

## Chapter 2: The causes of tenure insecurity



# Impediments to tenure security

Concerns relating to tenure insecurity affect more than 20 percent of all people in the world daily. The problem is getting worse as urban land values rise, and governments invest less in housing for the poor, relying instead on markets to fill this need. Informal settlements and slums grow exponentially; structural discrimination against women persists; and millions are displaced each year due to natural disasters and violent conflict. Rising poverty and inequality, large informal labor sectors, and the inability of municipal governments to cope with rapid growth or their own inefficiency or corruption further undermine tenure security. Even in those areas of the world realizing marked gains in economic growth in recent years, tenure insecurity persists or has, in many cases, gotten worse.

Tenure insecurity underlies many social, political and economic ills. It can lead to displacement and the loss of livelihood or property, especially for vulnerable groups like women, children, the elderly, indigenous people and the poor. Residents who fear displacement are less likely to invest in their homes or develop home-based businesses. Those without tenure security are also less able to leverage their property rights as collateral for a loan, or profit from the sale of their home.

In some areas, laws or municipal regulations even prevent the delivery of basic services to households or entire settlements without documentation of formal tenure rights. Such laws severely compound the harm caused by insecure tenure by withholding services such as clean drinking water and adequate sewerage. In some cases, the legal regime leaves residents in a total quandary, as regulations require that a site be serviced before it receives tenure documentation. On a macro level, tenure insecurity both reflects and contributes to the widespread social, political and economic marginalization of the poor.

## Impediments to secure tenure for the poor

This section examines five major impediments to tenure security for the poor.

- Lack of political will undermines laws and regulations established to protect tenure security for the poor.
- Insufficient legal and regulatory frameworks fail to provide tenure security for the poor.
- Customary and traditional laws governing land and housing tenure rights are disintegrating in some areas, leaving residents vulnerable to conflicting claims and forced eviction.
- Corruption pervades and corrodes legal and regulatory systems governing tenure security in many developing countries.
- Insecurity of tenure can be the result of faulty or inadequate administrative systems.

## Lack of political will

The lack of political will at the international, national, and sub-national levels is perhaps the most difficult issue facing security of tenure for the world's poor and is the largest roadblock for those working to bring awareness to the issue and correct it.

Security of tenure often remains underemphasized by policymakers. Absent from most government decision-making bodies is any sense of urgency about the need to provide adequate housing and documentation for all people. Public expenditure on housing is minimal in most countries and has markedly decreased over the past 20 years. While many developing country governments are aware of the need for land reform, efficient and equitable land administration, and secure tenure, their performance in addressing these issues is poor.

The inequality of land distribution is a particularly challenging political issue in developing nations because the more unequal the distribution of land, the more difficult it is to reform. This diminishes the incentive for governments to attempt positive change, even if they are willing to do so at the outset. Moreover, unequal distribution of land is often strongly linked with broader inequalities, such as those based on ethnicity, and are potentially explosive issues that politicians may be unwilling to tackle.<sup>12</sup>

Another challenge is political pressure to use land for profitable ventures instead of poverty housing and land tenure. Local governments often perceive that allocating land for profitable endeavors is in their interest (at least in the short term) because it generates tax revenue, especially where land values are increasing. Also, where bribes and kickbacks are the norm, commercial development may offer lucrative incentives to individual bureaucrats and lawmakers. It is not surprising, then, that commercial development—especially in fast-growing urban environments—tends to enjoy government support at the expense of housing for the poor.

Few governments recognize the important role played by the rental-housing sector and their failure to support it is a major shortcoming in many national housing policies because a large proportion of the residents of cities and towns in many countries are tenants. Although some multilateral agencies do recognize the importance of the rental housing sector, the majority of them rarely mention rental housing or develop loan programs to encourage it.<sup>13</sup>

## Insufficient law, regulations

### Eviction for development

The formal legal framework in many countries fails to adequately protect poor people from forced eviction. Despite a policy trend away from forced eviction in many parts of the world,<sup>14</sup> it is common to evict people to allow for commercial development and redevelopment of urban areas, and for large-scale infrastructural projects in rural areas.<sup>15</sup>

When housing settlements are expropriated for redevelopment, legal homeowners are given little compensation (rarely enough to buy a home of comparable size to the one they owned); tenants and squatters are given nothing. While it is important for governments to retain a right of eminent domain, or the authority to expropriate privately held land and housing if it is for the public good and fairly compensated, safeguards for residents are few and far between. The way in which people are evicted from their homes often causes unnecessary harm.<sup>16</sup>

### Protecting landlord and tenant

The legislative and regulatory framework governing landlord/tenant relations causes great concern. Laws and regulations are often ineffective, leaving tenants vulnerable to forced eviction or undermining the financial viability of landlords. In developing countries, most renters live in the informal sector, have no written contract and lack any legal mechanism to protect their tenure rights. Even in areas where laws do exist, they are seldom enforced. On the other hand, some legal frameworks go to great lengths to protect tenants' rights but fail to protect landlords' rights, thus preventing their economic viability for landlords and diminishing rental for the poor.

