

A photograph of a demolition site. In the foreground, a yellow excavator is tearing down a multi-story building. Debris and dust are visible. In the background, a tall, modern apartment building with many windows stands against a clear blue sky. Some trees are visible on the left and right sides of the frame.

# FORCED EVICTIONS

## GLOBAL CRISIS, GLOBAL SOLUTIONS

UN  HABITAT



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## GLOBAL CRISIS, GLOBAL SOLUTIONS

A Review Of the Status of Forced Evictions Globally Through the Work of the Advisory Group on Forced Evictions, Un-Habitat and Other International Actors



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## FOREWORD



The practice of forcibly evicting people from their homes and settlements is a growing global phenomenon and represents a crude violation of one of the most elementary principles of the right to adequate housing as defined in the Habitat Agenda and other international instruments. While many communities, grassroots organisations and civil society groups stand up for their rights, some governments at national, district and local levels evict people from their homes every day. These evictions are often carried out in the name of the common public good in order to make way for the economic development of both urban and rural areas. But the public good cannot be properly achieved without following due process and without providing housing alternatives that otherwise would minimize the impacts and losses incurred by those directly affected by evictions.

While UN-HABITAT recognizes and, indeed, advocates urban development and planning, and acknowledges that this may at times necessitate resettlement, it strongly emphasizes that such resettlement must be a last resort after consideration of all alternatives, and must be implemented both in accordance with international human rights law and in a sustainable and socially inclusive manner. The Housing Policy Section of UN-HABITAT develops tools and knowledge to help national authorities, particularly at the municipal level to devise more sustainable and inclusive urban policies that make provision for proper resettlement procedures.

This report reviews the status of forced evictions globally through the work of UN-HABITAT, the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT, and other international actors. It describes and evaluates the important successes and significant challenges related to the prevention, monitoring and assessment of forced evictions. We need to drive forward the political, normative, and operational processes necessary to reverse the continuing increase in forced evictions globally. This report goes some distance towards improving our understanding of the phenomenon in its outline of five of the most common causes of forced evictions, namely: urban development; large scale development projects; natural disasters and climate change; mega-events; and, evictions related to economic forces and the global financial crisis.

Apart from providing a succinct global overview and analysis of the state of global evictions today, we also encourage readers to use the text as a practical tool to inform public policy decisions related to urban planning and development. It is important that we develop and implement sustainable alternatives to forced evictions which are grounded in a human rights based framework.

Dr. Joan Clos  
Executive Director  
UN-HABITAT





## LIST OF ACRONYMS

ACHR	Asian Coalition for Housing Rights
ACR	Association of Climate Refugees (Bangladesh)
AGFE	Advisory Group on Forced Evictions
BMA	Bangkok Metropolitan Administration
CBO	Community based organization
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CLA	Space Launch Centre of Alcantara (Brazil)
COHAB	Municipal Company of Popular Housing (Brazil)
COHRE	Centre on Housing Rights and Evictions
CRPD	Convention on the Rights of Persons with Disabilities
ECSR	European Committee of Social Rights
FEMA	Federal Emergency Management Agency (United States)
HIC	Habitat International Coalition
IAI	International Alliance of Inhabitants
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person/People
LAA	Land Acquisition Act (India)
MDG	Millennium Development Goals
MNLM	National Movement on the Struggle for Housing (Brazil)
NBA	Narmada Bachao Andolan (India)
NDRF	National Disaster Recovery Framework Working Group (United States)
NGO	Non-governmental organization
NWDT	Narmada Water Disputes Tribunal (India)
OG/HK	Operation Garikai/Hlalani Kuhle (Zimbabwe)
OHCHR	Office of the High Commissioner for Human Rights
OM	Operation Murambatsvina (Operation Restore Order)
RSG	Rivers State Government (Nigeria)
RSPPD	Rivers State Physical Planning and Development Law (Nigeria)
SACC	South Africa Council of Churches
SDI	Slum Dwellers International
SSP	Sardar Sarovar Projects (India)
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UNFCCC	United Nations Framework Convention on Climate Change
UPR	Universal Periodic Review
WUF	World Urban Forum
ZLHR	Zimbabwe Lawyers for Human Rights



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## EXECUTIVE SUMMARY

The practice of forcibly evicting people from their homes is an egregious human rights abuse that in most cases could be prevented. Forced eviction targets the most marginalized and vulnerable populations, most often with far-reaching implications with respect to their housing, employment, education, physical and mental health, family life, culture, and overall well-being. Moreover, forced eviction deepens poverty, destroys communities, and irrevocably adversely impacts the future of millions of people.

Despite the persistence of this global phenomenon and its grave ramifications, it is too often overlooked by the international community. Forced evictions take place every day around the world. There are few human rights violations with such far reaching implications that continue to be perpetrated with relative impunity. Forced eviction is a global crisis, requiring global solutions through heightened attention and action, particularly by the international community.

This report critically analyzes the global phenomenon of forced eviction and presents this analysis with a view to informing public policy decisions related to urban planning, including how best to develop and implement sustainable alternatives to forced evictions. It specifically examines how UN-HABITAT and the Advisory Group on Forced Evictions (AGFE) can contribute to preventing, monitoring and assessing the impact of this phenomenon.

The report affirms that to understand and adequately address the practice of forced evictions, analysis must first and foremost be firmly located within a human rights framework. Under international human rights law, particularly the right to adequate housing, forced eviction is understood as the “permanent or temporary removal

against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Forced eviction has been deemed *prima facie* incompatible with human rights and a gross violation of the human right to adequate housing by United Nations human rights bodies.

Concurrently, the report is clear that to address and remedy forced evictions requires collaboration, cooperation and often negotiation between multiple stakeholders including members of the affected communities and their associations and organizations, different levels of government, regional and international groups and human rights bodies.

Forced evictions are contrary to the principles articulated in the Habitat Agenda as well as the United Nations Millennium Development Goals, in particular, Goal 7, Target 11: to improve the lives of 100 million slum dwellers by 2020. The United Nations has adopted a number of relevant guidelines and standards to define, clarify, and evaluate instances of forced eviction. These include: the United Nations Committee on Economic, Social and Cultural Rights’ General Comment No 7 on forced evictions; Guidelines on Internally Displaced Persons, the Comprehensive Human Rights Guidelines On Development-Based Displacement; the Basic Principles and Guidelines on Development-Based Evictions and Displacement; the Habitat Agenda; and the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons.

While forced eviction most obviously violates the right to adequate housing, it also violates a host of other human rights such as the right to food, water, sanitation, health, education,



privacy and life, as well as the right to be free from displacement, the right not to be deprived of one's property and the right to restitution.

On the basis of extensive desk research, thorough reviews of existing literature and engagement with experts in the field of housing rights and forced evictions, this report illustrates its main arguments through the articulation of 10 case studies that reflect five of the central causes of forced eviction. The case studies were selected to demonstrate the global nature of the practice of forced eviction (North and South) and to expose the diversity of causes and consequences of forced eviction.

It should be noted that this report is neither geographically nor thematically exhaustive. It is a preliminary analysis, which will ideally foster follow-up studies, the collection of updated empirical evidence and further reflection and creative thought on ways forward.

## CAUSES OF FORCED EVICTION

Five of the most prevalent causes of forced eviction are highlighted in detail in the report: urban development; large scale development projects; natural disasters and climate change; mega-events; and, evictions that are economic related, including because of the global financial crisis.

The report notes that regardless of the stated reason for the forced eviction, there is almost always an underlying element of discrimination. Miloon Kothari, the United Nations' former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, identified a number of groups that are disproportionately affected by forced eviction: minority groups, women and indigenous people. These groups – who are more likely to be living with low incomes, in poor housing conditions and

without secure tenure – are obvious target populations for government authorities and private actors looking to clear urban slums to access land for, e.g. mega-events, private development or city beautification.

### *Urban development*

The population of cities is rapidly increasing across the world. While this has spurred economic growth, it has also resulted in rapid urban development that is unplanned, unmanaged and insufficient in terms of the provision of land, housing, services and basic infrastructure for residents. In fact, urbanization (which includes rural-urban migration and the engulfing of rural areas by cities and towns) has led to a massive increase in the number of 'slum dwellers' with nearly one billion people now living in slums globally, most without secure tenure.

In order to address such rapid, unplanned growth and its consequent pressure on urban infrastructure, municipal governments are instituting city master plans and urban 'regeneration' or beautification strategies. These plans and strategies often incorporate forced evictions as a means of clearing land to make it available to private investors or for profitable development. Four case studies illustrate this prominent and frequent cause of forced eviction: Zimbabwe; Dominican Republic; and Brazil.

### *Large scale development projects*

Large scale development projects have caused some of the most egregious forced evictions because their size, scale and scope affect entire communities. It has been calculated that during the 1980s and 1990s large scale development was resulting in the displacement of 10 million people each year. During the following decade this number reached an estimated 15 million people per year. Large scale development projects that





result in evictions are often conducted under the pretext of serving the 'public good'. They may also include significant capital investment from corporations and other private sector actors. Such projects include, but are not limited to, the construction of dams, natural resource exploitation and the development of expressways. Indigenous peoples are particularly affected by large scale development projects, as their resource rich lands, upon which they have survived for generations, are often sought after for these projects. Large scale development also leads to environmental degradation and the loss of livelihoods, increasing the number of people forcibly evicted as a result. Inevitably, these evictees have no choice but to migrate to cities to survive, contributing to the rapid increase in urbanization. The case study of India's Narmada Valley and thematic analysis of dams and forced evictions illustrate the devastating consequences of large scale development projects.

#### *Natural disasters and climate change*

Natural disasters and climate change tend to devastate the lowest income communities. While not directly perpetrated by State Parties per se, States do have obligations in advance of and following natural disasters and the effects of climate change. For example, in cases where climate change or natural disasters result in displacement, States have a responsibility to ensure that anyone who loses their home is resettled in accordance with international human rights law. With respect to natural disasters, the State is also responsible for ensuring that adequate plans are in place to safeguard all residents before, during and after a disaster. Inadequate government planning and policies have led to a variety of housing and land rights violations. The ravaging effects of climate change are showcased by the case study of the Khulna District of Bangladesh while case studies of Hurricane Katrina in New Orleans, United States and the 2004 Tsunami

in Sri Lanka are used to show the damaging impact of natural disasters.

#### *Mega-events*

Planning for mega-events like the Olympic Games or World Cup soccer has been a significant cause of forced evictions in cities throughout the world. In preparation for being highlighted on the world stage, governments use mega-events as "excuses to push through massive infrastructure upgrading or city beautification plans" that result in evictions and displacement. The case study of Beijing, China illustrates the destructive actions of authorities during preparations for the 2008 Summer Olympic Games.

#### *Economic evictions including those caused by the global financial crisis*

This underexplored cause of forced eviction has had a direct and severe impact on housing for many low-income households. Economic evictions occur as a result of a number of factors which can be interdependent. For example, escalating rental housing costs in the private market, in conjunction with increasing levels of poverty triggered or exacerbated by the recent global financial crisis has led to an unprecedented growth in cases of forced eviction. While many evictions have 'legally' occurred due to non-payment of rent or mortgage default, States still have an obligation under international human rights law to ensure that evictions do not result in individuals being rendered homelessness. Rome, Italy is used as the case study to illustrate the dire impact of economic evictions and the global financial crisis.

### **IMPACT AND CONSEQUENCES OF FORCED EVICTIONS**

This report explores the impact and consequences of forced evictions through the different phases of the eviction process. Some of the most common impacts and



consequences are highlighted in this report, including:

- loss of home, investments and personal possessions;
- violence, physical abuse, threats, harassment and unlawful detention;
- loss of social ties, culture and familial identity;
- psychological disorders including depression and anxiety;
- economic hardship, loss of employment and economic livelihood;
- heightened food insecurity;
- interruption of education;
- relocation to communities without adequate resources like clean drinking water and basic health care; and
- discrimination, particularly when trying to resettle in a new community.

### STRATEGIES FOR RESISTING FORCED EVICTION

Affected communities, their representative organizations and non-governmental organizations (NGOs) alike use a variety of strategies in complementary ways to try to prevent or halt forced evictions. The report details a number of these strategies, including legal action; community organizing and mobilization; international solidarity and support and the use of international

law; media work; and the development and implementation of alternative plans to prevent or halt forced evictions. Regardless of the strategies employed, the report highlights that mobilization by affected communities is the linchpin to any effective strategy to prevent or remedy forced eviction.

### INTERNATIONAL RESPONSES TO FORCED EVICTIONS: MOVING FORWARD

This report concludes by looking at the future role of UN-HABITAT in addressing forced evictions. Specific recommendations are made with the goal of ensuring that UN-HABITAT plays a significant role in the prevention, monitoring and assessment of the impacts of forced evictions, including:

- an institutional commitment to developing, adopting and promoting a human rights-based approach to forced evictions;
- development of clear and consistent messages about forced evictions;
- strengthened infrastructure and institutional support;
- leadership in the development of forced eviction monitoring tools and research;
- increased support for its Advisory Group on Forced Evictions; and
- strengthened collaboration with United Nations partners.







# 1. INTRODUCTION





The practice of forced eviction, when undertaken unlawfully, is one of the most egregious human rights abuses. Not only does it particularly target the most marginalized and vulnerable populations, it is a practice that in most cases can be prevented. This report critically analyzes the global phenomenon of forced eviction for policy makers at all levels of government as well as other stakeholders,<sup>1</sup> and presents this analysis as a practical tool to inform public policy decisions related to urban planning, including how best to develop and implement sustainable alternatives to forced evictions for affected populations. The report demonstrates that forced eviction is a persistent phenomenon that leads to serious human rights violations, has grave ramifications for individuals, families and communities and requires heightened attention and action, particularly by the international community.

The report departs from an understanding of the importance of security of tenure and the right to adequate housing as basic human rights for all, and in particular for those who are poor and marginalized, including indigenous peoples, slum dwellers, women and particularly female headed households, disabled people and the elderly. As a consequence of their societal marginalization, it is these groups who are typically most affected by forced eviction, thus perpetuating their already precarious situation. Despite their lack of means and resources, it is most often these same groups who are on the front lines challenging this practice. It is this spirit of resistance and justice that, if properly harnessed and channelled, can lead to real change.

Drawing on missions carried out by the United Nations Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT

(AGFE) and information gathered by other international groups, the report explores the causes of forced eviction as experienced in different regions of the world. The case studies focus on the most common, as well as new and emerging causes of forced eviction: urban development (Zimbabwe, Dominican Republic, Nigeria, Brazil), large-scale development projects (India), natural disasters (Sri Lanka) and climate change (Bangladesh), the hosting of mega-events (China), and the global economic crisis (Italy). A thematic case study on the relationship between discrimination and forced eviction with a focus on the experiences of women and the Roma is also included. The report also assesses the impact of forced evictions on individuals, families and communities.

Through the case studies and other examples, the report exposes the ways in which domestic law has been used to defend the practice of forced eviction and yet at the same time, how domestic and international law has been used to halt and prevent forced evictions. With respect to the latter, the report will examine the different ways in which international human rights law and related mechanisms, such as United Nations treaty monitoring bodies and Special Rapporteurs, have been used to effectively engage the State (and State actors at all levels) in addressing forced evictions as a means of influencing policy decisions, law reform and political positions and outcomes. The report includes an assessment of the relevance of international human rights law and global mechanisms currently in place to monitor and address forced evictions. The report will also suggest how non-legal strategies and mechanisms have been used to challenge forced evictions. Examples of successful strategies that have been used to challenge forced evictions will be highlighted.

<sup>1</sup> Stakeholders include: Other UN bodies, special procedures such as Special Rapporteurs and Special Representatives, and agencies and non-governmental, community based and grassroots organizations concerned with and working on forced evictions or related issues.



Drawing on case studies, research and communications with a number of individuals and organizations, the report concludes that if UN-HABITAT makes an institutional commitment to playing a role in global efforts to prevent and propose alternatives to forced evictions, its contributions could be significant. As a starting point, UN-HABITAT could play a central role in the prevention of forced evictions through normative research and the dissemination of tools and guidelines to urban planners and policy makers, increased synergies with and technical advice to municipal urban planning, the development of alternatives to planned evictions and engaging in high level bilateral discussions with State representatives. UN-HABITAT may possibly play a facilitating role in the monitoring of forced evictions globally and it could contribute significantly to an understanding and assessment of the impact of forced evictions drawing on the information it retrieves through its prevention and monitoring roles. There is little doubt that UN-HABITAT is well-situated within the United Nations and unto itself to perform these functions – it has the necessary capacity and access to the expertise, contacts, and networks to successfully fulfil these functions. In essence, with strong collaborative support from other international groups and bodies within the UN, UN-HABITAT could become an authoritative expert agency on the issue of forced evictions, particularly in the urban context.

To date, however, UN-HABITAT's institutional response to the practice of forced evictions may be characterized as muted and inadequately resourced. International groups working to prevent and address forced evictions, have been disappointed that UN-HABITAT has not been a more vocal ally

both within the UN system as well as when engaging with States on issues related to the practice of forced evictions. For example, the AGFE mission to New Orleans in July 2009 documented blatant housing rights violations, rendered all the more grave by the resources available in the US. And yet, the results of the mission which were conveyed to the Executive Director of UN-HABITAT, and which received much media coverage,<sup>2</sup> apparently provoked little institutional response or support from UN-HABITAT.<sup>3</sup>

While UN-HABITAT's quiet diplomacy may have many benefits, if UN-HABITAT were to embrace the right to adequate housing as an overarching framework and methodology for its work, it could play a more effective role in the prevention and monitoring and in the assessment of the impact of forced eviction. A recent review of human rights mainstreaming in United Nations Agencies revealed that UN-HABITAT has no formal human rights policy and no conceptual framework on human rights based analysis is embedded in programming. Within UN-HABITAT's mandate, however, is an explicit commitment to promote the full and progressive realization of the right to adequate housing as defined in the Habitat Agenda and international human rights instruments.<sup>4</sup> A human rights framework would provide UN-HABITAT with a set of guidelines, including legally enforceable standards which could be used to measure State actions and hold them accountable with respect to forced evictions.<sup>5</sup> Already, UN-HABITAT has had some successes using a human rights approach, for example engaging governments on policy options other than forced evictions, and, on a pilot-basis assisting local organizations in Brazil to secure land and housing rights for 5,000 women.<sup>6</sup>

<sup>2</sup> UN-HABITAT, *Advisory Group on Forced Evictions, New Orleans, 2009. Discussions with AGFE mission members, October 2010 and July 2011.*

<sup>3</sup> *Mapping of United Nations Agency Human Rights Mainstreaming Policies and Tools, 2011: 38-39.*

<sup>4</sup> These standards are outlined in Section 5 of this report, "International Human Rights Law and Forced Eviction."

<sup>5</sup> *Mapping of United Nations Agency Human Rights Mainstreaming Policies and Tools, 2011: 38-39.*



## 2. METHODOLOGY







This report situates the practice of forced eviction within a human rights framework, using as its starting point the understanding that the practice of forced evictions is a violation of international human rights law.

This report was conducted primarily as desk research, relying on secondary sources produced by experts in the field of housing rights and forced evictions. These sources include reports on fact finding missions conducted by AGFE members, global surveys on forced evictions, and reports detailing successful responses and alternatives to forced evictions. The report also includes the results of correspondence with experts on forced evictions, regarding the effectiveness of current forced eviction monitoring mechanisms and how forced evictions could be better prevented, monitored and assessed at the international level.

In order to contextualize the causes, consequences and strategies to prevent, halt or address forced evictions, the report features 10 case studies and references relevant cases of forced eviction throughout. The case studies were selected according to how well they demonstrate the diversity of issues and factors involved in forced evictions, with the aim of achieving a broad representation of types of forced evictions across regions. Cases from all regions of the world were selected – North, South, East and West – to highlight that forced eviction is a truly global phenomenon. Cases were also selected if they offered successful strategies for resisting forced eviction that could be replicated in another jurisdiction.

The 10 case studies reflect the following central causes of forced eviction: urban development (Zimbabwe, Dominican Republic, Port Harcourt, Curitiba), large-scale development projects



*Residents plead with officials on the Ogu waterfront, Port Harcourt, Nigeria, June 30, 2009.  
Photo: UN-HABITAT.*



(Narmada Valley, India), natural disasters (Sri Lanka) and climate change (Bangladesh), the hosting of mega-events (Beijing, China), and the global economic crisis (Rome, Italy). A thematic case study on the relationship between discrimination and forced eviction with a focus on the experiences of women and the Roma is also included. The report

also assesses the impact of forced evictions on individuals, families and communities. It should be noted that this report is neither geographically nor thematically exhaustive. It is a preliminary analysis, which will ideally foster follow-up studies, the collection of updated empirical evidence and further reflection and creative thought on ways forward.





### 3. UN-HABITAT AND FORCED EVICTIONS







Historically, UN-HABITAT has not been perceived as playing a determining role in advancing the housing rights of the poorest people living in the most precarious housing situations, in part due to its own internal weaknesses which have limited its proactive engagement.<sup>7</sup> Once UN-HABITAT went through its revitalization process (1998-2001), and was transformed from a United Nations Centre to a United Nations Programme, it was able to take more seriously the challenge of implementing the Habitat Agenda and eventually the Millennium Development Goals, particularly with respect to the urban poor. To this end, at the beginning of this decade, UN-HABITAT launched a Global Campaign for Secure Tenure. The Global Campaign is an advocacy instrument designed to promote security of tenure for the poorest populations, especially those living in informal settlements and slums, with the goal of making a significant impact on the living and working conditions of the world's urban poor. The Global Campaign encourages negotiation as an alternative to forced eviction and the establishment of systems of tenure that minimise bureaucratic lags and the displacement of urban poor by government decisions and actions and market forces. Through a series of preparatory activities, consensus building, high-visibility launches, action plans and operational activities, the Global Campaign encourages dialogue between organizations of slum dwellers and support for non-governmental organizations (NGOs) and governments at all levels.

UN-HABITAT's efforts, through the Campaign, to engage and influence forced evictions globally have resulted in some successes. The Governing Council of the United Nations Centre for Human Settlements said the

following of the Secure Tenure Campaign, 5 years after its inception:

61. Generally speaking, it seems that the preparation and launch of the Campaigns has had a significant political value in raising and giving a higher profile to the chosen issues, bringing together different stakeholders and encouraging socio-political mobilization, as has happened in Brazil and the Philippines. In the Philippines, the Secure Tenure Campaign is credited with successfully involving the urban poor as partners in undertaking tenure and shelter improvements.

62. The need for the Campaigns has been fully acknowledged by governmental and nongovernmental organizations alike. It is interesting to note that, even in a country such as Brazil in which a relatively strong socio-political mobilization around the issues of the Campaigns has long existed, the promotion of the Campaigns was deemed to be of fundamental importance. The Campaigns supported the national socio-political processes there and helped them take a qualitative leap forward. This was also the case in the Philippines. In West Africa, the Campaigns are seen as an excellent way to harness political energy.

63. The wide range of important documents and materials which have been prepared in the context of the Campaigns seem to have been useful and much appreciated.<sup>8</sup>

Institutionally, however, the Campaign has been somewhat limited primarily due to a lack of sufficient resources<sup>9</sup> and resistance by

<sup>7</sup> See: *Governing Council of the United Nations Human Settlements Programme, 2005: paras 24-35.*

<sup>8</sup> *Governing Council of the United Nations Human Settlements Program, 2005: para.13.*

<sup>9</sup> *Governing Council of the United Nations Human Settlements Program, 2005: paras 20, 100-102.*



UN-HABITAT to embrace and integrate the issues raised by the Campaign into its broader programming.<sup>10</sup> These limitations, combined with the urgency of having forced evictions addressed and the international movement to have a more coordinated, systematic and sustained monitoring of forced evictions globally, resulted in the formation of the AGFE, for which UN-HABITAT's Housing Policy Section became the Secretariat.

### 3.1 ABOUT AGFE: MANDATE

At the first World Urban Forum (WUF), a dialogue discussion was organized to address the issue of unlawful evictions and to propose means for local and international actors to stop evictions, and promote negotiated resettlement alternatives. The topic was selected by the Secretariat based on an assessment of the Global Campaign for Secure Tenure that identified the issue as crucial for the further advancement of the Global Campaign.<sup>11</sup> The WUF dialogue recommended that a group be formed "to promote mechanisms for linking systems of eviction monitoring to networks of Institutions/ individuals with experience in promoting negotiated alternatives. The composition of the group should include slum dweller associations, government, local authorities, NGOs, private sector professional organizations."<sup>12</sup> The United Nations was then encouraged to "utilize this group and/or other mechanisms to take a position on how it will monitor and respond to unlawful evictions."<sup>13</sup>

AGFE was established as a result of a resolution adopted by the UN-HABITAT Governing Council during its 19th session in 2004, in

response to the recommendations of the first WUF. According to the resolution, the Executive Director of UN-HABITAT was requested to "establish an advisory group to monitor and identify, and if so requested, to promote alternatives to unlawful evictions."<sup>14</sup> The primary objective of AGFE is to advise the Executive Director of UN-HABITAT in addressing unlawful forced evictions and to promote policy alternatives. According to its Terms of Reference, AGFE is responsible for undertaking a variety of activities including to:

- monitor, identify and, if so requested, promote alternatives to unlawful eviction;
- facilitate learning through exchange and dialogue between stakeholders involved in forced evictions (e.g. governments, communities, NGOs, community based organizations (CBO), private sector, and professional associations including the media); and
- advocate and support research, training and capacity building, including working with the international community and other stakeholders to combat forced evictions and develop alternatives.<sup>15</sup>

AGFE members are appointed by the Executive Director of UN-HABITAT and serve in their individual capacity for a two-year period. The selection of members reflects, as much as possible, regional, institutional and gender balance. The group is composed of experts in the fields of urban development, community participation, human rights and forced evictions, and have been drawn from slum dweller organizations, governments, local authorities, NGOs and private sector

<sup>10</sup> Governing Council of the United Nations Human Settlements Program, 2005: para. 19.

<sup>11</sup> UN-HABITAT, Report of the First Session of the World Urban Forum, 2002: 21-22.

<sup>12</sup> UN-HABITAT, Report of the First Session of the World Urban Forum, 2002: 22. Moreover, Resolution 19/5 adopted at the 58th session of the General Assembly "...requests the Executive Director [of UN-HABITAT], in line with the recommendations of the World Urban Forum at its first session, to establish an advisory group to monitor and identify, and, if so requested, to promote alternatives to unlawful evictions" (pt. 7, 9 May 2003)

<sup>13</sup> UN-HABITAT, Report of the First Session of the World Urban Forum, 2002: 22.

<sup>14</sup> UN-HABITAT, Governing Council Resolution 19/5, 2003: Article 7.

<sup>15</sup> Advisory Group on Forced Evictions, Terms of Reference. On file with author.



professional organizations (a list of members is attached as Annex I). The last Convenor of AGFE was Yves Cabannes, Chair of the Development Planning Unit at University College London. AGFE is supported by a Secretariat in the Housing Policy Section of UN-HABITAT.

The continuation of AGFE's activities in its current structure and terms of reference remains unclear. AGFE continues to exist on paper, but its future will be determined in keeping with organizational changes at UN-HABITAT. An Expert Group Meeting focused on UN-HABITAT's potential role in preventing, monitoring and assessing the impact of forced evictions worldwide will be hosted by UN-HABITAT in September 2011. The outcomes of this meeting may play a persuasive role in the direction UN-HABITAT takes with respect to AGFE and forced evictions more generally.

### 3.2 ACTIVITIES: 2004 – 2010<sup>16</sup>

#### REPORTING TO THE EXECUTIVE DIRECTOR AND THE GOVERNING COUNCIL OF UN-HABITAT

A collective effort generated two global reports entitled Forced Evictions: Towards Solutions? The first one, published in 2005, presented: (a) the activities of the group, (b) cases of eviction threats and innovative cases where local solutions were found, (c) AGFE mission reports, and (d) reflections on innovative solutions and the way forward. The first report was launched during the UN-HABITAT Governing Council in 2005. The second report, containing up-to-date information on the cases of evictions dealt with by AGFE, was presented to the UN-HABITAT Governing Council in April 2007. Since that time, AGFE has continued to formally communicate with the Executive Director of UN-HABITAT through occasional

meetings and by making available the most pertinent findings from its missions.

#### DIALOGUE, LOBBYING AND ADVOCACY AT THE WORLD URBAN FORUMS

A session on "Fighting Forced Evictions" and a networking event on "Fighting Forced Evictions: Two years of efforts of the United Nations Advisory Group and its partners" were organized at the second and third WUF in Barcelona (September 2004) and Vancouver (June 2006), respectively. They generated a platform for a rich dialogue between panellists from local and national governments, grassroots and threatened communities, and advisory groups. Over one hundred participants attended each event. These well attended sessions and the dialogue generated in each indicated that forced evictions had become a significant global issue. AGFE members also participated in the fourth WUF in Nanjing China in 2008 and the fifth WUF in Rio de Janeiro in 2009, where they participated in side events on alternatives to forced evictions with other international groups that monitor forced evictions.

#### DOCUMENTATION, MONITORING AND FOLLOW-UP

Through its members and its large network of different actors, AGFE has monitored and followed up on planned and actual evictions in many countries, including: Argentina, Botswana, Brazil, China, Colombia, Dominican Republic, Egypt, France, Ghana, Guatemala, Honduras, India, Indonesia, Israel, Italy, Kenya, Mexico, Nigeria, Pakistan, Peru, Philippines, Senegal, South Africa, Sri Lanka, Uganda, United Kingdom, United States of America and Zimbabwe. Members have provided advisory services to governmental bodies and facilitated the provision of legal assistance to victims. A large number of cases have been documented. The cases documented so far constitute an

<sup>16</sup> Much of the following summary is excerpted from: UN-HABITAT, Advisory Group on Forced Evictions, 2007.



important and unique database on both the global situation and measures on how to address evictions.

### DEVELOPMENT OF TOOLS TO MONITOR AND ASSESS EVICTIONS

Monitoring acts of forced evictions is a key activity within AGFE's mandate. To this end, in 2009, the AGFE Secretariat developed a technical proposal for a Global Eviction Database. The proposed database would be the first to enable international groups monitoring forced evictions to work collaboratively. The potential impact of a global database is threefold:

- to provide a one-stop shop for viewers to understand the status of different global forced evictions;
- to allow stakeholders, particularly policymakers, to gain easy access to aggregated data (e.g. based on regions, compensation paid, monitoring organizations, etc.) based on the creation of different views from the database; and
- to increase general awareness of forced evictions around the world.

AGFE in conjunction with the Secretariat developed several normative tools to assist in the monitoring and documentation of forced evictions: the "Due Process Quantitative Diagnostic Tool", the "Eviction and Relocation Due Process Assessment Matrix" and the "Due Process Assessment Checklist."<sup>17</sup> These tools are an important first step to assist in the systematic documentation of the practice of forced evictions.

UN-HABITAT should consider whether 'due process' is the most effective and appropriate term for these tools. On the one hand, it might be useful for States to understand forced evictions in light of procedural human

rights, given that 'due process' is a familiar enough legal term in different contexts. On the other hand, there is something ill-fitting and technical about the term. It creates distance between those affected by forced eviction and the act itself. In order to be effectively addressed, forced eviction must be understood as more than just a process that must meet particular human rights standards. It must be understood as a fundamentally life-altering, traumatic crisis that affects every member of the household and often entire communities. It may be the single most defining event in a person's life. A human rights approach to addressing any social phenomenon requires that the impact on the individual be paramount and centre. The tools themselves are very good at ensuring this emphasis and focus, so the tools could simply be renamed: Eviction and Resettlement Human Rights Checklist.

