Take Back the Land!

The Social Function of Land and Housing, Resistances & Alternatives.

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AITEC (*Association Internationale des Techniciens, Experts et Chercheurs* – International Organisation of Engineers, Experts and Researchers) participates in developing an expertise grounded in social struggles and in setting forth proposals to protect and safeguard fundamental rights. The organisation mostly focuses on the right to housing and to the city and on the European Union's trade and investment policies.

www.aitec.reseau-ipam.org

Charlotte Mathivet, the Editor

Charlotte Mathivet is a political scientist and a right to housing and right to the city activist. She also edited number 7 of the Passerelle Collection, *Housing in Europe: Time to Evict the Crisis!*

The Editorial Board

This Passerelle issue benefited from the guidance and advice of an Editorial Board. Its members are: Yves Cabannes (University College of London), Samuel Jablon (Aitec), Krisztina Keresztely (Aitec), Justine Peullemeulle (Ritimo), Pascale Thys (Habitat et Participation), Julien Woessner (Citégo) and Lorena Zárate (Habitat International Coalition). We sincerely thank them.

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Preface

CHARLOTTE MATHIVET / JANUARY 2014

Charlotte Mathivet is a political scientist and a right to housing and right to the city activist. She is a member of Aitec and of the international network Habitat International Coalition (HIC).

She edited this issue of Passerelle.

The topic chosen for this new issue of Passerelle stems from the observation that many social movements, researchers, social organisations, local and national authorities as well as international organisations are concerned by the issue of the social function of land and of housing, worldwide.

Thanks to contributions by different actors, this issue sheds a light on the progress of the social function of land and housing in the different areas of the world.

Analysing its implications is crucial to help support struggles for the right to housing, to land and to the city for everyone. Chapter 1, "Urban and Rural Inhabitants' Insecure Real Estate and Land Rights" focuses on deciphering a series of sometimes abstruse concepts, such as tenure security. This chapter presents an analysis of land issues in rural as well as urban settings in order to understand how resistances and alternatives which stress the social function of land make sense.

Throughout this issue, we have set forth answers to the questions raised by ownership, which is still, in most countries, at the heart of mindsets and Constitutions. This is what Albert Jacquart explains in his latest text: "*It is no surprise that most Constitutions refer to the right to property as a Human Right. The goal is to provide a stable framework for individuals to develop. Initially, this right to property concerned useful commodities for daily life and aimed at preserving social cohesion. The scope of ownership gradually broadened and shifted away from what made it legitimate. Numerous societies added the right to transmis-*

sion through inheritance to the right to use; ownership therefore spread from one generation to the next. Ultimately, in a finite universe, this process can only lead to a widespread blockage due to the depletion of available commodities"[1].

The validity and ineluctability of private property are deeply rooted concepts in many societies. Few individuals plan their lives without thinking of owning a home or a plot of land. Even though it involves being indebted for years, sometimes even paying three or four times the initial price for one's home, or even losing one's home, in addition to having to pay back one's debt in the event of payment defaults, as has become apparent in the case of Spain since the 2008 crisis.

The ensuing injustice leads to uprisings and rebellions by populations who yearn for more equality and social justice. In Chapter 2, "The Right to Land, Access to Land: a Major Trigger of Rebellions", the issue of land appears as a trigger for large-scale mobilisations, as illustrated in Istanbul, Rio, São Paulo or during the Arab Spring. This is also true in rural areas if we take into consideration the autochthonous people's struggles, such as in South and North America, as well as resistances to land grabbing phenomena.

If land, whether rural or urban, were viewed as playing an essential role in all human beings' life, just like air or water, and its value in use outweighed its exchange value, wouldn't our cities and countryside look completely different? A reflection on different ways to relate to land – other than ownership – must therefore be carried out, i.e. ways that do not entail abusing, speculating or excluding others, as practiced by autochthonous peoples. Chapter 3, "Proposed Action for the Social Function of Land and Housing", presents experiences in different land and housing uses and types of tenure, namely some collective forms, which better respond to the aim of social justice.

Latin America has made progress thanks to the decade-long struggle of social movements, namely in Brazil, where the idea of the social function of property was included in the Constitution[2], thus questioning the untouchable idea of private property. Indeed, private property is now accountable for playing a social function, which is, moreover, aimed at social justice. This will undoubtedly limit misuses, especially by large landowners, without nevertheless fully guaranteeing social justice when it comes to land and housing in the country.

This highlights the fact that legal progress, often achieved thanks to the implication of social movements, is necessary if rights are to be obtained. This must be accompanied by a constant citizen oversight of the effective enforcement of these newly conquered rights, since the right to private property remains dominant.

[1]   Albert Jacquart, "property-concept" www.fondation-copernic.org/spip.php?article985 (in French)
[2]   Article 23, Constitution of Brazil, 1988

This issue's singularity is linked to its insight into a potential alliance between inhabitants and peasants, between rural and urban issues. Much food for thought is set forth here on points of mutual interest, alternatives and resistance practices around the world. Our hope is that these will have a "butterfly effect" and bring about new ideas and new possibilities of linkages!

This book is a social coproduction, a collective tool which, I hope, will be used once and again and will prove constructive for the many ongoing struggles. Thanks to all of those who have taken part in this publication!

Editorial

The Social Function of Land and Security of Tenure

OLIVIER DE SCHUTTER & RAQUEL ROLNIK / SEPTEMBER 2013

Olivier De Schutter is the UN Special Rapporteur on the right to food. Raquel Rolnik is the UN Special Rapporteur on the right to adequate housing.

The world is in the grip of a global tenure insecurity crisis. Access to secure housing and land is a prerequisite for human dignity and an adequate standard of living, yet millions of people live under the daily threat of eviction, or in an ambiguous situation where their tenure status is challenged by authorities or private actors at any time. The crisis manifests itself in many forms and contexts. Manifestations of the tenure insecurity crisis can be seen in displacement resulting from development, mega-events, natural disasters and conflicts, land grabbing, and as a result of the real estate face of the mortgage crisis.

No one is fully protected from tenure insecurity. At the same time it is evident that the most marginalized and poorest bear the brunt of the insecurity burden. Inhabitants of self-made and unplanned settlements epitomize tenure insecurity in a very visible form, but they are by no means the only example. Refugees and internally displaced persons, tenants, migrants, minorities, nomadic and indigenous communities, sharecroppers, other marginalized groups, and among all of these women – to name only a few – are often insecure. All tenure forms, including individual freehold, can be insecure, as the recent mortgage and financial crises have shown in different countries.

Security of tenure is without doubt a cornerstone of the right to adequate housing, and its absence one of the most acute vulnerabilities likely to lead to a range of human rights violations. Insecure tenure annuls all other aspects of the right to adequate housing: indeed, what is the point of having a well-insulated, affordable, culturally appropriate home, to cite only some aspects of the right to adequate housing, if one is under daily threat of eviction? At the same time, any housing initiative, whether in the context of urban renewal, land management or development-related projects, or in dealing with reconstruction needs after conflicts or disasters, will inevitably have tenure security implications. In addition, the denial of access to secure land and housing has been a major cause of conflict throughout history. It is also a source of impoverishment and a hindrance to socioeconomic development.

Conversely, when access to secure housing or land is provided, the potential for social and economic progress is immense—a fact recognized globally. Tenure security means a lot to families and individuals. It gives people certainty about what they can do with their land or home; and it offers them protection from encroachments by others. It often protects, increases and enables access to public services and benefits. It increases economic opportunities. It is a basis for women's economic empowerment and protection from violence. The relevance of the issue, not only to human rights but also to development, is evident.

Security of land tenure and access to land as a productive resource are essential for the protection of the right to food. In today's world, half of those who are food insecure live in smallhold farming households, and approximately 20% are agricultural laborers who are landless or landpoor, and unable to feed themselves adequately by producing from whatever land they can use. Guideline 8.10 of the FAO Guidelines on the Right to Food, adopted in 2004 by the FAO Council, emphasizes the need to *"promote and protect the security of land tenure, especially with respect to women, poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit"*; and it recommends advancing land reform to enhance access for the poor and women.

In recent years we have seen a global rush for agricultural land and mounting concerns about the phenomenon referred to as "land-grabbing" – the acquisition or long-term lease of large areas of land by investors. While renewed investment in agriculture was long overdue in many developing countries, large-scale investments in farmland have been associated with the expansion of large-scale, highly capitalized types of farming, rather than increased support to increase the productivity of the people who had hitherto been cultivating the land.