### Tools for transfer

In many countries, the legal framework for transferring rights to squatters from private landowners is inadequate or nonexistent. In some developing countries, no legal tools formally transfer land rights from the registered owner to the de facto possessor of that land. This means households living in informal settlements on private property have no way to formalize their land and housing rights, even if they have possessed the land for long periods of time and have invested scarce resources in building their own house on it.

Fear of displacement is common because the land and housing rights of current residents or possessors are constantly open to claims connected to generations past, as long as any person or corporation can trace a legal thread of ownership through some distant relative or earlier transfer of land or property.

Where laws and some framework do exist for transferring rights from owners to long-term possessors, often they are not used. In some cases, laws give squatters legal tenure rights after a certain number of years (often 10) of continuous occupation.<sup>17</sup> However, these rights are usually not officially acknowledged or registered, making them easy for developers to supersede to drum up a pretext of tenure rights to get a building site.<sup>18</sup>

## Roofs Over Heads: Habitat's advocacy campaign in Poland

A Polish couple and their two children live in a small communal flat in a municipality-owned building in Warsaw. The father works as a policeman and the mother as a part-time school teacher, yet Warsaw's high prices prevent them from renting a larger place for their family.

Last year, the previous owner of the land on which their multi-family housing unit sits, claimed his right to the property and said he intended to take it over. So the municipality froze any repair and renovation on the building despite its inadequate condition. A lawsuit over ownership of the land was filed, endangering the stability and living conditions of the 40 families occupying the communal flats.

The threat of eviction that the family now faces is a result of what is known across Central and Eastern Europe as the law of restitution, an instrument to provide for homeowners whose houses were nationalized by communist governments. In Poland, the government adopted restitution laws without protecting existing tenants. Large-scale privatization and restitution programs have left millions of people facing unaffordable rent increases or even eviction.

In response, Habitat for Humanity Poland joined forces with 12 other nongovernmental organizations in 2005 to start a social campaign against poverty housing called "Roofs Over Heads." The campaign aims to engage the public and increase awareness of the inadequate living conditions that affect as many as 6.5 million Poles. The ultimate goal is a national housing program that would include solutions for low-income families unable to afford houses through conventional means.

## Beyond tenure: Bad laws, regulations reduce housing for the poor



A comprehensive list of legal/regulatory impediments to adequate housing for the poor would include:

- Current zoning and land-use planning regulations—such as minimum lot sizes, mandatory set-backs and servicing standards—restrict the amount of formal sector urban land available for low-income housing.
- Unduly restrictive regulations for obtaining development permits limit the amount of urban land available for low-income housing and create costly bureaucratic barriers to building low-income housing.
- Construction regulations established by colonizers do not reflect the real limitations facing most low-income builders in the developing world. (For example, some regulations prohibit progressive, self-help building.)
- Many housing subsidies (such as interest rate subsidies) are not transparent and fail to target the poor. Excessive regulation of financing institutions precludes potential.<sup>19</sup>

### Discriminatory laws

Laws and regulations often discriminate against women, children and other vulnerable populations. Any group that has been traditionally marginalized or disadvantaged is especially vulnerable to tenure insecurity, including the poor (particularly the urban poor), women, children (including orphans and street children), elderly people, the chronically ill or disabled, indigenous people, ethnic or religious minorities, refugees, internally displaced persons (IDPs) and migrant workers. In some cases, these vulnerable populations are unable to effectively assert legal rights. In other cases, laws and regulations actually discriminate against them.

For example, laws commonly fail to establish and protect women's secure tenure rights in one or more of three ways:

- Legislation explicitly discriminates based on gender;
- Legislation appears gender-neutral on its face, but in fact discriminates in practice;
- Legislation explicitly prohibits discrimination based on gender, but is not implemented or not enforced. Women in many developing countries have little if any access to laws that favor equal access to housing rights.

### A culture of corruption

In many countries, corruption makes even the best-drafted laws and regulations for tenure security irrelevant. In many of the world's fastest-growing cities, soaring land values have strengthened the nexus between real estate developers, politicians and bureaucrats, leading to an environment of corruption in which laws and regulations are easily violated.

In developing countries, law-making and implementing laws and regulations lack transparency and enforcement is sporadic at best. Such an environment often acts against the housing interests of low-income communities. On a smaller but equally destructive level, corrupt officials require bribes to issue or register tenure documents. Where bribery is the norm, the poor are disproportionately hurt compared to the rich, whatever the best interests of the community as a whole.