With respect to the Quantitative Diagnostic Tool and the Matrix, an analysis of the desirability and utility of ascribing numerical values to an assessment of whether human rights criteria were met is still required. The Matrix suggests that "a maximum of available resources" standard be applied, without any indication as to how that standard can best be understood. This standard does not appear in the Checklist. The Matrix also needs to be reviewed to ensure that it is not too prescriptive or restrictive, recognizing for example that what constitutes 'adequacy', 'security' or 'reasonableness' may differ depending on the context in which the forced eviction takes place.

The eviction due process tools are intended to "assist UN-HABITAT staff to conduct a quick impact assessment of eviction and relocation processes driven by central and local government authorities in client countries."<sup>18</sup> The Due Process Assessment

<sup>17</sup> These tools were developed in 2009 and 2010 in draft form. See Annex II.

<sup>18</sup> See: UN-HABITAT, *Due Process Assessment Checklist for Development-Based Eviction and Relocation*, Draft 4 August 2010. Annex II.





Checklist is, in fact, a very detailed and fairly thorough tool aimed at assisting staff to determine whether international human rights standards have been followed throughout the different stages of eviction processes, examining the legal context of the country; pre- and mid-eviction information; access to remedies and cross-cutting issues. Together, the Checklist represents close to 70 questions, some very detailed and others more broad and overarching. There is little doubt that if information on each of these questions could be obtained, staff would be well placed to assess the situation on the ground and engage in dialogue with United Nations officials. In fact, the information sought may be far more extensive than required to initiate a process of dialogue with a government engaged in the practice of forced eviction.

The Checklist stands as a very practical tool to investigate forced evictions in an in-depth manner. The only obviously missing element from the checklist is an assessment of the less tangible effects of forced eviction, in particular, the psychological implications of threatened or actual eviction, and in the aftermath of eviction when evictees have been relocated or are homeless. The psychological dimensions of forced eviction have significant policy ramifications and should be considered in any discussion of compensation for eviction. On the issue of compensation, the Checklist should also include compensation for the injury to dignity caused by a human rights violation as egregious as forced eviction. This is the equivalent to “general damages” in a negligence case.

AGFE also developed other useful tools to assist in the documentation and assessment of violations of human rights norms in the context of forced evictions: methodologies for eviction impact assessment and the costing

of evictions; standardized forms regarding information on threatened evictions, averted or remedied evictions, implemented evictions, and monitored evictions; the AGFE evictions data collection format; and a standardized template for fact finding mission reports.<sup>19</sup> These tools have been developed such that they are in keeping with a human rights-based approach to assessing and addressing the practice of forced eviction.

## MISSIONS

Since its creation, AGFE has carried out mediating and conciliatory missions to facilitate dialogue between local and national governments and organisations of civil society to achieve negotiated alternatives in situations where forced evictions were eminent or happening. Missions were conducted in: Curitiba (Brazil), Rome (Italy), Santo Domingo (the Dominican Republic), Accra (Ghana), Harare, (Zimbabwe), Port Harcourt (Nigeria), New Orleans (USA), South East England (UK), Istanbul (Turkey) and Argentina. Each of these missions was comprised of AGFE Members along with internationally and locally recognized specialists and leaders.

## 3.3 AGFE: A BRIEF ASSESSMENT OF WORK TO DATE

During its six years, AGFE emerged as an important voice for a wide range of institutions and for threatened and evicted communities. It received information about new and ongoing forced evictions and communicated with UN-HABITAT about these evictions, assisting it to remain closely connected to events on the ground. AGFE assisted local groups to challenge forced evictions and opened up political channels to do so. For example, during the mission to Curitiba, AGFE organised a public hearing which brought together

<sup>19</sup> See Annex IV.



AGFE mission to Ushuaia, Argentina, August 8, 2009. Photo: UN-HABITAT.

Municipal, State and Federal Government representatives, representatives from the affected communities, popular movements in the struggle for housing, non-governmental organisations, universities, professionals, and students. Those who attended the public hearing agreed to establish a Working Group (equally represented by civil society and government), with the objective of proposing measures to prevent forced evictions and to promoting solutions to the cases presented at the public hearing by the affected communities. Due to social pressure which resulted from the public hearing held by AGFE, the public land belonging to the Company of Popular Habitation of Curitiba was transferred to the Municipality of Contenda (the metropolitan area of Curitiba) in payment of land taxes debts. The land is to be used for the construction of social housing. Also, the 290 inhabitants of the Village Audi, situated in

one of the poorest areas of the city of Curitiba, were resettled in the region of Sambaqui, a case that was highlighted during the public hearing carried out by the AGFE.<sup>20</sup>

As a result of the coordinated visits of AGFE and the United Nations Special Rapporteur on Adequate Housing to New Orleans, representatives from the US State Department undertook an investigative trip to New Orleans to learn more about the post-Katrina housing conditions.<sup>21</sup>

The AGFE mission to Rome resulted in:

- An unofficial but clear commitment by the Prefecture to observe a 12 month moratorium on evictions and evacuations;
- Commitment of Prefecture to organize a training course during 2005 on Article 11 of the ICESCR for magistrates, workers

<sup>20</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007: 49.

<sup>21</sup> Email correspondence with AGFE mission member, January 28, 2010, on file with author.



in the sector and associations with the possible help of the UN-HABITAT experts;

- Signing of a joint declaration between AGFE and the municipality of Rome to achieve a zero eviction plan at a local level, as coordinated at national and European levels;
- Motion of support by political parties was presented to the Italian Parliament.<sup>22</sup>

In this way, AGFE has worked hard to ensure that the perpetrators of forced evictions are no longer able to continue with impunity, by:

- engaging a broad range of stakeholders;
- facilitating new working relationships between stakeholders;
- developing alliances with decision makers; and
- engaging in collaborative on-the-ground activities and actions aimed at effecting change.

AGFE also helped to initiate international collaboration on the development of a normative framework and data collection methodology on forced evictions which are analyzed in some detail in. These tools are described and analyzed in some detail in section 3.2 of the report and the documents are available in Annex II of this report.

Despite these successes, AGFE's work has been somewhat constrained by a number of factors including:

#### **Lack of core funding and resources.**

Since its inception, AGFE has received limited funds for its work. This has meant the group as a whole has been unable to meet in-person on a regular basis, and in some years very few missions were carried out. Beyond the Secretariat, AGFE has had no paid staff

and was reliant on the volunteer time of its members.

#### **Limited visibility for the work of AGFE.**

The extent and impact of AGFE's work did not receive adequate attention by the Governing Council of UN-HABITAT, and except for the missions carried out by AGFE, AGFE itself received very little media attention, perhaps due to its lack of a media or communications strategy for its work and outputs. A closer working relationship with the ED of UN-HABITAT might have increased AGFE's profile. As a result, AGFE's work had very little impact or influence within UN-HABITAT as a whole, and in only a few instances did it have an impact on the authorities responsible for implementing and halting evictions.

#### **Lack of clear direction as to whether AGFE's work should be situated within a human rights framework.**

Though the Terms of Reference (TORs) for AGFE include an emphasis on forced eviction as a violation of human rights, and despite the fact that the tools developed by AGFE are rights based, AGFE members have different understandings of and levels of comfort with this approach. This is then reflected in the mission reports in terms of their analyses regarding rights violations.

#### **Insufficient communication between AGFE members and the Secretariat.**

Due to a lack of resources, and the international nature of AGFE, communication between the Secretariat and AGFE members was predominantly through email, rather than face-to-face meetings. Constructive email discussions are difficult to generate, especially on controversial or sensitive topics. Because it is difficult to clarify meaning in email communication, it can easily become

<sup>22</sup> Advisory Group on Forced Evictions, 2005: 119, 123.







adversarial in a way that is more often avoided when meeting in person.

**Insufficient communication between AGFE and UN-HABITAT's Executive Director.**

There was very little meaningful interaction between AGFE and the Executive Director of UN-HABITAT as AGFE only met with the Executive Director on a couple of occasions. As a result, it is questionable as to whether AGFE was, in fact, advising the Executive Director.

**Confusion regarding AGFE's role as an advocate to prevent or halt forced evictions.**

The AGFE TORs state that the primary objective of the Advisory Group is to prevent forced evictions. AGFE is to do this by advising and assisting UN-HABITAT to undertake activities such as, inter alia: “[f]acilitating dialogue between stakeholders of current or planned evictions, with a view of searching negotiated alternatives [sic]; [e]ncouraging governments

and institutions to develop proactive programmes .... and [p]romoting advocacy activities and other initiatives combating forced evictions.”<sup>23</sup> These functions leave ambiguous the extent to which AGFE can advocate on its own accord and the extent to which it is restricted to performing an advisory function to UN-HABITAT.

**Inconsistent quality between AGFE outputs.**

The quality of the fact-finding mission reports is varied. These variations are related to a number of factors, including: the amount of time available to mission members to draft the report, the nature of the mission, and the availability of documentation to support mission findings. Also, funds were not available to translate reports into English when originally written in another language, decreasing their accessibility and the likelihood of broad dissemination.

<sup>23</sup> Advisory Group on Forced Evictions, Terms of Reference: para 9. On file with author.





## 4. OVERVIEW OF FORCED EVICTIONS GLOBALLY





## 4.1 SCOPE OF FORCED EVICTIONS

There are no comprehensive global forced eviction statistics available, though organizations such as the Centre on Housing Rights and Evictions (COHRE) have produced estimates based on reported cases. Between 1998 and 2008, COHRE estimated that forced evictions affected 18.59 million people.<sup>24</sup> Between 2007 and 2008, COHRE calculated that close to 4.5 million people were affected by evictions, either threatened or implemented.<sup>25</sup> Of the approximately 1.5 million people affected by forced evictions that were actually implemented in 2007 and 2008, the breakdown by geographic region, according to COHRE statistics, is as follows:

- Asia: 872,926 or 55%;
- Latin America: 433,296 or 27%;
- Africa: 270,660 or 17%; and
- Europe: 13,286 or .85%<sup>26</sup>

"Globally, the World Bank estimated in 1994 that, over a twenty-year period and counting only three economic sectors, up to 190-200 million people were displaced by public sector projects alone, at an average of 10 million people annually. By now, this estimate is outdated. Considering the pace of displacements not only in three sectors, but in all economic sectors, and not only in public but also in private sector projects, the conservative estimate of development displacements rises to about 280-300 million over 20 years or 15 million people annually."<sup>27</sup>

Forced evictions occur in both urban and rural contexts. Rural evictions occur largely as a result of large-scale development projects such as the construction of reservoirs and

building projects associated with dams or other infrastructure work. It is not uncommon for farmers or indigenous peoples to be evicted from the lands they have traditionally owned and managed to make way for such projects. In urban areas, increasingly large-scale forced evictions are now being reported – evictions to allow for city beautification, development, and/or the hosting of major events like the Olympics or World Cup soccer. In some cities, evictions of hundreds of thousands of people in a single day have been reported.<sup>28</sup>

Forced evictions invariably affect the most marginalized and disadvantaged groups, those with the most insecure tenure, those who are the poorest: slum dwellers and squatters, female-led households, persons with disabilities, indigenous peoples, the elderly and ethnic and racial minorities.

Violence is common during forced evictions. It can include the use of batons, water canons, tear gas and sometimes even rubber bullets against those who resist the eviction. This kind of violence has resulted in bodily harm and even death. Those who resist evictions also commonly face arrest and criminal charges of disturbing the public peace and order.<sup>29</sup>

The effect of forced evictions and displacement on the lives of individuals, families and communities is nothing less than devastating. Forced eviction commonly results in overcrowding of households, loss of livelihood, unemployment, family breakup, increased consumption of alcohol and drugs, loss of educational opportunities, scarcity of food and potable water, and a loss of culture and community. It is now well documented

<sup>24</sup> Cited in *United Nations Housing Rights Programme*, 2011:9.

<sup>25</sup> These figures are, of course, estimates, based on information received by the Centre on Housing Rights and Evictions. Figures were not available for the numbers of evictions in North America during this time period.

<sup>26</sup> Centre on Housing Rights and Evictions, 2009:8.

<sup>27</sup> Cernea and Mathur, as cited in *United Nations Housing Rights Programme*, Jean Duplessis, 2011: 9.

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights, no date.

<sup>29</sup> Centre on Housing Rights and Evictions, 2009: 8.



that women suffer disproportionately from the practice of forced eviction. They suffer particular harms including gender-based violence and often bear the emotional or psychological effects experienced by their families.<sup>30</sup>

## 4.2 MAJOR TRENDS

Urban development is having a significant impact on the frequency and scale of forced evictions globally. In 2007, the number of slum dwellers around the world reached the one billion mark and by 2008, half of the world's population was recorded as living in urban areas.<sup>31</sup> According to UN-HABITAT's 2008-2009 State of the World's Cities report, the urban population in developing countries has grown, on average, at a rate of 3 million people per week in the last two decades.<sup>32</sup> Approximately half of all migrants to cities are women and there is an emerging trend of women migrating on their own.<sup>33</sup> This means women may be more susceptible to forced evictions.

In an attempt to contain this rapid and unplanned urban growth and increased pressure on urban infrastructure, cities are responding with urban regeneration or renewal strategies. These strategies, which are often cosmetic in nature, commonly involve the razing of slums and squatter settlements and the eviction of those who reside there. Residents are rarely consulted before the eviction or adequately compensated afterwards.

Climate change is emerging as a significant cause of displacement of communities in the

Pacific, in Africa and in North America (Alaska). As greenhouse gases and carbon dioxide emissions increase, water expands, tides increase, and waves grow stronger, threatening entire communities. For example, the rising Pacific and Indian Oceans is resulting in the displacement of families and communities in islands such as Papua New Guinea, Kiribati, the Maldives and the Solomon Islands.<sup>34</sup> Thousands of households in Bangladesh have been displaced as a result of rising waters and flooding.<sup>35</sup> This type of displacement is often regarded as being caused by natural rather than State imposed conditions. States, however, are being called upon to do more to curb their own contributions to climate change.

Thousands of people are also being displaced from their homes because of natural disasters, some of which are related to climate change. Hurricanes, tsunamis and earthquakes all result in the displacement of peoples from their homes and lands. Though these displacement do not arise as a direct result of State conduct or inaction, the ways in which States respond or fail to respond to these natural disasters is governed by international law and human rights principles.

Despite the scope and scale of forced evictions and the devastating effects on the livelihoods and well-being of individuals, families and communities, there remains a concerning lack of reliable, official data or information about forced evictions. The absence of this information allows the practice of forced eviction to continue with impunity, regarded as simply the 'cost' of development or urban expansion and renewal.<sup>36</sup>

<sup>30</sup> See for example: Centre on Housing Rights and Evictions, *Impact*, 2010.

<sup>31</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>32</sup> UN-HABITAT, 2008:15.

<sup>33</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>34</sup> See: Displacement Solutions, 2011: <http://displacementsolutions.org>.

<sup>35</sup> See: Displacement Solutions, 2011: <http://displacementsolutions.org>.

<sup>36</sup> Centre on Housing Rights and Evictions, 2009:7; See also: Office of the United Nations High Commissioner for Human Rights, no date.





## 5. INTERNATIONAL HUMAN RIGHTS LAW AND FORCED EVICTIONS





## 5.1 LEGAL DOCUMENTS AND PRINCIPLES

The human right not to be forcibly evicted is derived from the right to adequate housing, which was enshrined in Art.25 (1) of the 1948 Universal Declaration on Human Rights (UDHR) and has found its clearest expression as a component of the right to an adequate standard of living, including adequate housing under Art. 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). 160 States are now party to the ICESCR.

The right to adequate housing has been interpreted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) – mandated with monitoring State compliance with the ICESCR – to include protection against forced eviction. The Committee defined forced eviction as the

permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.<sup>37</sup>

The CESCR has deemed forced eviction to be a prima facie violation of the right to adequate housing,<sup>38</sup> and justifiable only in the most exceptional circumstances, and only when in accordance with the relevant principles of international law. The United Nations Commission on Human Rights (now

the Human Rights Council) referred to forced eviction as a “gross violation of [a broad range of] human rights, in particular the right to adequate housing.”<sup>39</sup> It is generally understood that forced evictions violate a host of other rights, including civil and political rights, such as: the right to health, education, food, employment, rights to non-discrimination and equality, the right to privacy, cultural rights, self-determination, the right to life, to freedom of expression and assembly, due process and access to justice, and to arbitrary detention. Some also argue that forced evictions violate the right to development.

The United Nations has adopted a number of relevant guidelines and standards by which to evaluate instances of forced eviction. These include: the CESCR’s General Comment No 7 on forced evictions which provides a legal interpretation of what is required under the ICESCR in order to comply with the prohibition on forced evictions; the *Comprehensive Human Rights Guidelines on Development-Based Displacement*;<sup>40</sup> and the *Basic Principles and Guidelines on Development-Based Evictions and Displacement*.<sup>41</sup> These Guidelines and Principles are very much in keeping with the Guiding Principles on Internal Displacement developed by the United Nations Representative of the Secretary General on Internally Displaced Persons, Francis Deng in 2001.<sup>42</sup>

Though in many instances international human rights law and principles are not directly enforceable in domestic or national level courts, international law has been used successfully to support domestic litigation

<sup>37</sup> United Nations Committee on Economic, Social and Cultural Rights, 1997: para 3.

<sup>38</sup> United Nations Committee on Economic, Social and Cultural Rights, 1991: para 18.

<sup>39</sup> United Nations Commission on Human Rights, 1993; United Nations Commission on Human Rights, 2004.

<sup>40</sup> Adopted by the Expert Seminar on the Practice of Forced Evictions, 11-13 June 1997, Geneva.

<sup>41</sup> United Nations Special Rapporteur on Adequate Housing, 2007.

<sup>42</sup> United Nations Commission on Human Rights, 1998. The Guiding Principles on Internal Displacement have provided practical guidance to governments, inter-governmental organizations, NGOs, CBOs, and others in addressing the needs and rights of internally displaced persons. These Principles are very relevant in the context of forced evictions and have informed the development of forced eviction specific guidelines and principles, as they include provisions on: protection from displacement; protection during displacement including rights to an adequate standard of living (eg: access to food, water and basic shelter/housing); and principles regarding rights of return.



*Housing rights poster in Agyemankata, Ghana. Photo: COHRE.*

against forced eviction. It is also used outside the context of litigation as an essential tool for affected communities to use in advocacy and campaigns against forced eviction. International human rights law is sometimes referred to as 'soft law', particularly with respect to economic and social rights like the right to adequate housing, on the basis that it is difficult to enforce and acts more as a shaming mechanism than 'black letter' law. This perception is, however, out-dated and incorrect. As this report reveals, economic and social rights are being litigated in different jurisdictions around the world and this litigation is based on international human rights principles. For example, a recent case of forced eviction was brought to the Kenyan High Court, *Susan Waithera Kariuki & 4 others v Town Clerk, Nairobi City Council & 2 others*. In that case, the presiding judge interpreted the right to adequate housing – enshrined in the Kenyan Constitution – and what that right requires in the face of forced eviction,

using jurisprudence from South Africa as well as international human rights law. In addition, another move aimed to strengthen the impact and accountability to the norms of international human rights law, the United Nations recently adopted an individual complaints mechanism – the Optional Protocol – to the ICESCR which, once in force, will enable individuals to file complaints directly with the CESCR for adjudication, once they have exhausted all domestic remedies.

Drawing on the United Nations' guidelines and standards by which to evaluate instances of forced eviction, and displacement what follows are some key principles which must be implemented in order for States to comply with international human rights law and obligations with respect to forced evictions.

#### **DUTY BEARERS**

While all persons have a right not to be forcibly and/or unlawfully evicted, the central question





is: who has a duty to fulfill this right? Several actors have relevant responsibilities, such as corporations and international financial institutions.<sup>43</sup> The principal obligation, however, remains with the State, which has the duty to respect, protect and fulfill relevant human rights. A report by the Special Rapporteur on Adequate Housing, notes that States must “refrain from violating human rights domestically and extraterritorially; ensure that other parties, including corporations or international financial institutions operating within the State’s jurisdiction do not violate the right to housing; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights have been violated.”<sup>44</sup> In *Akdivar and Others v. Turkey*, the European Court, referring to similar obligations under Article 1 of Protocol to the European Convention, held that the State has a duty to *both respect and protect* citizens against forcible eviction by State agents or other private citizens.

While the rights under the ICESCR are usually described as ‘progressive’ in nature, some obligations on the State are immediate. For instance, the ICESCR places an immediate obligation on States not to discriminate in the allocation of available resources on grounds such as race, sex, or political opinion.<sup>45</sup> The prohibitions on forced evictions contained within the prevailing interpretation of the right to housing poses an additional immediate obligation. As noted in General Comment 4 on adequate housing, “many of the

measures required to promote the right to housing would only require the abstention by the Government from certain practices.”<sup>46</sup> This challenges the classical critique and understanding of economic and social rights as always requiring positive obligations on the part of the State. While it is true that the realization of the right to adequate housing will require positive obligations on the part of the State, it includes a “negative” obligation on the State to refrain from forced evictions that fall short of international standards.<sup>47</sup>

It is unsatisfactory for a State to justify its disregard of housing rights by referring to other services it provides, or the fact that certain groups are enjoying the full realization of their rights. In *Grootboom*, a seminal housing rights case, the South African Constitutional Court clarified that housing policies which violate the rights of some groups even in the context of fulfilling the same or other rights to other citizens, still fell short of required international standards.

## PRE-EVICTION

States are obliged to refrain from engaging in the practice of forced eviction, especially as a punitive measure or means of war.<sup>48</sup> They are also obliged to protect people against the violation of their human rights by controlling and managing the underlying causes of evictions including those originating from third parties, such as land speculation and other market forces.<sup>49</sup> Where these forces may result

<sup>43</sup> See: *United Nations Special Representative of the Secretary-General, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie, 2011, which provides an analysis of the guiding principles on business and human rights with a focus on three fundamental pillars: First, “the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication.” Second, “the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.” And, third, “the need for greater access by victims to effective remedy, both judicial and non-judicial.”

<sup>44</sup> *United Nations Special Rapporteur on Adequate Housing*, 2007: paras 11-12.

<sup>45</sup> *International Covenant on Economic, Social and Cultural Rights*, 1966: art 2.2

<sup>46</sup> *United Nations Committee on Economic, Social and Cultural Rights*, 1991: para 10; see similarly General Comment 7, *United Nations Committee on Economic, Social and Cultural Rights*, 1997: para 8: “the State’s obligation to ensure respect for that right [against forced evictions] is not qualified by considerations relating to its available resources.”

<sup>47</sup> *Government of the Republic of South Africa v Grootboom*, 2000.

<sup>48</sup> *United Nations Committee on Economic, Social and Cultural Rights*, 1997: para 8; *Centre on Housing Rights and Evictions*, Pinheiro, 2005: Principle 5.3.

<sup>49</sup> *United Nations Special Rapporteur on Adequate Housing*, 2007: para 30.



in the violation of human rights, the State is under an obligation to intervene to ensure that this does not happen.

Acknowledging that forced evictions may nonetheless occur, the CESCR and other United Nations bodies specify certain requirements that must be met before a State commences with an eviction. In particular, all feasible alternatives to eviction must be explored in consultation with the affected community.<sup>50</sup> The purpose of such consultation is not only to notify the community, but also to explore and assess alternatives to eviction proposed by these communities, using a bottom-up approach. Thus, an options assessment and evaluation of anticipated impacts should proceed in parallel with consultations, taking into account differential consequences on affected groups, with a view to securing their human rights. Special attention must be given to impact on vulnerable groups, such as women, Indigenous peoples, and persons with disabilities. The African Commission stressed the importance of such consultation in *Endorois v. Kenya*, noting that the threshold of required consultation differs according to the circumstances and the nature of the evicted group and their relationship to their homes or lands.<sup>51</sup> In the *Saramaka* case, the Inter-American Court stressed that such consultation requires effective participation of affected groups in the decision-making.<sup>52</sup>

In addition to consultation, those affected by the forced eviction have a right to due process. The State must provide reasonable notice of the eviction and a justification for the eviction.<sup>53</sup> Those who will be affected by the

forced eviction also have a right to a hearing or trial to challenge the eviction before it occurs.

### MID-EVICTION

States are generally only permitted to undertake evictions in exceptional circumstances. Even during such circumstances, evictions must be: (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; and (e) regulated so as to ensure full and fair compensation and rehabilitation.<sup>54</sup> The use of force, or gendered violence, is strictly prohibited.

Where eviction is deemed necessary, persons evicted have the right to be resettled by the provision of alternative lands or housing of equal or better quality.<sup>55</sup> In accordance with the principles expounded in General Comment No. 4 of the CESCR, alternative housing or housing at relocation sites must satisfy the following criteria: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.<sup>56</sup>

### POST-EVICTION

One of the basic principles of the right against forced evictions is the duty on the State to provide adequate compensation. The adequacy of compensation depends on the circumstances of each case. In general, however, there is a strong bias to real property compensation, and recognition that “[c]ash compensation should under no circumstances replace real compensation in the form of

<sup>50</sup> United Nations Committee on Economic, Social and Cultural Rights, 1997: para 13.

<sup>51</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 2009: para 200.

<sup>52</sup> *Saramaka People v. Suriname*, 2007

<sup>53</sup> United Nations Special Rapporteur on Adequate Housing, 2007: paras 37 & 41.

<sup>54</sup> United Nations Special Rapporteur on Adequate Housing, 2007: para 21.

<sup>55</sup> United Nations Special Rapporteur on Adequate Housing, 2007: para 16.

<sup>56</sup> United Nations Committee on Economic, Social and Cultural Rights, 1991: para 8; See also: United Nations Special Rapporteur on Adequate Housing, 2007: para 16.



*Njemanze demolition, Port Harcourt, Nigeria, March 2009. Photo: UN-HABITAT*

land and common property resources.”<sup>57</sup> The adequacy of alternative lands will be determined on the basis of how much they fulfill the criteria of the right to housing, in terms of providing security of tenure, access to basic services, affordability and habitability.<sup>58</sup> It is also important to recognize that certain groups, particularly indigenous communities, have a strong and enduring bond to their land and will often find the offer of alternative land or monetary compensation to be unacceptable.

Closely linked to adequate compensation is the concept of restitution, which is intended to place a duty on States to ensure an aggrieved person is returned to his or her pre-loss position.<sup>59</sup> As a legal concept, restitution has been “treated as a central (and often preferred)

remedy for violations of legal obligations within many jurisdictions for more than a century.”<sup>60</sup> It is “increasingly endorsed by the international community as being relevant to instances of displacement around the world.”<sup>61</sup> Restitution is considered to be a human right on the premise that “human rights violations...must be remedied by a process of restoration to re-establish as far as practicably possible the pre-loss position of those affected.”<sup>62</sup> Restitution rights have been recognized and enforced in a number of real world situations in recent decades including post-conflict Bosnia-Herzegovina, post-authoritarian South Africa and post-communist East Germany.<sup>63</sup> The Pinheiro Principles, adopted in 2005, “provide practical guidance to States, UN agencies and the broader international community on how

<sup>57</sup> United Nations Special Rapporteur on Adequate Housing, 2007: para 60.

<sup>58</sup> United Nations Special Rapporteur on Adequate Housing, 2007: para 55.

<sup>59</sup> Centre on Housing Rights and Evictions, Sri Lanka, 2009.

<sup>60</sup> Centre on Housing Rights and Evictions, Pinheiro, 2005: 4.

<sup>61</sup> Centre on Housing Rights and Evictions, Sri Lanka, 2009: 3.

<sup>62</sup> Centre on Housing Rights and Evictions, Sri Lanka, 2009: 3.

<sup>63</sup> Centre on Housing Rights and Evictions, Pinheiro, 2005: 4.





to best address the complex legal and technical issues surrounding housing, land and property restitution.”<sup>64</sup> They are discussed in further detail below.

States also have obligation to ensure evictions do not render persons homeless or vulnerable to other human rights violations. “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.”<sup>65</sup>

It is acknowledged that unlawful evictions may take place despite State efforts, therefore, international human rights instruments clarify that the State must provide adequate legal remedies for persons claiming violation of their right to housing.<sup>66</sup>

## 5.2 THE PINHEIRO PRINCIPLES

The Pinheiro Principles on Property Restitution for Refugees and Displaced Persons were developed by a leading housing rights advocate, Scott Leckie, in conjunction with Paulo Sérgio Pinheiro, United Nations Special Rapporteur on housing and property restitution for refugees and internally displaced persons. They were formally endorsed on August 11, 2005. Under the Principles, forced evictions are explicitly prohibited and States are expected to “take steps to ensure that no one is subjected to displacement by either State or non-State actors.”<sup>67</sup> The Principles recognize the right to housing and property restitution as a core remedy to displacement: Principle 2 states:

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.<sup>68</sup>

The Principles also recognize the right to adequate housing and posit that States should allow any displaced persons who wish to return to their home to do so without arbitrary or unlawful time limitations.<sup>69</sup>

While the Principles are not legally binding, they have been recognized as having “persuasive value” by some jurisdictions in cases involving the violation of property rights.<sup>70</sup> In *Centre on Housing Rights and Evictions v. Sudan*, the African Commission on Human and Peoples’ Rights used the Principles to analyze remedies to the violation of the right to property in the context of forced eviction.<sup>71</sup> The Commission referred to the Principles as “emerging principles in human rights jurisprudence” and that when read with other jurisdictional decisions, they could provide

<sup>64</sup> Centre on Housing Rights and Evictions, Pinheiro, 2005: 4.

<sup>65</sup> United Nations Committee on Economic, Social and Cultural Rights, 1997: paras 13 & 16.

<sup>66</sup> United Nations Committee on Economic, Social and Cultural Rights, 1997: para 15.

<sup>68</sup> Centre on Housing Rights and Evictions, Pinheiro, 2005: Principle 2.1, 2.2.

<sup>69</sup> Centre on Housing Rights and Evictions, Pinheiro, 2005: Principle 8, 10.2.

<sup>70</sup> Centre on Housing Rights and Evictions (COHRE) v. Sudan cited in Thiele, 2010: 5.

<sup>71</sup> Thiele, 2010: 4.



“great persuasive value” to interpreting African property rights.<sup>72</sup> While not explicitly dealing with forced eviction, the European Court of Human Rights cited five of the Principles in its decision in *Dokic v Bosnia and Herzegovina*.<sup>73</sup> The Court also called on “member states to resolve post-conflict housing, land and property rights issues of refugees and IDPs [internally displaced persons], [by] taking into account the Pinheiro Principles.”<sup>74</sup> If regional and national courts continue to acknowledge the Principles in their decisions, they will start to hold more weight both legally and politically and potentially lead to more substantial remedies for those who have experienced displacement and forced eviction.