The rush for farmland has thus placed small-holder farmers under increasing pressure and concerns about negative implications, including for rural deve-

lopment and poverty reduction efforts, have spurred efforts to strengthen international regulations and norms in this area. In our capacity as United Nations Special Rapporteurs, we have been supporting these efforts. In 2010, the Special Rapporteur on the Right to Food presented to the Human Rights Council a set of minimum principles and measures to address the human rights challenge of large-scale land acquisitions and leases (A/HRC/13/33/Add.2). Their presentation was based on the consideration that it was necessary to clarify the human rights implications of land-related investments, in order to make it clear that governments had obligations they could not simply ignore for the sake of attracting capital. Similarly, the Special Rapporteur on the right to adequate housing has also focused her attention on security of tenure. She has presented a first report (A/HRC/22/46) examining the wide range of tenure arrangements and the prevalent focus in policy and practice on one form of tenure: individual freehold. She is currently preparing a second report to provide comprehensive guidance and recommendations for States and other stakeholders in relation to security of tenure for the urban poor, to be presented to the Human Rights Council in 2014.

In May 2012, the Committee on World Food Security (CFS) endorsed a set of Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) to promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. This document will be complemented by another set of guidelines for responsible agricultural investment in the context of food security and nutrition, being negotiated within the CFS at the time of writing. At same time, within the United Nations Human Rights Council a process is under way to develop an international declaration on the rights of peasants and other people working in rural areas. As stated in the preamble of the draft declaration (A/HRC/WG.15/1/2), its relevance is based on the observation that *"peasants constitute a specific social group which is so vulnerable that the protection of their rights requires special measures to make sure that States respect, protect and fulfil their human rights."* The issue of land and security of tenure is central to the draft declaration which identifies a "peasant" as *"a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products"* (art. 1).

The concerns related to the increasing pressure on land and rural livelihoods reflect an understanding that land is not merely an economic asset or a commodity, but also plays essential social and cultural fuctions. As the VGGT underlines in its preface, *"land not only provides a critical source of livelihood for the rural poor, it is also has important social and cultural functions. The eradication of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests. The livelihoods of many, particularly the rural poor, are based on*

secure and equitable access to and control over these resources. They are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth."

Access to land and security of tenure are essential for the ability of smallholders to achieve a decent standard of living. Land provides an essential social security mechanism and social safety net for millions of rural poor, living of subsistence farming. The ability to grow a substantial part of their own food is also critical to their access to adequate food and nutrition, since this reduces the dependency of the rural poor on market prices for food which are often highly volatile and go through significant variations across seasons. The right to food imposes on States an obligation not to deprive individuals of access to the productive resources on which they depend.

Security of tenure is also protected by international human rights law and safeguards against forced evictions. There is no doubt that forced eviction constitutes a gross violation of a wide range of internationally recognized human rights. Providing protection against such practices is thus a core function of security of tenure. Forced evictions have been addressed by human rights mechanisms and courts at all levels in considerable detail. Extensive guidance is available on the prohibition of forced evictions and the strict procedural safeguards that must be followed in situations in which evictions are carried out, including meaningful consultation with affected communities. As underlined by the Committee on Economic, Social and Cultural Rights, all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats. The Commission on Human Rights, in its resolution 1993/77 (para. 3), similarly urged Governments to confer legal security of tenure on all persons currently threatened with forced eviction.

The increasing pressure on land has accentuated the importance of security of tenure for both the rural and the urban poor. The political economy of land deeply influences processes of development, urbanization and housing. Large-scale acquisition of land in rural areas – often carried out in non-transparent ways and managed poorly – as well as land speculation undermine tenure rights and local livelihoods. Coupled with drought and other climate-related changes, such activities are major drivers of migration to cities, where adequate land and housing is often not available to newcomers, especially the poor. As a result, people end up living in housing and settlements with insecure tenure arrangements.

In addition, due to their increasing commodification, rural and urban lands have become highly contested assets, with dramatic consequences, particularly but not exclusively in emerging economies. The dynamics that accompany the liberalization of land markets are increasing the pressure on urban low-income settlements. This is topped by a global context where resources for housing do

not reach the lowest income groups. Communities are under threat of dispossession, their right to adequate housing, including tenure security, left unprotected.

In this regard, some have argued for legal empowerment of the poor in the form of individual titling and formal ownership of land. However, evidence shows that individual titling and increasing a market for property rights are in many cases not the best means of protecting security of tenure. In fact, despite the prevalence of a great variety of tenure systems and arrangements worldwide, in the past few decades, most models of urban planning, land management, development and legal regimes have prioritized individual freehold. This common fixation on freehold has been supported by the predominant economic doctrine of reliance on private property and market forces.

As a result, the financial sector and the private housing market, coupled with support for households to take on credit debt, became primary mechanisms for allocating housing solutions. Foreign assistance from international organizations greatly influenced the development of market-based housing finance and boosted housing market activity in developing countries. Despite some diversity in housing policy experience, most countries opted for promoting housing markets and individual homeownership, privatizing social housing programmes and deregulating housing finance markets. This was evident in most formerly planned economies, which in the 1990s privatized public housing on a large scale, leading to radical changes in tenure structure. In some of those countries, owner-occupied housing now constitutes more than 90 per cent of the housing stock.

In developing countries, governments were encouraged to undertake individual land titling programmes as a key means of not only increasing tenure security, but also of facilitating access to formal credit and reducing poverty. The underlying assumption was that secure tenure—understood as having proper titles—increased housing investment. Also influential was the claim of a direct correlation between property ownership and affluence in the West and the lack of it in developing countries. Consequently, home ownership rates worldwide have been generally climbing since the 1950s.

This process has overshadowed other well-established forms of tenure. Government support of other forms was reduced, for instance for collective ownership or rental housing. Furthermore, the prevalence of individual freehold over any other tenure arrangements has increased the tenure insecurity of all other forms of tenure.

The recognition of formal ownership, rather than land users' rights, may in fact confirm the unequal distribution of land and place women at a further disadvantage. As discussed by the Special Rapporteur in a report presented to the General

Assembly in 2010 (A/65/281), individual titling schemes should be encouraged only where they can be combined with the codification of users' rights based on custom, and where the conditions have been created to ensure that the establishment of a land rights market will not lead to further land concentration. On the other hand, the recognition of customary rights, including collective rights, can serve as an alternative to individual titling. Such formal legal recognition of customary rights can provide effective security and favour investments in the land. At the same time, adequate human rights based safeguards must be in place to ensure that the recognition of customary forms of tenure will not legitimize traditional, patriarchal forms of land distribution in violation of women's rights.

Recognition and protection of security of tenure is one of the most compelling challenges of today's world and is fundamental to preventing the most egregious forms of eviction, displacement and homelessness. Furthermore, security of tenure is essential for human dignity and to sustain an adequate standard of living.The AITEC publication is a most welcome contribution to further clarify the important social functions of land and why land cannot be reduced to a mere economic commodity.

Introduction

"Socializing" Land
by Shielding it
from Speculation

NICOLAS BERNARD & PASCALE THYS / JULY 2013

Nicolas Bernard is a Law Professor at Saint-Louis University, Brussels. Pascale Thys is the coordinator of the association Habitat & Participation in Leuven, Belgium.

When it comes to reflecting on habitat, a central fact is too often overlooked: housing is grounded, anchored in land. Far from floating in the ether, housing is rooted to the ground and is solidly attached to it. In other terms, housing is *located* on a plot which actually represents approximately one quarter (or a third, in some areas) of the property's total value. Therefore the issue of land cannot be viewed separately from the issue of housing, since building the latter requires control over the former.

More specifically, land is the ultimate finite (i.e. limited) resource. Land cannot expand, unless artificial islands are built[1] or colonies are established on the moon. This means that it must be used sparingly, even more so considering that the population increases over time, which in turn intensifies housing needs and the demands on available land required for housing.

[1]   As in some Arab emirates…

Nonetheless, up until now land has not been set apart as a specific commodity. Owners' wide-ranging power – if not absolute power[2] – over their property can be indistinctly wielded over movable property or real estate, or in the case at hand, over bricks or earth. No exceptions have been made for landownership.

However, at the same time an inspiring theory has developed. This theory argues that landownership has a "social function". The absolutist approach to property rights was developed during the French Revolution as a response to the Ancien Regime which, it is true, had established numerous land constraints that benefited the Church and sires. Today's social demands make a compelling case for questioning this approach. The problem here is less the notion of private property than that of "depriving" property, a negative form of ownership in which the property is not effectively put to use – but nevertheless implies leaving other people without a home. It now seems necessary to limit and define owners' discretional power. In this sense, why not choose to define property rights as a tool aimed at specific goals rather than as a strictly selfish prerogative? Put differently, maybe it is time to work on constructing a useful and accountable form of ownership, "*which is only justified to the extent that it meets its purpose of public interest and loses its very foundation if it strays from it*"[3] ?

