance, *Selçuk and Asker v. Turkey*, applications Nos. 23184/94 and 23185/94, Judgement of 24 April 1998.

- The European Committee of Social Rights, through the consideration of articles 16 and 31 of the European Social Charter (revised).³⁵

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria

While the African Charter on Human and Peoples' Rights does not expressly guarantee housing rights, several of its articles implicitly provide for such protection, as evidenced by jurisprudence of the African Commission on Human and Peoples' Rights, which has also based itself on general comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights.

In *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, the African Commission recognized that "the combined effect of articles 14 [right to property], 16 [right to health], and 18 (1) [protection of the family] reads into the Charter a right to shelter or housing".

The Council of Europe's Commissioner for Human Rights, who is mandated to promote awareness of and respect for human rights in its member States, has also addressed forced evictions, notably in connection with discrimination against specific groups, including stating that evictions should not occur without the provision of alternative housing.³⁶

Forced evictions violate the protection of the family

In 2004, the European Committee of Social Rights considered a collective complaint about discrimination against Roma in Greece. The complaint focused on three aspects of housing and land rights, including the systematic eviction of Roma from sites or dwellings considered to be unlawfully occupied by them.

The Committee found that the facts violated article 16 of the European Social Charter on the right of the family to social, legal and economic protection.

The European Committee of Social Rights relied on the principle of the indivisibility, interdependence and interrelatedness of human rights, and noted that the right to housing permits the exercise of many other rights (civil and political as well as economic, social and cultural) and is of central importance to the family. The Committee stated that the obligation to promote and provide housing extends to security from unlawful eviction.

Source: *European Roma Rights Centre v. Greece*, Complaint No. 15/2003, Decision on the merits, 8 December 2004.

³⁵ See, for instance, *European Roma Rights Center v. Greece*, Complaint No. 15/2003, Decision on the merits, 8 December 2004 and *European Roma Rights Center v. Italy*, Collective Complaint No. 27/2004, Decision on the merits, 7 December 2005.

³⁶ See, for instance, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009", CommDH(2009)16.

C. International monitoring

United Nations treaty bodies

Implementation of the United Nations core human rights treaties is monitored by committees of independent experts, often referred to as *treaty bodies*, such as the Committee on Economic, Social and Cultural Rights. These committees issue both *concluding observations* on the periodic reports of State parties to those treaties, as well as thematic *general comments*, which offer expert guidance to States on their obligations arising under a particular treaty. Some also have a *complaint mechanism* allowing individuals to submit allegations of human rights violations, including forced evictions, committed against them. In this connection, the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights offers a new avenue for individual complaints on forced evictions.

In addition to the Committee on Economic, Social and Cultural Rights, several other committees have also issued concluding observations that address forced evictions. The Human Rights Committee has considered forced evictions in relation to the principle of non-discrimination and protection against arbitrary or unlawful interference with the home as guaranteed in the International Covenant on Civil and Political Rights. The Committee on the Elimination of All Forms of Discrimination against Women has also voiced its serious concern about forced evictions and their impact on the development and advancement of women.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Cambodia

The Committee urges the State party to implement a moratorium on all evictions until the proper legal framework is in place ... in order to ensure the protection of human rights of all Cambodians, including indigenous peoples. ... The Committee strongly recommends that the State party, as a matter of priority undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects and to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions and guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health-care centres and transportation at the time the resettlement takes place.

Source: E/C.12/KHM/CO/1.

The Human Rights Committee and the Committee against Torture have also accepted *individual complaints* dealing with forced eviction.³⁷ The Committee on the Elimination of Racial Discrimination has addressed threatened forced eviction under its *early warning and urgent action procedure*,³⁸ which seeks to raise attention to urgent issues with the States concerned beyond the Committee's normal reporting and monitoring procedures. In 2011, the Human Rights Committee issued *interim measures* so as to prevent the forced eviction of a Roma community in Bulgaria.³⁹

Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom

The Committee deeply regrets the State party's insistence on proceeding immediately with the eviction of the Gypsy and Traveller community at Dale Farm in Essex before identifying and providing alternative culturally appropriate housing for members of these communities. The Committee further regrets the State party's failure to assist the communities in finding suitable alternative accommodation (art. 5 (e) (iii)).