### 5.3 THE MILLENNIUM DEVELOPMENT GOALS

The Millennium Development Goals (MDGs), derived from the Millennium Declaration, commit States to a new global partnership to address extreme poverty. Though the MDGs are not legally binding, they have significant political weight and are relevant in the context of forced evictions in developing countries. The MDGs were signed by 189 countries, including 147 heads of State and Government, in September 2000<sup>75</sup> and received further endorsement by United Nations member states at the 2005 World Summit (Resolution adopted by the General Assembly).<sup>76</sup> Forced



*The impact of forced evictions in South Africa. Photo © COHRE.*

<sup>72</sup> Centre on Housing Rights and Evictions (COHRE) v. Sudan cited in Thiele, 2010: 5.

<sup>73</sup> *Dokic v Bosnia and Herzegovina*, 2010: para 44.

<sup>74</sup> *Dokic v Bosnia and Herzegovina*, 2010: para 45.

<sup>75</sup> United Nations General Assembly, 2000: online.

<sup>76</sup> United Nations General Assembly, 2005: online.



evictions are contrary to many of the United Nations' MDGs.<sup>77</sup> The practice of forced eviction leaves the poorest, most insecure households, particularly slum dwellers, even more destitute,<sup>78</sup> and contributes to extreme poverty and hunger,<sup>79</sup> reduces access to employment<sup>80</sup> and primary education,<sup>81</sup> often increases or exacerbates gender inequality,<sup>82</sup> and contributes to poor health.<sup>83</sup> Perhaps it is not surprising therefore, that the sole indicator for target 7.D. (improving the lives of 100 million slum dwellers by 2020) is the number of households worldwide with secure tenure.<sup>84</sup> The importance of security of tenure to the realization of the MDGs was also noted by the United Nations Secretary General's MDG Task Force: "Meeting this challenge [of the MDG] requires a plan for secure tenure, affordable access to land, basic services, and housing finance."<sup>85</sup>

The need to more closely align the MDGs and human rights is underscored by the way in which some States have misinterpreted target 7.D, linking the MDG agenda with slum clearance policies that conflict directly with their own human rights treaty obligations. For example, it has been argued that a provincial slum clearance law in South Africa, and moves to replicate it, were based on a flawed interpretation of target 7.D. Similarly, in its 2005 MDG report, Viet Nam mentions urban slum clearance as one of the measures it has taken to reach target 7.D., instead of rectifying the absence of references to secure tenure and participatory upgrading in target 7.D.<sup>86</sup>

The fulfillment of the MDGs with respect to improving the lives of slum dwellers is in keeping with the commitments made by States in the Habitat Agenda, adopted at the second United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey in 1996. The Habitat Agenda commits States to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration, [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided."<sup>87</sup>

## 5.4 INTERNATIONAL HUMAN RIGHTS MECHANISMS

There are a number of international human rights mechanisms that NGOs and CBOs can use in their advocacy to prevent, mitigate against forced evictions. What follows below is not an exhaustive list of all human rights mechanisms, but a select few important mechanisms.

### 5.4.1 UNITED NATIONS TREATY MONITORING BODIES

States that have ratified treaties such as, the ICESCR, the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD), are

<sup>77</sup> United Nations General Assembly, 2000: online.

<sup>78</sup> Millennium Development Goal 7d is to "Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020."

<sup>79</sup> Millennium Development Goal 1 is to broadly "Eradicate extreme poverty and hunger" and "Reduce by half the proportion of people living on less than a dollar a day."

<sup>80</sup> Millennium Development Goal 1b is to "Achieve full and productive employment and decent work for all, including women and young people."

<sup>81</sup> Millennium Development Goal 2 is to "Achieve universal primary education."

<sup>82</sup> Millennium Development Goal 3 is to "Promote gender equality and empower women."

<sup>83</sup> Millennium Development Goal 5 and 6 are respectively to: "Improve maternal health" and "Combat HIV/AIDS, malaria and other diseases."

<sup>84</sup> United Nations Millennium Project, 2006: online.

<sup>85</sup> United Nations Millennium Project, 2005:3.

<sup>86</sup> Office of the High Commissioner for Human Rights, 2010.

<sup>87</sup> UN-HABITAT, 1996: para 40(n).



required to report every five years – in writing and at an oral hearing – to the relevant treaty monitoring body (United Nations Committee), to provide information on the measures the State is taking to meet its obligations under each treaty to which it is a party. NGOs/CBOs are also invited to submit reports with their assessment of State party compliance prior to the review of the State and to attend the oral hearing. After the review, the Committee issues Concluding Observations which provide a succinct assessment of the State's compliance with the treaty. These Concluding Observations are often very critical of State parties, tackling tough human rights issues head-on. Concluding Observations always include a set of recommendations that the State is expected to act on before the next review.

Many NGOs have brought the issue of forced eviction to the attention of Committees, particularly the CESCR. The CESCR takes very seriously the issue of forced evictions and has commented critically on forced evictions in a number of country contexts.

For example, in its most recent review of the Dominican Republic in 2010, the CESCR expressed concern regarding ongoing forced evictions in the country and made concrete recommendations in this regard:

27. The Committee reiterates its concern about the continuing housing deficit in the State party, both in terms of quantity and quality, and about housing conditions in the bateyes, including limited access to sanitation infrastructure, water supply and health and educational services. The Committee also reiterates its concern over forced evictions taking place in contravention of the State party's obligations under the Covenant and

notes the absence of a law or decree prohibiting the practice of evictions (art. 11).

In light of the Committee's general comments Nos. 4 (1991) on the right to adequate housing and 7 (1997) on forced evictions, the Committee recommends that the State party carry out measures to provide access to adequate and affordable housing with legal security of tenure for everyone, irrespective of income or access to economic resources and particularly to the most disadvantaged and marginalized individuals and groups. The Committee also urges the State party to take specific measures to ensure that persons forcibly evicted are provided with alternative accommodation or compensation enabling them to acquire adequate accommodation, including by adopting an adequate legal framework. It further requests that the State party provide additional updated information in one year's time on the implementation of the recommendations made in the report on the technical assistance mission to the State party of the Committee on 19–26 September 1997 (E/C.12/1997/9). [Emphasis added]<sup>88</sup>

NGOs and CBOs in the Dominican Republic can now use this multi-pronged recommendation in their advocacy to demand that the government refrain from the practice of forced evictions, and that it adopt a legal framework to be applied with respect to forced eviction and provide victims of forced eviction with adequate compensation.

It should be emphasised that Concluding Observations of this nature are only useful if concerned organizations bring them back home and ensure their relevance on the ground, domestically. States often do not pay heed to the recommendations of treaty

<sup>88</sup> United Nations Committee on Economic, Social and Cultural Rights, 2010: para 27.





monitoring bodies, therefore, it often rests on NGOs/CBOs to utilize these recommendations to demand action and change. NGOs/CBOs can use Concluding Observations in a variety of ways - to build media attention on their issues, to publically shame their government, or to support litigation. Most organizations that participate in the treaty monitoring body process also find it an excellent mechanism through which to build networks and solidarity both domestically and with international human rights NGOs.

Of particular use to those working to prevent or address forced evictions may be the early warning and urgent procedures mechanisms as well as the individual complaints mechanisms and interim measures available through some of the treaty monitoring bodies. For example, under CERD, NGOs and other concerned stakeholders can request “early warning measures” to prevent existing problems from escalating into conflicts and “urgent procedures” to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. For example, the Human Rights Clinic of the University of Essex and the Dale Farm Housing Association filed several Communications (2010 and 2011) with the CERD Working Group on Early Warning and Urgent Action regarding the imminent forced eviction of the Dale Farm Gypsy and Traveller Community by Basildon Borough Council.<sup>89</sup> In response, the CERD Committee expressed concern about the eviction and urged the UK government to consider suspending any planned eviction until an adequate solution is achieved and to designate alternative sites that are adequate, suitable for relocation and compatible with the culture and traditions of the people affected.<sup>90</sup>

Several treaties also have individual complaints mechanisms or “optional protocols” that can be used to address potential rights violations once all domestic remedies have been exhausted and if the protocol has been ratified by the State Party. Generally, under this procedure, the treaty monitoring body has the mandate to order interim measures at any time. For example, in 2011 the Global Initiative for Economic, Social and Cultural Rights in partnership with the Equal Opportunities Association (Bulgaria), filed a complaint with the United Nations Human Rights Committee on behalf of members of the Dobri Jeliatzkov Romani community in Sofia, Bulgaria who are facing imminent eviction. Included in their communication was a request for interim measures of protection, which the Committee granted requesting the State Party to refrain from evicting the complainants and/or demolishing their dwellings until the communication has been properly considered by the Committee.<sup>91</sup>

#### **5.4.2 UNITED NATIONS SPECIAL RAPPORTEUR: ADEQUATE HOUSING**

Special Rapporteurs are independent experts appointed by the United Nations Human Rights Council. They are not part of the United Nations civil service (this position is honorary and no remuneration is received for their work), though they receive support and assistance from the High Commissioner for Human Rights in Geneva. Special Rapporteurs do not represent the countries of their nationality and their independence is fundamental to ensure their impartiality. There are Rapporteurs on a number of thematic areas including adequate housing, food, and water and sanitation.

<sup>89</sup> University of Essex and Dale Farm Housing Association, Communication, 2011: online.

<sup>90</sup> Committee on the Elimination of All Forms of Racial Discrimination, 2010: online.

<sup>91</sup> United Nations Human Rights Treaty Division, 2011: on file with author.





The main activities of the Special Rapporteur on Adequate Housing are:

- to receive information on individual cases of violations against the right to adequate housing;
- to request explanations from governments by means of urgent appeals and allegation letters;
- to perform official missions to specific countries to investigate the status of the right to housing and present the respective report to the United Nations Human Rights Council; and
- to submit an annual report to the United Nations Human Rights Council, in Geneva, and one to the United Nations General Assembly, in New York, which addresses specific themes related to the right to housing or specific reports on country missions performed by the Rapporteur.<sup>92</sup>

All of the functions of the Special Rapporteur can be of practical value and significance in advocacy efforts domestically to prevent or stop forced evictions. The official country missions tend to have the largest on-the-ground impact. They provide an opportunity for constructive dialogue between the Rapporteur and government officials in a non-adversarial environment. Official missions can assist in opening dialogue between government officials and civil society, especially where that relationship was previously adversarial or non-existent. Missions can also provide an opportunity for NGOs/CBOs and other stakeholders to have their voices heard by an independent official who is working in their direct interest and whom will report back to the broader international community.

For example, the Special Rapporteur on Adequate Housing went on mission to Kenya in February 2004. He visited a number of

informal settlements threatened with evictions and those who had been evicted. He made several strong recommendations:

82. ...With respect to evictions, the Government should immediately put into practice the procedure called for under general comment No. 7 of the Committee on Economic, Social and Cultural Rights. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions.

Following his visit, the Special Rapporteur maintained pressure on the government through follow-up correspondence. A few months after the Special Rapporteur's visit, the Government announced a temporary halt to all evictions. It is generally understood that this temporary moratorium can be attributed to the joint initiatives at the local, national and international level, including the Special Rapporteur's mission.

Allegation letters can contribute in a cost-effective way to the pressure on a State to address forced evictions within its territory. They also establish some dialogue between a State party and the United Nations human rights system and can result in the State furnishing the United Nations with more information regarding the eviction, that might otherwise be more difficult to obtain. For example, in 2009 the Special Rapporteur wrote an allegation letter to Italy regarding the eviction of a Roma community in Milan. The Government of Italy provided a response indicating that the evictions had been undertaken in conformity with the Italian Criminal Code and that emergency shelter was offered to community members, though none had availed themselves of it.<sup>93</sup>

<sup>92</sup> United Nations Special Rapporteur on Adequate Housing, 2011: online.

<sup>93</sup> United Nations Special Rapporteur on Adequate Housing, 2009: paras 46-47.

### 5.4.3 UNIVERSAL PERIODIC REVIEW



*United Nations delegates listen to review of the United States' human rights record in Geneva, November 5, 2010. Photo: COHRE.*

The Universal Periodic Review (UPR) is a relatively new human rights mechanism administered through the United Nations Human Rights Council. It is essentially a peer review process, whereby States review the compliance of other States with respect to international human rights norms and obligations. Every Member State to the United Nations is reviewed under this mechanism every 5 years, whether or not they are a member of the United Nations Human Rights Council. Though the recommendations that emerge from this review process do not have the force of law, they have significant political weight. To date, the UPR has been taken quite seriously by most States. The UPR process is meant to create dialogue between States and NGOs. In its preparations for the UPR, States are expected to engage in meaningful consultations with

a diverse range of NGOs and to be able to report back to the Human Rights Council on achievements in this regard. NGOs are invited to make very short written submissions which contribute to the questions asked of the State during the review. The issue of forced evictions has been raised in the UPR process.

For example, the United States recently underwent its review by the Human Rights Council, with the US having accepted recommendations in March 2011. Human Rights NGOs such as the National Law Center on Homelessness and Poverty raised the issue of rising evictions and growing homelessness in the US as a result of the mass conversion of public housing into private rental accommodation that is unaffordable.<sup>94</sup> UN-HABITAT also submitted a report to the

<sup>94</sup> Tars, 2010.



United Nations Human Rights Council – which it is entitled to do – regarding the status of the right to adequate housing in the United States.<sup>95</sup> UN-HABITAT's succinct report highlights the findings of AGFE's mission to New Orleans, stating:

In July 2009, the Advisory Group on Forced Evictions (AGFE), which advises the Executive Director of UN-HABITAT, conducted a fact-finding mission to the city of New Orleans and found allegations of instances of forced evictions caused by such activities as the demolition of public housing, inadequate supply of housing vouchers and affordable private market units, and the unequal distribution of hurricane recovery funds. It also commented on a dramatic rise in the population of homeless individuals in New Orleans, which may have been aggravated by these activities.<sup>96</sup>

The submission recommends that the United States ratify the ICESCR and support legislative initiatives calling for the right to adequate housing.<sup>97</sup> As a result of these and other submissions, United States government officials agreed to a recommendation put forward by a number of States that they ratify the ICESCR in general, and that they better safeguard the economic and social rights of the most vulnerable and the homeless.<sup>98</sup>

## 5.5 THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW TO DOMESTIC LITIGATION AND ADVOCACY

International human rights law can be used in domestic advocacy against forced evictions in a variety of ways.

If a State has ratified a treaty, the provisions of the treaty and its interpretation through General Comments, as well as Concluding Observations can be used to support domestic litigation aimed at preventing or remedying forced eviction.

International law can also be used in legislative advocacy. For example, language from the ICESCR can be introduced into legislative records to interpret existing legislation. International human rights may also be used to inform the introduction of new legislation. For example, advocates in Canada used the CESCR's Concluding Observations on Canada as well as the Special Rapporteur's report on his mission to Canada to inform a private member's bill, the Secure, Adequate, Accessible and Affordable Housing Act.

International human rights law can also be used in the everyday work of adjudicators. For example, in keeping with international human rights principles regarding forced evictions, adjudicators presiding over landlord-tenant disputes could decide to investigate every application to evict in order to determine whether the eviction is likely to cause the tenant to become homeless. In those cases where it would, the adjudicator would not grant the eviction order and would, instead, fashion a remedy to ensure the tenant would somehow remain housed.

International human rights principles can also be used to support campaigns to resist forced evictions and for the right to adequate housing.

<sup>95</sup> UN-HABITAT, *Submission for Universal Periodic Review of United States of America*, November 2010.

<sup>96</sup> UN-HABITAT, *Submission for UPR*, 2010: 5.

<sup>97</sup> UN-HABITAT, *Submission for UPR*, 2010: 7.

<sup>98</sup> Norway and Morocco made this recommendation. For a summary of recommendations accepted and rejected by the US see: National Law Center on Homelessness and Poverty, 2011.



## 6. EVICTIONS IN PRACTICE







### 6.1 KEY CAUSES

AGFE's work alongside that of other international groups such as COHRE, Habitat International Coalition (HIC), International Alliance of Inhabitants, Slumdweller International (SDI) and the Asian Coalition for Housing Rights (ACHR), shows that the most prevalent causes of forced eviction are those that arise as a result of development. Development related evictions span a broad range of activities including:

- large scale projects like hydro-electric dams, or mining projects that force people from their homes and off their land and that lead to urban-rural migration;
- city development projects to address increasing urbanization and related infrastructure issues;

- urban projects to increase safety and security of inhabitants living in areas deemed by authorities to be dangerous;
- projects aimed at addressing an environmental concern;
- city beautification projects; and
- the hosting of mega-events like the Olympics, World Cup Soccer events, and international conferences.

Outside of development related projects, forced evictions also occur as a result of natural disasters, climate change and more recently (particularly in developed countries), as a result of economic deprivation, market forces and more specifically the global financial crisis.

TABLE 1: CAUSES OF FORCED EVICTION

Cause	Characteristics	Examples
Urban development	<ul style="list-style-type: none"><li>• Cities are dramatically increasing in size, partly due to rural-urban migration (some of which is caused by forced eviction) resulting in local and national governments developing master plans to deal with infrastructure challenges.</li><li>• Where urban population is exploding, poor residents frequently live in precarious housing without secure tenure making them extremely susceptible to forced evictions.</li><li>• To address rapid growth, cities are forcibly evicting the most vulnerable residents to make room for new infrastructure, beautification projects and the institution of master city plans.</li><li>• Often evictions occur in conjunction with real estate and corporate sectors.</li></ul>	<p><b>Nairobi, Kenya:</b> mass evictions from informal settlements located in areas deemed by the authorities to be “dangerous”</p> <p><b>Zimbabwe:</b> city beautification destroys informal housing</p> <p><b>Dominican Republic:</b> residents without title forcibly evicted to make room for infrastructure</p> <p><b>Port Harcourt, Nigeria:</b> demolition of waterfront settlements to execute a city master plan</p> <p><b>Curitiba Brazil:</b> city beautification, national security, disaster prevention</p>
Large scale development	<ul style="list-style-type: none"><li>• Large scale development involves the creation of massive new infrastructure projects like dams, mines and roads under the pretext of serving the ‘public good’.</li><li>• Typically involves destruction of entire communities for development of new infrastructure (i.e. dams, mining, roads).</li><li>• Major cause of rural-urban migration.</li><li>• Leads to severe environmental damage.</li></ul>	<p><b>Alcantara, Brazil:</b> expansion of Space Launch centre</p> <p><b>Karachi, Pakistan:</b> construction of Lyari Expressway</p> <p><b>Philippines:</b> logging and open pit mining</p> <p><b>Narmada Valley, India:</b> Sardar Sarovar multipurpose dam project</p>



Cause	Characteristics	Examples
Natural disasters and climate change	<ul style="list-style-type: none"> <li>Natural disasters include hurricanes, earthquakes and tsunamis, while climate change is attributed to human activities that alter the composition of the global atmosphere causing flooding, rising sea levels, extreme weather.</li> <li>Inadequate government planning and policies surrounding disaster management and climate change has led to forced relocations, land confiscations and government threat to secure tenure.</li> <li>Where people have been displaced or forcibly relocated by natural disasters and climate change, states are responsible for resettling people in keeping with human rights law.</li> </ul>	<p><b>New Orleans, United States:</b> Hurricane Katrina led to demolition of public housing with no adequate resettlement plan</p> <p><b>Sri Lanka:</b> Tsunami led to no construction buffer zone that displaced people with no alternative</p> <p><b>Khulna District, Bangladesh:</b> permanent coastal flooding has led to forced displacement with no resettlement plan</p>
Mega events	<ul style="list-style-type: none"> <li>Mega events include the Olympic Games, Soccer World Cup, world expos and other events that draw significant national or international attention.</li> <li>Used as excuse to push through infrastructure upgrading and city beautification plans and to displace unwanted population groups.</li> <li>Criticism for forced eviction tactics has led to authorities trying to delink any evictions that take place as being part of the preparations.</li> </ul>	<p><b>Istanbul, Turkey:</b> European Capital of Culture</p> <p>Nagoya, Japan: Aichi Expo</p> <p><b>Beijing, China:</b> Summer Olympics</p> <p><b>London, England:</b> Summer Olympics</p> <p><b>Brazil:</b> World Cup Soccer &amp; Summer Olympics</p>
Economic evictions and the global financial crisis	<ul style="list-style-type: none"> <li>The global financial crisis has led to extreme fiscal uncertainty for governments around the world and has resulted in millions of mortgage foreclosures.</li> <li>Governments have evicted vulnerable groups from prime real estate to sell for profit.</li> <li>Mortgage foreclosures have led to forced eviction of thousands of renters who were living in foreclosed buildings.</li> <li>States have obligations under ICESCR to ensure no one is evicted into homelessness.</li> </ul>	<p><b>Italy:</b> rent and mortgage default; illegal and informal occupation of public housing</p> <p><b>Argentina:</b> lack of affordable housing has led to occupation of 'illegal' land and subsequent eviction</p> <p><b>United States:</b> Millions of homes have been foreclosed in the last three years resulting in a sharp increase in the homeless population</p>
Discrimination	<ul style="list-style-type: none"> <li>Forced eviction is aimed at those who are impoverished and other particular groups recognized as requiring protection from discrimination.</li> <li>As compared to people with secure tenure or with an adequate income or sustainable livelihood, those who suffer eviction are prevented from enjoying the right to an adequate standard of living, including housing and food.</li> <li>In some instances, particular groups of people are clearly targeted for forced eviction and thus directly discriminated against. Women and the Roma are two such groups.</li> <li>Discrimination interacts with and is interrelated to other causes of forced eviction.</li> </ul>	<p><b>Greece:</b> Roma evicted for preparation of 2004 Olympic Games.</p> <p><b>United Kingdom:</b> In Greater London Roma and Irish Travellers evicted through implementation of regional spatial strategies.</p> <p><b>Italy:</b> Roma communities evicted with no alternatives provided.</p>



### 6.1.1 URBAN DEVELOPMENT

Between 2007 and 2008 over 40 per cent of all recorded forced evictions were in the urban context.<sup>99</sup>

The global rise in migration to urban centres alongside urbanization itself has resulted in a massive increase in the number of 'slum dwellers' with nearly one billion people now living in slums.<sup>100</sup> According to UN-HABITAT, in the last two decades, the urban population in developing countries has grown on average at the rate of 3 million people per week.<sup>101</sup> The city can be a cruel place to live: the population in cities is exploding, which places huge demands on infrastructure, housing, employment, health, sanitation and other services. These demands often are not being met. As a result, poor migrants and city dwellers are frequently left to live in the most precarious housing, without secure tenure, building makeshift accommodation on public lands, wherever they can find a bit of space: along railway and power lines, on sidewalks by busy roads, or near airports. Of course, by living on public lands that can be deemed dangerous to health and safety, and without legal title, these residents are extremely susceptible to forced eviction.

To address rapid and unplanned growth and its increasing pressure on urban infrastructure, municipal governments are instituting "Master Plans", urban renewal or beautification strategies,<sup>102</sup> in some cases with the help of the real estate sector<sup>103</sup> and domestic and foreign corporations.<sup>104</sup> According to some municipal governments, these plans are an attempt to gain control over urban development,

in the context of unruly and unsafe rapid urbanization.<sup>105</sup> In some instances, these urban renewal strategies or plans are in fact mostly 'cosmetic changes'<sup>106</sup> and rarely benefit the most precariously housed. In fact, more often they result in forced eviction of residents to make way for commercial complexes or mega projects.<sup>107</sup> The individuals impacted by these strategies are rarely consulted and are often rendered homeless and even more destitute than they were previously.<sup>108</sup>

There are plentiful examples of forced evictions occurring in these contexts.

Informal settlements in **Nairobi, Kenya** currently house over two million people. In early 2004, various Ministries within the national government announced an unprecedented series of mass evictions, threatening over 300,000 residents in Nairobi, including thousands in Kibera, Nairobi's largest informal settlement. The planned evictions were justified by the government on the basis that informal settlements were located in dangerous public areas – rail reserves, under electrical power lines or on land reserved for future road construction. The government indicated that all settlements built on land set aside for road reserves, near roads, railway tracks or power lines faced eviction. Raila Village was the first community to be evicted: 400 structures were demolished including schools, clinics and churches. This eviction resulted in the displacement of approximately 2,000 people and caused property losses worth millions of Kenyan shillings. Residents were not provided with due notice, were not consulted and no resettlement or relocation

<sup>99</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>100</sup> Housing and Land Rights Network, Habitat International Coalition, 2010: 5-6.

<sup>101</sup> UN-HABITAT, 2008:15.

<sup>102</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>103</sup> Leckie, 1995: 8.

<sup>104</sup> Housing and Land Rights Network, Habitat International Coalition, 2010:4.

<sup>105</sup> UN-HABITAT, Report on Mission to Port Harcourt, 2009.

<sup>106</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>107</sup> Housing and Land Rights Network, Habitat International Coalition, 2010:6.

<sup>108</sup> Centre on Housing Rights and Evictions, 2009:9.



Homes marked for demolition for the Azikiwe Street dualization, Port Harcourt, Nigeria, March 13, 2009.  
Photo: UN-HABITAT.

plan was offered. Around the same time, similar evictions occurred along the railway lines in Kibera.<sup>109</sup> The outcry and community organizing about these and the thousands of other threatened evictions resulted in the governments suspending any further evictions in Kibera. Negotiations and discussions between the government, those affected by potential evictions and other stakeholders have commenced regarding a possible resettlement plan for those living along the rail lines. However, this has not curbed forced evictions in other parts of Kenya.<sup>110</sup>

Residents of the **Dominican Republic** have been subjected to ongoing evictions for decades. Many of these evictions are the result of development projects related to urbanization, be it the building of roads and

highways or land development for tourism. It is made relatively easy by the fact that most residents in the Dominican Republic do not have formal deeds or leases to their homes/lands. For example, Amnesty International reported that at the beginning of December 2007, scores of police and soldiers forcibly evicted 45 families, including minors, from their homes in Villa Venecia de Pantoja, approximately 10 kilometres from Santo Domingo. The police and soldiers woke the settlers at around 4:00 am and told them to leave the area immediately. Most of the families' possessions were destroyed or confiscated during the eviction. Within two hours, an excavator belonging to an international real estate agency started demolishing the homes and uprooting trees and crops. These 45 families were the last of a

<sup>109</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 19-24.

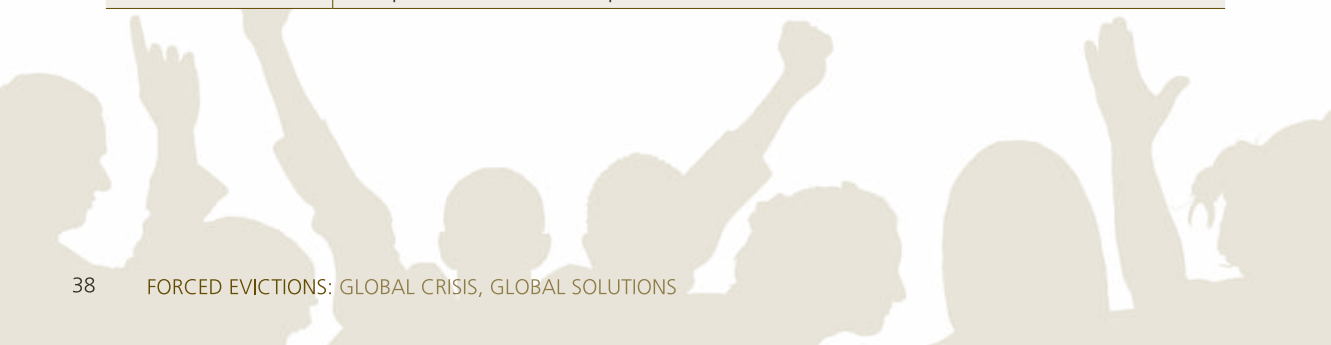
<sup>110</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007: 26.





**TABLE 2: CASE STUDY OF ZIMBABWE**

Place	Zimbabwe
Relevant Missions	United Nations Special Envoy on Human Settlements Issues released a report on a mission carried out between June 26 and July 8, 2005 in Zimbabwe.
Principal Cause of Eviction	‘City beautification’/clean up: Operation Murambatsvina (OM), or ‘Operation Restore Order,’ implemented by the Zimbabwean government from May 2005 onwards and intended to destroy all informal housing in urban areas and clamp down on informal trading.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• UN-HABITAT held that OM has caused the loss of shelter and/or livelihood for nearly 700,000 people. Some urban centres lost 60% of their homes. Most demolished shelters had access to basic services. Evictions were carried out without adequate notice, court orders, due process, legal protection, redress or relocation measures, in violation of Zimbabwe’s international human rights law obligations.</li> <li>• Characteristic of ‘city beautification’ evictions, government officials justified OM by claiming that slum residents presented an economic, security and health threat to the country. Several reports allege that evictions were in part a political retribution against groups that supported the opposition in preceding elections.</li> <li>• Evictees were reportedly ordered by officials to return to their rural places of origins, or to face further evictions if they were to attempt to find alternative shelters in urban areas.</li> <li>• Evictions and demolitions proceeded without appropriate notice and at many times without any notice at all. Many evictees were forced to leave all their personal property behind, and had no chance of looking for alternative accommodation. Lack of notice also meant that the State did not give individuals a chance to show documents evidencing the legality of their tenure.</li> <li>• OM was undertaken at a time of triple-digit inflation, shortage of food and fuel supplies, and in a highly polarized and tense political climate. The deprivation of shelter had drastic impacts and led to the denial of multiple rights in addition to the right to adequate housing.</li> <li>• The general political unrest and the constraints on civil society further exacerbated the situation by hindering necessary response.</li> <li>• Follow-up reports show that most evictees were driven deeper into poverty in following years and were not given compensation.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• Most evictions were justified under the colonial-era Regional, Town and Country Planning Act of 1976 which facilitated segregation. Other relevant legislation is the Housing Standards Control Act of 1972 and the Urban Councils Act of 1995.</li> <li>• Evictions failed to follow relevant requirements under national and international law. In addition to lack of notice, eviction orders were carried out by the central government’s police, which was unauthorized to do so under the Planning Act, in breach of international human rights law requirement that evictions be carried out by the authorized and accountable official agents.</li> <li>• Evictions were often done in an arbitrary fashion with no regard to whether the evictees held legal title to their property or not. The State breached the requirement under international human rights law to provide adequate legal venues for potential evictees to contest their eviction.</li> <li>• The State completely disregarded the requirement to engage in prior consultation with potential evictees and explore alternatives.</li> </ul>





Community Response including use of International Law/ Mechanisms	<ul style="list-style-type: none"> <li>• Some affected individuals have filed cases through local NGOs such as the Zimbabwe Lawyers for Human Rights (ZLHR) to prevent demolition. While some court decisions have been upheld by the Police, most have not. In cases, such as Porta Farm, the Police flagrantly ignored three court orders preventing demolition.</li> <li>• A few weeks after OM, the Ministry of Justice issued a directive asking courts to refuse to hear cases brought by OM victims. The Magistrates' Courts complied, claiming they had no jurisdiction.</li> <li>• In many instances, the High Court has either sanctioned the use of forced eviction, or refused to find contempt of court when police violated court orders prohibiting demolitions (e.g. Dare Remusha Co-operative vs. MLGPWUD &amp; 4 Ors HC 2467/05). The UN Special Envoy voiced concern about judicial independence and the High Court's failure to protect human rights. Legal venues were also used by landowners to prevent the government from constructing housing units as part of its post-OM reconstruction effort.</li> <li>• Other civil society organisations, such as ZLHR and COHRE, undertook efforts to raise OM as a crime against humanity that triggers individual international criminal responsibility. ZLHR also raised the case to the African Commission for Human and People's Rights.</li> <li>• Other assistance was headed primarily by local and regional religious groups such as the South Africa Council of Churches (SACC).</li> </ul>
Impact/ Results	<ul style="list-style-type: none"> <li>• The State's Operation Garikai/Hlalani Kuhle (OG/HK) responded to growing local and international pressure by promising to build over one million housing units from 2005-2008. Up to 2010, only several hundreds of evictees were given unfinished units of poor standards while thousands were given bare plots of land. Amnesty International and other organizations heavily criticized OG/HK for not providing security of tenure and for other deficiencies.</li> <li>• The State initially hampered efforts by the United Nations and the International Organization of Migration to rebuild housing units. Such resistance has subsequently decreased.</li> </ul>
Lessons Learned	<ul style="list-style-type: none"> <li>• Zimbabwe's evictions are an example of the interconnectedness of human rights. The vulnerability created through the 2005 expulsions exposed large groups to death and serious deprivation following economic and political crises in 2008 and following years.</li> <li>• One expulsion may lead to many others. Zimbabwean refugees and IDPs are often subjected to xenophobic harassment by communities in their new areas of residence, as a result of the stigma and the alleged reasons for the original expulsion.</li> <li>• OM is a clear example of the wider urbanization crisis in African cities and a reminder of the importance of urban environmental sustainability (specifically Goal 7 target 10 and 11 of the Millennium Declaration).</li> <li>• The complex political climate and the strained relationship between President Mugabe and the Western world as well as international human rights organizations has increased the difficulty of delivering humanitarian assistance or influencing political decisions.</li> </ul>

group of 170 families that had been occupying this area for more than seven years. They say the settlement was established on public land belonging to the Sugar Estate Council (Consejo Estatal del Azúcar, CEA). The real estate agency claimed to be working for the true owner of the land, who reportedly was one of their shareholders. The police and soldiers who carried out the eviction were under the

command of a military general based in Los Alcarizos municipality. They did not provide the families with a legal eviction notice, the families were not consulted or provided with any information prior to the eviction, nor were they provided with alternative housing, compensation for their losses or any assistance from authorities.<sup>111</sup>

<sup>111</sup> Amnesty International, 2007: online.