Today, Reasserting the Social Function of Land Ownership is Crucial

In legal language, property rights fall among three "rights in rem": "*fructus*", which is the right to own the fruit of a property; the right of user, "*usus*"; and "*abusus*", the right to dispose of a possession – i.e. transform it, yield it or destroy it. Having rights in rem over land can include one or several of these rights. If, as Professor Nicolas Bernard[4] argues, the issue at hand is that of protecting land, it must be protected from the concept of "*abusus*" which makes property rights almost absolute rights.

This "social function" could then be specified. Indeed, it posits the idea that land ownership cannot be absolute since it is limited by its "social function". This principle has been enshrined in the Brazilian Constitution since 1988 (article 23) but other Constitutions previously referred to it, such as the 1917 Mexican Constitution. In this paper, we will present an overview of the history of this concept. Our aim is to shed light on the "limitations" that stand out and should be placed on land ownership, a scarce resource hoarded by an increasingly small number of owners worldwide.

[2]   Art. 544 of the Belgian and French Civil Code: "*Property is the right to enjoy and dispose of belongings in the most absolute fashion, as long as no use forbidden by the law or regulations is made of them*".
[3]   Rivero, J, *Les libertés publiques,* Paris, P.U.F., 1973.
[4]   Bernard, N, "Les (R)évolutions du droit de propriété, entre érosion et recomposition", Bruxelles, *Les Cahiers nouveaux*, n°84, 2012.

Aristote (-384 to -322) seems to have been the first to set forth the necessary "social function" of property[5]. According to him, human beings are impelled to gain ownership over specific commodities. This is necessary to ensure proper maintenance of the property. Thus private property is not condemned but each citizen-owner must commit to sharing the use of his possessions.

Saint Thomas (1255 – 1274) also developed this idea of the "social function" of property[6]. The Catholic church, from Pope Clement IV to Pope Pius IV, took clear measures against landowners who did not fulfil their social function obligations: anyone could farm their land and make use of a third of its area!

Auguste Comte (1798 – 1857) believed that society should consider property as a whole which of its own accord stretches beyond the individual aspects of ownership[7]. He is not opposed to individual possession or management of productive properties, but he thinks they must be at the service of a social mission. Thus, he states that property has "*a crucial social function, which is to create and manage capitals so that each generation paves the way for the next*". Property entails duties and is not considered merely a right, meaning that land ownership is viewed as a responsibility and not just as a form of power.

Léon Duguit (1859 – 1928)[8], an eminent law critic and an advocate of the social function of property rights, took this idea a step further. According to Duguit, a bearer of land rights is inevitably endowed with a specific social function. Therefore, he claims: "*I deny his property right; I declare his social duty*". "*Nowadays, property is no longer an individual's subjective right* […]. *Any owner of wealth is bound by the obligation to put it to use to multiply social wealth and social interdependency* […]. *Owners therefore have the social obligation to perform this task and will only be protected by society as long as it is done and to the extent thereof*". He clearly presents the repercussions in terms of social uprising to be faced by those who do not fulfil the "social function" of their land property.

Presently, land ownership seems to have been removed from society's "control", though new mechanisms[9] are tentatively being implemented. Raising the issue of the social function of land ownership involves the following questions: what are the roles and social responsibilities of "citizen-owners"? What should the public authority's responsibility and resources be? What are the means available to land rights activists and networks to build up national and international pressure for the right to a "sustainable" and "affordable" habitat?

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[5] Deploige, S. "La théorie thomiste de la propriété (suite et fin)". In: *Revue néo-scolastique*. 2ᵉ année, N°7, 1895. pp. 286-301.
[6] Op. cit.
[7] Madjarian, G, *L'invention de la propriété: de la terre sacrée à la société marchande*, L'Harmattan, 1989, pp 206-209.
[8] Op. cit.
[9] Cf. in this issue, Jablon, Samuel, "Community Land Trusts or Common Land Ownership", p. 172.

Making Property for Use and the Social Function Part of Positive Law

This principle is established at the highest level (such as in the highly symbolic "*Property is binding. Its use must also contribute to the common good*" stated by German Basic Law[10]) and is also defined concretely when applied to land ownership. The Constitution of Brazil[11] only guarantees property rights if its "social function" is explicitly respected. In a mostly rural country, this social function is defined as the obligation to put land to "*rational and appropriate use, compatible with natural resources and the environment, in compliance with labour law and in a way that contributes to owners' and workers' well-being*"[12]. Beyond the formal legal recognition of entitlement, a form of *property based on use* must be acknowledged and granted to those who actually farm land.

How can the law reflect this crucial claim? Can creative solutions be found for this problem? Yes, namely by reviving the Antique civil-law notion of breaking up property rights of rem. Two laws adopted in 1824, prior to the creation of Belgium – which was, at the time, ruled by the Dutch – created the possibility for the master of land to, in broad outline, confer rights not on the land itself but on anything built thereupon. The building lease and emphyteusis were thereby created[13], allowing their bearers to be temporarily[14] considered the full owners of constructions (which they sometimes built themselves) on a land which is not their property. This means they did not have to pay for land property. And these rights could be yielded, for a profit. At the end of the defined term, however, the buildings belonged to the landowner (officially called a "subsurface owner" or an "emphyteutic lessor"[15], depending on the case), sometimes in exchange for compensation[16].

In regard to this issue of Passerelle, these mechanisms are incredibly important: they are a way to protect land by making it unavailable for speculation[17]. The Community Land Trust is a legal figure which – and this is not a coincidence – is closely linked to the idea of a broken up right of rem. The private-law, non-profit Community detaches land from the commercial/trade realm and preserves it from the skyrocketing prices which are too frequent in real estate. By yielding only rights over buildings, this organisation not only makes them financially acces-

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[10] Basic Law of the Federal Republic of Germany, May 23ʳᵈ, 1949, art. 14, 2.
[11] Constitution of the Republic of Brazil, October 5ᵗʰ, 1988, art. 5, XXIII.
[12] Art. 186 of the Constitution.
[13] Law of January 10ᵗʰ 1824 on the building lease and law of January 10ᵗʰ, 1824 on the emphyteusis.
[14] They last respectively 50 and 99 years maximum.
[15] Both are landowners of the concerned land, the subsoil land owner grants a surface right to the beneficiary (called the "surface owner" and the emphyteutic lessor grants a long lease right (to a long term leaseholder).
[16] Cf. Bernard, N, *Précis de droit des biens*, Limal, Anthemis, 2013 for more details.
[17] Concretely, since the beneficiary of the surface right or the long-term lease is not purchasing the land (just the property of any existing buildings, or the possibility to build on the land), the total cost is much less.

sible to first-time occupants but essentially contributes to maintaining this benefit for the next occupants, since it remains a subsurface property system *ad vitam*. Indeed, the organisation pledges to never alienate the land, a vital commodity. There is more: if an inhabitant sells his/her broken up right (at market value), the trust systematically wields its pre-emptive right. It also receives a majority share of the value-added which it imputes to the new price (the price the right is sold for), thus significantly lower[18]. A full circle, so to speak[19].

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[18]   This is the cornerstone, or even the stroke of genius, of this mechanism!
[19]   Cf. N. Bernard, G. De Pauw, L. Géronnez, "Les *Community land trusts*, une réponse (acquisitive) innovante face à la crise du logement", *Les Cahiers de l'urbanisme*, n°78, August 2011, p. 91 *et seq*.

URBAN AND RURAL INHABITANTS' INSECURE REAL ESTATE AND LAND RIGHTS

Introduction

The Security of Tenure: an Introduction[1]

ALAIN DURAND-LASSERVE / OCTOBER 2012

Alain Durand-Lasserve is a Research Director at CNRS (National Center for Scientific Research), in France, specialized in land and housing policies in developing countries.

A ccess to secure land and housing is a precondition for reducing poverty, yet many millions of people live under the daily threat of eviction, or without sufficient security to invest what they have in improving their homes.

While the data on the number of slums dwellers worldwide are estimated with a relative accuracy (from an estimate of 924 millions people in 2001 (UN-Habitat 2003 c) to a figure of 827 millions in 2010 (depending on definition criteria), those on the number people exposed to insecurity are not so easily measured.

