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SPECIAL THEMES: SECURITY OF TENURE

Report of the Executive Director

Summary

The present theme paper has been prepared by the United Nations Centre for Human Settlements (Habitat) to support consideration of the special theme of security of tenure by the Commission on Human Settlements at its eighteenth session. It is based on the initial formulation of the normative framework for secure tenure as presented to the first substantive session of the Preparatory Committee for the Special Session of the General Assembly for an Overall Review and Appraisal of the Implementation of the Habitat Agenda. 1/

Chapter I explores global trends on the issue of shelter and locates these within the widening resource gaps emerging globally. The rights-based approach of the United Nations, within which secure tenure is situated, is highlighted. Chapter II examines the significance of secure tenure for adequate shelter and human settlements development, and highlights for the role of women in this regard. Chapters III and IV propose a definition of secure tenure, and thereafter elaborate a range of different tenure options that may be relevant in different parts of the world. This serves to enhance the emphasis on the strength of the security, rather than the form of the tenure. Chapter V introduces a number of points for consideration and discussion. These are seen as a key part of a wide normative debate promoted through the Global Campaign for Security of Tenure.

* HS/C/18/1.

1/ HS/C/PC.1/CRP.8

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Introduction

1. The adoption of the Habitat Agenda in Istanbul in June 1996 marked a watershed in the history of the United Nations. Not only was this the most representative and authoritative gathering ever assembled to discuss human settlements and urban development, but it also marked a decisive break with previous global conferences in the manner and the extent to which local governments and organs of civil society were engaged.

2. The Global Plan of Action, through which the Habitat Agenda was to be implemented, promised fresh energy and a new initiative on behalf of the world's poor, particularly the urban poor, including the vision of adequate shelter for all. An enabling strategy, based upon partnerships, offered the promise of a new approach to shelter delivery and urban development.

3. Central to that model was a recognition of the rights of the poor, to be manifested in a number of ways, including the extension of secure tenure. Tenure security extends a sense of permanence and certainty to previously marginalized people, allowing them to design shelter and survival strategies based on a certainty that encourages the design of risk management and the accumulation of assets, individually and socially.

I. GLOBAL TRENDS

4. Recent economic crises and the impact of globalization have sharpened even further the disparities in the distribution of wealth and resources. The increasing poverty gap in the world has been well documented, not least by the annual Human Development Reports of the United Nations Development Programme. In all, 1.3 billion people do not have access to clean water, and the same number live on less than \$1 per day. Furthermore, 2.6 billion people do not have access to basic sanitation, while five million have died from diarrhoeal diseases caused by water contamination.

5. This concentration of poverty, homelessness and slums is increasingly associated with the growth of the world's urban population. Since 1950, the global urban population has jumped from 750 million to more than 2,800 million people. ^{2/} Indeed, 80 per cent of the world's population growth in this decade has occurred in urban areas. This urban growth is, however, mostly informal and unplanned, often resulting in people settling on unwanted and dangerous locations. As reported by the International Federation of the Red Cross, 96 per cent of all deaths from natural disasters already happen in developing countries. ^{3/}

6. By 2025 the total urban population is projected to increase by 60 per cent to reach approximately 5,000 million people, and 94 per cent of this increase is expected to occur in developing countries. ^{4/} In short, the world could face an urban crisis of staggering proportions in the next twenty five years – and one which will require a complete reorientation of urban policy by Governments and multilateral institutions. In

^{2/} United Nations Population Division 1999. World Population Prospects: The 1999 Revision.

^{3/} International Federation of Red Cross and Red Crescent Societies, World Disasters Report 1999, pg.7.

^{4/} Land reform and resource rights have featured prominently in the World Food Summit Plan of Action, the World summit for Social Development, the Convention to Combat Desertification in these Countries Experiencing Serious Drought/or Desertification, particularly in Africa, the Beijing Platform for Action and the Convention on Biological Diversity.

the short period since the City Summit at Istanbul, it has become all too apparent that the conditions under which the world's poor live have not been arrested, but have continued to deteriorate.

7. The issue of security of tenure is just as fundamental in rural areas. The key to sustainable rural development is for the rural poor and the landless to have legally secure access to assets. Insecure land tenure in rural areas acts as a direct disincentive to investment in sustainable practices of land management. The resulting land degradation and soil loss threaten food security with implications for water resources and the conservation of biodiversity. One of the most likely results of these processes is that the rural poor will inexorably become the urban poor, where the same issues of land insecurity obtain.