**TABLE 3: CASE STUDY OF DOMINICAN REPUBLIC**

Place	Dominican Republic
Relevant Missions	A 3-person mission led by AGFE from March 8-13, 2005
Principal Cause of Eviction	The main issue in the Dominican Republic is the threat of eviction rather than actual evictions. 75% of houses in the Dominican Republic are self-constructed, with 50% of the population possessing no deeds to the houses in which they live. The relevant legal framework makes such non-title holders subject to eviction.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• Police and soldiers forcibly evicted 45 families from their homes at 4:00 am on December 1, 2007 in Villa Venecia de Pantoja in Santo Domingo Province. No notice was given and the families were forced to leave their homes immediately. Within two hours, an excavator belonging to an international real estate agency began demolishing the homes. Personal belongings were confiscated.</li> <li>• In the Villa Esfuerzo neighbourhood, 600 houses were destroyed during the AGFE mission's visit in 2005, despite many of the residents having deeds of ownership. The evictions were in part due to pressures by companies who claim ownership of the land.</li> <li>• More than 200,000 people in the Federal District of the Dominican Republic are under threat of eviction. More than 30,000 would be displaced to enable the opening of the Rio Occidental Avenue according to the RESURE plan. In the Santo Domingo province, over 75% of the population is at risk of eviction, in part to make way for the East River Avenue.</li> <li>• The concern in the Dominican Republic arises in part from the country's history with forced evictions. Between 1985 and 1995, over 200,000 slum dwellers were forcibly evicted as part of city beautification programs.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• The principal legal source justifying evictions until 2005 was <i>Ley 1542</i>, which was replaced by <i>Ley de Registro Inmobiliario</i> (Real Estate Registry Law). It is unclear how much difference this made, given that evictions continued after 2005.</li> <li>• The State has often exacerbated the legal situation by issuing more than one land deed for the same plot of land or not giving sufficient details about the relevant location.</li> <li>• During mass evictions in October 2006 and in January and June 2007, no notice, consultation, compensation or alternative housing were offered to the evicted families despite the State being a party to the ICESCR. Those performing the evictions were often non-State agents, usually hired by the private eviction plaintiff.</li> </ul>
Community Response including use of International Law/ mechanisms	<ul style="list-style-type: none"> <li>• There are very active and involved civil society organisations, such as the coalition of Espacio de Coordinación Urbana Popular Por la Defensa del Territorio, which helped introduce legislative initiatives such as the <i>Law Regarding Urban Land Occupation</i>. It also offers legal assistance to affected communities and often operates as an interlocutor between government and affected groups.</li> </ul>
Impact/Results	<ul style="list-style-type: none"> <li>• The AGFE mission has reported that most State agencies have shown willingness to cooperate with national and international civil society on housing issues. Legal reforms and consultations with impacted communities have at times emerged from such cooperation.</li> <li>• Local organizations have had a successful record in using international human rights tools. In 1990, the Committee for the Defence of Rights of the Barrio and Ciudad Alternativa managed to successfully achieve the official condemnation of CDESCR of the Dominican Republic government for its practice of forced evictions, and to get it to issue a warning against a project threatening 70,000 dwellers. The relevant Presidential decree was repealed and these dwellers gained secured tenure.</li> </ul>



Lessons Learned	<ul style="list-style-type: none"> <li>• The fact that more than 70% of the population lack title deeds shows that the problem cannot be tackled solely from a legal perspective.</li> <li>• AGFE mission noticed conflicting policies, such as imposing moratorium on violent removal of families from land, which they occupied for years, yet having eviction still take place. This showed conflict and lack of communication between different state agencies, as well as different priorities and frameworks for different state institutions, with one focusing solely on domestic legal, rather than on social and rights-based considerations.</li> </ul>
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**TABLE 4: CASE STUDY OF PORT HARCOURT, NIGERIA**

Place	Port Harcourt, Rivers State, Nigeria.
Fact Finding Mission	5-person fact-finding mission led by UN-HABITAT visited Port Harcourt from March 12-16, 2009.
Principal Cause of Eviction	<u>Urban Development</u> : Rivers State Government (RSG) initiated a large scale urban renewal program in an attempt to execute a development plan (The Greater Port Harcourt Master Plan). This entailed demolishing settlements on the waterfront and replacing them with a private business area, particularly a private entertainment complex (Silverbird Showtime).
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• RSG expressed in 2008 plans for demolition of waterfront settlements and other 'illegal' structures that, if realized, will destroy the homes of up to 300,000 residents (nearly 40% of city's population). Due to economic circumstances, many will be rendered homeless.</li> <li>• Demolition of buildings along the Abonnema Wharf Road and the Njemanze waterfront settlement in February and August 2009 already destroyed the homes of between 13,800 to 19,000 residents. Subsequent demolitions in vicinity rendered thousands of others homeless.</li> <li>• No consultation with community on urban renewal plan. RSG refused to supply community with copies until December 2010. RSG vilification of waterfront settlement residents as criminals.</li> <li>• Compensation paid only to owners (landlords) upon which ownership is transferred to RSG. Tenants not compensated or resettled, but are summarily evicted contrary to their rights as tenants.</li> <li>• Only 7-days notice given in case of Njemanze settlement. Personal property that was not removed was confiscated by RSG.</li> <li>• Excessive police and military force used for evictions and to quell peaceful demonstrations. At least 12 people shot and seriously injured in Bundu waterfront in October 2009. No investigation underway one year later.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• Main legislation RSG relies on is Rivers State Physical Planning and Development Law (RSPPD). UN-HABITAT, Amnesty International and others hold that RSG failed to follow due process (e.g. consultation, considering alternatives) enshrined in RSPPD;</li> <li>• The legality of waterfront settlements is controversial. Structures technically violating terms of Temporary Occupation Licenses, but RSG renewed licenses for years despite knowledge of such violations;</li> <li>• Jurisdictional dispute about whether waterfront settlements fall under federal or state law; and</li> <li>• Eviction of tenants after transfer of ownership to RSG raises issues under the rent and tenancy legislation which require evictions to occur through court orders.</li> </ul>
Community Response including use of International Law/ mechanisms	<ul style="list-style-type: none"> <li>• Legal Action: NGOs and tenant associations launched at least three court cases accompanied by litigation campaigns. Two cases were lost, and in one case RSG defied a court injunction and proceeded with demolition;</li> <li>• Advocacy: UN-HABITAT, International Alliance of Inhabitants (IAI), Amnesty International and others advocated strongly against the forced evictions. Shortly after the publication of AI report in October 2010, RSG agrees to publish Master Plan and allow residents to access it.</li> </ul>





Impact/ Results	<ul style="list-style-type: none"><li>• Tenants around Abonnema Wharf Road initiated a court case against the RS in August 2008 on constitutional and other bases. seeking an injunction from interfering with tenants' constitutionally. The Federal High Court order to halt demolitions and a subsequent notice of consequence of disobedience to court order was ignored and demolition was executed a few days later by the RSG.</li><li>• Social and Economic Rights Action Center launched case on June 25th, 2009 (Suit No. PHC/1144/2009: <i>Pastor Ubong Usoro &amp; 3 Others V. Governor of Rivers State &amp; 6 Others</i>) relying on administrative, due process, constitutional and international grounds. Case seems to still be undecided.</li><li>• On July 30, 2009, 151 residents of a waterfront commenced legal action seeking order from the Federal Court to issue injunctions (Suit No: FHC/PHC/CS/13609/09). Claimants alleged among other things that policy violated right to ancestral lands. In August 2009, RSG carried out demolition despite court advice to maintain status quo. Federal Court in June 2010 denied jurisdiction and transferred case to the Rivers State High Court. Court also claimed no proof of indigency or ancestral nature of land given.</li></ul>
Lessons Learned	<ul style="list-style-type: none"><li>• Success of chosen pressure tactics, such as international advocacy and domestic legal pressure, is still unclear. The demolition of the Njemanze waterfront settlement occurred seven days after RSG received UN-HABITAT report. Nevertheless, as of today, less than 5% of planned demolitions took place, in the span of over 2 years.</li><li>• There is no evidence of international pressure on the private partner corporation, Silverbird, despite the Zero Eviction Campaign's demand that an independent commission of inquiry be established to investigate their role in the evictions. Work may be done on the necessity of corporate adherence to international standards expounded in the Global Compact and United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights.</li></ul>

Urban migration has also led to forced evictions for residents of Dakar, Senegal. As a result of the financial crisis of the 1970s and 1980s and the franc's devaluation in 1994, people residing in rural Senegal relocated to the capital city of Dakar in hopes of improving their economic livelihood. The influx of new residents to Dakar led to an unprecedented increase in the demand for housing, which resulted in the development of many informal residential areas. Captage was one of the informal sites that resulted from rural migrations, housing about 10,000 people in wooden shelters. It was built on land designated for agriculture by Dakar's urban plan and was therefore "deemed inappropriate for habitation" by the municipal government.<sup>112</sup> In 2004, the Governor of Dakar and Mayor of the Common District of

Grand Yoff instituted eviction orders, citing the "irregular occupation of zones designated by lease to several people."<sup>113</sup> Residents who resisted eviction were harassed and intimidated by government officials. Ultimately, between 7,000 and 10,000 people were affected by the "brutal" evictions at Captage.<sup>114</sup>

Development based evictions are very common in Asia. Most Asian countries are now in competition to attract global capital investment. As a result, a great deal of money is being spent on improving urban infrastructure to make cities more attractive for investors, including expressways, bridges, railways, sewers, water supply, electricity grids and mass transit systems. While cities need these infrastructure projects to meet growing

<sup>112</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 66.

<sup>113</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 66.

<sup>114</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 67.



demands of ever increasing urban populations, the manner in which they are being planned, financed and carried out is displacing people on an increasing scale.<sup>115</sup>

For example, the Government of the Philippines has initiated infrastructure programmes to develop Metropolitan Manila into a prime city comparable to other Asian cities. Metro Manila has a population of 10 million people, 4 million of whom are poor, living below the poverty line. The infrastructure programs will likely affect 500,000 urban poor living in slum communities. The Northrail-Southrail Linkage project, which will widen the Philippine National Railway in the south of Manila and revive the railway in the north, is one such infrastructure project. As of 2007, nearly 30,000 families or 145,000 people had been removed from their homes. It is estimated that once the development is completed, 80,000 families (approximately 400,000 people) will be affected. This is the largest planned displacement of people in the history of the Philippines. 60 per cent of the population living along the rails have been there for 10 years or more. Almost all of the residents originally came from rural communities and moved to the city looking for work as they had lost their land and any alternative economic opportunities. The Government of the Philippines has instituted a resettlement program, but it has been critiqued, largely because the relocation sites are at some distance from the city and sources of a livelihood. Moreover, at least some of the relocation sites are inappropriately located near garbage dumpsites and do not have the

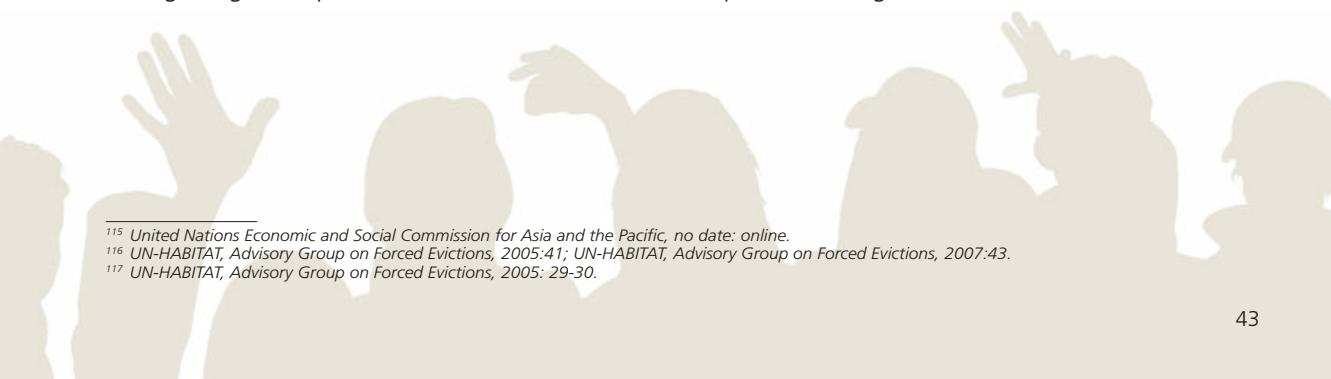
necessary social services such as schools, health care, drainage, potable water or electricity.<sup>116</sup>

In some countries, particularly developed countries, the profits that can be reaped from the conversion of public or social housing into private market accommodation has resulted in the eviction of some of the poorest, most marginalized tenants. This is increasingly common throughout the United States. Publicly funded housing for low income tenants, who, in some cities like New Orleans and Chicago, are predominantly black, is now facing increasing insecurity, resulting in housing deprivation for the poorest people. In recent history, the federal government has reduced funding for public housing, eroding the structures that keep public housing affordable. The government is also decreasing the public housing stock. There is currently a moratorium on the building of new public housing. Public housing in the United States is being demolished and only replaced on a 3:1 ratio. For example, in 2002, the federal government demolished over 78,000 public housing units and replaced them with just under 34,000 units. Besides demolishing units, state governments like New York, Illinois, and Louisiana are discouraging public tenancies. For example, in New York City, which has the largest public housing program in the United States, the federal government is trying to divest itself of responsibility for the provision of public housing by downloading the fiscal responsibility to the state and municipal levels of government, by encouraging privatization, and through promoting legislation to make it easier for public housing residents to be evicted.<sup>117</sup>

<sup>115</sup> United Nations Economic and Social Commission for Asia and the Pacific, no date: online.

<sup>116</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:41; UN-HABITAT, *Advisory Group on Forced Evictions*, 2007:43.

<sup>117</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 29-30.





Manaus City in Northern Brazil. Photo: COHRE.

**TABLE 5: CASE STUDY OF CURITIBA, BRAZIL**

Place	Curitiba, Brazil
Fact Finding Mission	UN-HABITAT: Fact-finding mission, February 24-25, 2005
Principal Cause of Eviction	Various reasons including urban development projects, mega-events, city beautification, national security, disaster prevention, rent default, and private investment projects. Approximately 2,500 people were evicted in 2003-2004 with another 6,000 people in 2008.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• Evictees have generally received little to no notice that they are going to be evicted from their homes. Residents' homes and personal possessions are often burned in front of them, leaving them with nothing to start over. In a number of reported cases, evictees have been subject to violent and aggressive action by private guards or military police. In one case, a resident was found murdered shortly after he had been evicted.</li> <li>• Only in a minority of cases have residents been offered a resettlement plan. Where residents have been relocated, there have been a multitude of problems. In one case, residents were sent to a community that lacked the necessary resources to meet the needs of the new population – leaving new and old inhabitants without access to basic services. In other cases, residents have been unable to secure work in their new community or have been unable to access public transportation to go to their old jobs.</li> <li>• Where relocation has not been offered, residents may have to deal with the Municipal Company of Popular Housing (COHAB), a mediator of land conflicts between tenants and landlords. NGOs/CBOs believe COHAB has contributed to increased forced evictions of urban poor. COHAB's solution to conflicts usually involves the transfer of individual ownership to tenants who are evicted but if they cannot afford the payment of instalments, which most are not able to, then they are evicted from the land.</li> </ul>



<p>Relevant Legislation and Legal Issues</p>	<ul style="list-style-type: none"> <li>• Brazil's constitution includes the right to a nationally unified minimum wage that is capable of satisfying basic living needs including housing.</li> <li>• National legislation, including the Civil Code and Federal Law for Land Usage and Parceling, was reformulated to provide a legal framework for the protection and compensation of people facing forced evictions. However, critics argue that Brazil's low-income population still lacks any significant legal protection from forced evictions and continues to be convicted for being homeless and occupying empty plots of land.</li> <li>• In 2009, Brazil's National Council of Justice approved a recommendation to orientate judges, tribunals and courts to prioritize the judgment of suits related to land conflicts. However, it appears this is only benefitting large private landowners who want to protect their property. Furthering the legal challenges faced by displaced residents, the President of the Federal Supreme Court of Brazil has made it clear he supports a strategy leading to the criminalization of social movements that fight for land and agrarian reforms. This will likely make it extremely difficult for current and future evictees to protect themselves through adjudication.</li> </ul>
<p>Community Response including use of International law/ mechanisms</p>	<ul style="list-style-type: none"> <li>• A number of community groups have formed to protest the forced evictions taking place in Curitiba and throughout Brazil. The National Movement on the Struggle for Housing (MNLN) and Land of Rights NGO are two of the larger groups, both of which have had some success in creating change for current and potential evictees.</li> <li>• Residents of Curitiba have also filed petitions against the local government, lobbied for evictions to be stopped, and sought legal assistance to prevent evictions or to receive compensation for their losses.</li> <li>• The situation in Curitiba was also recognized by AGFE, which held a public hearing during its fact-finding mission to bring together government representatives, individuals from affected communities and representatives from community groups and NGOs.</li> <li>• Brazil is also a State Party to the ICESCR and therefore required to recognize the right of all human beings to work and to the right to an adequate standard of living, including adequate food, clothing, and housing.</li> </ul>
<p>Impact/Results</p>	<ul style="list-style-type: none"> <li>• In conjunction with other NGOs, the MNLN was able to stop one potential eviction by convincing the municipal government to expropriate land from the private owner who wanted to forcibly evict those who had settled on the land.</li> <li>• The Land of Rights NGO has provided legal assistance and training to affected residents, but in some cases, families seeking legal assistance have been threatened. This greatly reduces the number of evictees who are willing to risk taking legal action.</li> <li>• NGOs/CBOs have had success in bringing national media attention to the situation in Curitiba. This resulted in Brazil's executive power announcing action to guarantee housing rights to families.</li> <li>• AGFE's public hearing initially resulted in some families being resettled in upgraded areas but many are still waiting and Curitiba's City Hall claims there is a lack of financial resources to transfer and build houses for these families.</li> </ul>
<p>Lessons Learned</p>	<ul style="list-style-type: none"> <li>• The case of Curitiba shows the power community groups and NGOs can have in affecting change. However, there is concern that the change is not long-term and may not have a lasting impact. For long-term change, the government must adopt national legislation to protect potential evictees and to ensure any evictions abide by existing international obligations. There will also be a need for the judiciary to take a fair, unbiased and balanced approach to cases involving land conflicts.</li> </ul>





### 6.1.2 LARGE SCALE DEVELOPMENT PROJECTS

Large scale development projects have caused some of the most egregious forced evictions, affecting entire communities, and cultures.

They often involve significant levels of capital investment from corporations and other private sector actors and are “often planned or conducted under the pretext of serving the ‘public good,’ such as those linked to development and infrastructure projects.”<sup>118</sup>

These projects are commonly understood from the perspective of the short-term benefits they offer: a new dam will generate more electricity for industry, a mining project may provide new resources for government, a large scale sporting event will bring in new revenue and promote national pride. But the reality of forced eviction for the community living at or near the project is quite different. “A project

being developed on their land, on their homes, is often about the destruction of communities, the disruption of lives, and the impoverishment of people.”<sup>119</sup>

From the Americas to the Pacific to India and Africa, Indigenous peoples are particularly affected by large-scale development projects over-taking small-scale subsistence practices, leading to a lack of environmental sustainability and to the undermining of Indigenous livelihoods. Large scale development projects which lead to forced eviction and displacement are one of the most common causes of Indigenous rural-urban migration. In rural contexts, forced eviction and displacement is often legally feasible because many Indigenous peoples do not have formal titles, deeds or even registration of their ancestral lands.



*Submergence in the Narmada River Valley, August 2004. Photo: Friends of River Narmada.*

<sup>118</sup> United Nations Special Rapporteur on Adequate Housing, 2007: para 8.

<sup>119</sup> See: Schlieff, 2010: online.



There are many examples of forced evictions caused by mega development projects. For example, the Quilombo communities<sup>120</sup> in the town of Alcantara, in the northeast region of **Brazil**, are under threat of forced eviction due to the expansion of the Space Launch Centre of Alcantara (CLA). For the Quilombo, land and its natural resources are not only the main source of livelihood but are also linked to social and cultural cohesion. Most of these communities do not hold title to their lands. The expansion of the CLA was initiated in 1986 to enable the adaptation of the operations centre and the launching of re-useable transport vehicles. The expansion is planned to take place in four phases, the first two have already taken place and resulted in the eviction of 1,350 people. It is anticipated that the next two phases will see the eviction of 1,500 people living in Quilombo communities.<sup>121</sup>

In the first two phases, the evictees were resettled in *agrovilas* near the CLA without title and where the land is of poor quality. The land has few natural resources and has disrupted the ability of these communities to remain self sufficient. The *agrovilas* are located at some distance from the water, restricting their ability to fish, an activity which had been an important part of their survival. Fisherfolk now must walk 10 kilometres and carry identification cards to pass through the gates of the CLA in order to have access to the water. The majority of the evictees did not receive any compensation for their lands and communities were not consulted prior to the eviction. Families did not receive any financial support or access to credit for agricultural development. As it stands, no

resettlement projects have been presented or discussed with the communities currently threatened with eviction who still reside in the area affected by the CLA expansion.<sup>122</sup>

In Karachi, **Pakistan**, a new American funded highway – the Lyari Expressway – is being developed on both sides of the Lyari River ostensibly to improve access to a port and to move residents away from a flood zone. Critics assert that the development is being undertaken to provide the central government with access to valuable real estate.<sup>123</sup> The building of the Expressway is predicted to result in the eviction of 77,000 families or approximately 230,000 people. Already, over 11,000 houses and 3,100 businesses have been destroyed. Injuries and deaths associated with these evictions have been reported.<sup>124</sup> These communities were established over 200 years ago and many of the families have tenancy rights recognized by the courts. It is anticipated that the eviction will disrupt schooling for 26,000 students and that 40,000 people will lose their jobs. The government is offering evictees compensation and resettlement outside of Karachi. The compensation/resettlement scheme has been deemed wholly inadequate by concerned NGOs and community organizations who critique the scheme as underfunded and the relocation sites as being remote, lacking paved roads and essential services such as water and electricity. Businesses and informal factories have not been offered any compensation.<sup>125</sup> Activists opposing the evictions and resettlement schemes have been subject to violence and the threat of violence.<sup>126</sup>

<sup>120</sup> The quilombo communities are descendants of African slaves who were brought to the country to labour in the colonial period. Eventually once freed they settled on lands that became their communities. It is estimated that there are more than 2,000 quilombo communities located in almost every state in Brazil.

<sup>121</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007: 38-40.

<sup>122</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007: 40.

<sup>123</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 14.

<sup>124</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007: 25.

<sup>125</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 14-16.

<sup>126</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005: 18.



In the **Philippines**, Indigenous peoples in both the Mindanao and Caraga regions have been forcibly evicted from their lands because of Government approved logging and other development contracts or because their lands were destroyed by open-pit mining.<sup>127</sup> Similarly,

Indigenous peoples in Kenya, Canada, Mexico and elsewhere have been subject to forced eviction and displacement as a result of large scale development projects including game reserves, hydroelectric dams and natural resource exploitation.<sup>128</sup>

**TABLE 6: DAMS AND EVICTIONS**

### Dams and evictions

Dams are the hallmark of development, often understood as synonymous with development and economic progress. They generate 19 per cent of the world's electricity and can contribute to food production, energy generation and water control to assist with flooding.<sup>i</sup> While dams have made an important and significant contribution to human development, they come with a huge social cost. The construction of dams has invariably resulted in the forced eviction of individuals, families and communities from their homes and lands. Roughly 40 to 80 million people worldwide have been displaced by dams.<sup>ii</sup> The "Declaration of Curitiba: Affirming the Right to Life and Livelihood of People Affected by Dams" (1997)<sup>iii</sup> provides a succinct articulation of the tension between the intentions of stakeholders who build or invest in dams, and those who are affected by their construction:

*Our struggles are one because everywhere there is a wide gulf between the economic and social benefits promised by dam builders and the reality of what has happened after dam construction. Dams have almost always cost more than was projected, even before including environmental and social costs. Dams have produced less electricity and irrigated less land than was promised. They have made floods even more destructive. Dams have benefited large landholders, agribusiness corporations and speculators. They have dispossessed small farmers; rural workers; fishers; tribal, indigenous and traditional communities.*

In 2007, the Prime Minister of China, Wen Jiabao, reported that dam building in China had displaced a whopping 23 million people.<sup>iv</sup> The Three Gorges Dam on the Yangtze River has been a major contributor to this displacement. It is the world's largest and perhaps most controversial hydro power project. This project submerged 13 cities, 140 towns and 1,350 villages during construction. It displaced 1.3 million people and more have been forced to leave due to unexpected consequences of the project such as landslides.<sup>v</sup> When the project commenced, evictees were told by government officials that they would be provided with replacement land and housing and that the urban population would have new jobs. However, when representatives from International Rivers visited the reservoir area in the summer of 2009, the affected people with whom they spoke commonly complained that the compensation they received was not sufficient to pay for their new homes.<sup>vi</sup>

Despite the known devastating consequences of dam construction, the Brazilian government is planning to build Belo Monte on one of the Amazon's major tributaries, the Xingu, which would be the world's third largest hydroelectric project.<sup>vii</sup> The aim is to provide energy from this dam to anywhere in Brazil. It is one of more than 100 large dams being planned for the Brazilian Amazon. Belo Monte is a massive project, which would devastate 1,500 square kilometres, would displace between 20,000 to 40,000 people and would gravely affect the lands and livelihoods of 800 Indigenous peoples.<sup>viii</sup> Evictees would be relocated to Altamira where they would compete with migrant workers for very few, low-paying jobs. Indigenous groups and social movements have been opposing the project for 20 years.<sup>ix</sup>

<sup>i</sup> World Commission on Dams, 2000: xxix.

<sup>ii</sup> World Commission on Dams, 2000: xxx.

<sup>iii</sup> This document was approved at the First International Meeting of People Affected by Dams, Curitiba, Brazil, 14 March 1997.

<sup>iv</sup> International Rivers, 2009:3.

<sup>v</sup> International Rivers, 2009:1.

<sup>vi</sup> International Rivers, 2009:3.

<sup>vii</sup> International Rivers, 2010:1.

<sup>viii</sup> International Rivers, 2010:1.

<sup>ix</sup> International Rivers, 2010:2-3.

<sup>127</sup> UN-HABITAT / Office of the High Commissioner for Human Rights, 2005:149.

<sup>128</sup> See case studies of Canada, Kenya and Mexico in: UN-HABITAT / Office of the High Commissioner for Human Rights, 2005.