"Non-empirical evidence suggests that between 30 and 50 % of urban residents in the developing world lack any kind of legal document to show they have tenure security. Development agencies, academics and practitioners in urban issues concur that informal growth has become the most significant mode of housing production in cities of the developing world. In fact, gaining access to housing through legal channels is the exception rather than the rule for most urban poor households. In many cases the majority of inhabitants live with tenure systems that are 'informal', which means that their occupation of land and/or housing is either illegal, quasi-legal, tolerated or legitimized by customary or traditional laws, which can either be recognized or simply ignored by the authorities. Slums – the

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[1]   This article is an extract from the report prepared for the United Nations Special Rapporteur on the Right to Adequate Housing, "Security of Tenure: Types, Policies, Practices and Challenges" by Geoffrey Payne and Alain Durand-Lasserve, October 2012.

generic term used to classify informal, illegal or unplanned settlements – are the invisible 'zones of silence' on tenure security" (UN-Habitat, 2006: 92-93).

This situation is explained by the fact that the concept of security of tenure often refers to a perception, a subjective appreciation of a situation in a given time and place, by people concerned, observers, decision makers and experts. It also depends on policy and political factors that may evolve rapidly overtime. Methodological attempts to overcome this problem have so far achieved limited results (UN-Habitat 2011f).

Unfortunately, the responses by governments have so far failed to keep pace with the challenge of urbanization and urban growth in ways which enable the majority of people on low incomes to meet their basic needs. These groups now represent a large and increasing proportion of total urban populations. Tenure security was removed from the UN definition of slums in 2009 (UN-Habitat, 2010-2011:33), (I) because it was considered subjective and less measurable than adequate access to water and sanitation, the structural quality of housing and overcrowding and (II) because information on secure tenure was not available for most countries included in the UN database. However, evidence worldwide suggests that there is a close relationship and interaction between slums and tenure insecurity.

High land prices, inappropriate regulatory frameworks, bureaucratic inertia and political exploitation invariably conspire to inhibit progress. Mistaken confidence that there is a simple solution to such large and complex problems has also failed to address the diversity of legal, cultural, economic and political systems within which land tenure and property rights operate.

What is Land Tenure?

Any discussion of land tenure and property rights needs to recognise the importance of cultural, historical and political influences, as well as those of technical and legal systems. Each of these influences results in subtle differences in the way key terms and relationships are defined.

Inevitably, given the fundamental nature of the issue in human relations, many definitions of land tenure exist[2]. The Global Land Tool Network at UN-Habitat[3] defines land tenure as "*the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land*". A more detailed definition is provided in an earlier UN-Habitat report (2008:5), as "*the way land*

[2]   The French verb *tenir* means "to hold"; *tenant* is the present participle of *tenir*.
[3]   www.gltn.net/index.php/land-tools/access-to-land-and-tenure-security/introduction-to-land-rights-records-a-registration

is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land". This definition is the one used in this review as it is not only clear and comprehensive, but also makes a clear distinction between land tenure and property rights, which are defined as "*recognised interests in land or property vested in an individual or group and* [wich] *can apply separately to land or development on it (eg., houses, apartments or offices). A recognized interest may include customary, statutory or informal social practices which enjoy social legitimacy at a given time and place*". More basically, therefore, tenure relates to the means by which land is held and property rights relate to who can do what on a plot of land.

Land tenure should primarily be viewed as a social relation involving a complex set of rules that governs land use and land ownership. While some users may have access to the entire "bundle of rights" with full use and transfer rights, other users may be limited in their use of land resources (Fisher, 1995). The exact nature and content of these rights, the extent to which people have confidence that they will be honoured, and their various degrees of recognition by public authorities and the concerned communities, have a direct impact on how land is used (UN-Habitat, 2003b).

Property rights may vary within, as well as between, tenure systems. It is therefore possible to have a high level of security, but restricted rights to use, develop or sell land, or a limited level of security, but a wide range of actual rights.

It is important to note that the level of rights can be altered by a series of restrictions concerning the use of the land, which must conform to planning rules, development and construction norms and standards, as well as to the type of development mentioned in the contract or agreement between the owner and the user of the land. The level of rights may also depend on the period of time for which rights are agreed upon and whether they are renewable and transferable. Finally, the degree of formality in rights agreements or lease contracts can affect the level of rights as they can range from informal unwritten agreements to formal contracts between land owners and occupants (leaseholds). There also are customary agreements that provide various levels of rights depending on the local legal and regulatory framework.

What is Tenure Security?

Secure tenure is the right of all individuals and groups to effective protection by the state against forced evictions, i.e. under international law, "*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".[4]According to UN-Habitat (2004:31), security of tenure describes *"an agreement between an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework (the legal framework includes both customary and statutory systems). Security of tenure 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 justiciable. The tenure can be affected in a variety of ways, depending on constitutional and legal framework, social norms, cultural values and, to some extent, individual preference. 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 by the State, 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".* In order to take into account the perception of tenure security by people and communities, UN-Habitat expands the definition of tenure security by incorporating in the definition the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it (Bazoglu & UN-Habitat 2011:5).

Insecure tenure covers a wide range of local situations, from total illegality to various forms of tolerated occupation, or occupation legitimized by customary practices but not considered as legal by government or local authorities. In extreme cases, it may include land or property which could be subject to claims for legal recognition, but where such status has not been officially recorded or where the adjudication of claims has been denied. It also affects vast numbers of people. *"Estimates suggest that between 30% and 50% of Asia's urban residents lack any kind of legal tenure document which entitles them to occupy that land. In cities like Mumbai, Karachi, Manila and Dhaka, the proportion of people living without any form of tenure security in informal settlements is already much higher than the proportion of those living on formally-accessed land"* (UN-Habitat 2008:3).

Insecure Tenure and Evictions

Eviction can be considered as the most detrimental manifestation of tenure insecurity for the urban poor, but it is not the only one: tenure insecurity also has an impact on the access to services, the access to credit, the vulnerability to risks and other hazards.

Although there is a tight link between tenure insecurity and eviction, (eviction takes place in settlements that do not enjoy security of tenure), insecurity does

[4]   Committee on Economic, Social and Cultural Rights, General Comment No.7: The right to adequate housing (Art.11.1): forced evictions, para 3.

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not systematically result in evictions, which are more influenced by political factors than by the tenure and occupancy status of the land. Many cities where communities do not have secure tenure are not threatened by evictions. If, according to the UN-Habitat definition, security of tenure requires the *"effective protection by the state against forced evictions"*, it must be stressed that this protection usually remains at the discretion of authorities.

Insecurity of tenure and related risks of eviction can be aggravated by political factors (threats of eviction of politically hostile communities), social stigmatization of poor communities, non-compliance with planning and construction norms and standards, and market pressure (demand for land has an impact on land values in all land delivery channels).

However, a series of other factors can reduce the risk of eviction when security of tenure is not legally guaranteed: political will at the highest government level; perception of political risks for governments (threat on influential communities or the threat of protests if a high number of households are exposed to eviction); political protection or patronage; capacity of concerned communities to protect themselves (cohesion, self-organization, solidarity); support from civil society organizations and human rights organizations at national and international levels; intervention of national and international NGO, commissions, coalitions and federations; recommendations and guidelines by international aid & development agencies (UN, and bilateral; World Bank restrictions[5]).

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[5]   Operational Manual 4.12 of the World Bank on Involuntary Resettlement, World Bank, 2001.

Chile: Neoliberal and Vulnerable Cities. Post-Disaster Reconstruction and Resistance.

CLAUDIO PULGAR PINAUD / DECEMBER 2013

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Chile is stricken by natural disasters over and over again – earthquakes, tsunamis, fires, floods, volcanic eruptions, etc. This particularity makes the most excluded social groups even more vulnerable. It is also a major challenge for urban and housing public policies, given the inevitable reconstruction processes which ensue from disasters, as well as the necessary policy efforts to prevent and mitigate their outcome.

The earthquake which took place on February 27th 2010 struck the whole centre-south area of the country, from Santiago to Concepción, which is the most populated and the most densely populated area in the country. In addition to the significant number of casualties and damages[1], the earthquake provoked a

[1]   The earthquake caused 521 casualties and 56 missing people. According to the figures published on March 29th 2010 by the Ministry of Housing and Urban Planning (MINVU), 370,051 homes were damaged by the earthquake, of which 81,440 were destroyed and 108,914 severely damaged. Numerous equipments were damaged as well. An uncommon tsunami occurred after the earthquake, reaching the shore at different times with varying levels of intensity, thus worsening the damage caused by the earthquake.

series of social conflicts concerning the reconstruction process in the affected areas. These conflicts can be analysed as an opportunity crisis as well as a driver for social organisation and for capital.

The reconstruction process can be viewed as an opportunity for development. This leads to the following question: an opportunity for what and for whom? To answer this question, the conditions of neoliberal Chile in the face of the 2010 earthquake and tsunami must be analysed, by adopting a *"vulnerability approach, given the central role it plays and especially its economic and political aspects in the process of a disaster"* (Oliver-Smith, 2002). In Chile, neoliberalism has been implemented and taken root; its social and economic outcome further amplified the disaster's impact.