The Committee urges the State party to halt the intended eviction, which will disproportionately affect the lives of families and particularly women and children and create hardship. The Committee strongly recommends that the State party should provide alternative culturally appropriate accommodation to these communities before any evictions are carried out. The State party should ensure that any evictions are conducted in accordance with the law and in a manner that respects the human dignity of all individuals in this community, in conformity with international and regional human rights norms.

Source: CERD/C/GBR/CO/18-20.

United Nations special procedures

"Special procedures" is the generic name given to the mechanisms established and mandated by the Human Rights Council to address issues of concern in all parts of the world. Although their mandates vary, they usually monitor, examine and report publicly on human rights situations in specific countries or on major thematic human rights issues worldwide.

Their methods of work include conducting country missions; investigating issues of concern; reviewing communications from individuals or groups alleging violations, including those involving forced eviction, and inter-

³⁷ See Committee against Torture, *Hajrizi Dzemajl et al. v. Yugoslavia*, communication No. 161/2000.

³⁸ See, for example, its letter to the Government of Slovakia, dated 10 August 2010.

³⁹ *Naidenova et al. v. Bulgaria*.

vening, when appropriate, with States in connection with alleged violations; and reporting annually to the General Assembly and the Human Rights Council.

The work of the Special Rapporteur on adequate housing has since its inception focused on forced evictions and the Special Rapporteur often reports on and intervenes to prevent and redress forced evictions. In 2007, the Special Rapporteur drafted the basic principles and guidelines on development-based evictions and displacement, which provide very detailed information on the prohibition on forced eviction and the requirements to be met before, during and after evictions that are unavoidable. Many of these requirements are highlighted in this Fact Sheet.

The Special Rapporteur on the right to food has also taken up forced evictions from land, as such evictions often violate the right to food. The Special Rapporteur has looked at the prohibition on forced eviction from land in the context of indigenous peoples as well as small landholders, herders, pastoralists and fisherfolk, and has called on international human rights bodies to consolidate the right to land and take land issues fully into account when ensuring respect for the right to adequate food.

In addition, several other special procedures mandate-holders have monitored, examined and reported on forced evictions, for instance:

- The Special Rapporteur on violence against women
- The Special Rapporteur on the rights of indigenous peoples
- The Special Rapporteur on the human rights of internally displaced persons
- The Special Rapporteur on contemporary forms of racism
- The Special Rapporteur on the situation of human rights defenders
- The Special Rapporteur on torture
- The Independent Expert on minority issues
- The Special Rapporteur on extreme poverty and human rights.⁴⁰

The special procedures may receive *individual complaints* or complaints from groups or communities facing forced evictions or NGOs representing them, and intervene accordingly. Such interventions are particularly useful to prevent, halt or remedy forced evictions.

⁴⁰ For a list of all special procedures, and information on their mandates and contact details, see www.ohchr.org.

Urgent action requests can be submitted to the Human Rights Council special procedures at:

United Nations special procedures

OHCHR–UNOG
8–14 avenue de la Paix
CH–1211 Geneva 10
Switzerland
E-mail: urgent-action@ohchr.org

United Nations fact-finding missions

Finally, in extraordinary situations, high-level fact finding missions may be mandated to investigate human rights violations, including forced evictions. In 2005, the Secretary-General of the United Nations appointed a Special Envoy on Human Settlements Issues to investigate and report on mass forced evictions in Zimbabwe. The report provided detailed findings of fact and legal analysis as well as recommendations to the Government of Zimbabwe as well as to the United Nations and the international community. In their work, international commissions of inquiry often consider forced evictions and displacements, for instance in Libya (A/HRC/17/44) and the Syrian Arab Republic (A/HRC/23/58).

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