**TABLE 7: CASE STUDY OF NARMADA VALLEY, INDIA**

Place	Narmada Valley, India
Fact Finding Mission	<p>HIC-HLRN, South Asia Regional Program: Fact-finding mission to Sardar Sarovar and Man Dam Project, 2002.</p> <p>International Environmental Law Research Centre: Three independent observers visited Narmada Valley from July 8-11, 2004.</p>
Principal Cause of Eviction	Mega Development Project: The Sardar Sarovar Projects (SSP) is a multi-purpose dam project that has been built in the Narmada River Valley. The total land to be submerged by the dam is about 40,000 hectares, including about 13,000 hectares of forest land. The government claims the SSP will provide drought-prone areas with drinking water and irrigation while critics see it as displacing hundreds of thousands of indigenous people from at least 245 villages.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• Evictions resulting from the SSP have occurred since the late 1980s and early 1990s when the first dam on the Narmada was completed. Approximately 320,000 people have been directly evicted and more than one million have been affected by the SSP.</li> <li>• The eviction process has varied throughout the years. In some instances, residents have received no warning of their impending eviction, losing everything as reservoirs are filled and their homes submerged. At other times, there have been confrontations between residents and government authorities with people being arrested and forcibly removed from their homes.</li> <li>• There is little evidence that state authorities took any proactive measures to inform rural and tribal residents of their impending plans through accessible modes of communication like the beat of drums and public meetings. Where advance notice was given to residents, it was often through gazette notification and publication in newspapers. This is a highly ineffective means of notification given the large proportion of people affected by the SSP who are unable to read.</li> <li>• Eviction has resulted in many of India's most disadvantaged and impoverished citizens losing their economic livelihoods, being removed from their social support networks, and experiencing severe health problems including malnutrition and lack of clean drinking water.</li> <li>• Where the government has attempted to assist citizens with resettlement and rehabilitation, eligibility has been extremely problematic. In many cases, land records are out of date, causing people to lose any potential for compensation. However, even where affected people have been provided with land, it is often unsuitable for farming, far from desired locations and void of basic amenities such as schools and health care.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• Article 21 of India's National Constitution is the right to life, which has been read broadly by the Indian Supreme Court to include the right to adequate housing, the right to an adequate livelihood, and the right to be free from forced eviction.</li> <li>• However, the impact of the Supreme Court's decisions have been nullified by the government's use of the Land Acquisition Act (LAA) for implementation of the SSP. The doctrine of eminent domain underlies the LAA, according to which the state can acquire private land for public purposes. The state's powerful right of eminent domain is nearly impossible to challenge legally, leaving displaced residents with no mechanism by which to resist the state's acquisition of their land. To add further challenges, the LAA does not require rehabilitation of displaced individuals.</li> <li>• In 1979, the Narmada Water Disputes Tribunal (NWDT) Award was established to set the policy framework for resettlement and rehabilitation associated with the SSP. The Supreme Court has held the NWDT Award is the benchmark for resettlement and rehabilitation and is binding on three states involved. However, relief is only available for 'Project Affected Persons' who are defined as families that lose their legally owned land to the reservoirs. This excludes tribal populations who may have customary rights but not legal title; anyone who suffers secondary displacement as a result of the SSP; and anyone who is landless.</li> </ul>





Community Response including use of International law/ mechanisms	<ul style="list-style-type: none"> <li>• A group of displaced persons and concerned community activists formed the Narmada Bachao Andolan (NBA) in the 1980s. The NBA, also known as the Save the Narmada Movement, has been highly influential in advocating for the rights of displaced residents. In 1988, the NBA formally called for all work on the SSP to be stopped. By 1991, the NBA's campaign against the SSP had gained so much momentum that the World Bank, which initially funded the project, commissioned its own independent review.</li> <li>• In 1994, the NBA filed a public interest litigation petition with the Supreme Court of India. The NBA has also put pressure on the international community to take action to mitigate development-induced displacement. As a State Party to the ICESCR, India is required to recognize the right of all human beings to work and the right to an adequate standard of living, including adequate food, clothing, and housing.</li> </ul>
Impact/Results	<ul style="list-style-type: none"> <li>• After reviewing the SSP, the World Bank concluded that the Indian government had failed to adequately resettle and rehabilitate displaced residents. In 1993, the World Bank decided to step back and withdraw its funding for the project. However, the Indian government proceeded despite the NBA's strong campaign against the SSP and the World Bank's withdrawal.</li> <li>• The NBA's Supreme Court case was initially successful. In 1995, work on the SSP was halted after the Court ruled that the government's rehabilitation of displaced people was inadequate. Unfortunately, the Supreme Court reversed its decision in 2000 and construction on the SSP was allowed to proceed.</li> </ul>
Lessons Learned	<ul style="list-style-type: none"> <li>• The NBA's strong campaign against the SSP shows how powerful community advocacy groups can be in drawing international attention to the issue of forced evictions. While not ultimately successful in their Supreme Court case, the NBA achieved a significant victory in causing the World Bank to review and withdraw their support for the SSP.</li> <li>• Unfortunately, the case of Narmada Valley also illustrates how difficult it can be to sway government bodies. Despite domestic and international condemnation, the government of India chose to continue with the SSP. This demonstrates the critical need for a legal framework that defines the rights of displaced residents and outlines the obligations of authorities causing the displacement. Without such a framework, governments will continue to take irresponsible actions and affected residents will have no formal means of redress.</li> </ul>

### 6.1.3 NATURAL DISASTERS AND CLIMATE CHANGE

#### NATURAL DISASTERS

Natural disasters cause displacement on a grand scale. States have an obligation to take reasonable steps to ensure natural disasters do not result in massive displacement by ensuring adequate infrastructure is in place in advance of a natural disaster and by ensuring that proper systems and processes – in keeping with human rights law – are in place after the disaster. Quoting the United Nations Inter-Agency Standing Committee, the Special Rapporteur on Adequate Housing notes in her report focused on natural disasters that,

“Increasingly, it has come to be recognized that human rights protection also needs to be provided in these contexts. The tsunamis, hurricanes and earthquakes, which hit parts of Asia and the Americas in 2004/2005, highlighted the need to be attentive to the multiple human rights challenges victims of such disasters may face. All too often the human rights of disaster victims are not sufficiently taken into account. [...] Often the human rights violations are not intended or planned. Sometimes they result from insufficient resources and capacities to prepare and respond to the consequences of the disasters. More often, they are the result of inappropriate policies, neglect or oversight. These violations could be avoided if both national and international actors took the relevant human rights guarantees into account from the beginning.”<sup>129</sup>

<sup>129</sup> United Nations Special Rapporteur on Adequate Housing, Report, 2010: para. 12.



[i]n the face of weather disasters, inadequate government planning and policies have led to a variety of housing and land rights violations including “forced relocations, land confiscations and government threat to secure tenure.”<sup>130</sup> In New Orleans, for example, AGFE was told that inadequate “natural disasters and emergencies” legislation was in place when Hurricane Katrina hit, resulting in an insufficient response to the hurricane.<sup>131</sup>

States are also responsible for taking climate change seriously and mitigating its effects so that if forced relocations are necessary, they are completed in a manner that is in compliance with international human rights law.

The following two case studies, one from Asia, the other from North America, demonstrate the ways in which a natural disaster, which tend to devastate the lowest income communities, are often used opportunistically by governments to further a development agenda that conflicts with human rights obligations. In New Orleans, Louisiana, Hurricane Katrina has been used to effectively convert public housing for poor people into private accommodation for middle income earners, similar to what is occurring in New York and Chicago, as noted previously. In Sri Lanka, the December 2004 tsunami was used to create a coastal buffer zone which prohibits residential reconstruction but which allows for the reconstruction of hotels and tourist-oriented establishments.<sup>132</sup>



*Katrina trailer modified for advocacy, New Orleans, United States, July 2009. Photo: UN-HABITAT.*

<sup>130</sup> Housing and Land Rights Network, *Habitat International Coalition*, 2010:3.

<sup>131</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2009: 19.

<sup>132</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:133.

**TABLE 8: CASE STUDY OF NEW ORLEANS, UNITED STATES**

Place	New Orleans, United States of America
Fact Finding Mission	A five-person mission led by AGFE visited New Orleans from July 26-31, 2009.
Principal Cause of Eviction	Natural disaster: Hurricane Katrina. However, post-Katrina state action and re-development plans have significantly contributed to increases in homelessness and cases of forced evictions.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• City Council ordered demolition of nearly 4,500 public housing units in 2007, replacing them with mixed-income housing.</li> <li>• Many demolished public housing units had sustained minimal damage from Katrina. Demolitions were financed and required by the federal government. 70% of public housing or affordable housing units were lost as a direct result of state action.</li> <li>• A planned Louisiana State University medical complex in Low-Mid City put a number of residences and historic homes at risk of being demolished.</li> <li>• Rental assistance in the form of "Section 8 Vouchers" significantly decreased post-Katrina. Almost two thirds of project-based Section 8 units were not reopened after the hurricane.</li> <li>• Federal and state governments distributed recovery and disaster relief resources unequally, privileging more valuable areas such as the French Quarter.</li> <li>• Private developers rebuilding public-housing complexes put stringent requirements (curfews, financial and criminal records) for low-income units but not for private market units.</li> <li>• Rebuilding process has largely occurred without consultation with community. In one case, the city ignored a community-initiated professional alternative plan for the planned medical complex.</li> <li>• Homeless population in July 2009 estimated at 12,000 people, four times higher than most American cities. Recovery programs have largely failed to recognize those residents as IDPs, effectively ignoring their property rights. The United States government ignored the United Nations Guiding Principles on Internal Displacement.</li> <li>• New Orleans remains significantly behind in terms of provision of public services. A large number of hospitals have not reopened.</li> <li>• Visible connection between forced eviction and enjoyment of rights to health, privacy, participation, non-discrimination and life. In December 2010, eight young squatters died in an abandoned warehouse while lighting a survival fire.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• Overlapping federal, state, and local housing and disaster programs often caused confusion and inability of vulnerable communities to access available relief.</li> <li>• The federal <i>Stafford Disaster Relief and Emergency Act</i> gives the President discretionary powers to intervene instead of creating a mandatory rights-based relief plan. The Stafford has been criticized as a violation of international law principles relating to IDPs.</li> <li>• Building improvement policies and legislation (such as H.O.P.E. VI and its amendments) significantly decreased availability of public housing by waving the requirement to rebuild public housing units that were demolished for modernization, on a one-to-one basis.</li> <li>• Local zoning ordinances require the removal of trailers issued by the Federal Emergency Management Agency (FEMA) from the homeowner's land.</li> <li>• While the United States has not ratified relevant international treaties such as the ICESCR, it has ratified the UDHR, ICCPR and CERD, which codify aspects of housing rights.</li> </ul>
Community Response including use of International Law / mechanisms	<ul style="list-style-type: none"> <li>• The Legal Defense and Educational Fund obtained an order from the Federal Court to stop disbursing money from the Road Home program due to its discriminatory effects against African-Americans.</li> <li>• Other domestic lawsuits filed. In 2006, the Army Corps of Engineers was found liable for flooding due to poor maintenance of levees. A class action against a hospital for its role in the deaths and injuries is underway and cases have been launched against FEMA for issuing trailers with toxic fumes.</li> <li>• A lawsuit is ongoing to reopen the Charity Hospital and ensure equal access to care for uninsured and low income residents of New Orleans.</li> </ul>



Impact/ Results	<ul style="list-style-type: none"> <li>• The Federal Court's ruling against the discriminatory formula of the Road Home program was largely symbolic because it occurred after over 90% of the funds had been disbursed. State immunity prevented the order from applying retroactively.</li> <li>• New Orleans's Mayor Mitch Landrieu collaborated with community stakeholders before hiring a new Police Chief and creating a new independent police oversight system.</li> <li>• On August 27, 2009, FEMA established the National Disaster Recovery Framework Working Group (NDRF) with a mandate to create a comprehensive and long-term coordinating structure for recovery assistance. It will act together with the National Response Framework created in 2008 which addresses short-term first-response. However, the NDRF does not have legal authority over federal agencies and does not provide rights for IDPs.</li> <li>• In 2006, the United Nations Human Rights Committee urged the United States to review and adapt its disaster-relief and recovery policies to reflect its obligations of non-discrimination against IDPs. It also urged the government to increase efforts to fulfill the rights of low-income and African-American citizens.</li> </ul>
Lessons Learned	<ul style="list-style-type: none"> <li>• Forced eviction is a phenomenon that occurs in developed, rich and democratic countries, not just in developing countries.</li> <li>• Many public officials, even in developed countries such as the United States, lack human rights education and knowledge.</li> <li>• Responses must be tailored to the existing legal avenues. Since the United States did not ratify ICESCR, legal responses have sometimes focused on other rights such as privacy and non-discrimination.</li> </ul>

**TABLE 9: CASE STUDY OF SRI LANKA**

Place	Sri Lanka
Relevant Missions	Regional meeting organized by the Asian Coalition for Housing Rights (ACHR) between March 11-13, 2005, which included AGFE and other stakeholders.
Principal Cause of Eviction	Natural disaster (2004 Tsunami) and subsequent reconstruction regulations created a buffer zone of 100 to 200 metres of the mean high water line where no construction is to be allowed.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• In response to the tsunami, the Sri Lankan government established a coastal buffer zone in which no dwelling rebuilding was permitted. Notwithstanding whether their houses were damaged by the tsunami, individuals living within this zone were ordered to relocate.</li> <li>• The buffer zone left over 100,000 people displaced and in limbo. Those who were prevented from reconstruction were generally moved to inland shelters. Concerns were raised about the arbitrariness and disproportionate effect of the buffer, especially on fishermen who comprised the majority of victims, and whose livelihood depended on the sea.</li> <li>• Some of the alternative housing provided by the government was very far from the coast line, sometimes 14 kilometres away, which put additional strain on fishermen.</li> <li>• Reports indicate that some coastal land value suffered a significant decrease after the announcement of the buffer zone.</li> <li>• Communities affected by the buffer zone, in whose interest it was allegedly created, were not consulted at any time, contrary to international human rights law requirements. The taskforce on reconstruction consisted exclusively of business people with no community or NGO participation.</li> <li>• While individual households were forced to relocate, hotels and other commercial enterprises were permitted to continue operating on the same coastline.</li> <li>• This exacerbated an already significant problem of land disputes and displacements that were caused by ongoing ethnic strife. Additionally, the ostensibly favourable treatment of tsunami-victims in comparison to victims of ethnic violence created tensions between the two groups. This led to some violent confrontations such as the vandalization of tsunami-victim shelters in the Batticaloa district.</li> </ul>





Relevant Legislation and Legal Issues	<ul style="list-style-type: none"><li>• Sri Lanka has signed and ratified the ICESCR. In addition, Article 27(2)(c) of the country's Constitution obliges the State to aspire for an adequate standard of living through the provision of housing, among other rights.</li><li>• The Presidential Secretariat's <i>Notice on Reconstruction for Housing, Businesses &amp; Fishing Industry Affected by the Tsunami</i> promised to provide all tsunami-affected families with alternative housing or financial subsidies for self-help projects.</li><li>• The government has repeatedly stated that privately owned land within the buffer zone will remain the property of the original owners and that the government will not claim ownership of it.</li></ul>
Community Response including use of International Law / mechanisms	<ul style="list-style-type: none"><li>• International, regional and local NGOs and community groups pressured the government to undertake a community-based development policy instead of their top-down approach (e.g. ACHR pushed for a "people-driven tsunami rehabilitation process").</li><li>• NGOs and community groups successfully pressured for government endorsement of reconstruction through 'owner driven schemes,' allowing self-help initiatives.</li></ul>
Impact/ Results	<ul style="list-style-type: none"><li>• Due to national and international pressure, the government revoked the buffer zone policy in 2006, thus allowing 11,000 people who would have been relocated under the original plan to continue living on the coast. The government cited land scarcity as one of the main reasons for revising the buffer zone policy.</li><li>• A 2006 Amnesty International report states that by November 2005, all tsunami displaced people were moved from emergency shelters to basic transitional housing of reasonable standard.</li></ul>
Lessons Learned	<ul style="list-style-type: none"><li>• This case study raises important questions about voluntariness and alternative housing. Many of those provided with alternative housing preferred to return to their original coastline homes instead.</li><li>• It is clear that the magnitude of the disaster and the ensuing involvement of the international community facilitated the provision of alternative housing and a more humane treatment of tsunami victims, as opposed to victims of ethnic strife.</li></ul>

## CLIMATE CHANGE

Displacement caused by climate change is an emerging and urgent phenomenon. The United Nations Framework Convention on Climate Change defines climate change as "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."<sup>133</sup> It is generally understood that those countries that have contributed most to climate change – that is, by contributing to human created greenhouse gas emissions – tend to suffer the least from climate change

and those who have generally contributed the least to climate change, suffer the most effects. The main changes in weather patterns due to climate change are:

- Contraction of snow-covered areas and shrinking of sea ice;
- Sea level rise and higher water temperatures;
- Increased frequency of hot extremes and heat waves;
- Heavy precipitation events and increase in areas affected by drought; and
- Increased intensity of tropical cyclones (typhoons and hurricanes).<sup>134</sup>

<sup>133</sup> United Nations Framework Convention on Climate Change, 1992: art 1, para 2. The Intergovernmental Panel on Climate Change (IPCC) uses a similar definition, the main difference being that IPCC covers all aspects of climate change and does not make a distinction between climate change attributable to human activity and climate change and variability attributable to natural causes.

<sup>134</sup> Office of the High Commissioner for Human Rights, 2009: para 8.



The greatest single impact of climate change might be on human migration or displacement.<sup>135</sup> There are four primary types of climate-induced displacement:

- Weather-related disasters, such as hurricanes and flooding;
- Gradual environmental deterioration and slow onset disasters such as desertification, sinking of coastal zones and possible total submersion of low-lying island States;
- Increased disaster risks resulting in relocation of people from high-risk zones; and
- Social upheaval and violence attributable to climate change related factors.<sup>136</sup>

Each of these may cause people to involuntarily flee their homes and lands and thus be responsible for climate-induced displacement.<sup>137</sup>

The number of people potentially affected by climate-change induced displacement is staggering. Estimates range from a global total of 50 million to a worst-case scenario of up to one billion people facing the loss of their homes and lands in the coming century. Countries that are likely to be affected by massive climate change displacement include: China (est. 30 million displaced), India (est. 30 million displaced), Bangladesh (est. 20 million displaced) and Egypt (est. 14 million displaced).<sup>138</sup>

Displacement as a result of climate change can be temporary or permanent. Temporary displacement is generally the result of a climate event such as a hurricane, flood, storm surge or tsunami and most often those displaced can return to their homes once the event

has passed. Permanent displacement means those affected by the climate related event or situation cannot return to their homes. They may be re-housed locally where possible, or in another part of the country. In some instances, a local or national solution is not available and relocation to a neighbouring country, or to another nation entirely may be required.<sup>139</sup>

The Office of the High Commissioner for Human Rights (OHCHR) notes that the following rights may be effected by climate change: the right to life, the right to adequate food, the right to water, the right to health, the right to adequate housing, and the right to self-determination, and states further that “persons affected by displacement within national borders are entitled to the full range of human rights guarantees by a given state, including protection against arbitrary or forced displacement and rights related to housing and property restitution for displaced persons.”<sup>140</sup> Through the United Nations Framework Convention on Climate Change (UNFCCC), the international community has approved in principle to enhance action and develop a work programme on “loss and damage” caused by climate change. Though the UNFCCC is not yet operational, it will open up an official mechanism for inter-governmental compensation of countries/people who have suffered loss or damage as a result of climate change.<sup>141</sup>

A number of countries are currently grappling with climate related displacement and housing rights issues including: the Maldives, Papua New Guinea (Carteret Islands), Tuvalu, Kiribati, and Bangladesh.<sup>142</sup> What follows is a case study of Bangladesh.

<sup>135</sup> Office of the High Commissioner for Human Rights, 2009: para 55.

<sup>136</sup> Office of the High Commissioner for Human Rights, 2009: para 56.

<sup>137</sup> Displacement Solutions, 2010:15-16.

<sup>138</sup> Displacement Solutions, 2010:15-16.

<sup>139</sup> Displacement Solutions, 2010:16-17.

<sup>140</sup> Office of the High Commissioner for Human Rights, 2009: paras 16-41, 57.

<sup>141</sup> International Institute for Sustainable Development, 2010: 17-18.

<sup>142</sup> For more information about climate change and displacement in these countries see: Displacement Solutions, 2010:16-17. See generally: <http://www.displacementsolutions.org/>.

**TABLE 10: CASE STUDY OF BAGLADESH**

Place	Southern Delta Region, Khulna District, Bangladesh
Fact Finding Mission	Displacement Solutions: Five-person team visited southern delta region from January 9-13, 2011.
Principal Cause of Eviction	Climate Change: As a result of permanent coastal flooding in the southwest of Bangladesh, many residents have been forced to flee their homes. It is estimated about 6.5 million people have already been displaced as a result of climate change and it is expected 20 to 35 million people will be forced to leave their land by mid-century due to climate change. Bangladesh has been named the world's most vulnerable country to climate displacement.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• In the Khulna district, citizens have been forced to flee their homes and land as a result of permanent coastal flooding, coastal erosion and storm surges. With no option to return home and little access to new land, many of these displaced individuals are surviving on a 25 kilometre long, two metre high and three to four metre wide embankment.</li> <li>• About 90% of displaced residents have no economic livelihoods and are forced to live day-by-day from aid handouts.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• The Bangladeshi government has done little to assist people who have been displaced by climate change. The government has attempted to address the effects of climate change, but they have not developed any solutions for addressing the plight of current and future displaced residents.</li> <li>• In cases where residents are not immediately forced out of their homes, the Government of Bangladesh continues to largely follow British land laws that permit summary eviction of people without even a court order. Where the government declares a state of emergency, it becomes even more difficult for displaced people to resist evictions or protest against their consequences.</li> </ul>
Community Response including use of International law/ mechanisms	<ul style="list-style-type: none"> <li>• Around 200 community-based groups throughout Bangladesh joined together to form the Association of Climate Refugees (ACR) to actively find permanent and sustainable residential solutions for displaced citizens. The ACR is focusing on capacity building and empowerment at the local level.</li> <li>• Bangladesh is also a State Party to the ICESCR and therefore required to recognize the right of all human beings to work and to the right to an adequate standard of living, including adequate food, clothing, and housing.</li> </ul>
Impact/Results	<ul style="list-style-type: none"> <li>• The ACR believes having local communities involved in advocating for their rights is the only way for the Bangladeshi government to listen to their plight. While the government has yet to take any steps to help displaced residents, there is some hope that the ACR's community-level approach will have an impact in the long-term. In addition to local empowerment, the ACR with Displacement Solutions are aiming to acquire 250,000 acres of new land for the 6.5 million permanently climate displaced persons in Bangladesh. To date, 25,000 acres have been secured.</li> </ul>
Lessons Learned	This case illustrates the power of community-led groups to address climate-based evictions. With greater resources, the ACR could make a significant impact in developing and implementing permanent and sustainable solutions for current and future displaced citizens. However, there is also a need for the Government of Bangladesh to take an active role in addressing the needs of people who have been displaced by climate change. Government support for land-based solutions is an absolute necessity in Bangladesh where climate change is expected to have increasingly dire consequences over the coming decades.



#### 6.1.4 MEGA-EVENTS

Related in part to urban development, preparation for mega-events has been a major use of forced evictions in cities throughout the world. Governments often use mega-events as “excuses to push through massive infrastructure upgrading or city beautification plans” that result in evictions and displacement.<sup>143</sup> In preparation for being highlighted on the world stage, host cities for mega-events will often undertake a “virtual ‘clean-sweep’ of informal settlements, street vendors and hawkers and homeless persons.”<sup>144</sup> Residents are often directly evicted to make way for construction of event venues and related infrastructure, to accommodate the influx of visitors, or to beautify the area prior to the event.<sup>145</sup> In

other cases, residents are compelled to leave because of rising housing costs linked to land speculation in the areas where the mega event will be hosted. In the face of criticism for such tactics, authorities are now being “careful to de-link the mega event from any evictions that take place as a part of the preparations.”<sup>146</sup>

In Istanbul, **Turkey** – which has a rapidly increasing urban population<sup>147</sup> – urban renewal projects have affected 80,000 people, with close to 13,000 people having had their homes destroyed. Many more households are being threatened with eviction. This is being driven by cultural mega-events – Istanbul is the European Capital of Culture (2010) and the Central and State authorities are hoping to transform it into a ‘global’ first class city with modern infrastructure and housing



*Bulldozer crushes home, Istanbul, Turkey, June 2009. Photo: UN-HABITAT / Cihan Baysal.*

<sup>143</sup> Centre on Housing Rights and Evictions, 2009:10.

<sup>144</sup> Centre on Housing Rights and Evictions, 2009:10.

<sup>145</sup> Bender, 2008: 34.

<sup>146</sup> Centre on Housing Rights and Evictions, 2009:11.

<sup>147</sup> Between 1980 and 2008, the population of Istanbul almost tripled from 4.75 million to 15 million. Between 1995-2002, Istanbul had the highest rate of urban growth among a selection of 78 OECD metro-regions.





stock. The result is that poor and informal neighbourhoods centrally located on prime real estate are being torn down to make way for housing developments aimed at higher income households.

In 2005, UN-HABITAT learned of an eviction that took place in early winter in Nagoya, **Japan**. 1,036 homeless people who were living in tents and informal structures in parks and along the riverside were removed. 594 guards, police officers and city officials surrounded the homeless people and their advocates and dismantled their makeshift tent homes. The City Authority claimed that these homeless people were disturbing the 'proper use' of the park and planned renovation work, but it was widely reported by the media that the primary reason for the eviction was to clear and beautify the city before the Aichi Expo in March of that year. The homeless people were

provided temporary emergency shelter but no long term solutions were offered. Notice of the eviction had been provided to the homeless population and there was immediate and significant opposition. A joint letter from 100 lawyers was filed, an objection was filed by the homeless residents and protest letters from across the country were sent to the City Authority. These objections were all ignored and a final eviction order was issued on January 21, 2005.<sup>148</sup> Two years later, the City of Osaka evicted a community of homeless people living in Nagai Park to beautify that area for the upcoming World Athletic Games which took place in March 2007.<sup>149</sup>

In July 2003, Beijing, **China** was awarded the 2008 Olympic Games. Two days later, following the purchase of land by developers, the first wave of evictions commenced. In September 2003, in the wake of protests,



*House demolitions ahead of the Beijing Olympics. Photo: COHRE.*

<sup>148</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007:88-89.

<sup>149</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007:91.



the government denounced forced evictions as a policy. However, close to half a million people were evicted from their homes and lands in preparation for the Olympics, replacing well established communities with shopping centres, office buildings, high-end residential buildings and sports facilities. The government did provide evictees with compensation and relocation, but residents say the compensation was inadequate and the relocation sites were on the outskirts of the city – far removed from their communities and employment.<sup>150</sup> For more information on evictions in Beijing as a result of the hosting of the Olympic Games see: Case Study.

Concerns are now being expressed about the impact of the 2012 Summer Olympics on low-income East Londoners in the **United Kingdom** where the event is expected to take place. The site for the Olympic Park in East London was acquired through a 'compulsory purchase order' leading to the displacement of more than 200 businesses employing 5,000 staff, an estimated 1,000 residents, a Roma community, an Irish Travellers community, several sports facilities and other community services.<sup>151</sup> Though the government instituted a relocation process, it has been criticized, particularly with respect to the government's efforts in exploring all feasible alternatives to eviction, the sharing of information, and the lack of an independent review mechanism for the resettlement process.<sup>152</sup> It is anticipated that more low income and vulnerable households, particularly those who are renters rather than owners of property, are likely to be negatively affected.

Similar concerns are being raised about the 2016 summer Olympics and the 2014 World

Cup Soccer to be hosted in **Brazil**. The Special Rapporteur on Adequate Housing, Raquel Rolnik, said that she has received many allegations concerning displacement and evictions as a result of these events, which could lead to violations of human rights: "I am particularly worried about what seems to be a pattern of lack of transparency, consultation, dialogue, fair negotiation, and participation of the affected communities in processes concerning evictions undertaken or planned in connection with the World Cup and Olympics."<sup>153</sup>

#### 6.1.5 ECONOMIC EVICTIONS INCLUDING THOSE CAUSED BY THE GLOBAL FINANCIAL CRISIS

It is generally accepted that the subprime mortgage crisis experienced predominantly in developed countries, particularly the US and the European Union, was one of the main causes of the current worldwide financial and economic crisis.<sup>154</sup> While the financial crisis was initially seen as a crisis of developed countries, it is increasingly spreading to affect also developing ones.<sup>155</sup> The World Bank estimates that with a slowdown in global economic growth, 53 million more people could be left in poverty, and 200,000 to 300,000 more babies could die each year between now and 2015 if the crisis persists.<sup>156</sup>

The global financial crisis has had a direct and severe impact on housing for many low income and poor households. In some places governments are evicting squatters and slum dwellers from prime real estate so that the land can be sold to developers for huge profits. This process has commenced in **Colombo**, for example, where these types of evictions

<sup>150</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007:10-11.

<sup>151</sup> Bender, 2008:35.

<sup>152</sup> Bender, 2008:36-37.

<sup>153</sup> *United Nations Special Rapporteur on Adequate Housing, Brazil*, 2011: online.

<sup>154</sup> *United Nations Special Rapporteur on Adequate Housing*, 2009: para. 6.

<sup>155</sup> *United Nations Special Rapporteur on Adequate Housing*, 2009: para. 17.

<sup>156</sup> Cited by: *Share the World's Resources*, 2009: online.

**TABLE 11: CASE STUDY OF BEIJING CHINA**

Place	Beijing, China
Fact Finding Mission	Centre on Housing Rights and Evictions: Fact-finding mission to Beijing, May 2008.
Principal Cause of Eviction	Mega-Event - Olympic Games: To prepare for the 2008 Beijing Summer Olympic Games, approximately 1.5 million residents were subject to development-based evictions. While some of these evictions would have occurred even without the Olympics, the scale of displacements more than doubled since Beijing was selected for the Olympic Games. The prime motivations for the evictions included reorientation of the functions of the core city; transportation upgrading projects; environmental projects; real estate projects; and construction of cultural and sports facilities.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• In Beijing, the process of demolition and eviction is often characterized by uncertainty, lack of public participation and due process, and inadequate compensation. There are reports that forced evictions have become more violent and abusive despite government warnings against this behaviour. Aggressive tactics may be taken by private companies or other third parties when residents refuse to leave their homes. In some cases, developers have cut off water and electricity, used physical threats, or resorted to violence.</li> <li>• Government authorities have also taken indirect actions to push residents out of communities. According to Human Rights Watch, after discussing how to expel one-million migrant workers from Beijing, municipal authorities decided to shut down over fifty unregistered schools for children of migrant workers. This left tens of thousands of children without access to education and forced many workers to decide whether to stay for their livelihoods or move for their children's future.</li> <li>• Many displaced residents are at great risk of becoming homeless after they have been evicted due to inadequate compensation provided by local developers. For those who do receive compensation and relocation, they are often forced to live far from their communities and workplaces, negatively affecting their economic livelihoods and making it extremely difficult to rebuild their social networks.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• The local level of government generally starts the process of demolition and forced eviction. The Constitution of the People's Republic of China allows government bodies to expropriate land for its use in the public interest but states that compensation will be given. However, critics have emphasized that the concept of public interest is vague and undefined and often exploited by governments. Under this doctrine of eminent domain, citizens who are ordered to give up their property cannot refuse to move but they can try to negotiate for higher compensation. If they are dissatisfied with what is offered to them, they can seek administrative adjudication or sue the government for its failure to follow legal procedures through the Law of Land Administration. However, Chinese laws and regulations do not specify that developers and evictees must agree to the terms of compensation before the demolition takes place – the developers are only required to have offered some compensation.</li> <li>• Challenging the legality of the eviction process or taking action to receive better compensation has been extremely difficult for residents of Beijing. In 2005, the Chinese Supreme Court ordered lower courts to stop hearing cases brought by people who had been evicted. New government regulations were also implemented to restrict lawyers from representing groups of evictees.</li> <li>• In January 2011, however, a new law governing urban evictions in China was adopted by government. The law will come into force in 2012. According to the new rules: governments must conduct evictions, not private developers; compensation upon eviction is to be set at market price of comparable property; disputes are to be settled by courts; the cutting off of utilities or roads as a method of forcing people off their lands and out of their homes is prohibited. The government is permitted to evict residents and property owners in a number of circumstances such as for projects related to energy or transport infrastructure; housing for low income people; defence; diplomacy; education; or health care. The government is not permitted to evict for commercial projects. Where evictions are permitted, they are not to be conducted at night or during holidays and police and security guards should not be deployed during an eviction unless there is an emergency. The new law do not apply to evictions in rural areas.</li> </ul>



Community Response including use of International law/ mechanisms	<ul style="list-style-type: none"> <li>• In Beijing, residents have banded together to protest forced evictions and have also attempted to take legal action against the government and developers. Some displaced citizens have appealed to the local residents' committee (<i>juweihui</i>), street and district level government officials and the Mayor's office for help. In other cases, affected residents have resorted to self harm in order to resist or avoid eviction.</li> <li>• As a State Party to the ICESCR, the international community has also expressed concern over Beijing's Olympics-related evictions.</li> <li>• Legal scholars wrote an open letter to the government urging them to adopt new policies regarding forced evictions.</li> </ul>
Impact/Results	<ul style="list-style-type: none"> <li>• It is believed that protests by residents, advocacy by legal scholars and the release of an investigative report by the Beijing Office for Petitions citing forced eviction as the number one reason for civil unrest in China, resulted in the 2011 new law guiding evictions. It remains to be seen, however, how the law will be interpreted and its impact. The adoption of the new law is considered a significant gain. The Chinese government has made it very difficult for residents to publicly express their discontent because of restrictions on community activism and free expression. In some cases, residents have been arbitrarily detained, subjected to violence, or committed to psychiatric institutions for participating in protests.</li> <li>• To date legal actions have been ineffective for residents as well. Courts have been ordered to stop hearing cases from evictees; and lawyers have been restricted from representing groups of evicted residents. As a result of these measures, residents have found it very difficult to find legal representation, much less have their case heard in court.</li> <li>• Where residents have complained to government bodies, they allege that their complaints have been largely ignored. Some evictees believe local residents' committees are receiving corrupt payments from developers. As a result it is unclear whether the new rule requiring disputes to be heard in courts will be advantageous for affected constituencies.</li> </ul>
Lessons Learned	<p>The Chinese government's tight control over freedom of expression and community activism has made it challenging for displaced residents to speak up about their situation and effect any great change. NGOs trying to report on the situation in Beijing have found it equally difficult to collect information to share with the larger international community. Despite these incredible obstacles, some positive change has been achieved. Further research and analysis is needed into the underlying reasons for the new rules.</p>

are part of the government's "economic war" to impose the burdens of the global financial crisis on the working class and the poor.<sup>157</sup> The global financial crisis that was triggered by the mortgage crisis in the **United States** has led to unprecedented growth in cases of forced evictions and homelessness.<sup>158</sup> It is estimated that since 2008 more than three million Americans have been "forced from their homes in one of the largest forced evictions in history" as a result of often discriminatory subprime lending practices and the financial meltdown.<sup>159</sup>

The relationship between the Global economic crisis and forced evictions remains a relatively under explored area. The United Nations Special Rapporteur on Adequate Housing devoted a 2009 report to the issue of the global financial crisis and the right to adequate housing.<sup>160</sup> She notes that security of tenure, for both owners and lenders, has been deeply affected by the crisis. Foreclosure have often resulted in homelessness or inadequate living conditions, and loss of employment. As a result "tent cities" and encampments have emerged.<sup>161</sup>

<sup>157</sup> International Committee of the Fourth International, 2010: online.