The 2010 earthquake thus operated as an indicator of Chilean society. It highlighted the spatial inequalities and injustices which have unfolded over the last forty years. It also revealed the crucial role of social players, especially the *pobladores*'[2] movement, as they organise and resist to achieve better living conditions. The earthquake sped up social processes in a country which seemed to have been numbed by a seventeen-year dictatorship[3] followed by twenty years of never-ending transition to democracy[4]. Since 2010 citizens have awoken to action. This telluric and social process, set off on February 27th 2010, has consistently gained speed since: first thanks to the solidarity[5] and mutual assistance provoked by the disaster, then because the earthquake and tsunami both revealed the inequalities of Chilean society and provided an opportunity for people to get together and organise. We have chosen to call this process the double telluric and social movement.[6]

Urban and Housing Policies in Neoliberal Chile: Spatial Inequalities and Injustices

The liberalization of urban land appears clearly in official documents of the Ministry of Housing and Urban Planning (MINVU) dating from between 1978 and 1981: in 1979, "urban limits" were eliminated in order to – officially – allow

[2]   *Poblador(es)*: Inhabitants of a *población*. In Latin America and especially in Chile, this term has a social and often political connotation which sets it apart from the term "inhabitant". *Pobladores* refers to groups of people living in working class popular neighbourhoods and struggling for their environment, their neighbourhood, their streets and their right to the city.
[3]   Pinochet ruled Chile for 17 years, from the coup of September 11th 1973 until March 11th 1990.
[4]   Between 1990 and 2010 four democractically elected governments ruled as an alliance of centre-left parties called the Concertation of Democratic Parties.
[5]   According to our observations, there were many more expressions of direct solidarity and mutual assistance than looting or other anti-social and marginal behaviors, which the media nonetheless shed the spotlight on.
[6]   For a more in-depth approach: Pulgar Pinaud, Claudio. "Quand la justice spatiale fait trembler la ville néolibérale. Le double mouvement tellurique et social dans le Chili d'après le tremblement de terre du 27 février 2010". In *Justice spatiale | spatial justice* N° 6. 2014. Université de Paris Ouest Nanterre.

"Aurora de Chile, popular poblaciò, more than 80 years and they want to evict us". Displacement process, February 2013. / Photo Credit: Claudio Pulgar Pinaud

the market to bring down land and real estate prices by increasing the available supply. But the outcome was the opposite of the intended effect, as prices rose. Speculation on land, which had suddenly become part of urban limits thanks to an administrative decision, played a key role in price trends. Gradually, social housing was no longer provided in peri-central locations but rather on the city outskirts, because of speculation; this shift continues today.

The system of subsidised housing, still in force, constituted a watershed since it directed the demand of those in need of assistance towards the market. In addition to requiring the beneficiaries to run up debts, this mechanism introduced the idea of targeting benefits, as "*housing is a commodity which can only be obtained thanks to individual effort; state subsidies will be set aside for the neediest, as a reward for their efforts*" (Chilean construction association, 1991: 90-91). Rodríguez and Sugranyes (2005) claim that in Chile subsidised housing is less a genuine housing policy than "*above all a financial mechanism to support private real estate and construction*". In the heat of the structural adjustment policies of the 1980s, the Chilean state's priority was first and foremost to provide stability to the private construction industry.

The massive building of housing for the poor – though be it of poor quality and located on the outskirts – successfully quelled social claims for many years, allowing most of the poorest applicants to be housed by means of access to private ownership schemes. Nonetheless, this housing policy ultimately led to a crisis because it created "ghettos" of urban poverty, areas inhabited by *pobladores* "with homes" (Rodríguez, 2005).

The Post 2010 Reconstruction Policy: the Same Formula?

Different reports (MNRJ, 2011a; Rolnik, 2011; INDH, 2012; UN- HABITAT Mission, 2010) published by human rights organisations after the earthquake bore witness to the "ideology of reconstruction". It has also been addressed in some articles and even a few press investigations. In "The Ideological Failure of Reconstruction", Peréz (2011) suggests that this reconstruction model has proven to be a vehicle for dismantling the state by transferring competences to private players, who are viewed as "*brilliant, powerful and prominent*". The reconstruction process has emphasized the granting of subsidies, simplifying bureaucracy and facilitating the private sector's participation, whereas the victims have been assigned to emergency housing solutions of mediocre quality, segregated and far removed from the centres of their daily and social life.

Land Tenure Insecurity and Displacements after the 2010 Earthquake and Tsunami in Chile

The territories that were most harmed by the 2010 earthquake/tsunami were above all the historic centres of the main cities inland and the coastlines of littoral areas. Different authors (Davis, 2005; Klein 2007; Harvey 2007) have argued that post-disaster processes can prove to be fruitful opportunities to expropriate well located lands. In these situations, "disaster capitalism" is ruthless: its' speculative agents start operating during the emergency phase, almost at the same time as the first relief reaches the territories.

Accounts gathered in the field just a few days after the earthquake and confirmed by other authors[7] report that "real estate agents" arrived and offered to purchase plots of land quickly, at prices well below their value prior to the earthquake. This happened above all in historic city centres, where many homes had been destroyed. Some families sold their land, because they lacked information and were in shock, thinking it was better to secure some money quickly. However, they did not assess the full value of their property, especially in a medium to long term perspective. This process has continued, so much that it is now considered normal, a continuity of the free market of land, but in a new context provided by the earthquake's bulldozer action[8]: it has provided a *tabula rasa* and cleaned

[7] "Real estate companies were also said to pressure families to sell land and housing at very low prices in a moment where they were very vulnerable, in order to make way for private redevelopment". In ROLNIK, Raquel. 2011.
[8] Bulldozers quickly arrived in historical centres to demolish houses which could have been rebuilt. In the heat of emergency relief efforts, we observed city officials and volunteer firemen with no technical knowledge whatsoever assessing the homes which could remain standing and those which had to be demolished. Just a week after the earthquake, thousands of homes that could have been rebuilt were torn down. We will never know if this happened out of sheer negligence or if real estate interests were involved in these express demolitions officially justified by the concern of mitigating risks in the event of recurrences.

out city centres of "old" housing and their "old" inhabitants. Five major types of displacement of victims can be identified in this process:

— **Displacement performed by state expropriations due to new definitions of areas of risk:**
In coastal areas, many inhabitants have been displaced as tsunami risk areas have been defined. Preventing future disasters seems to be a reasonable endeavour, but there have been different treatments in these expropriations depending on people's social class (Constitución). In some cases, homes have been rebuilt on the shore and others in the hills (Dichato): this has highlighted the contradictions brought about by the real estate interests at stake.

— **Displacement due to the market-State's subsidy-based home reconstruction model, or State-sponsored gentrification:**
As explained above, the subsidy-based housing model in Chile puts the market in charge of providing social housing. Therefore, developers seek to achieve scale economies (by building a lot of homes next to each other) and by building on cheap land (on the city outskirts). The case of Constitución is telling: most of the victims who lived on the shore were resettled in social housing complexes on the outskirts, up in the hills, kilometres away from their original neighbourhoods. This model has prevailed in all cities and is particularly obvious in middle sized and metropolitan cities.

— **Displacement of non-owners:**
Tenants and live-in relatives who did not own the destroyed homes or the land have been forced to move to new territories, mostly on the city outskirts. Most of them were not eligible for reconstruction subsidies, since they were not homeowners. There are no figures for the number of non-owners displaced at the national level, since they have been rendered invisible in this process by not being eligible for the reconstruction "targeting" – thus, over 65,000 families were, from the start, prevented from applying for reconstruction subsidies[9].

— **Market displacement or post-disaster gentrification:**
These are common dynamics in neoliberal cities where the land market has been liberalised, but the post-disaster context clearly facilitated them and sped up the process. The case of the centre of Talca is eloquent, as is Curicó and to a certain extent the coastal cities of Constitución and Dichato. In Talca[10], it is impressive to walk around downtown neighbourhoods four years after the earthquake and note that on the well-located plots where old houses were torn down and poor

[9] MNRJ "Informe para la Relatora Especial de Naciones Unidas para el Derecho a la Vivienda Adecuada. El terremoto-tsunami del 27 de febrero 2010 y los procesos de reconstrucción en Chile". September 2011.
[10] For more information on Talca, cf.: LETELIER, Francisco and Boyco, Patricia.
Talca pos-terremoto: una ciudad en disputa. Modelo de reconstrucción, mercado inmobiliario y ciudadanía. Santiago, Chile, Ediciones SUR. 2011.

pobladores used to live, there are now big apartment buildings and expensive housing condominiums.