8. The issue and importance of rural tenure reform is well documented, most notably in the Rio Declaration on Environment and Development, which was endorsed at the 1992 United Nations Conference on Environment and Development, and most recently at the eighth session of the Commission on Sustainable Development in May 2000. 5/

9. A powerful combination of environmental change, declining per capita rural productivity, rapid urbanization, deepening economic inequity and political inaction serves to concentrate most poverty, homelessness and physical insecurity in the developing world. While the issue of security of tenure has a global resonance, it is clear that the biggest challenges arising out of tenure insecurity are to be found in the developing world.

10. The current rate of urbanization in the developing world, coupled with the fact that this leads to a massive urbanization of poverty, is compounded by weak local government structures, a mismatch between actual revenue and necessary expenditures, administrative capacity, inequitable and outdated urban planning techniques and deficient concepts and practices of urban governance.

11. It is not urbanization, in and of itself, that causes these problems, but rather a failure to make better use of the enormous opportunity and potential offered by the urbanization process. It is rather poorly-managed urbanization that leads to the marginalization of the urban poor, which in turn increases their current cost of living and defers enormous future environmental and social costs to the next generation.

12. The extension of secure tenure is but one part of an integrated approach to improving access for the urban poor not only to improved shelter and basic services, but also to informal and formal employment opportunities, as well as direct political representation. At the centre of the problem lies the issue of political will.

13. Indeed, the challenge of urban poverty, appalling living conditions and bad governance does not arise because of a failure to provide technical and workable solutions – it arises because of narrow political and economic priorities that are not based on addressing human needs in an equitable or sustainable manner.

14. This enormous concentration of extreme poverty raises some difficult policy issues that will need to be addressed within a right-based approach to development, which integrates human rights into a development framework by emphasizing the promotion of freedom, well-being and dignity of individuals and the centrality of the person. This rights-based approach is underscored by the enormous evidence that political freedoms are associated with higher levels of growth. Indeed, evidence from Africa south of the Sahara and elsewhere, show that authoritarianism and the absence of civil liberties are associated with increased distortions in trade and labour markets that disproportionately harm the poor. 6/

15. For the marginalized urban poor, access to land and services cannot be governed by ordinary market mechanisms such as an ability to pay. Exceptional policy measures will have to be considered and may, indeed, point to the need for some fundamental rethinking on some of the assumptions that underpin

5/ United Nations Population Division. 1999 World Population Prospects: The 1998 Revision.

6/ World Development Report 2000/2001: Attacking Poverty. Part.III.9

conventional approaches to tenure. In the context of competing claims to urban land and access to the city, circumstances are very likely to arise in which competing claims will point to a conflict between property rights and human rights.

16. In examining these challenging policy problems and proposing workable solutions, guided by the Charter of the United Nations and principles of social justice and equity, the United Nations will need to be vigorous in asserting the absolute primacy of human rights. Central to this approach is the need for city and national governments to recognize unambiguously the permanence of the poor, and to extend to them a meaningful urban citizenship.

17. Promoting the systematic extension of tenure security need to be seen in this complex context. However, to the extent that it is successful, it will lead to an improvement in shelter strategies for the urban poor, promote and support a far more prominent role for women, and directly and indirectly contribute to creating a climate for improved urban governance. In most instances, the proliferation of informal settlements and slums arises from a combination of the poverty of the inhabitants, deficient national policy frameworks, and the weak, inefficient and often corrupt systems of urban governance within which they often find themselves.

18. Looking at it more closely, it is necessary to observe that there are two distinct but related issues that will need to be addressed. The first is the extension of formality and secure title to already existing urban settlements. The second relates to the need for improved provision and availability of urban land that is affordable and well-located for self-help development. Informal settlements exist and expand because of the inadequate provision of land, speculative investment patterns, a tendency towards over-regulation, and a regulatory framework of standards, regulations and administrative procedures which is, at best, indifferent and – more likely – hostile to the need of the urban poor. All of these issues will have to be tackled directly in order to create the conditions for rapid progress, economic investment and growth.