<sup>158</sup> Housing and Land Rights Network, Habitat International Coalition, 2010:2.

<sup>159</sup> Housingwire, 2011: online and Housing and Land Rights Network, Habitat International Coalition, 2010:9.

<sup>160</sup> United Nations Special Rapporteur on Adequate Housing, 2009.

<sup>161</sup> United Nations Special Rapporteur on Adequate Housing, 2009: paras.: 67-73.





AGFE also commenced work in this area through its missions to Argentina (2009)<sup>162</sup> and to Italy (Rome) (2005).

In **Italy**, the private lease sector accounts for the majority of eviction cases in Italy. As of 2002, approximately 13 per cent of all leaseholders in Italy had experienced the ordeal of an eviction enforced by the police.<sup>163</sup> This number is expected to be much higher in the face of the current economic climate, where escalating food and gasoline prices are eating into household budgets. In 2005, average rents in Italy far exceeded average incomes. Families living on low income were paying between 81 and 185 per cent of their income on rent.<sup>164</sup> Families paying such a high proportion of their income on rent are obviously extremely vulnerable to eviction for arrears or non-payment of rent. As the economic crisis persists, evictions from homes sold in auctions due to mortgage defaults, debts and bankruptcy have started to emerge. These types of evictions arise in the face of rising unemployment. While some will eventually be able to re-purchase their homes, a significant percentage will not be able to do so, and will either join the rental market or be left homeless. Of course, as the economic crisis takes hold, those with the fewest means are most likely to become homeless, with little recourse but to live informally in abandoned buildings. Without any legal security of tenure, evictions are imminent. As is the case in other developed countries, the economic crisis in Italy is made worse by the fact that there is an insufficient amount of affordable housing or social housing for the poorest populations, and few programs to assist poor households in accessing market value rents.

While evictions for non-payment of rent or for defaulting on mortgage payments are “legal”, the State still has an obligation under the ICESCR to ensure no one is evicted into homelessness, regardless of the cause of the eviction. The State also has an obligation to ensure access to adequate housing for particularly marginalized and disadvantaged groups including those with disabilities, immigrants and refugees, ethnic and racial minorities, female headed households, and other disadvantaged groups.

Since 2001 **Argentina** has struggled with a financial crisis that was devastating to those who were already impoverished. Though in 2003 the Government responded to the housing crisis by making a significant budgetary and policy commitment to housing as a human right, and in 2010 adopted a law that raises the Government’s policy commitment to an enforceable right,<sup>165</sup> there continues to be a gap between affordable housing supply and housing demand. According to the United Nations Special Rapporteur on Adequate Housing, who visited Argentina on mission in April 2011: “This [gap] is partly due to State neglect of housing issues in previous decades. But the situation has deteriorated recently due to the economic growth that Argentina is experiencing and its direct effect on price increases for land, including urban land, housing and rents which have grown proportionately more than the income of most of the population.”<sup>166</sup> As a result, the occupation of land and housing continues unabated as does the eviction of those living “illegally” in those places.

<sup>162</sup> The scope of the AGFE mission to Argentina was broader than the impact of the global economic crisis on tenure security, covering issues such as planning policies for new human settlement sites and forced evictions in urban areas under environmental protection and the impact of provincial housing policies affecting indigenous peoples and migrants.

<sup>163</sup> UN-HABITAT, Advisory Group on Forced Evictions, 2005:115.

<sup>164</sup> UN-HABITAT, Advisory Group on Forced Evictions, 2005:115.

<sup>165</sup> United Nations Special Rapporteur on Adequate Housing, *Relatora Especial*, 2011: online.

<sup>166</sup> United Nations Special Rapporteur on Adequate Housing, *Right to housing*, 2011: online.





**TABLE 12: CASE STUDY OF ROME, ITALY**

Place	Rome, Italy
Relevant Missions	AGFE-led four person mission from February 15-19, 2005
Principal Cause of Eviction	Two major causes: 1) inability to pay private rent and defaults on mortgages; and 2) illegal and informal occupation of public housing.
The Eviction Process and its Effects	<ul style="list-style-type: none"> <li>• In Rome, between 1983 and 2003, over 212,000 evictions were requested, of which 66,112 were executed by the police. In 2004 alone, 2,111 evictions were carried out. This reflects a national problem in Italy where in 2003-4 an estimate of 170,000 evictions were carried out as a result of inability to pay excessively high rent prices.</li> <li>• The Rome Municipal Administration indicated a shortage of over 26,000 public housing units to accommodate lower income evictees. An estimate of 9,040 of available public housing units (13.79%) in Rome were informally occupied in 2005, putting these residents under a continuous threat of eviction.</li> <li>• Many available squats are in very unsafe conditions with no access to facilities or services, such as in the Roma camp in Vicolo Savini.</li> <li>• Main underlying reasons for evictions include: 1) increase in rent prices and decentralisation of responsibility over housing; 2) the privatisation of social housing projects; and 3) the flow of internal and external migration to Rome without a corresponding policy to deal with such influx.</li> </ul>
Relevant Legislation and Legal Issues	<ul style="list-style-type: none"> <li>• Section 55 of <i>Law No. 392/1978</i> on private residential building and Section 6 of <i>Law No. 431/1998</i> provide main legislative framework. However, main problem seems to be non-legal. In 2007, the European Committee of Social Rights (ECSR) found the Italian system of evictions consistent with international human rights law because it provided for prolonging period of enforcement for orders of possession/eviction and for financial support for evictees looking for alternative housing.</li> <li>• In contrast to most other European countries, the right to housing is not recognized in Italy by the constitution, by legislation or by any official national policy in this area. However, Italy is a signatory of both the ICESCR and the European Social Charter which provides for the right to housing (Art.31) and specifically the right against forced evictions (Art.31 §2 and E of the Revised Charter);.</li> <li>• The right to adequate housing is only recognized for families deprived of housing in case of natural disasters (Decision No. 5950/2002 State Council).</li> <li>• <i>Law No. 209/2004</i> removed 105 million Euros from a public fund meant to assist low-income families in rent payment.</li> </ul>
Community Response including use of International Law / mechanisms	<ul style="list-style-type: none"> <li>• The AGFE-led mission, in collaboration with local civil society organizations such as the Union Inquilini, cooperated with the Rome Municipal Administration to address housing problems.</li> <li>• Italian and other organizations have used regional human rights mechanism to oppose eviction policy and practices. In 2009, the ECSR heard <i>Centre on Housing Rights and Evictions (COHRE) v. Italy</i> (No. 58/2009), and in 2004, the <i>European Roma Rights Centre (ERRC) v. Italy</i> (No. 27/2004). and found that evictions carried out by the Italian government against Roma people failed to satisfy conditions in the European Social Charter which resemble those found in international human rights law.</li> </ul>
Impact/ Results	<ul style="list-style-type: none"> <li>• The AGFE-led mission and other civil society organizations secured a 12-months eviction moratorium, unofficially imposed by the Prefecture of Rome on forced evictions, and worked for the adoption of a gradual zero-eviction policy.</li> <li>• In <i>European Roma Rights Centre (ERRC) v. Italy</i> (No. 27/2004) the ECSR found that evictions carried out by the Italian government against Roma people failed to satisfy conditions in the European Social Charter which resemble those found in international human rights law. This, however, did not end the forced evictions against the Roma people as evidenced by mass forced evictions in 2008 and after.</li> </ul>



Lessons Learned	<ul style="list-style-type: none"><li>• Evictions resulting from inability to pay high rent present a difficult challenge in terms of garnering support for it as a human rights issue, due to the negative/positive rights duality. This is so despite the devastating effects it may have on large groups who are not provided with adequate alternatives.</li><li>• Some stakeholders prefer to characterize the issue (especially when it relates to minorities, such as the Roma) as a minority rights or a non-discrimination issue, reflecting larger public as well as jurisprudential support of such rights.</li></ul>
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**TABLE 13: DISCRIMINATION AND FORCED EVICTION**

### **Discrimination and forced eviction**

The practice of forced evictions may be considered *prima facie* discrimination. Discrimination occurs when a law, policy, or program creates a distinction, exclusion, restriction or preference based on a prohibited ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms.

Forced eviction is singularly aimed at those who are impoverished and other particular groups recognized as requiring protection from discrimination. Miloon Kothari, the United Nations' former Special Rapporteur on adequate housing, identified a number of groups as disproportionately affected by forced eviction: minority groups, women, and indigenous people.<sup>i</sup> These groups – who are more likely to be living with low incomes, in poor housing conditions, and without secure tenure – are easy prey for Government authorities and private actors looking to clear urban slums to create land for mega-events, private development or beautification plans. The result is that, as compared to people with secure tenure, or with an adequate income or a sustainable livelihood, those who suffer eviction are prevented from enjoying rights such as the right to an adequate standard of living, including housing and food.

In some instances, particular groups of people are clearly targeted for forced eviction and thus directly discriminated against. Women and the Roma are two such groups. As the Special Rapporteur notes, women are especially vulnerable to forced evictions because of the gender discrimination they face.<sup>ii</sup> As domestic, migrant and sex trade workers, women are vulnerable to being evicted from accommodation that is provided with their work, while married women are susceptible to evictions because of dowry-related issues and the potential of domestic violence, divorce or becoming widowed.<sup>iii</sup>

Roma communities have been subject to both direct and indirect discrimination, especially with respect to housing and forced eviction, by public authorities and the general public. Their traditionally nomadic lifestyle leaves them at an especially high risk of forced eviction.

In Greece, reports by NGOs have highlighted a pattern of severe discrimination against Roma communities in housing. Preparation for the 2004 Summer Olympics was used as an opportunity for state authorities to drive Roma communities out of many regions. In Aspropyrgos, municipal authorities used preparation for the Olympics as a pretext to remove and relocate Roma, claiming their settlement area might be used to build Olympic facilities. In the end, no facilities were ever constructed but many Roma homes were demolished in what the local government called a "cleaning operation."<sup>iv</sup>

In 2009, the AGFE conducted a fact-finding mission to Greater London to further explore the discriminatory eviction of Roma, Gypsies and Irish Travelers from their settlements. Eviction of these groups was thought to be a direct effect of the implementation of exclusionary regional spatial strategies. The nomadic culture of these groups has made it difficult for them to locate authorized places to settle. In 2004, the U.K.'s Housing Act required local authorities to assess the need for new settlement sites for Roma, Gypsies and Irish Travellers as well as to maintain existing sites. However, the Commission on Racial Equality found that many sites were poorly located, overcrowded and had unacceptable living conditions, evidence that local authorities were continuing to discriminate against these groups by failing to adequately address their housing needs.

In Italy, Roma have been regularly subjected to forced evictions by local authorities. In 2007, there were at least 15 reported cases of Roma people being forcibly evicted from their homes and in many of these cases, local authorities did not provide any alternative accommodation or compensation. For many Roma who do not possess Italian citizenship, they have been forced to leave the country, making it almost impossible to contest the discriminatory actions of Italian authorities.



*Roma community homes demolished in Europe. Photo: COHRE.*

The ECSR has recognized the interaction between discrimination and forced eviction in relation to Roma communities on two occasions. In 2004, the ECSR heard a complaint alleging violation of right to housing of, and discrimination against, Roma in Greece in *European Roma Rights Centre v Greece*.<sup>v</sup> The ESCR also addressed the interaction between forced evictions and discrimination in 2010 when COHRE submitted a complaint alleging violations of the right to adequate housing for Roma communities in Italy in *Centre on Housing Rights and Evictions v Italy*.<sup>vi</sup>

<sup>i</sup> *United Nations Special Rapporteur on Adequate Housing, 2004: para 39.*

<sup>ii</sup> *United Nations Special Rapporteur on Adequate Housing, 2004: para 41.*

<sup>iii</sup> *United Nations Special Rapporteur on Adequate Housing, 2004: para 41.*

<sup>iv</sup> *UN-HABITAT, Advisory Group on Forced Evictions, 2005.*

<sup>v</sup> *European Roma Rights Centre v Greece (2004), Complaint No. 15/2003, European Committee on Social Rights.*

<sup>vi</sup> *Centre on Housing Rights and Evictions v Italy (2010), Collective Complain No. 58/2009, European Committee on Social Rights.*







## 7. IMPACT AND CONSEQUENCES OF FORCED EVICTIONS





The impact of forced eviction is generally devastating to individuals, families and communities. It represents egregious human rights violations that could be easily avoided if States and other actors simply refrained from engaging in the practice.<sup>167</sup>

The people most affected by forced eviction tend to be those who are poor and without formal title or legal recognition of the land on which they reside. These individuals are often members of already disadvantaged groups: Indigenous people, women and particularly female headed households, persons with disabilities, older people, persons with disabilities or chronic illnesses, and children/ youth.

Every stage of the forced eviction process – whether pre, mid or post eviction – has severe repercussions for those affected.

The threat of forced eviction can be a relentless form of agitation and instability causing serious psychological damage. Individuals and families live in a state of uncertainty, never knowing when they might be forcibly evicted from their homes. The threat of forced eviction can also cause divisions within and between communities, generating social conflict and resulting in community members investing less in their neighbourhoods due to the lack of communal identity and certainty about their future.

In many instances, forced evictions are carried out with the use of force and violence. Tear gas, fires, rubber bullets, and gender-specific violence are often used as means to remove people from their homes. For example, in September 2006, armed police and hired youth evicted approximately 300 families from the Komora slum in Nairobi. Police



Man on oxygen living in informal settlement in Istanbul, Turkey, June 2009. Photo: UN-HABITAT/Cihan Baysal.

<sup>167</sup> Leckie, 1995:8.



set fire to shelters and bulldozed others.<sup>168</sup> Violence also occurred in a forced eviction in the Central Kalahari Game Reserve in Botswana, where it was reported that those acting on behalf of Government officials had threatened the Bushmen at gunpoint, ordering them to leave.<sup>169</sup> In 2007 in Curitiba, it was reported to COHRE that an eviction order was implemented with the support of the state police, special troops, dogs, 50 vehicles and a helicopter.<sup>170</sup> Violence is also used to deter advocacy. For example, in Pakistan, the Convenor for the Action Committee for Civic Problems, the main organizer of the movement against the Lyari Expressway, has received death threats. According to a local advocate in Karachi, "[e]victions are not only inhuman but brutal as anyone who dares to oppose them is put in jail and tortured, their families are harassed, and sometimes family members disappear or die under mysterious circumstances. All of this is done to ... deter the resistance."<sup>171</sup>

Women are often on the front lines opposing forced evictions, coming face-to-face with police, soldiers, armed thugs and even bulldozers. In the 2005 eviction of the Kurtkoy neighbourhood in Istanbul, the women were the first to defend their homes. They threw stones and sticks at the soldiers and put up barricades in their streets. They were assaulted in return. Fifteen women were arrested and held for three days.<sup>172</sup>

Immediately following forced eviction, residents are traumatized. In many cases, families remain on the eviction site without water, electricity or shelter for days, uncertain as to what to do, and where to go. In most instances they have lost

their homes, including all of the investments they made in it, as well as their personal possessions – clothing, furniture, valuables and cherished heirlooms. They also lose a place from which to create stability, as well as access to health services and schools. Entire communities are destroyed, family members are separated, a way of life destroyed.<sup>173</sup> AGFE learned on its mission to Port Harcourt that in many instances women and children were moving in with relatives in villages outside of Port Harcourt, and the men were staying back to continue with their income-earning activities.<sup>174</sup> In many cases, the families or communities had been living on the site of the eviction for generations, so the loss of their homes signified the loss of culture and familial identity.

Victims of forced eviction suffer from feelings of depression and anxiety, particularly about the future. Once evicted, residents are rarely compensated, serving to exacerbate their economic hardship and social impoverishment.<sup>175</sup> Forced eviction invariably results in the disruption of employment and the means to secure a livelihood. Not only does this serve to further disadvantage the already impoverished, but it is also very demoralizing. In some cultural contexts, male honour is deeply wounded when the 'breadwinner' role is compromised or taken away.

In some cases, entire communities are forced to move to urban centres or where the infrastructure cannot support them. The result is that they reside in urban slum settlements – some of the worst housing in the world – without access to proper services including schools and health care services. Social support found in their original communities no

<sup>168</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2007:27.

<sup>169</sup> Centre on Housing Rights and Evictions, *Letter*, 2005.

<sup>170</sup> Centre on Housing Rights and Evictions, 2009:34.

<sup>171</sup> Cabannes et al, 2010:44.

<sup>172</sup> Cabannes et al, 2010:53.

<sup>173</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>174</sup> UN-HABITAT, *Advisory Group on Forced Evictions, Report on Mission to Port Harcourt*, 2009:33.

<sup>175</sup> Leckie, 1995:29.



longer exists. Employment is scarce, making subsistence near impossible. In many cases the new residents experience discrimination as outsiders. In other instances, those evicted are forced to move to peri-urban centres also lacking in adequate infrastructure and services. Residents then have to travel long distances to reach employment, putting additional burdens of time and transport expenses on the already disadvantaged and poor. Having been evicted once, evictees become increasingly susceptible to eviction as their tenure security becomes weaker and weaker without proper state protection and resettlement.

Reports indicate that the mental and physical health of residents who have experienced forced eviction is often compromised. Diseases are contracted as a result of living rough or in cramped quarters. Alcoholism has, in some instances, been reported as a problem. Overcrowded accommodation post-eviction can also lead to increased levels of household violence.

During his mandate, the Special Rapporteur on Adequate Housing, Miloon Kothari, outlined the impact of forced eviction on particularly vulnerable groups including: women, children, and Indigenous peoples.<sup>176</sup> Women have distinct experiences of forced eviction.<sup>177</sup> Women are also more likely to be “the first targets of police violence during an eviction drive” and will continue to experience “heightened rates of physical, psychological and economic violence before, during and after the evictions.”<sup>178</sup>

When women are forcibly evicted, it often severely restricts their earning capacity and

mobility and results in the loss of their social support networks. In some instances women resort to prostitution as a means of earning money and are extremely vulnerable to being trafficked. Some women feel that they have no choice but to travel overseas for employment leaving their families behind.

Because women are often the emotional centres of the household or family, many women bear the emotional burden and impact of the forced eviction. Women attend to their own emotional needs as well as those of their children, husbands, relatives and even other community members.

Persons with disabilities are likely to be more vulnerable to violence during a forced eviction and are likely to experience more barriers in securing adequate housing after an eviction. On the mission to New Orleans, the AGFE team visited two older women who were homeless, squatting in an abandoned house. Both had been renting apartments in the private market prior to the Hurricane. One of the women was in her 60s and was disabled, requiring the use of a wheelchair. To enter the house she had to drag herself up the front steps as there was no accessible ramp. The house itself was abandoned and thus in a state of complete disrepair, unsanitary with no clean, running water or electricity. It was infested with mosquitoes and lacked floorboards.<sup>179</sup>

Indigenous peoples are also directly targeted by forced eviction as they often live on resource rich land and do not always have formal title to their land, making them relatively easy to remove from their lands.

<sup>176</sup> United Nations Special Rapporteur on Adequate Housing, 2004.

<sup>177</sup> Centre on Housing Rights and Evictions, 2009:9.

<sup>178</sup> Centre on Housing Rights and Evictions, 2009:12-13.

<sup>179</sup> UN-HABITAT, Advisory Group on Forced Evictions, New Orleans, 2009:34.





## 8. CHALLENGING FORCED EVICTION: SUCCESSFUL STRATEGIES AND LESSONS LEARNED





There is no single strategy that alone is effective in challenging the practice of forced evictions. Invariably affected communities, CBOs, NGOs, and other stakeholders use a variety of means in a complementary fashion, simultaneously or selectively, in order to prevent or halt forced evictions. These multi-pronged strategies often involve two or more of the following:

## 8.1 LEGAL ACTION

In instances where independent courts are available, communities affected by eviction often use legal mechanisms to challenge an impending eviction. Courts are generally used to challenge the eviction or the enabling legislation itself, and to seek injunctions to stop the eviction from being carried out while a broader legal case is prepared.

For example, in Kibera, Nairobi, eighty residents living on the rail line operational corridor filed a case in the High Court against the Kenya Railways Corporation, seeking an injunction to restrain the Railways from evicting them: *Nderu & Others v Kenya Railways Corporation*. The case was eventually settled when the Kenya Railways Corp agreed to enter negotiations.<sup>180</sup> And in another case in the Lugari District a High Court granted a temporary injunction ahead of a full hearing, with the Judge stating that the plaintiffs were likely able to establish that the notice period for the eviction was “unreasonably inadequate.” The Judge further noted, “[The Railway Corp.] have allowed the plaintiffs to occupy the land for a period of over 30 years without removing them. Why would it now give such citizens a 30 day notice to remove what they have invested for such a length of time?”<sup>181</sup>

More recently, the Kenyan High Court heard a case under its new Constitution brought before it by 5 petitioners on behalf of thousands of residents living in Nairobi’s informal settlements.<sup>182</sup> The residents challenged the demolition of their premises by the Nairobi City Council. Some of the residents had lived in the informal settlement for over 40 years. The Plaintiff’s alleged that the eviction violated their right to adequate housing among other economic and social rights as found in Article 43 of the Constitution of Kenya. The court ruled that it was unjust for the City to have only provided residents one or two days notice to vacate their homes without reason, and to forcefully evict them from their homes. Relying on jurisprudence from South Africa, specifically the *Grootboom*<sup>183</sup> decision, the High Court of Kenya encouraged the City to adopt a housing strategy which responds “reasonably to the needs of the most desperate and provides at least temporary shelter for those with no access to land.”<sup>184</sup> The Court also held that the State had an obligation to provide adequate housing and a constitutional obligation to provide the residents alternative housing, drawing on international human rights law to support its judgement.

In Johannesburg, a group of inner city poor residents, with the support of the Wits Law Clinic and a private law firm, challenged the city of Johannesburg’s practice of evicting poor people from allegedly unsafe buildings onto the inner city streets. The case went to the Supreme Court of Appeal which ruled that the residents should vacate the unsafe buildings but ordered the City of Johannesburg to provide alternative shelter to all of those

<sup>180</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:24.

<sup>181</sup> *Samoei Kirwa and others v. Kenya Railways Corporation as cited in: UN-HABITAT, Advisory Group on Forced Evictions*, 2005:24.

<sup>182</sup> *Susan Waihera Kariuki & 4 others v Town Clerk, Nairobi City Council & 2 others*, 2010.

<sup>183</sup> *Government of the Republic of South Africa v Grootboom*, 2000.

<sup>184</sup> *Susan Waihera Kariuki & 4 others v Town Clerk, Nairobi City Council & 2 others*, 2010. According to the Kenyan High Court and the court in *Grootboom*, a reasonable housing policy must: be comprehensive, coherent and effective; have sufficient regard for the social economic and historical context of widespread deprivation; have sufficient regard for the availability of the State’s resources; make short, medium and long term provision for housing needs; give special attention to the needs of the poorest and most vulnerable; be aimed at lowering administrative, operational and financial barriers over time; allocate responsibilities reasonably, adequately resourced and free of bureaucratic inefficiency or onerous regulations; respond with care and concern to the needs of the most desperate; achieve more than a mere statistical advance in the numbers of people accessing housing, by demonstrating that the needs of the most vulnerable catered for.



residents in need. The City was ordered to file an affidavit demonstrating compliance with the order within four months of the judgement.<sup>185</sup>

In Canada, a group of homeless people in Victoria, British Columbia, challenged a city by-law that prevented them from erecting overhead shelter in the form of tents, tarps and cardboard boxes at a local park.<sup>186</sup> The City had a documented shortfall of spaces in homeless shelters. The homeless defendants who had been living in the park argued the bylaws were unconstitutional, infringing “the right to life, liberty and security of the person” under section 7 of the *Canadian Charter of Rights and Freedoms*.

The trial court found the prohibition of temporary overhead shelter in parks to be unconstitutional where there was a lack of alternative shelter space. The court relied on the right to adequate housing under international human rights law to support its decision. The Court referred to submissions made by Canada to the United Nations CESCR regarding the scope of domestic protections for the right to housing and on General Comment No. 4 on the right to adequate housing under the ICESCR. The decision was upheld on appeal. Following the decision of the British Columbia Supreme Court, the City of Victoria added approximately eighty new shelter beds and implemented a new policy on temporary shelters that was consistent with the Court’s ruling, which allowed tents to be erected from 7pm to 7am.

## 8.2 COMMUNITY ORGANIZING AND MOBILIZATION

“...well-organized communities, strong mobilization and people-driven processes are critical keys to finding positive ways out of forced evictions.”<sup>187</sup>

AGFE’s experiences across communities indicates that community organizing and mobilization is the single most important factor in preventing or halting forced evictions and negotiating adequate resettlement. It is invariably those affected by forced evictions and their associations or groups that are the original source of alerts regarding pending forced evictions, it is these groups that stand in front of bulldozers, mobilize to develop alternative plans, try to engage local or national government, solicit support from the international community by developing partnerships and provide information to the United Nations human rights system and other bodies.

AGFE has also learned that neighbourhoods organized by grassroots federations are better able to resist forced evictions than are more isolated communities that have not organized. For this reason, community organizing and mobilizing ought to be regarded as an important strategy in resisting forced evictions.

In the Dominican Republic, Espacio de Coordinacion Urbano Popular por la Defensa del Territorio coordinates more than 60 urban civil society organizations. These organizations have collectively resisted forced evictions in Santo Domingo. In Curitiba, Brazil, the local section of the National Movement for Housing Struggle, in close collaboration with the Catholic Church, spearheaded proposals to the local government.<sup>188</sup> In Philippines, residents of relocation sites are organized into councils, representatives of which liaise with government officials. In Italy tenants organizations and community mobilization provided important alternatives to forced eviction.<sup>189</sup> MayDay New Orleans has been the voice for public housing tenants in the aftermath of Hurricane Katrina and Lower Mid-City residents have rallied and organized a

<sup>185</sup> *City of Johannesburg v Rand Properties (Pty) Ltd*, 2007

<sup>186</sup> *Victoria (City) v. Adams*, 2009; *Victoria (City) v. Adams*, 2008.

<sup>187</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:139.

<sup>188</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:139.

<sup>189</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:139.





*Former residents of the St Bernard Community and members of Mayday New Orleans with AGFE members, New Orleans, United States, July 2009). Photo: UN-HABITAT.*

virtual community called Save Charity Hospital aimed at re-opening Charity Hospital and retaining the historic community of Lower Mid-City. In Peru, the Tambo Grande community organized itself to form a Defence Front. They mobilized support from diverse groups including other government representatives, national and international institutions, artists, intellectuals. With this broad base of support, the eviction was prevented.<sup>190</sup>

### **8.3 INTERNATIONAL SOLIDARITY AND SUPPORT AGAINST EVICTION: INTERNATIONAL NGOS WORKING IN CONCERT WITH LOCAL ORGANIZATIONS AND MOVEMENTS**

In many instances, support and solidarity from the international community has played a

significant and important role in addressing evictions in the domestic context. Oftentimes communities feel very isolated in their struggles and the support of international groups and United Nations bodies can make a significant difference to the local struggle. International groups like COHRE, HIC, IAI, SDI, ACHR, and AGFE undertake a variety of activities to assist local communities: drafting letters to Government, assisting in the preparation of legal cases, assisting local organizations to use international human rights mechanisms, acting as a third party negotiator with government officials, assistance in the development of alternative plans.

In 2004 the IAI launched the Zero Eviction Campaign aimed at securing housing rights for all. The Campaign has established an international alert system for violations

<sup>190</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:64.





of housing rights; it issues appeals for international solidarity; proposes missions and conciliation to AGFE; and supports the exchange of experiences and good practices by inhabitant's organizations, local bodies and other stakeholders to avoid evictions. The Zero Eviction Campaign has been active in a number of countries including Kenya, Zimbabwe, Nigeria, Dominican Republic, Italy, France, Croatia, United Kingdom and India.<sup>191</sup>

In Kenya, the Zero Eviction Campaign helped to establish the W Nairobi WI Campaign to challenge the eviction of 300,000 due to infrastructure investments (motorways, railways, electricity lines). The Campaign has local (mobilization, judicial appeals, meetings) and international dimensions (a special web site resulted in approximately 10,000 solidarity e-mails having been sent to all of the institutions involved). The campaign was successful in stopping the forced evictions. The Campaign also helped to initiate negotiations to convert Kenya's external debt to Italy (45 million Euros) into a People's Fund which is to be used to improve living conditions in two shanty towns in Kenya. The Campaign adopted a similar approach to address evictions in Zimbabwe – establishing Operation to Re-Establish Housing Rights in Zimbabwe, they called for a moratorium on evictions under Operation Murambatsvina, and a cancellation of debt. It was as a result of the Campaigns efforts that the United Nations sent an envoy to investigate the evictions.<sup>192</sup>

A Zero Evictions campaign was also launched in Nigeria by IAI members to address the Port Harcourt evictions as well as other evictions. The Campaign made demands at the local and international level. At the domestic level the campaign called for: a moratorium on evictions; the repeal of any policy or law

that violates the right to adequate housing under domestic and international law or that jeopardises Nigeria's attainment of Goal 7 Target 11 of the Millennium Development Goals or its Habitat Agenda commitments; to provide immediate compensation and adequate alternative accommodation to those affected by forced eviction; and to institute an independent commission of inquiry to investigate the extent of the State Government's involvement in the Silverbird project in Port Harcourt and the resultant forced evictions. The Campaign called on the international community to block investments in Nigeria if they result in projects that promote forced evictions without procedural protections and that the cancellation of Nigeria's debt only occur if the funds are instead used to develop housing and urban policies for the poor. The Campaign called on the United Nations to condemn all evictions, to provide a forum whereby all stakeholders – government and civil society – could convene to negotiate an alternative plan. The Campaign specifically called upon UN-HABITAT to conduct a mission to Port Harcourt and to assist in negotiating a settlement.<sup>193</sup>

In 2002, approximately 1,500 people living on the Naguru and Nakawa estates in Kampala, Uganda were threatened with eviction by the Kampala City Council which intended to use the land for the construction of retail and middle-income housing. A local organization – Naguru and Nakawa Estates Tenants Organization sought the support of the Centre on Housing Rights and Evictions to oppose the eviction. COHRE submitted a Protest Letter to the Government of Uganda, the City Council and Members of Parliament as well as the media. A few weeks later, COHRE was told that the President of Uganda intervened to stop the eviction of tenants. During

<sup>191</sup> International Alliance of Inhabitants, online.