— **Displacement of non-victims: taking advantage of the reconstruction**
Among the victims and sectors to be rebuilt, the State included whole neighbourhoods which hadn't been damaged by the earthquake – however, their strategic location gave them an incredible speculative real estate potential. Paradoxically, today these *pobladores* are victims of the state – and not the earthquake – as it seeks to evict them to pave the way to private and speculative business opportunities. In Chiguayante, the demolition of the neighbourhood started in a non-transparent process at the limit of lawfulness. Since the inhabitants were "fake" 27F victims, a corruption scandal unfolded and cost the former Governor of the Region (who was just recently elected senator) her position. Nevertheless, the displacement process has continued.

In some territories, several of these five types of displacements overlap. These processes of displacement and dispossession can be identified as cases of "*accumulation by dispossession*", following Harvey's concept. They should also be discussed in the perspective of security of tenure, since it is a crucial component of the right to adequate housing. In her 2011 Report, the UN Special Rapporteur developed this point and mentioned the Chilean case as an example of the violation of this right.

Housing blocks for earthquake victims and displacement supported by the State/Market / Photo Credit: Claudio Pulgar Pinaud

Social Movements' Resistance and the Social Function of Land and Property

This model of subsidised housing policy is repeated, evicting the poor to the outskirts and creating segregated cities, uprooting *pobladores* from their neighbourhoods where they have social networks and belong to a social fabric, in addition to depriving them of access to public utilities and infrastructure that do not exist on the outskirts. Apparently, "social-natural disasters" such as tsunamis, earthquakes or fires are levered as opportunities to "rid" land of its original inhabitants and provide the real estate market with more profit-making opportunities. This was made clear in statements by the Minister of Housing himself, as he emphasized the "vitality of the private sector" as an achievement of reconstruction – but at the expense of the usual victims, the urban poor.[11]

Faced with this landscape of displacements and neoliberal reconstruction, processes of organisation and resistance have been surfacing throughout the territory. The major claims are for the right to housing and the right to land, the right to the city and the right to remain in one's own neighbourhood. This process, made up of both resistance and resilience, is what we have chosen to call "the double telluric and social movement"[12]. Two national movements (MNRJ and FENAPO) as well as other local movements are making a claim to the social function of land and property in addition to the (re)construction of their homes and their cities, as they demand the right to remain on their territories. In Dichato the social movement has achieved a major triumph: significant mobilisation by the *pobladores* led to most housing being rebuilt on the shore and with better quality materials. The difference between the solutions provided in Dichato and other cities highlight the crucial role of radical mobilizing in obtaining better conditions for *pobladores*. Demands are now flourishing in other areas, with claims such as the creation of a land bank for social housing, for instance. The claims which are being voiced are linked to the right to the city. They stress the social function of land and property opposing the current market hegemony.

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Rebuilding Port-au-Prince After the 2010 Earthquake: a Question of Land Ownership?

LUCIE COUET / OCTOBER 2013

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The January 12th, 2010 earthquake killed tens of thousands of people and turned Port-au-Prince into a city of tents. Over a million people ended up homeless and built makeshift shelters outside their homes, in their courtyards, on the street, or in camps. There was already a housing crisis prior to the earthquake, but three years later it has not yet been solved. Land tenure is at the heart of the reconstruction challenge. How can new housing be built if there is no clear administrative division of land? How can a capital be rebuilt if it has lost control of its own territory? The stakes are high and the required solutions are difficult to implement. In the meantime, people are not just sitting around and waiting: reconstruction is already underway, the city is doing the best it can.

View of the city centre from Bolosse neighbourhood (Port-au-Prince) / Photo Credit: Josué Azor / FOKAL

A Historical Land Tenure Issue

Land ownership is a key issue in a country which is still over 50% rural and whose inhabitants keep migrating to the cities. It takes approximately two years for the process from the land survey to the final sale to be completed, and at the end of 24 months the new owner's rights over the recently acquired land are often not guaranteed. When Haiti was a French colony, property handover registries were often just as piecemeal and provided no government guarantee of property rights. When the Haitian revolution took place, at the end of the 18th century, which ultimately led to Haiti's independence in 1804, most of the colonist landowners were driven out of the country. Nonetheless, despite a redistribution of some plots, no land reform was enacted. Thus, today's grey area in tenure goes back a long way. Over the last two centuries, no major land reform has clarified the situation, even though inheritance rules keep dividing land between heirs over and over again, every time someone dies. This has been fragmenting land which is, in addition, worn out and degraded because of the massive deforestation caused by farmers' poverty. The lack of an overarching land policy has led to an entanglement which has grown more and more complex as the decades go by.

It is now hard to precisely define limits for land properties. The Directorate General for Taxation, which includes the Ownership Office, finds it difficult to identify the lands which belong to the State, and even more so since its headquarters collapsed in January 2010. Some of its records were salvaged and are being re-classified, but the system is not yet computerised. Moreover, property handovers

are seldom recorded: the land-surveyor – whose role is to define limits for a plot –, then the notary, most often simply guarantee the existing ownership and not all cases are sent to the Directorate General for Taxation. Additionally, most large properties are under a joint ownership regime. However, often one of the family members lives abroad – this is the situation of 10% of Haiti's population –, and a proxy is rarely drawn up for purposes of the joint ownership. Large land tenures are often poorly managed and unknown to State authorities. Concretely, a representative of the landowner – sometimes a self-designated representative – sees to the occupancy rights. Large land properties are fragmented and are not properly recorded, as is the case concerning State property. New occupants are not given any enforceable deed of occupancy, but they build on these plots. They are not eligible for bank loans or for a housing microcredit since there can be no mortgage as collateral. Banks have available funds for individual loans but cannot find potential customers with sufficient guarantees. There are pawnbrokers and moneylenders, but their rates on medium-term loans are steep. Therefore, individuals do not have significant housing investment capabilities and are limited to storing cash under their mattresses or receiving remittances from the diaspora. There are very few real estate developers: investing in housing is risky. The legal framework is mostly obsolete, the loan rates are high and tenure insecurity can jeopardise a project's financial stability.

The Concrete Impact of Legal Insecurity

The primary consequence of this widespread tenure insecurity and of the Haitian State's lack of control over its land is the increasing urbanisation of the most dangerous and remote sites. Port-au-Prince is in a cyclonic and seismic area; it is also prone to landslides and floods. Since there are no sanitized plots available, people are rebuilding homes on mountain slopes and near streams, further and further away from roads, electricity, drinking water, economic activities and services. In 2013, the Ministry of the Environment started building a wall along the biggest mountain to the south of Port-au-Prince, to mark a boundary for urbanisation and to protect the rural outskirts. Given the extent of the problem and the population's lack of alternatives, this initiative seems doomed to failure.

A second phenomenon has driven the city to spread towards the North, to the edges of the flood plain. After the 2010 earthquake, a whole strip of land from the seaside to the foothills of the Matheux Chain was designated of public utility in the framework of a project for setting up agribusiness industries. At the same time, several non-governmental organisations started implementing a State-driven project to relocate the inhabitants of one of Port-au-Prince's biggest camps to temporary housing units just to the South of this new public utility area. These measures were announced and, combined with the lack of available housing, impelled people to rush towards this newly designated public utility area. Thus,

approximately an hour away from the city centre, with no drinking water supply and in the midst of a lunar landscape, dozens of thousands of people settled. The temporary camps gradually turned into a tarpaulin city, where everyone plants little stakes around their homes to mark the limits of their property. Or rather their aspiration to ownership. Occupants have reported being threatened by representatives of legal landowners, suffering violent attacks at night or rip offs; they have also reported excessive prices for these plots. Nonetheless they are still determined to stay in what they consider to be their homes. Some areas were recognized by the neighbouring municipality, or were given a police station. No prior planning was used as a guideline for the establishment of this area, which is now one of the city's most burning urban issues.

At the same time, also in 2010, the capital's historical centre was designated as a public utility area too. At the time, politicians wanted to renovate the urban centre where most ministries, the national palace, the parliament, the city hall and other landmarks are located. It would also allow for real estate operations to bolster the stock of housing and stores, which had been depleted by the earthquake. The declaration of public utility was not the most appropriate tool for this project and the process was cancelled, two years after the initial declaration. The abusive use of a solid land management tool ended up, accidentally, freezing all transactions within Port-au-Prince. As landowners awaited the outcome of the situation and the official ban on land sales, they withheld from renovating plots with former commercial premises or housing, as well as from starting any new constructions. Likewise, in the years that followed the partial destruction of the historical city centre, no plots of land were merged. The centre of Port-au-Prince is also a major logistic hub for the metropolitan area, thanks to the port and the national highways which provide transportation of foodstuffs from the rest of the country and the Dominican Republic to the local market. At night, this giant market empties out and the buildings lined up along elegant arcade-sidewalks look out onto desert streets. Economic activities have been transferred to other municipalities in the city. Safety and long-term investors' trust must be restored in this commercial heart and soul of the city. Without stores, warehouses, offices and housing for its workers, the city centre cannot be a significant economic driver.