II. SIGNIFICANCE OF SECURE TENURE FOR ADEQUATE SHELTER AND HUMAN SETTLEMENTS DEVELOPMENT

19. While the issue of secure tenure is but one of a set of components that contribute to a successful shelter strategy, it has been consciously identified by UNCHS (Habitat) and the Commission on Human Settlements because it has a catalytic effect – it invariably leads into other processes and issues vital to sustainable shelter delivery. The political dimension of secure tenure accelerates engagement among key stakeholder, strengthening their ability to reach consensus on issues of slum upgrading. In rural areas, land tenure reform, access to productive assets and increased productivity are essential to economic, social and political stability.

20. In both rural and urban areas, addressing the issue of land reform and tenure security directly rises the issue of the role of women, and their relationship to land and development. The promotion of secure tenure needs to ensure, as a priority, that women's names appear equally on land and tenure records, that their rights are enshrined in communal property systems, and that equal inheritance rights of women – especially widows and daughters – are established and protected. Overall, the extension of women's equal access to tenure security is an excellent vehicle for promoting the role of women in producing shelter and reducing poverty.

21. Secure tenure should be considered as the first component of the progressive realization of the right to housing, as elaborated in paragraph 61 of the Habitat Agenda. The granting of secure tenure will not, in and of itself, solve the problem of homelessness, poverty, unsafe living environments and inadequate housing. Secure tenure is, however, one of the most essential elements of a successful shelter strategy, indeed, it is possible to argue that such a strategy will not succeed without security of tenure – it is a necessary but insufficient condition for a successful shelter strategy which will, in turn, have social and economic benefits.

22. The existence of widespread conditions of insecure tenure around the world, concentrated on the urban poor and compounding the marginalization of women, prevents Governments from meeting their commitment to enable the provision of adequate shelter for all. Shelter policies simply will not work properly without the long-term certainty provided by secure tenure.
23. Globally, insecure tenure inhibits investment in housing, hinders good governance, undermines long-term planning by distorting prices of land and services, generally to the detriment of the poor. The lack of secure tenure, in short, reinforces poverty and social exclusion and impacts most negatively on women and children.
24. It was these and other considerations that led to the adoption of the Habitat Agenda in 1996, in pursuance of which Governments made a number of commitments. In chapter III of the Habitat Agenda, formal commitments are captured on the two main themes. With regard to the provision of adequate shelter for all, the commitments made under paragraphs 39 and 40 are, in their entirety, of particular and direct relevance.
25. In particular, in paragraph 40 (b), Governments committed themselves to providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and ownership of land and other property, credit, natural resources and appropriate technologies.

III. DEFINING SECURE TENURE

26. Security of tenure describes an agreement between an individual or group on land and residential property which is governed and regulated by a legal ^{7/} and administrative framework. The security derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justifiable. The tenure can be effected in a variety of ways, depending on constitutional and legal frameworks, social norms, cultural values and, to some extent, individual preference.
27. In summary, a person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. Such exceptional circumstances might include situations where the very physical safety of life and property is threatened, or where the persons to be evicted have themselves taken occupation of the property by force or intimidation.
28. In promoting policies to recognize tenure security the primary emphasis should be on the strength of the security, rather than on the precise nature and form in which the tenure is applied. It is too often assumed that security of tenure implies individual freehold (private ownership), which is but one of many ways in which security can be effected.
29. In the case of informal settlements, or for these labelled as squatters, a wide variety of circumstances arise, some of which may be extremely complex. Different tenure systems can co-exist, either as the city expands and assimilates rural and agricultural land, or through the juxtaposition of a mix of legal, customary and non-legal relationships.
30. All over the world, informal settlements often attain a de facto status, which may be acquired through the length of time for which a settlement has been tolerated or ignored, or through the extension of administrative recognition through the provision of municipal and urban services, and the associated collection of revenue. The extension of de jure recognition of such cases through regularization is certainly

^{7/} This legal framework is taken to include both customary and statutory systems

not automatic, however, and would differ from country to country, depending on constitutional and legal frameworks.

31. De facto recognition may also be realized in a manner which can be highly exploitative, wherein the security of occupation is underwritten by the discretionary authority of the landlord and, in some cases, the warlord. In such cases, it may be argued that in the absence of formal authority, the tenure is legally enforceable but not practically justiciable, and would therefore not be defined as secure tenure.

IV. TYPES OF RESIDENTIAL TENURE

A. Rent

32. Rent is a form of leasehold, in terms of which access to a property and the use thereof is governed by a legal agreement of fixed duration. Agreements are normally governed by law. Rental agreements operate either in the private domain, as a contract between private citizens and bodies corporate or companies, or in the public domain, wherein the rental is provided by a public body, such as a local authority, as part of a social housing policy. It is common, in formal rental agreements, for the lessor to assume some responsibility for the maintenance of the property. It is the form of secure tenure least likely to lead to capital investment by the lessee (and, some may argue, by the lessor).