<sup>192</sup> International Alliance of Inhabitants, online.

<sup>193</sup> International Alliance of Inhabitants, <http://www.habitants.org/>.



the mid-2000's UN-HABITAT launched and implemented a Secure Tenure Campaign to bring all stakeholders together to ensure that the urban poor's right to security of tenure and to be free from evictions was upheld.<sup>194</sup>

## 8.4 INTERNATIONAL HUMAN RIGHTS LAW AND MECHANISMS

Many of the advocates resisting forced evictions in their domestic context have turned to international human rights law and mechanisms to assist in preventing or halting forced eviction. International and regional mechanisms are particularly important in countries where internal mechanisms of recourse and redress are inadequate and the hallmarks of democracy are compromised for example, where courts and other judicial mechanisms are not at arm's length from government, where there is no independent media, where the State refuses to engage in meaningful dialogue with NGOs and community groups, and where there is a lack of freedom of speech. International and regional fora provide an opportunity for marginalized and disadvantaged voices to be heard and for pressure to be exerted on the State from the outside – by the international community.

The Espacio de Coordinación Urbano Popular por la Defensa del Territorio in the Dominican Republic has used the United Nations CESC to draw attention to recent forced evictions in Santo Domingo and elsewhere. They also coordinated the AGFE mission. In fact, NGOs and community groups in the Dominican Republic have a long history using the international human rights system as a State accountability mechanism. They were one of the earliest to attend the CESC for the review of their government, and the urgency of the situation of forced evictions galvanized the CESC to travel to the Dominican Republic to further investigate the situation and make

recommendations to the Government for immediate action.

Many NGOs have also used the United Nations' Special Procedures in their work to resist forced evictions, in particular by participating in the hosting of an official country mission by the Special Rapporteur on Adequate Housing. For example, the Special Rapporteur has visited a number of countries where forced eviction is a major issue of concern: Peru, Kenya, Pakistan, the USA – including New Orleans, Argentina, South Africa, the Maldives, and Brazil. In each case local organizations have capitalized on the Rapporteur's visit to draw attention to particular instances of forced eviction, to engage in dialogue, and negotiations with government officials, and to galvanize broad based support.

## 8.5 MEDIA

Most community organizations and community campaigns to prevent or halt evictions use the media strategically to develop and galvanize support, to raise awareness, to shame government and to initiate discussions with government. The Lyari Expressway evictions, for example, have received extensive publicity. NGOs and community groups have worked to inform the media by holding press conferences and conducting tours of the affected communities. According to local organizations, media support for the affected communities has been a key force in opposing the evictions. It is generally understood that the media coverage has assisted in mobilizing broad civil society opposition to the project.

Media is also used by international groups when conducting missions to communities facing forced eviction. For example, AGFE's mission to Turkey resulted in coverage of the evictions in all national newspapers, a major achievement in a country where the demolition

<sup>194</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:39–40.



of houses and opposition to government eviction plans are rarely part of public debate and discourse. AGFE surmises that media coverage of their mission was what provoked the President of the Housing Ministry to meet with representatives from the civil society initiative, STOP (Autonomous Planners Without Borders). STOP had prepared an alternative plan for the eviction of a Roma community and was able to present it to the President of the Housing Ministry.<sup>195</sup>

The AGFE mission to New Orleans also generated a great deal of media attention – print, television and internet based. The local newspaper, the *Times-Picayune*, in particular, wrote several articles, at times travelling with mission members on site visits. Three documentary makers also travelled with the mission. Television footage of the mission which aired on different networks increased opportunities for many residents and community leaders to voice their concerns and make recommendations to local, state and national governments. The media coverage generated by AGFE assisted the Special Rapporteur on Adequate Housing for her mission to the US a few months later.<sup>196</sup>

## 8.6 DEVELOPMENT OF ALTERNATIVE PLANS

Many communities faced with eviction take it upon themselves to develop alternative plans to those proposed by the government. Under international human rights law, States have an obligation to pursue every alternative to forced eviction and thus should consider alternative plans, including those developed by civil society.

In 2003 residents of a historic community in Bangkok, Thailand – Pom Mahakan – were

threatened with eviction by the Bangkok Metropolitan Administration (BMA). The BMA had decided that Pom Mahakan – a 100 foot wide piece of land between the ancient city wall and the canal – would make a lucrative tourist attraction and therefore that the 75 families living there would have to be evicted. The community's refusal to accept forced relocation attracted the attention of the architectural department of King Mongkut's University of Technology Thonburi and over time a relationship was developed between the department and the community. This relationship resulted in research that revealed that community members were in fact in favour of using their community for tourism as they could see how it would benefit their own household economies. They believed, however, that their community could incorporate more parks without anyone having to be evicted from their homes. With this vision, students in the architectural department and residents of Pom Mahakan created a community development plan which reblocked the existing housing and created a series of mini parks between housing and around small courtyards. This alternative plan was eventually endorsed by the Human Rights Commission of Thailand and in December 2005 it was used in negotiations between the BMA, the community and the University to reach an agreement to preserve and develop the area as an antique wooden house community.<sup>197</sup>

Homeowners in Lower Mid-City New Orleans have been struggling to keep their 27 block neighbourhood in tact in the face of development plans for a state of the art medical corridor. In the aftermath of the Katrina Hurricane, the US Department of Veteran Affairs and Louisiana State University announced the selection of the Lower Mid-

<sup>195</sup> See: UN-HABITAT, *Advisory Group on Forced Evictions, Istanbul, 2009*.

<sup>196</sup> See: UN-HABITAT, *Advisory Group on Forced Evictions, New Orleans, 2009*.

<sup>197</sup> Centre on Housing Rights and Evictions, *Successes, 2008:57-64*.



City community for the site of a new hospital system. If built the new hospital would destroy the historic neighbourhood around the existing Charity Hospital, where residents have been rebuilding and restoring their homes and community since the Hurricane. The AGFE mission visited this community and was provided with a comprehensive presentation on an alternative plan that had been commissioned by the Foundation for Historical Louisiana from RMJM-Hillier, a major architectural firm. The alternative plan avoids the eviction of homeowners and small business owners in the neighbourhood and is significantly less expensive than the Veterans/LSU plan.<sup>198</sup> As it stands, Lower Mid-City has successfully resisted eviction and the alternative plan has received broad community support and the support of some politicians. Most recently, Senator David Vitter, House Speaker Jim Tucker, Treasurer John Kennedy sent a letter to Louisiana State Governor Bobby Jindal proposing an alternative plan that is more in keeping with that of RMJM-Hillier Plan.<sup>199</sup> There is little doubt that the alternative plan developed by Low Mid-City residents helped to ignite debate around the development of the medical complex and has thus stalled the eviction of the community.

Regardless of the context within which forced eviction is threatened, research indicates that the following activities or conditions are necessary in order to prevent or halt forced evictions:<sup>200</sup>

**Vibrant organized communities.** Successful processes occur when a threatened community organizes itself, relies on its own strength and gradually gets support at national and international levels.

**Eviction is more likely to be prevented or halted if people led movements and strategies are involved in the issue.**

Activities that these groups undertake include: mass mobilisation; exposing and publicising planned evictions; establishing housing rights campaigns; publicly refusing to move; linking with similar groups from other areas and sharing information, ideas, and strategies; engaging the government in dialogue about planned evictions; developing and publicising viable alternative plans; and legal action.

**International NGOs and Advisory Groups**

can play a vital and important role in stopping forced evictions. COHRE, HIC, IAI, and AGFE among others have all had success in this regard, providing technical, legal assistance to local partners.

**The exchange of experiences, ideas and concepts, between peoples' organizations**

can play a very positive role in assisting local organizations to develop ideas on how to prevent or resist forced evictions. One of the roles of AGFE has been to develop the exchange of experiences at multi-sector levels (grassroots, local governments and professional support groups). For example, the Curitiba Municipality benefited from learning about the land policies implemented by the Sao Paulo Government. The Sri Lankan groups benefited from exchanging experiences with the leaders of the Indian Slum Dwellers Federation. During the mission in Santo Domingo, Dominican Republic, the Peruvian experience of setting up a 'Fund for Land' and also to assist evicted people was discussed and the local groups in the Dominican Republic are considering establishing a similar system.<sup>201</sup>

<sup>198</sup> See: UN-HABITAT, Advisory Group on Forced Evictions, New Orleans, 2009 and Save Charity Hospital, [www.savecharityhospital.com](http://www.savecharityhospital.com).

<sup>199</sup> See: Save Charity Hospital, [www.savecharityhospital.com](http://www.savecharityhospital.com).

<sup>200</sup> Centre on Housing Rights and Evictions, *Successes*, 2008.

<sup>201</sup> UN-HABITAT, Advisory Group on Forced Evictions, 2005:149.





Tsunami survivors in Sri Lanka try to rebuild their lives, March 2005. Photo: UN-HABITAT.

**Local governments often play innovative roles in preventing or halting forced evictions**, despite their relative lack of power within the housing context. AGFE has documented and influenced creative practices by local governments to halt forced evictions. For example, in the French Municipality of Bobigny, near Paris residents – primarily working class immigrants living in public housing – were facing a growing number of evictions due to arrears in rent. The Mayor responded to the situation issuing a municipal decree declaring the municipality a “territory free of evictions.” Though this decree was declared invalid in court, it triggered similar decrees in other municipalities and public debate on forced evictions. The result was that evictions slowed down.<sup>202</sup> Similar decrees were discussed and considered as a result of AGFE missions to Dominican Republic and to Rome.

It is more difficult to say why strategies to prevent forced evictions are not successful. In some cases it may be that the pecuniary interests compelling the eviction simply blind the perpetrators of the eviction to the human costs: mining projects, hydroelectric power plants or mega events like the Olympics. Evictions that constitute *prima facie* discrimination such as those experienced by the Roma, are unlikely to be stopped without legal recourse. In those cases, the motivation for the eviction is to remove the particular group from the land – alternative plans are, therefore somewhat irrelevant, and there is little to negotiate. In some instances, evictions based in an ideological position may also be difficult to thwart. For example, the conversion of public housing to private market accommodation resulting in the eviction of thousands of the poorest most marginalized tenants across the country, is an ideological, market and profit

<sup>202</sup> UN-HABITAT, *Advisory Group on Forced Evictions*, 2005:141-142.



driven policy, one which believes in smaller government and which suggests members of disadvantaged groups ought to learn how to swim or else they will be left to sink.

It may also be that our strategies do not always tell the right story. So much of the reporting on forced evictions refers to the scope of the eviction, the rationale, and an analysis of the legality or the illegality. As a result, sometimes, the human aspects of the story are obfuscated. If we are unable to convey an understanding of the human experience of forced eviction we may not be able to mobilize as much support

as is necessary to have this violation of human rights treated as an egregious act, equal to the attention paid to “breaches of security interests.”

Lastly, as long as debates rage as to the legitimacy of adequate housing as a human right and its justiciability, and as long as the international community allows itself to be distracted by new trends, campaigns and initiatives to the exclusion of human rights issues that have or should have long been on the agenda, forced evictions will never be adequately addressed.





## 9. MOVING FORWARD: FILLING RESEARCH GAPS, EFFECTIVE MONITORING AND PREVENTION OF FORCED EVICTION





## 9.1 RESEARCH GAPS

### DEFINITIONS

The definition of what constitutes a ‘forced eviction’ is constantly evolving. When the term was first used it was generally applied to major development projects like hydroelectric dams resulting in mass forced evictions of thousands of people. Over time, the term has come to include evictions which are the result of many different causes including armed conflict, violence against women, urban expansion, market forces and financial crises, climate change and natural disasters. The definition of forced eviction must be constantly re-visited and re-invigorated so that it can respond to the lived experiences of people in their homes and communities. For example, to date, relatively little attention has been paid to the predominant causes of forced evictions in developed countries, such as economic evictions, particularly during recessions, and gentrification. These types of evictions defy conventional understandings of what constitutes a forced eviction as they are often conducted completely within the parameters of the law and in keeping with notions of due process. For example, the evictions of public housing tenants in New York, Chicago and New Orleans in the context of the redevelopment of public housing have generally taken place in a legal manner with fair and due process. However, since these evictions are involuntary, target and impact marginalized groups protected by human rights legislation and most commonly occur to maximize private sector profits, they rightfully fall under the scrutiny of international human right law.

AGFE in conjunction with civil society experts and the Special Rapporteur on Adequate Housing and the Office of the High Commissioner for Human Rights should consider developing guidelines for forced evictions that primarily take place in the

context of developed countries as well as important regional principles.

### APPLICATION OF INTERNATIONAL LAW

The obligations of private sector actors under international law with respect to forced eviction remain a relatively unexplored yet vital aspect of the phenomenon. Clear standards need to be established that determine how a third party can be held accountable if they engage in the practice of forced evictions. Third parties might include: private landlords, mining companies and private companies sub-contracted to implement the eviction.

Though an increasing amount of research and analysis has appeared that focuses on women’s experiences of forced eviction, it is not yet clear what international legal standards apply to women’s experiences of forced eviction and what those standards mean in the context of women’s equality. Research into the conflicting and complementary legal standards that could be used would be a good starting point. There is also a lack of information on the experiences of persons with disabilities in the eviction process.

### SOLUTIONS

In-depth, detailed research into successful strategies to prevent and halt forced evictions is still needed. This is especially true of successful strategies used in preventing forced evictions: very little is known about these practices because the eviction never takes place and therefore remains hidden from public view.

### RELOCATION AND COMPENSATION

In exceptional cases where forced evictions are carried out in compliance with international law, resettlement and compensation or restitution is required. Research is still needed to determine more specific principles regarding what constitutes adequate resettlement and compensation in keeping with human rights law.





## IMPACT ASSESSMENTS<sup>203</sup>

Research shows that in the last two decades progress has been made developing Eviction Impact Assessment (EviA) methodologies and associated tools. While EviA methodologies share certain commonalities and broad objectives, they often use different frameworks, having been developed in different contexts and often for quite specific needs and purposes. These methodologies include: (1) Economic Evaluation as part of broader feasibility investigations to determine relocation impact; (2) a comprehensive Housing Rights Violation Matrix which includes assessing losses incurred through forced eviction; (3) the Impoverishment Risks and Reconstruction (IRR) model, developed in the course of the 1990s and incorporated into the policies of the World Bank and regional international development banks; and (4) eviction impact assessment through Participatory Monitoring and Evaluation. In some cases eviction impact assessment is undertaken in relation to a specific case to support litigation or the development of community-driven alternatives or in the course of academic research and more general human rights monitoring work.<sup>204</sup>

There is real potential for cross-pollination between these different methodologies. Given the diversity of different applications, and the importance of taking account of specific local context, it is essential that any consolidated methodology be flexible enough to respond to the particular case or situation at hand. Further investigation and consultation with relevant parties would help to establish whether or not it is feasible and advisable to combine different methods into a composite EviA 'toolkit'.<sup>205</sup>

## LONGITUDINAL STUDIES

As it stands no longitudinal studies have been conducted to assess the long-term socio-economic and psychological impact of forced evictions on individuals, groups, families and communities. Longitudinal studies of this nature would help to formulate even more appropriate remedies to forced evictions. It would also assist in developing a better understanding of the full ramifications of this gross violation of human rights.

### 9.2 EVALUATION OF PROCESSES AND RESOURCES FOR MONITORING EVICTIONS GLOBALLY

At the present time, there are currently a handful of organizations at the international level that are charged with monitoring forced evictions, conducting fact finding missions, working with local organizations to use legal and other means to prevent, halt and develop alternatives to forced eviction. These organizations include: AGFE, COHRE, HIC, ACHR, SDI, Amnesty International, and the IAI. The United Nations Special Rapporteur on Adequate Housing and the United Nations CESCR also play important roles in monitoring forced evictions globally. It is clear that the work of each of these organizations is important in the global struggle to raise awareness regarding the phenomenon of forced evictions, to the prevention of forced evictions and to the development of alternatives. At the same time, it is also clear that forced evictions continue globally, with their scope and frequency increasing. It is beyond the scope of this report to analyze why this is. We can, however, reflect on the limitations that UN-HABITAT and AGFE together have experienced in their work on

<sup>203</sup> This section is taken directly from: *United Nations Housing Rights Programme, Jean Duplessis, 2011.*

<sup>204</sup> *United Nations Housing Rights Programme, Jean Duplessis, 2011:7-8.*

<sup>205</sup> *United Nations Housing Rights Programme, 2011:7-8.*



forced evictions with a view to determining what role UN-HABITAT and AGFE should play in the future.

The constraints on AGFE's effectiveness have been commented on in previous reports and include:

- Limited political support for AGFE through United Nations members of Governing Council.
- Limited financial resources which has hampered the functioning of the Group (constraints on face-to-face meetings, conference calls, collaborative activities, mediating and conciliatory missions).
- Originally missions were only conducted when a local authority requested that AGFE undertake a mission. This seriously limited the number of missions that could be conducted. And then, once requests were opened up to community groups, AGFE did not have the resources to meet the demand.
- AGFE members mostly work on a voluntary basis, without remuneration and most AGFE members are leaders in their field and in their communities. This means that they often have very little time to undertake report writing or to attend lengthy fact finding missions or meetings.
- AGFE lacked a coherent human rights approach to its work and understanding of what such an approach means in practice.
- On occasion confusion arose regarding AGFE's relationship to UN-HABITAT, for example, whether AGFE could closely align itself with a United Nations body for the purposes of influencing the politics of a forced eviction and whether local groups could somehow avail themselves of the power of the United Nations through AGFE to benefit their reality.

And yet, despite these constraints, it seems somehow obvious that AGFE and UN-HABITAT,

however reconstituted, must continue to play a role in monitoring and addressing forced evictions.

### 9.3 MOVING FORWARD

UN-HABITAT is well situated to play an important role in bringing greater international attention to the practice of forced evictions with a view to eradicating it as a practice. In this regard, UN-HABITAT may consider: i/ coordinating further research on issues arising as a result of forced evictions and disseminating tools and guidelines to urban planners and policy makers; ii/ increasing synergies with and technical advice to municipal urban planning; iii/ conducting missions to investigate and assist local efforts to prevent or halt forced evictions; and iv/ promoting a global understanding of the gravity and significance of forced evictions in the lives of the urban and rural poor and solutions to forced eviction. UN-HABITAT is well positioned to play an important institutional role in preventing and proposing alternatives to global forced evictions.

#### AGFE'S ADVISORY ROLE

If UN-HABITAT hopes to play a role in eliminating the practice of forced evictions globally, it will need an international group or committee of experts to provide technical assistance and professional advice. The Advisory Group could be called upon to provide advice to the Executive Director of UN-HABITAT in a number of different contexts, be it with respect to evictions in particular country contexts, strategic interventions that the Executive Director might be able to make at high level meetings within the United Nations system or elsewhere, or the programmatic work of UN-HABITAT itself. The expertise and independence of AGFE members suggests an important role in providing advice and guidance to UN-HABITAT as it further develops its programming on forced evictions. Together,



UN-HABITAT and AGFE could ensure that forced eviction becomes a significant area of interest to the international community.

If adequately resourced and institutionally supported, AGFE's role in preventing and halting forced evictions and developing suitable alternatives could be quite significant. Its relationship with UN-HABITAT and the Executive Director could allow a good flow of information between AGFE and UN-HABITAT, and lead to the development of meaningful and constructive bi-lateral discussions.

### **COMMIT TO THE RIGHT TO ADEQUATE HOUSING AND FREEDOM FROM FORCED EVICTIONS**

If UN-HABITAT is to play a significant role in the prevention or cessation of forced evictions, it will have to make an institutional commitment to a rights-based approach to its work and recognize the importance and relevance of the right to adequate housing for the poorest people in the world. UN-HABITAT's programming and budget must reflect this commitment. This commitment alone, if made public to the international community, could have a significant impact on the practice of forced evictions. In the creation of synergies with urban planning initiatives, UN-HABITAT may also have an important role to play with respect to the provision of technical advice on alternatives to evictions.

A rights-based approach to the right to adequate housing offers concrete guidelines or measures that UN-HABITAT and AGFE can use to guide their work and discussions with States. This approach has several hallmarks which are simple and straightforward:

- States must commit to an understanding that forced eviction is a gross violation of human rights except under exceptional circumstances and must agree to a

moratorium on the practice of forced eviction.

- Where a forced eviction is deemed absolutely necessary, the practice must be carried out in strict compliance with international human rights law as developed by the CESCR and the Special Rapporteur on Adequate Housing. It thus ceases to be classified as an eviction.
- The State must commit to the elimination of forced evictions as a practice within a certain timeline.
- Forced evictions, relocation and policies regarding forced evictions must always be discussed with the full and meaningful participation of civil society, all stakeholders, indigenous representatives, groups that will be affected and those vulnerable to insecure tenure.
- The State must immediately identify and prioritize the needs of those who have already been evicted to ensure they can live with dignity and rights within their communities.
- The State must ensure accessible and transparent accountability mechanisms, including independent monitoring and review of progress and implementation and an individual complaints mechanism for victims of violations of the right to adequate housing, including forced evictions.

### **STRENGTHEN AGFE'S INFRASTRUCTURE AND INSTITUTIONAL SUPPORT**

If AGFE is to continue to exist as an Advisory Group to the Executive Director, AGFE members must have more frequent and institutionalized meetings with the Executive Director of UN-HABITAT. If UN-HABITAT is committed to reducing the number and severity of evictions that occur around the world, then there must be an institutional commitment to work closely and meet frequently with AGFE members to continuously strategize on how best to draw attention to



and address forced evictions as they arise globally, including committing adequate resources to this end.

### **MONITORING FORCED EVICTIONS: TOOLS**

With respect to monitoring of forced evictions, with UN-HABITAT's support, AGFE has already played a leading role in the preliminary development of a Global Database on Forced Evictions, ensuring a collaborative approach with other international monitoring organizations. AGFE has also initiated the development of a number of standardized tools to assist in data collection regarding forced evictions (some of which were reviewed above). AGFE has also developed a good working relationship with the Special Rapporteur on Adequate Housing and has a pool of experts to draw on to assist in monitoring related activities. It remains to be determined whether the ongoing monitoring and collection of data on forced evictions is best carried out by UN-HABITAT in conjunction with AGFE members and/or by other international groups working on forced evictions.

AGFE's leadership in the development of tools to assist in the systematic collection of information pertaining to evictions should continue. Because AGFE members work on

forced evictions on-the-ground, their insights and practical expertise is necessary to ensure these tools are of practical significance. These tools, particularly those pertaining to due process, once refined, will be invaluable resources to those in the field to assess whether violations of human rights have occurred and how these violations can be addressed.

### **RESEARCH**

UN-HABITAT, collaborating with AGFE members who are all experts on different aspects of forced eviction, is in a good position to initiate further research on emerging issues related to forced eviction that remain under-explored (such as those identified above). Research should focus on the experience and expertise of those working on the ground or internationally to prevent or halt forced evictions, rather than desk research based primarily in the review of literature. It would also be beneficial for research to further explore synergies with and technical advice to municipal urban planning.

### **ENGAGEMENT WITH OHCHR AND SPECIAL RAPPORTEUR**

UN-HABITAT and AGFE must continue to work collaboratively and in a supportive capacity with the other United Nations bodies concerned with forced evictions.







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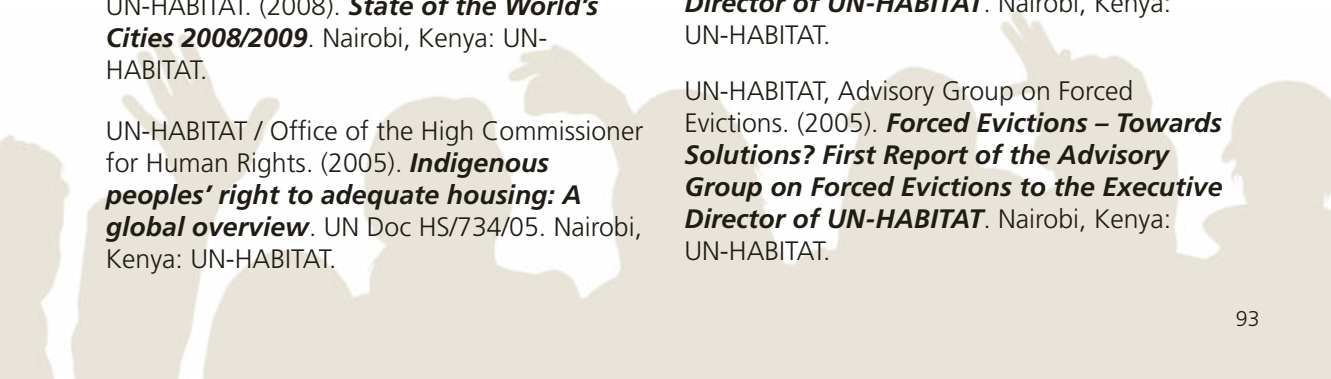
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## ANNEXES



## ANNEX I: LIST OF AGFE MEMBERS

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<sup>206</sup> AGFE Members are individuals appointed by the Executive Director of UN-HABITAT. The Members serve for a term of two years.



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## ANNEX II: AGFE EVICTION TOOLS

### A. EVICTION DUE PROCESS QUANTITATIVE DIAGNOSTIC TOOL

Eviction Due Process Quantitative Diagnostic Tool - General Legislation Level

City:

Country:

Dates visited by AGFE Mission:

#### Due process component

1	Are relevant existing legislation and policies compatible with the obligations arising from the right to adequate housing / the requirements of the ICESCR?
2	Does existing legislation provide the greatest possible security of tenure to occupiers of houses and land?
3	Is existing legislation designed to control strictly the circumstances under which evictions may be carried out?
4	Do specific legal procedures/guidelines for forced evictions exist?
5	Does existing legislation provide appropriate protection of women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups from the forced eviction?
TOTAL GENERAL ASSESSMENT	

Eviction Due Process Quantitative Diagnostic Tool - Neighbourhood Level

Neighbourhood/Community:

Date visited by AGFE Mission:

City:

City population

Country:

Type of eviction (past or planned):

Date and time of eviction:

Official justification/rationale given by the evictor:

Estimated number of persons evicted/threatened:

Estimated number of women-headed households evicted/threatened:

Dominant tenure status of the evicted households:





Due process component (for planned evictions, skip the questions that do not apply)

1	Have all feasible alternatives been fully explored in genuine consultation with the affected persons prior to carrying out the evictions (with a view to avoiding, or at least minimizing, the need to use force)?
2	Has information been made available in reasonable time to all those affected on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing was/is to be used?
3	Has adequate and reasonable eviction notice been given to all affected persons prior to the scheduled date of eviction?
4	Have government officials or their representatives been present during evictions?
5	Have all persons carrying out the eviction been properly identified?
6	Has it been ensured that evictions do not take place in particularly bad weather or at night (unless the affected persons consented otherwise)?
7	Has it been ensured that the eviction does not render individuals homeless or vulnerable to the violation of other human rights?
8	Have adequate legal remedies been provided (including legal counsel and legal aid)?
9	Have all individuals concerned received adequate compensation for any property, both personal and real, which is affected?
10	Have all appropriate measures been taken, to the maximum of existing resources, to ensure that adequate alternative housing or resettlement is available to those who are unable to provide for themselves?
11	Have appropriate measures been taken to ensure that no form of discrimination is involved when forced evictions occur, i.e. against women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups?
	TOTAL ASSESSMENT

## B. DUE PROCESS ASSESSMENT CHECKLIST FOR DEVELOPMENT-BASED EVICTION AND RELOCATION<sup>207</sup>

### RATIONALE/INTENDED APPLICATION

This checklist is intended as a practical tool for UN-HABITAT staff, both in field and headquarters, who are involved in project/programme design and technical assistance. A more comprehensive UN-HABITAT tool kit on forced evictions, including a basic eviction impact assessment methodology and guidelines for sustainable resettlement, based on due process in line with international human rights standards, is under preparation. The purpose of this checklist is to assist UN-HABITAT staff to conduct a “quick-and-

dirty” assessment of eviction and relocation processes driven by central and local government authorities in client countries. The findings are expected to inform UN-HABITAT’s dialogue with government counterparts and the agency’s technical assistance in view of ensuring compliance with international human rights law and principles. Furthermore, the findings can contribute to the identification of best/good practices in developing alternative approaches to forced eviction, including in situ upgrading and sustainable relocation. In cases of unsustainable approaches and housing rights violations, the findings will help UN-HABITAT in establishing mechanisms for awareness creation and capacity-building among key stakeholders. If need be, this first assessment can also constitute the basis for

<sup>207</sup> This draft paper was prepared by the Housing Policy Section of UN-HABITAT.



Assessment of due process (in the range from 0=Not complied with, to 10=Fully complied with)	Weighting	Total number of possible points	Total points allocated	Percentage	Source(s) of information used for the assessment	Comments by AGFE Mission Team
		10				
		10				
		10				
		10				
		10				
		10				
		10				
		10				
		10				
		10				
		110	0	0		

a more in-depth analysis, by UN-HABITAT or other entities. If client governments show a continued lack of willingness to improve their approach, UN-HABITAT may consider suspending its technical cooperation until basic principles to comply with international standards are met.

#### DEFINITION OF 'FORCED EVICTION'

Under international law, forced eviction is defined as "the permanent or temporary removal against their will of individuals, families and/communities from the home and/ or the land they occupy, without the provision of, and access to, appropriate form of legal or other protection. The prohibition on forced

evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights."<sup>208</sup>

Development-based forced evictions are usually planned or conducted under the justification of serving the "public good." They occur in both urban and rural settings. In most cases, they are linked to development and infrastructure projects such as roads, dams, industrial or energy projects, mining and other extractive industries; land acquisition measures associated with urban renewal, slum upgrading, housing renovation, city beautification; other land-use programmes, including for agricultural purposes; property, real estate and land

<sup>208</sup> Committee on Economic, Social and Cultural Rights (CESCR) General Comment 7 - The right to adequate housing (Art.11.1): forced evictions: 20/05/97.





disputes; uncontrolled land speculation; major international business or sporting events (“mega events”); as well as environmental purposes. Such activities are often supported by international technical and financial assistance. Many urban-based projects involve – directly or indirectly – UN-HABITAT policy and technical assistance.