There Are Solutions, But They Will Take Time

As informal reconstruction is underway, some solutions have been surfacing – but they will all take time. The Interministerial Committee for Land Planning (*Comité interministériel pour l'aménagement du territoire*) has launched a project to establish a land register in two suburban neighbourhoods; they are encountering difficulties mapping land ownership but are little by little working out solutions to these complex problems. The State is working on a national housing

policy to standardise investment and has launched major public initiatives. Non-governmental organisations have come together to reflect on land issues and present solutions to policymakers. In 2013, the reconstruction of four ministries, the courthouse and the Supreme Court began in the city centre. The duration of these projects will have to comply with international donors' grant requirements. Often defined on a short-term basis, these requirements don't take into account the fact that urban renovation takes longer. The funds from the Petro Caribe Fund allow for a more flexible use than USAID, European Union or Inter-American Development Bank funds, and also include financing for a significant share of state expenditure on housing and public building projects.

The lack of land management has therefore redefined the city. The poor bear the brunt of this situation, on a day-to-day basis. But in the short term, all the inhabitants of Port-au-Prince, rich and poor, will suffer the harmful consequences of this uncontrolled sprawl. It is also, obviously, a hindrance to economic development. The increasing traffic jams in the city symbolise this cruel inertia. In Port-au-Prince, urban development is inching forward.

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Making the Case for a Legal and Urban Form for Popular Urban Land Rights in West Africa

JEAN-FRANÇOIS TRIBILLON / JULY 2013

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Many inhabitants of African cities have precarious housing situations, whether they are unstable tenants in often appalling rentals, at the mercy of their landlords, or whether they have built on land plots bought here and there from their alleged owners or from traditional chiefs – clandestine developers.

This article seeks to sketch out answers to the following question: what kind of land tenure recognition and registration[1] system would effectively enforce urban land rights? For lack of a more appropriate term, these rights are here further qualified as "popular" since they are meant to benefit the inhabitants of many neighbourhoods who do not have the social, cultural and economic possibility to make their land practices fit within the legal framework set out by written law and implemented by State bureaucracy.

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[1] Procedure making individuals' right to land as well as to the property built on that land enforceable and consolidated. In most African countries, whether French speaking or not, land registration entails rights and the only recognized land right is the result of registration, which is a laborious and expensive procedure.

This outline will draw on the lessons learned from recent experiences in Africa and Madagascar which aimed at securing these rights, without going into the details of these experiences.

Legal Aspect

From Urban Land Legitimacy to Urban Land Rights

It seems impossible to legally secure urban land rights without appealing to popular urban land legitimacy, which must be accounted for in these rights.

Land users could thus claim a double legitimacy and express it most straightforwardly (this is the user speaking):

— *"When I purchased my plot of land, I went through the administrative procedures and paperwork – such as: having the town register the acquisition title – which is something that any man or woman of my status must do (social and legal legitimacy):*

— *Then I did what any head of household my age does: I had to build a house for my family, since this is my duty as an adult. So I did as many others have done, I built my home on this land, which is located in our neighbourhood (most of us come from the same province so it is safer and easier to help each other out). This neighbourhood is connected to other neighbourhoods and is part of our city"*. (urban legitimacy).

All things being equal, the same rationale is valid for setting up a small house with a store or a small house with a workshop.

This legitimacy has to do with performing the "correct" land-related actions "properly". It is part of non scholarly law, neither written nor customary (in the sense of African rural traditions) even though it is sometimes indirectly inspired by customary law. It is a law developed according to uses rather than traditions.

As a starting point, a radical contrast within African cities must be noted. This is the contrast between:

— on the one hand, a land legality (land law) and urban legality (urban planning laws and legally approved urban planning documents to implement this law) set forth by public institutions and authorities and present in the official or legal city;

— on the other hand, a popular land legitimacy (land appropriation) and popular urban legitimacy (land use and development of neighbourhoods) extant in the most underprivileged neighbourhoods – the illegal city, according to public institutions and authorities.

We are setting forth this hypothesis of legitimacy in a legal space opened by legal science: the law is not exclusively written law – which the most powerful economic or political African players refrain from applying to themselves as a way of demonstrating their strength and power – it also lies in the most commonly accepted behavioural standards. These standards are neither explicit nor organised. They are a source of "*what should be done and how a reasonable man or woman of low income should behave*", rather than a set of organised and classified standards, which is the main characteristic of law and more generally legality.

So the question must be put differently: how can this land legitimacy be strengthened for city dwellers in underprivileged neighbourhoods, to guarantee minimum land tenure security? This means doing away with the permanent threat of eviction, defined as the obligation to vacate a location when ordered to by the holder of a legal title or a legal mandate for developing the area.

This legitimacy can be improperly described as the possibility of invoking legal principles from: – human rights declarations which have scattered different fundamental principles throughout the galaxy of universal law; – the persistence of rural customary land law even though it has been put at risk by urbanisation; – the "nature of things" (observing social practices and creating legal acknowledgments of those considered "fair", as Roman jurists did) as it becomes "natural law", which could give a legal grounding to existing popular urban land practices; – the "state of necessity" of households who wish to build their home but cannot find a matching legal land supply and end up having to take what they cannot obtain legally; – the Muslim legal doctrine of "vivification": by settling and building on land, occupants "enliven" the soil and thus are worthy of certain rights.

A popular urban land law could be built on this legal foundation. This could be the basis used to identify and manage/preserve individual popular land rights.

The Obsessive Hunt for the Owner

Distracting the investigating jurist from his/her obstinate and somewhat neurotic hunt for the owner among the different users is a requirement to secure these rights. Ownership is promoted everywhere, even in popular land law which, for instance, simply refers to the "boss" of a place, someone people turn to in order to solve conflicts and organise the use of space. But this is far from making this person an owner endowed with Napoleonic exclusivity over the land. This conclusion should not be leaped to, especially in "poor" urban environments. Anyone can ask this boss for permission to settle somewhere out of the way or appeal to a land-based hospitality which can last.

In other terms, popular land law allows for significant flexibility in the forms of occupation of urban land, which is a quality that should be preserved.

Political and Urban Planning Aspects

According to the dictionary, security is akin to a "horizon": it is an imaginary goal, impossible to achieve, which recedes as one moves towards it[2].

Experts, bankers and jurists all agree that land tenure security can only be maximal. What does maximal land tenure security mean? Registration on the Land Register. This is also the solution set forth by land administrations: registration is the only way to avert uncertainty and risk. In its current implementation, registration is an ideal far beyond the reach of popular land holders.

Security From Whom and Against What?
Experience shows that land tenure security is above all about being protected, defended. From whom? (I) neighbours, (II) local authorities, (III) state authorities, (IV) land wheeler-dealers.

Neighbours: Neighbours may try to push their fence back, they may cause all sorts of problems, as people say, but the bottom line is their solidarity. Therefore the technique of "participatory enumeration", based on neighbours' consent, is not decisive since they always agree.

State authorities: Let's face it: resisting state authorities' claims with a land "title" grounded in popular land legitimacy is pretty much pointless. On the contrary, state authorities are less assertive when they face collective defence actions or when delegations are prepared to jostle authorities.

Defence against local authorities is undoubtedly both the core issue and its solution: they do not serve the same interests and therefore the same ideology as state authorities. Action should be first and foremost aimed at local authorities, which implies negotiating and reaching agreements with them. (see below).

Why Do People Need Land Tenure Security?
What would the major benefits be for the user (incentives to formally establish his/her rights), impelling him/her to achieve land tenure security for the property?
— **Facilitating access to mortgage credit?** The beneficiaries of this security are in a too dire economical and social situation for a mortgage to actually provide them with credits;
— **Facilitating the transmission of inheritance to heirs?** The legal facility provided includes numerous institutional and tax setbacks, it might not be worth the trouble;
— **Keeping one's home?** This is definitely the kind of security people may seek.

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[2]   I am plagiarising Robert Castel here: *L'insécurité sociale, qu'est-ce être protégé?* 2003, Paris, Seuil, La république des idées.