33. However, for low-income families, rental – which is the most used form of tenure – is seldom formal or regulated, particularly in developing countries. Agreements are arrived at informally, with little or no recourse to legal advice, and the agreements are enforced in a non-legal manner. Indeed, a major part of the campaign will have to address the urban-poor segment of the rental sector, and the tension that exists between secure tenure for tenants and subtenants, and the property rights of the owners. Both in percentage and in policy terms, addressing the informal rental sector will be one of the most significant challenges for the campaign, and one which will have the most impact for the urban poor.

B. Leasehold

34. Leasehold conveys the right of beneficial occupation to land or property, but such occupation is circumscribed both by a finite period of time, and as the specific conditions of the lease. The lessor retains ultimate control over the property, through the stipulated time limit and conditions. Upon expiry of the lease, the lessor may automatically reassume occupation, reallocate the lease to another person or body, or extend the lease to the occupant. For the period of the lease, which may be very long (e.g., 99 years), and subject to compliance with the terms of the lease, the occupant does enjoy secure tenure.

C. Freehold

35. Freehold is the form of tenure which confers on the title-holder the maximum control and discretion over the land, normally only circumscribed by law and/or planning and zoning restrictions. It provides for the land (and improvements) to be used as collateral and mortgaged, it may be transferred or bequeathed at the discretion of the title-holder, and is free from any time restrictions, i.e., it is title in perpetuity. It is the form of tenure most associated with investment and, indeed, speculation. Ideologically, it is most favoured by the proponents of the free-market and individualist conceptions of society.

D. Conditional freehold – “rent-to-buy”

36. A hybrid of leasehold and freehold, this is effectively a lease that may be converted to freehold upon the fulfillment of stipulated conditions, which ordinarily include the payment of the lease (or “rent”) for a period of time. Another form of this approach is found in the term “contract-for-deed”. It is all too often the case, however, that the equity does not accrue in terms of the contract, and that even one or two months missed payments – not unusual for this segment of the market – can lead to all previous payments being forfeited, and the one renting being forced to start the repayment process from the beginning again.

E. Collective forms of tenure

37. There are various methods of enjoying full security of tenure within a collective framework. The principle relates to the sharing of access to a property on the basis of an agreement, which specifies the terms and conditions of such access. This may take the form of the creation of body corporate, such as a condominium or a private company, or a house association or cooperative. What all of these forms of tenure share is the need for a relatively high level of common interest, and the skills and capacity to administer the arrangement, which generally requires quite a high level of organizational ability and commitment.

F. Communal tenure

38. One of the defining features of communal tenure is that it is common for the community to have a long and common history as well as a cultural identity, such as a tribe or clan. Access to such land may be governed by custom, and include the right to use and to occupy, but not to transfer or alienate, which decision would be determined by the community as a whole. Under Islamic tenurial systems, “musha” refers to a collective land holding, whereas “Waqf” is a category of land held in perpetuity by a religious institution, and is effectively removed from market mechanisms.

V. ITEMS FROM DISCUSSION

39. While there are other forms of tenure, the above categories are the most common forms of granting security of occupation. The policy emphasis of the global campaign is not to promote any one type of tenure in preference to others, but rather focus on the essential conditions that have to be met to ensure security of tenure, and highlight the benefits that accrue to the individual, the household and society from the granting of such security. A major initiative need to be undertaken to promote the right of women to have full and equal access to tenurial security.

40. The above forms of security tenure – which are seen as formal and justiciable – can only be effective when they operate within an enabling legal framework, and are supported by an administrative capacity that maintains an effective land information system and title register which can properly record and update rights to property and land. This again raises the importance of good governance.

41. The Commission may wish to consider for following issues during its discussion:

(a) In the context of scarce land resources, huge urbanization pressures and increasing disparities in the distribution of resources, is there an inherent conflict between housing rights and property right?

(b) Are certain forms of tenure more appropriate and useful to the needs of the poor? Is private home ownership for all citizens achievable, or even desirable?

(c) Is real progress in resolving the world’s shelter crisis possible without systematically removing social and legal discrimination against women, such as in the case of inheritance rights?