The above international definition makes it clear that not all forced evictions are prohibited. In certain situations, for instance to ensure the protection of residents occupying derelict buildings or zones prone to natural hazards (e.g. flood areas), eviction may be unavoidable. Nevertheless, even in these cases, the eviction process should be in line with national law and international standards. Basic principles that need to be met to comply with international standards include:

- Genuine consultation and participation of affected persons and communities;
- Adequate information and notification;
- Effective administrative and legal recourse;
- Due process when the actual eviction is carried out;
- Prohibition of actions resulting in homelessness and deterioration of housing and living conditions;
- Provision of adequate relocation to alternative housing and/or adequate compensation before evictions are carried out; and
- Non-discrimination of women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups.

Non-compliance with these international standards leads to human rights violations which can take various forms. For example, no clear justification is communicated to the evictees; the eviction is carried out in a violent or otherwise inadequate way; evictees receive no or too short a notice, are rendered homeless

or suffer from a deterioration of their living conditions; there is no provision for relocation or compensation; and other civil, political, economic, social and cultural rights besides the right to adequate housing are not respected.

A common problem occurs at national level when domestic laws, procedures and guidelines are not in line with international standards. Court rulings in favour of eviction based on them are easily interpreted as legitimate although not in compliance with the State’s international standards and obligations.

The present checklist is based on the following main reference documents:

Committee on Economic, Social and Cultural Rights (CESCR), General Comment n°7 on Forced Evictions and General Comment N°4 on Adequate Housing

Special Rapporteur on adequate housing, “Basic principles and guidelines on development-based evictions and displacement”, Annex to report A/HRC/4/18

This checklist has taken into consideration and partly incorporated the background information and questions developed by the Office of the High Commissioner for Human Rights (OHCHR) in its “Forced Evictions Assessment Questionnaire” that was designed for Human Rights Officers and organisations dealing with cases of forced evictions. Due process in terms of international human rights standards needs to be followed throughout the process of eviction and relocation. Therefore, the following checklist is structured into the four sections: (i) legal context in the country/city; (ii) Prior to eviction/ relocation (project design phase); (iii) During the eviction; (iv) Remedies – relocation and/ or compensation; and (v) cross-cutting / in all eviction contexts.



## I. LEGAL CONTEXT OF THE COUNTRY/CITY

- 1.1. Is the State a signatory to the International Covenant on Economic Social and Cultural Rights (ICESCR)?<sup>209</sup> If so, when was it ratified?
- 1.2. Is the State a signatory to the International Convention on Civil and Political Rights (ICCPR)? If so, when was it ratified?
- 1.3. Are relevant existing legislation and policies compatible with the obligations arising from the right to adequate housing / the requirements of the ICESCR?
- 1.4. Does existing legislation provide the greatest possible security of tenure to occupiers of houses and land? Is there a tenant protection legislation?
- 1.5. Is existing legislation designed to control strictly the circumstances under which evictions may be carried out?
- 1.6. Do specific legal procedures/guidelines for forced evictions exist? Do they provide appropriate protection of women, children, youth, older persons, indigenous peoples, ethnic and other minorities, and other vulnerable individuals and groups from forced eviction?

## II. PRIOR TO EVICTION/RELOCATION (PROJECT DESIGN PHASE)<sup>210</sup>

- 2.1. Exploration of alternatives through consultation and participation

International standard: Explore all feasible alternatives in genuine consultation with the affected persons prior to carrying out the evictions (with a view to avoiding, or at least minimizing, the need to use force)

Operational definition:

All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.

### 2.2. Adequate information and notification

International standard: Information had to be made available in reasonable time to all those affected on the proposed eviction, and, where applicable, on the alternative purpose for which the land or housing was/is to be used

<sup>209</sup> The ICCPR states that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation" (Article 17.1).

<sup>210</sup> Planning processes should include the following elements:

- appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives;
- effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;
- a reasonable time period for public review of, comment on, and/or objection to the proposed plan;
- opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and
- holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.



### Operational definition:

Any decision to carry out an eviction should be announced in writing in the local language to all individuals concerned, sufficiently in advance of the scheduled date of eviction. Adequate eviction notice should contain a detailed justification based on absence of reasonable alternatives (outcome of the genuine consultation process described above) and a presentation of measures taken and foreseen to minimize the adverse effects of the eviction. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

### 2.3. Effective administrative and legal recourse

International standard: All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

On the ground checks related to 2.1., 2.2. and 2.3.:

- Have all alternatives to eviction been considered and, if not, why? If, so which alternatives? Why have they not been implemented?
- Has the redevelopment plan considered the possibility to re-house evictees in the same location after the completion of the project (for example, through vertical densification)? [Thus only temporarily relocate people]
- Was an eviction-impact assessment carried out? If yes, give details. [When and who carried it out, who was consulted, etc]
- Are there available indicators, statistics and data to assess the differential impact of forced evictions on women, children, elderly, people with disabilities, people with illness and under treatment and other groups with specific needs?
- How, when and by whom were communities informed of the project and potential evictions? How easily and transparently was it to access all information relevant to the project?
- Were communities consulted at any stage of the process? What did the “genuine consultation” process consist of? When and how? By what authorities? All communities or part or only community representatives? [Check the number and types of meetings that were held. If possible, consult minutes or any other records which show WHO discussed WHAT, HOW and WHEN.]
- How were the affected persons/communities notified of the eviction? Under what form (written, oral, public billboard, radio, etc.)? How much time in advance? In a language understandable by all recipients?
- Did the notification contain: justification for the decision? Explanation of why alternatives to the eviction could not be implemented? Information on relocation? Information on compensation? Information on legal recourses available against the decision and how to access them? If ‘overriding public interest’ (or similar formulation) was used by the responsible authorities, how is this defined? Is this defined and regulated by particular legislation (land use planning, town planning acts)? If only used and defined for this particular case, has the affected community been involved in its definition?
- What are the existing administrative and judicial review mechanisms against these decisions? Have they been used? Are they timely and effective? Are they accessible? Has an independent body with constitutional authority, such as a court of



law, tribunal or ombudsperson, mediated, arbitrated or adjudicated?

- Have the affected individuals and communities access to legal counsel - without payment if necessary?
- Did the affected persons have enough time to access recourse mechanisms before the eviction took place?
- Was the eviction process suspended if a review of an eviction decision was taking place?
- Was there an inventory made in order to assess the value of the properties, investments and other material goods that is foreseen to be destroyed or could potentially be damaged? Were non-monetary losses included?
- Did the affected persons/households receive support/compensation to evacuate their material goods? Were the affected persons or their representatives informed of these measures?
- What measures were foreseen to avoid affected persons to become homeless or vulnerable to violations of other human rights? Were the affected persons or their representatives informed of these measures?
- What relocation/resettlement measures were foreseen? Were the affected persons or their representatives informed of these measures?
- What specific measures were foreseen:
  - So that children's schooling is not disrupted;
  - for people under medical treatment;
  - for people with disabilities?
- Were consultations with affected persons/communities conducted on the appropriateness and adequacy of the relocation site?
- Are the living conditions in the relocation site at least at the same level than before and in accordance with core elements of the right to adequate housing? With access to basic services? Would affected people's livelihood be guaranteed? [For

instance, in case of relocation of poor individuals and communities from slums and similar conditions, the relocation site should enhance the living conditions of the people. In no case should they be worse off.]

- Was the relocation site fully operational before the eviction was conducted?
- Was the relocation planned in a way to avoid segregation and marginalization of the evicted communities?

### III. DURING THE EVICTION

#### 3.1. International standard: Prevent vulnerability to violation of human rights

Operational definition:

The eviction must not be carried out in a manner that violates the dignity and human rights to life and security of those affected. Authorities must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of the eviction, and that the human rights of children are protected.

Any legal use of force must respect the principles of necessity and proportionality, as well as 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 enforcement and human rights standards.

Authorities and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction





and arbitrary and illegal appropriation, occupation or use.

In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to:

- (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses;
- (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and
- (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

Authorities and their agents should never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material.

At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to:

- (a) essential food, potable water and sanitation;

- (b) basic shelter and housing;
- (c) appropriate clothing;
- (d) essential medical services;
- (e) livelihood sources;
- (f) fodder for livestock and access to common property resources previously depended upon; and
- (g) education for children and childcare facilities.

3.2. International standard: The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during the eviction.

3.3. International standard: The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

3.4. International standard: Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

On the ground checks related to 3.1. – 3.4.:

- When did the eviction take place? [Time, date, was it during bad weather, public holidays, etc.?)
- Who carried out the eviction? [In some cases, police forces seal off the area, but it is the private companies' workers and bulldozers that destroy the houses]
- Was there a formal authorization for the eviction action presented?
- Were independent observers and monitors present during the evictions (civil society, international organizations, etc.)?
- How were the eviction(s) carried out?
- Was violence used by the authorities during the evictions? [What material was used? Was it proportionate?]



- Were lives threatened during the eviction? [For example bulldozers destroying houses with people inside]
- Was there violent resistance from the persons facing evictions?
- Were belongings destroyed during evictions? [This could include identification and official papers, cattle and poultries, etc.]
- Were persons facing evictions forced to destroy their shelters and belongings themselves?
- Were measures taken to protect possessions that were involuntarily left behind against destruction, illegal appropriation and use?
- Were steps taken to ensure that no one was subject to attacks or other acts of violence, in particular women and children? [for instance from another community]
- What measures were taken to minimize the traumatic impact of the eviction on women, infants, children, elderly, disabled and the ill?
- Are video footage, testimonies and any other information on the event available?
- Has the eviction been carried out completely or are there still other evictions foreseen?
- Did the evictees have to bear any costs for the eviction or resettlement?
- Could media freely and impartially cover, investigate and report on the events?
- Immediately after the eviction, what measures were taken to provide food, water, shelter (to prevent homelessness), clothing, medical service and other essential facilities?
- Were affected persons taken, with their belongings, to the relocation site?
- What are the concrete issues faced as a result of the eviction, in particular, what are the humanitarian needs of the evictees?
- Do the responsible authorities monitor the situation of the evicted persons? [those relocated and those that were not]

#### IV. REMEDIES

- 4.1. International standard: Adequate legal remedies have to be provided (including legal counsel and legal aid)

Operational definition:

All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid (especially for persons who are in need of it to seek redress from the courts), return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

- 4.2. International standard: Provision of adequate relocation to alternative housing and/or adequate compensation for any property, both personal and real, which is affected

Operational definition:

When eviction is unavoidable, and necessary for the promotion of the general welfare, the Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. The authorities must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional



to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.

Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.

To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far

from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

Members of the same extended family or community must not be separated as a result of evictions.

Authorities must take all appropriate measures, to the maximum of existing resources, to ensure that adequate alternative housing or resettlement is available to those who are unable to provide for themselves

Operational definition:

Where those affected are unable to provide for themselves, the responsible authorities 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.

While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law.

Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.



All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.

Identified relocation sites must fulfill the criteria for adequate housing according to international human rights law. These include:

- security of tenure;
- services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate;
- affordable housing;
- habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants;
- accessibility for disadvantaged groups;
- access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and
- culturally appropriate housing.

In order to ensure security of the home, adequate housing should also include the following essential elements:

- privacy and security;
- participation in decision-making;
- freedom from violence; and
- access to remedies for any violations suffered.

Generally, authorities should ensure that in the context of any case of resettlement the following criteria are adhered to:

- (a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent internationally recognized human rights principles are in place;
- (b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;
- (c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;
- (d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;
- (e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;
- (f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;
- (g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;





- (h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;
- (i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;
- (j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and
- (k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

On the ground checks related to 4.1 and 4.2.:

- If a judicial proceeding or hearing was held on the case, did it meet the criteria of fair and impartial justice, and due process?
- Were victims or their representatives harassed or under threat of any sort because of their opposition to the evictions?
- In case the eviction was unavoidable, was there fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property? How was the evaluation of losses and compensation calculated? Who was in charge of the calculation and evaluation?
- In cases where the livelihood of evicted persons was linked to their land and housing, what measures – in consultation with affected people – were foreseen for these persons to continue accessing productive resources and employment? [Note that in case of fishing communities, access to sea, lakes and rivers may also be relevant]
- How is compensation delivered, including from a gender equality perspective?
- Has there been any negative impact on the livelihood of relocated communities?
- What specific measures were put in place:
  - So that children's schooling is not disrupted;
  - for people under medical treatment;
  - for people with disabilities?
- Are the living conditions in the relocation site at least at the same level than before and in accordance with core elements of the right to adequate housing? With access to basic services? Are the livelihoods of the affected households guaranteed?





[For instance, in case of relocation of poor individuals and communities from slums and similar conditions, the relocation site should enhance the living conditions of the people. In no case should they be worse off.]

- Was the relocation site fully operational before the eviction was conducted?
- Was the relocation conducted in a way to avoid segregation and marginalization of the evicted communities?
- Was the affected community or group relocated in different places, hence dislocating them?
- Has the tenure of resettled households changed (from owner to tenant, from tenant to owner, etc.)? What is being done to ensure the sustainability of this tenure, especially for low-income households (for instance state subsidies, etc.)?
- Has there been any tension/conflict between the relocated community and the communities previously living in the area of relocation (“host communities”)?

## V. CROSS-CUTTING / IN ALL EVICTION CONTEXTS

- 5.1. International standard: Take appropriate measures to ensure that no form of discrimination is involved when forced evictions occur, i.e. against women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups

Operational definition:

Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.





### C. EVICTION AND RELOCATION DUE PROCESS ASSESSMENT MATRIX

Eviction Due Process Assessment Matrix - General Legislation Level	
City:	
Country:	
Dates visited by AGFE Mission:	
Due process component	
1	Are relevant existing legislation and policies compatible with the obligations arising from the right to adequate housing / the requirements of the ICESCR?
2	Does existing legislation provide the greatest possible security of tenure to occupiers of houses and land?
3	Is existing legislation designed to control strictly the circumstances under which evictions may be carried out?
4	Do specific legal procedures/guidelines for forced evictions exist?
5	Does existing legislation provide appropriate protection of women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups from the forced eviction?
TOTAL GENERAL ASSESSMENT	

Eviction Due Process Assessment Matrix - Neighbourhood Level	
Neighbourhood/Community:	
Date visited by AGFE Mission:	
City:	
City population	
Country:	

Type of eviction (past or planned):
Date and time of eviction:
Official justification/rationale given by the evictor:
Estimated number of persons evicted/threatened:
Estimated number of women-headed households evicted/threatened:
Dominant tenure status of the evicted households:

Due process component (for planned evictions, skip the questions that do not apply)	
1	Have all feasible alternatives been fully explored in genuine consultation with the affected persons prior to carrying out the evictions (with a view to avoiding, or at least minimizing, the need to use force)?

[illegible]





2	Has information been made available in reasonable time to all those affected on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing was/is to be used?
3	Has adequate and reasonable eviction notice been given to all affected persons prior to the scheduled date of eviction?
4	Have government officials or their representatives been present during evictions?
5	Have all persons carrying out the eviction been properly identified?
6	Has it been ensured that evictions do not take place in particularly bad weather or at night (unless the affected persons consented otherwise)?
7	Has it been ensured that the eviction does not render individuals homeless or vulnerable to the violation of other human rights?
8	Have adequate legal remedies been provided (including legal counsel and legal aid)?
9	Have all individuals concerned received adequate compensation for any property, both personal and real, which is affected?
10	Have all appropriate measures been taken, to the maximum of existing resources, to ensure that adequate alternative housing or resettlement is available to those who are unable to provide for themselves?
11	Have appropriate measures been taken to ensure that no form of discrimination is involved when forced evictions occur, i.e. against women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups?
	TOTAL ASSESSMENT

**D. STANDARDIZED FORMS REGARDING: I/ THREATENED EVICTIONS, II/ AVERTED OR REMEDIED EVICTIONS, III/ IMPLEMENTED EVICTIONS; AND IV/ MONITORED EVICTIONS;**

**A: THREATENED EVICTION**

• **Issues on the city, communities and families threatened with eviction**

1. Name and location of community threatened with eviction
2. Background on the city (size, location, etc.)
3. Estimated number of families affected
4. Brief description of families background

• **The case**

5. Background and history to the case
6. Minimum information on the legal grounds of the case
7. Reasons given for the eviction (official and other)
8. The main events that have taken place so far (with dates)
9. Names of authorities implementing the

eviction

• **The answer to the eviction**

10. Level of organisation of the affected community (including names of organisations, their approach, strengths and weaknesses)
11. Names of supporting agencies working in alliance with the affected community
12. Actions taken so far by the community and/or supporting agencies to resist the eviction and / or to develop creative, alternative solutions
13. Consultations held and alternative housing and/or compensation offered by the authorities to the affected community (if any)

• **Follow up**

14. Strategies for future action discussed / developed / proposed to deal with the threatened eviction
15. Important events anticipated (e.g. dates set for eviction, planned actions, court cases, development of alternatives, etc.)



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16. Reasons why this is a good focus case for the Advisory Group. Ideas on what the Advisory Group could do to contribute to the successful resolution of the case.
17. Full address contact person

#### B: AVERTED OR REMEDIED EVICTION

- **Issues on the city, communities and families**

1. Name and location of community
2. Background on the city (size, location, etc.)
3. Estimated number of families affected
4. Brief description of families background

- **The case**

5. Background and history to the case
6. Minimum information on the legal grounds of the case
7. Reasons given for the eviction (official and other)
8. The main events that have taken place so far (with dates)
9. Names of authorities implementing the eviction

- **The answer to the eviction**

10. Level of organisation of the affected community (including names of organisations, their approach, strengths and weaknesses)
11. Names of supporting agencies working in alliance with the affected community
12. Actions taken so far by the community and/or supporting agencies to avert the eviction and / or to develop creative, alternative solutions
13. Consultations held and alternative housing and/or compensation offered by the authorities to the affected community (if any)

- **Follow up**

14. Strategies developed to avert the eviction
15. Important events anticipated (e.g. dates set for eviction, planned actions, court cases, development of alternatives, etc.)
16. Reasons why this is a good focus case for the Advisory Group.
17. Full address contact person



### C: IMPLEMENTED EVICTION

- **Issues on the city, communities and families affected by the eviction**

1. Name and location of the evicted community
2. Background on the city (size, location, etc.)
3. Estimated number of families affected
4. Brief description of families background

- **The case**

5. Background and history to the case
6. Minimum information on the legal grounds of the case
7. Reasons given for the eviction (official and other)
8. The main events that have taken place so far (with dates)
9. Names of authorities implementing the eviction

- **The answer to the eviction**

10. Level of organisation of the affected community (including names of organisations, their approach, strengths and weaknesses)
11. Names of supporting agencies working in alliance with the affected community
12. Actions taken so far by the community and/or supporting agencies to avert the eviction and / or to develop creative, alternative solutions
13. Consultations held and alternative housing and/or compensation offered by the authorities to the affected community (if any)

- **Follow up**

14. Strategies for future action discussed / developed / proposed to deal with the threatened eviction

15. Important events anticipated (e.g. dates set for eviction, planned actions, court cases, development of alternatives, etc.)

16. Reasons why this is a good focus case for the Advisory Group. Ideas on what the Advisory Group could do to contribute to the successful resolution of the case.

17. Full address contact person

### D: MONITORED EVICTION

- **Issues on previous information to AGFE**

1. Name and location of community
2. Background on the city (size, location, etc.)
3. Who provided the first information on this case to AGFE? How was the information checked?
4. Which steps were adopted by AGFE in the case?

- **The case**

5. Updated background and history to the case
6. Updated information on the legal grounds of the case
7. Reasons given for the eviction (official and other)
8. The main events that have taken place so far (with dates) and current situation
9. Names of authorities implementing the eviction

- **The answer to the eviction**

10. Name of community organizations involved in the case and type of action
11. Names of supporting agencies working in alliance with the affected community
12. Actions taken so far by the community and/or supporting agencies to resist the eviction and / or to develop creative, alternative solutions



13. Consultations held and alternative housing and/or compensation offered by the authorities to the affected community (if any)

- **Follow up**

14. Strategies for future action discussed / developed / proposed to deal with the case

15. Important events since last report to AGFE (e.g. planned actions, court cases, development of alternatives, etc.)

16. Reasons why the Advisory Group should continue monitoring/following up this case. Ideas on what the Advisory Group could do to contribute to the successful resolution of the case.

17. Full address contact person







## ANNEX III: TEMPLATE FOR FACT FINDING MISSION REPORTS

Acronyms

Acknowledgements

Executive Summary (1-2 pages)

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- 1.1. Problem and justification for AGFE mission to XXX
- 1.2. Preparatory work by AGFE and local partner organisations
  - Previous and on-going local activities in XXX (including documentation activities)
  - Office of the Special Rapporteur on adequate housing
  - Other initiatives
- 1.3. Mission objectives
  - 4.1. Normative objective
  - 4.2. Operational objectives
- 1.4. Mission participants and local support groups
- 1.5. Mission methodology

### II. CONTEXT, EXTENT AND IMPACT OF THE EVICTIONS

- 2.1. Eviction inventory (locations, dates, number of structures)
  - Include a map that shows the eviction sites
  - Establish a typology (if possible)
- 2.2. Official justification(s) for the evictions
- 2.3. Total affected population
- 2.4. Impact of the evictions (social, economic, cultural)

### III. IMMEDIATE EFFECTS OF ACTIVITIES CARRIED OUT DURING THE MISSION (RELATED TO "OPERATIONAL OBJECTIVES")

- Site visits
- Meetings
- Public hearings

- Round-tables
- Etc.

### IV. GENERIC LESSONS LEARNT (RELATED TO "NORMATIVE OBJECTIVE")

This section should present the new insights gained on forced evictions that can be disseminated to other locations with similar eviction parameters

### V. DUE PROCESS ANALYSIS

This section should present a narrative version of the findings of the due process assessment based on the application of the Quantitative Eviction Diagnostic Tool. It covers two components of the assessment: (i) existing and planned local and national legislation relevant to forced evictions and security of tenure, under the angle of its compatibility with the ICESCR and other international legal instruments to which the country is a signatory; and (ii) due process assessment of eviction practice against the provisions of CESCR General Comment 7 for past and planned evictions in the settlements visited by the mission.

- 5.1. Due process assessment against existing local and national legislation
  - Does existing legislation provide the greatest possible security of tenure to occupiers of houses and land?
  - Do specific legal procedures/guidelines for forced evictions exist?
  - Is existing legislation designed to control strictly the circumstances under which evictions may be carried out?
  - Does existing legislation provide appropriate protection of women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups from forced eviction?
  - Are relevant existing legislation and policies compatible with the obligations arising



from the right to adequate housing / the requirements of the ICESCR?

- If there is any planned local or national legislation, what difference is it expected to make?
- 5.2. Due process assessment of eviction practice against the provisions of CESCR General Comment 7
  - Have all feasible alternatives been fully explored in genuine consultation with the affected persons prior to carrying out the evictions (with a view to avoiding, or at least minimizing, the need to use force)?
  - Has information been made available in reasonable time to all those affected on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing was/is to be used?
  - Has adequate and reasonable eviction notice been given to all affected persons prior to the scheduled date of eviction?
  - Have government officials or their representatives been present during evictions?
  - Have all persons carrying out the eviction been properly identified?
  - Has it been ensured that evictions do not take place in particularly bad weather or at night (unless the affected persons consented otherwise)?
  - Has it been ensured that the eviction does not render individuals homeless or vulnerable to the violation of other human rights?
  - Have adequate legal remedies been provided (including legal counsel and legal aid)?
  - Have all individuals concerned received adequate compensation for any property, both personal and real, which is affected?
  - Have all appropriate measures been taken, to the maximum of existing resources, to ensure that adequate alternative housing or resettlement is available to those who are unable to provide for themselves?

- What are the rights of tenants?
- Have appropriate measures been taken to ensure that no form of discrimination is involved when forced evictions occur, i.e. against women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups?
- 5.3. Overall findings of the due process assessment
  - Summary and conclusions of the due process analysis;
  - Comparison with assessment by previous missions

## VI. RECOMMENDATIONS AND WAY-FORWARD

This chapter contains a set of realistic recommendations for follow-up actions to be implemented by UN-HABITAT, AGFE and other relevant stakeholders involved in forced evictions. There should be particular emphasis on recommendations to the Executive Director of UN-HABITAT on what the organisation could undertake in view of a non-eviction approach in XXX (and other locations with similar eviction parameters). The recommendations should relate to the immediate effects of the mission activities: What was agreed; what are the commitments; who is going to do what; what is the anticipated timeline?

- 6.1. Recommendations for follow-up actions by UN-HABITAT
- 6.2. Recommendations for follow-up actions by AGFE
- 6.3. Recommendations for follow-up actions by central government
- 6.4. Recommendations for follow-up actions by local governments
- 6.5. Recommendations for follow-up actions by other actors (local, regional, international)
- 6.6. Proposal of a mechanism for follow-up and monitoring on the implementation of AGFE's recommendations.



## ANNEX

- Bibliography (including websites visited)
- Final mission programme
- List of persons met (full names, organisations, contact details)
- Illustrations: photographs, maps, extracts from or scanned copies of media coverage, government reports, Google screenshots of eviction sites (if they add value to the report), etc.
- Documentation that the mission received from the different parties met and otherwise collected before and during the mission.
- Documentation on relevant court cases
- Petitions, press releases and correspondence
- Declarations
- Press release
- Photos taken by mission participants and/or received from local actors
- Legal texts
- Development plans

**Photographs:** The mission is expected to produce a minimum of 20 photos (in 300 dpi resolution) that clearly depict the areas affected by planned/past evictions and the current conditions where people are living after eviction. Each photo needs to be accompanied by a caption/short text describing what it shows and the date it was taken. The photo should be included in appropriate places the report.





## ANNEX IV: INTERNATIONAL LAW

Featured below are excerpts from important international human rights law documents as they pertain to forced evictions. Full versions of documents can be viewed online.

### United Nations Universal Declaration of Human Rights

<http://www.un.org/en/documents/udhr>

#### Article 25.1

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

### United Nations International Covenant on Economic, Social and Cultural Rights

<http://www2.ohchr.org/english/law/cescr.htm>

#### Article 2.2

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Article 11.1

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization

of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

### Millennium Development Goals

<http://www.unmillenniumproject.org/goals/gti.htm>

Goal 1: "Eradicate extreme poverty and hunger" and "Reduce by half the proportion of people living on less than a dollar a day."

Goal 1b: "Achieve full and productive employment and decent work for all, including women and young people."

Goal 2: "Achieve universal primary education."

Goal 3: "Promote gender equality and empower women."

Goal 5: "Improve maternal health."

Goal 6: "Combat HIV/AIDS, malaria and other diseases."

Goal 7d: "Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020."

### United Nations Commission on Human Rights – Resolution 1993/77: Forced Evictions

[http://www.unhabitat.org/downloads/docs/1341\\_66115\\_force%20evic%20chr1.htm](http://www.unhabitat.org/downloads/docs/1341_66115_force%20evic%20chr1.htm)

1. *Affirms* that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;

### United Nations Commission on Human Rights – Resolution 2004/28: Prohibition of Forced Evictions

[http://www.unhabitat.org/downloads/docs/1341\\_73776\\_forced%20evic4.doc](http://www.unhabitat.org/downloads/docs/1341_73776_forced%20evic4.doc)





1. *Reaffirms* that the practice of forced eviction that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing.

### The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action

[http://www2.unhabitat.org/declarations/documents/The\\_Habitat\\_Agenda.pdf](http://www2.unhabitat.org/declarations/documents/The_Habitat_Agenda.pdf)

#### Paragraph 40 (n)

We further commit ourselves to the objectives of:

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.

### United Nations Committee on Economic, Social and Cultural Rights – General Comment 4: The Right to Adequate Housing

<http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:
  - (a) *Legal security of tenure*. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;
  - (b) *Availability of services, materials, facilities and infrastructure*. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;
  - (c) *Affordability*. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against



unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

- (d) *Habitability.* Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;
- (e) *Accessibility.* Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place

to live in peace and dignity, including access to land as an entitlement;

- (f) *Location.* Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;
- (g) *Cultural adequacy.* The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.
10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.



18. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

**United Nations Committee on Economic, Social and Cultural Rights –  
General Comment 7: The Right to  
Adequate Housing – Forced Evictions**  
<http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument>

3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions”, primarily since all suggested alternatives also suffer from many such defects. The term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.
8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.
11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.
12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant.



Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted.”

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to 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 otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

### **The Practice of Forced Evictions: United Nations Comprehensive Human Rights Guidelines on Development-Based Displacement**

[http://www.sarpn.org.za/documents/d0002751/6-Forced\\_evictions\\_COHRE\\_Dec2006.pdf](http://www.sarpn.org.za/documents/d0002751/6-Forced_evictions_COHRE_Dec2006.pdf)

11. States should ensure that adequate and effective legal or other appropriate remedies are available to any persons claiming that his/her right of protection against forced evictions has been violated or is under threat of violation.

13. States should ensure that no persons, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a consequence of a forced eviction.





16. States should fully explore all possible alternatives to any act involving forced eviction. In this regard, all affected persons, including women, children and indigenous peoples shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives. In the event that agreement cannot be reached on the proposed alternative by the affected persons, groups and communities and the entity proposing the forced eviction in question, an independent body, such as a court of law, tribunal, or ombudsman may be called upon.

17. States should refrain, to the maximum possible extent, from compulsorily acquiring housing or land, unless such acts are legitimate and necessary and designed to facilitate the enjoyment of human rights through, for instance, measures of land reform or redistribution. If, as a last resort, States consider themselves compelled to undertake proceedings of expropriation or compulsory acquisition, such action shall be: (a) determined and envisaged by law and norms regarding forced eviction, in so far as these are consistent internationally recognized human rights; (b) solely for the purpose of protecting the general welfare in a democratic society; (c) reasonable and proportional and (d) in accordance with the present Guidelines.

21. All persons threatened with forced eviction, notwithstanding the rationale or legal basis thereof, have the right to:

- (a) a fair hearing before a competent, impartial and independent court or tribunal
- (b) legal counsel, and where necessary, sufficient legal aid
- (c) effective remedies

27. All persons, groups and communities have the right to suitable resettlement which

includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable.

**Basic Principles and Guidelines on Development-Based Evictions and Displacement: Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18)**  
[http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

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

11. While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual



parties, including private landlords and landowners, of all responsibility.

12. Under international law, the obligations of States include the respect, protection and fulfilment of all human rights and fundamental freedoms. This means that States shall: refrain from violating human rights domestically and extraterritorially; ensure that other parties within the State's jurisdiction and effective control do not violate the human rights of others; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights have been violated. These obligations are continuous and simultaneous, and are not suggestive of a hierarchy of measures.
16. All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.
21. States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.
30. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land.
37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.



41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.
55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include: (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.
60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.
- United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: The Pinheiro Principles**  
<http://www.unhcr.org.ua/img/uploads/docs/PinheiroPrinciples.pdf>
- Principle 2: The right to housing and property restitution**
- 2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.





2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

#### **Principle 4: The right to equality between men and women**

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.

#### **Principle 5: The right to be protected from displacement**

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

#### **Principle 8: The right to adequate housing**

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

#### **Principle 10: The right to voluntary return in safety and dignity**

10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.

#### **Principle 21: Compensation**

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.





21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even

under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.





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