Moreover, growing evidence points to corrupt or complicated registration processes contributing to a redistribution of assets toward the wealthy. Red tape and corruption in land administration make it costly and time-consuming for people to register land. Powerful elites often use their discretionary power and influence over land allocation for political and personal advantage, while landowners and land professionals with vested interests often obstruct simple, accessible and efficient systems for land transfer, land survey, and the registration and collection of land information.<sup>20</sup> In Ukraine, for instance, a state-run monopoly for land survey services attempted to profit by charging villagers excessive fees to register their new land ownership rights, denying them secure tenure.<sup>21</sup>

### Eroding protection of custom

Customary and traditional laws governing land and housing tenure rights are disintegrating in some areas, leaving residents vulnerable to conflicting claims and forced eviction. Where customary or traditional land systems are functioning, they can provide important protections for residents. In many developing countries in Asia, the Pacific, and Africa and the Middle East, customary laws have long held sway over housing rights. In recent years, however, acute socio-economic changes—including a high incidence of HIV/AIDS, and a rise in extreme poverty and urbanization—have dislodged many traditional systems governing tenure, eroding people's rights.

In some cases, current tenure registration systems are the products of historical tension between two or more different systems. In Africa, for example, most governments inherited a dual land tenure system upon independence; some areas within the country were governed by European administration systems and others by traditional systems.<sup>22</sup> As a result of overlapping tenure systems, current land rights in many parts of the region are subject to multiple claims. Formalizing or transferring these rights can be difficult and costly. Colonial land registration systems in many sub-Saharan African countries have fallen into complete disuse, both reflecting and contributing to the widespread failure of formal sector urban land markets.<sup>23</sup>

## Tradition governs tenure rights in Africa



Kinship continues to be the basic principle underlying most land rights systems in Africa. Under these systems, family members are allocated rights to use the land that cannot be

sold or given to non-family members, but rather revert back to the family upon death or marriage.

Customary laws, although altered by colonial rule, continue to govern land tenure systems in many parts of the continent and can provide important protections for residents. They are almost always unwritten, and often co-exist uneasily alongside formal written systems. In many cases, customary laws (e.g., those prohibiting rights through sale, mortgage, etc., outside the family and thus protecting the extended family) are eroding under pressure for land development in urban areas.

Until recent years in West Africa, communal housing was based on the right of any person to live with his or her relatives. As a result of customary tenure patterns reflected in family compounds, poor households were usually able to find basic shelter, and squatting was not as common as it was in other parts of the world. A greater problem was provision of basic services, almost non-existent in communal housing arrangements.

While this traditional form of family tenure shelters some of the most poor, it also prevents the transfer of rights that could create land markets for those who want to sell their share of rights and those who have no right to shelter because they lack kinship relations. As economic tensions (and the demand for urban housing) rise and core family structures begin to shift, extended families have become less willing to share their housing. In some cases, family leaders have sold the rights out from under their extended relatives.<sup>24</sup>



## Inadequate, faulty administrative systems

Land administration is essential to any effort to ensure secure tenure best serves the interests of the poor. The term “land administration” refers to how civil authorities run and enforce tenure rules and regulations.

Good property and housing registration systems are crucial to secure tenure, as they facilitate legal transfers of security of tenure, public and transparent record of ownership and tenant rights, and the protection of rights related to housing.<sup>25</sup>

In many countries, however, the lack of resources makes local authorities unable to keep pace with developments on the ground. Deficiencies in the land administration institutions responsible for boundary demarcation, registration and record keeping, adjudication of right, and resolution of conflict can prevent secure tenure.

One administrative function in particular—making land tenure formal by issuing titles—can actually reduce secure tenure. While titling has its advantages (See the solutions section of the report, page 45.), it also has many drawbacks.

The trend toward decentralization of land administration in many developing countries also strains these systems. In most countries, even where land responsibilities are vested with local bodies, the central government retains some control, responsibilities and decision-making powers. Decentralized land bodies depend largely on financial and technical support from the central government. While such oversight might be good, if local government does not receive adequate financial and technical resources from the central government, it can't do the job. Therefore, the key challenge is building the capacity of local land institutions.<sup>26</sup> In Ghana, for instance, the central government controls revenue and some use of land managed by local chiefs.<sup>27</sup> In metropolitan Manila in the Philippines, officials and civic leaders recognize the rights of the poor to housing and basic services. However, local government lacks resources with which to respond and meet those needs.<sup>28</sup>

Accountability is another key challenge in land administration and registration systems. How accountable a land administration system is correlates with whether or not its members are elected.

In the great majority of developing countries, high costs, illiteracy and bureaucratic barriers keep the poor from asserting their legal rights to get titles or access to land. In countries where all residents are fortunate enough to have protection under the law, the poor often do not have the knowledge or legal aid to exercise their rights. Even when poor people have legitimate, long-term tenure rights to land and housing, they often fail to formally register these rights. Their rights are thus less secure against any claim.