The Instigator, an Outsider to the Social Fabric.
The instigator of the campaigns in favour of popular urban land rights is in itself often a political problem, as current campaigns show. These are often international bodies which propagate ideologies far removed from the concerns of the country and are fond of steamroller campaigns which cannot be openly criticized since they know what is best for people. These are actually quite fragile programmes. Minor political shifts are enough to call them into question. More modest programmes, better adjusted to local social demands, would truly be a positive development.

Dangers and Risks of Blocking Urban Planning
Classical legalisation through the recognition of property rights obviously makes urban development projects more difficult and sometimes even impossible. By making occupants owners, subsequent development projects for districts created spontaneously and without any initial planning are *de facto* (and this *de facto* must be stressed) impossible unless the appropriation is immediately conditioned to planning and development projects. The price to pay for these projects is usually steep, meaning they are used to punish occupants and to force them to let other social groups settle on the land instead of them. Agnès Deboulet's article on this topic criticizes the excessively large roads being opened in districts undergoing reorganisation in Cairo. She interprets this as a kind of punishment inflicted by the state technocracy on these ill-born and ill-faring neighbourhoods[3].

The Extension of the Market Sphere
Legalising popular occupation entails a major risk: the theoretical and practical impossibility of limiting the effect of this policy to the already existing city. It leads to the accumulation of wealth for all urban and periurban popular tenure. This in turn obviously entails (*de facto*, once again) major difficulties for planning urban spreading and the city as it develops.

Three Ways to Sidestep these Problems

First Possibility:
Land Law Conditioned by Urban Planning.
From a legal standpoint, we have advocated a land tenure security policy based on the concrete expression of popular land legitimacy and stemming from a serious investigation, in compliance with due procedure, of land occupancy. This is what we are calling the legal principle.

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[3]   DEBOULET, Agnès "Contrer la précarité par la sécurisation foncière et la légalisation. Enjeux et opportunités dans le Monde arabe et en Égypte", in Dynamiques foncières dans les villes du Sud, edited by Aurélia MICHEL, Éric DENIS, Rafael Soares GONCALVES, *Revue Tiers Monde* N° 206, April-June 2011.

Djenné Market, Mali / Photo Credit: Flore Musson

We have also stressed the risks this involves for urban planning: land tenure security could jeopardise all projects for enhancing habitat and development at the district level, as well as all urban planning endeavours at the city level.

We are positing here a possibility: deliberately limiting the legal principle to avert the planning risk. Urban space is at stake, and urban planning is what makes urban space "civilised". Otherwise, cities are just a shapeless cluster of activities and housing which are not productive and are not quality-oriented. A city is a framework for producing and living; it must be able to foresee its future to a certain extent and prevent serious complications. It is not a simple shelter or a field for building shacks.

A compromise could be reached by properly defining popular land law and its scope: it would only be effective if applied to a developed space, if possible with the support of the rights' holders. Therefore, inasmuch as land law applies to a non developed or insufficiently developed space, it remains in reality (a right on a property) merely virtual (it is a virtual right constituted by the relationship between a specifically defined person and an imperfectly defined land tenure space). The difficulty is giving this idea a legal form.

A virtual right over an undefined plot of land located in a district most often created through spontaneous settlements would allow its holder to participate directly or indirectly in the development of the area or neighbourhood. Thus, the planning would strengthen this right and make it a real, complete and undividable right, which can be registered.

We must admit that there is no existing technical characterisation of this right pending equipped and developed land: would it be a rights-debt held against the local authority, which would have an obligation to perform the necessary planning? Would it be a real estate rights-debt that would have to be combined with the right to the city? This real estate right-debt must nevertheless be considered as a right public authority could only get rid of by expropriating or purchasing the land, even if the property rights over clearly defined plots would only become effective after the development works authorised by the public authority (the group of virtual rights' holders can file a request for planning) or, as would be more likely, after a concerted development project is accepted as a public operation by the public authority.

Thus, the ultimate and definite protection of "popular" land law would crown a joint and successful planning endeavour. This protection is concretely expressed by the access of the beneficiaries themselves, or thanks to their efforts and their participation alongside public authority, to land rights which can be presented as real, complete, ownership rights over a surface area, maybe even property.

Second Possibility: Institutional Mechanisms

Experience has made one thing quite clear: up until now, land related administrations have not been able to carry out urban land reforms. They cannot be expected to suddenly break with this and do the opposite of what they have been doing for a century and a half: ignoring popular interest. The only institutions able to head similar operations are urban municipalities. These are the only authorities able to run restructuring operations in makeshift districts which already exist or are being created, to map out land tenure and establish registries for property and people.

Third Possibility: an Unlikely Urban Reform Law?

In order to recognize popular urban rights, bills would have to include:
—   Allowing the poor to legitimately occupy nice locations and benefit from enforceable land rights;
—   The principle of a virtual popular right which would become a consolidated popular right after the space has been organised;
—   The principle of granting quasi-ownership rights to several users of the same plot without dividing it or creating undivided or joint ownership;
—   The principle of municipal competence over these issues;
—   Encouraging joint development initiatives

Let's not get carried away, this is the kind of law which will never be voted in an ordinary situation. It could be passed forcefully but with the administration deciding clearly not to enforce it. So we must do without it. The radical option of building doctrine around the notion of popular land legitimacy must be embraced. Experiences must be carried out before a law can be drafted enshrining these practices. Experiment first, legislate later; the law exists to set in stone the lessons learned from experience.

Security of Tenure and the Social Function of Land in India

SHIVANI CHAUDHRY & MILOON KOTHARI / DECEMBER 2013

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The majority of the Indian population, in urban as well as rural areas, lives in extremely inadequate and insecure conditions without basic services, including access to water, sanitation, food and healthcare. Socio-economic indicators as well as statistics related to housing in India reveal stark inequalities and grossly inadequate living conditions. Against this backdrop, the central government has embarked on several legal and policy initiatives, which at one level aim to provide tenure security while on the other attempt to appease the real estate industry and promote private investment. Given this situation, there is an urgent need in India for the adoption of the human rights approach and a harmonisation of laws and policies to ensure that adequate housing and protection of land rights is realized for all. This paper, while explaining the context and major challenges in India, aims to propose some solutions.

Background

According to the Census of India 2011, around one out of every six households in urban India (17.4%) lives in an informal settlement (slum), while the total number of people living in slums was estimated to be 65 million in 2011. Three Indian cities, Delhi, Mumbai and Kolkata are home to 17% of the world's population that lives in informal settlements.

Large infrastructure projects, including dams, ports and mining, environmental conservation projects, urban renewal and city beautification schemes, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of families, most of whom have not received rehabilitation. India is estimated to have the highest number of people displaced annually, around 65-70 million since independence in 1947, as a result of ostensible "development" projects. India also has the largest number of rural poor as well as landless households in the world. Land ownership is highly inequitable with 60 per cent of the country's population controlling 5 per cent of the country's land, and 10 per cent of the population controlling over 55 per cent of the land. Forced land acquisition and the failure of rehabilitation coupled with a severe agrarian crisis, and growing landlessness and homelessness, contribute to "distress migration" of the rural poor to urban areas in search of livelihoods.[1]

The two facets of the housing crisis consist of: (1) the promotion of a neoliberal paradigm of development, which in its attempt to increase industrial development and foreign investment, and to create "world class, slum free cities" promotes evictions and displacement; and, (2) the failure of the state to invest in and provide social/ low cost housing. The lack of affordable housing results in the majority of the poor being forced to live in extremely inadequate conditions in informal settlements / insecure housing or on the streets. The national urban housing shortage for the period 2012-2017 is estimated to be 18.78 million houses, 95.62% of which is for economically weaker sections and low income groups. The paradox is that despite an acute shortage in urban dwelling units, a significant number of houses in urban India are lying vacant; 11 million houses according to the 2011 Census of India. In rural India, the housing shortage for the period 2012-2017 is estimated at 43.7 million houses, of which 90% is for "below poverty line" families.

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[1]　See "The Human Rights to Adequate Housing and Land in India: Status Update 2012", Housing and Land Rights Network, Delhi.

Security of Tenure and the Social Function of Property and Land

Tenure in urban India consists of various kinds, depending on the nature of the settlement, the city/town, and the governing state laws and policies. It includes ownership, lease, rental housing, and other temporary arrangements. The majority of housing in informal settlements is, however, characterised by the absence of the legal security of tenure, which results in a large percentage of the population living in extremely insecure conditions. It is thus critical that protection against forced evictions and displacement forms a cornerstone of any policy providing security of tenure.[2]

The Government of India, in 2009, launched a national scheme called Rajiv Awas Yojana (RAY), which intends to provide property rights to all slum dwellers and to *"build a 'slum free' country that provides shelter and basic services to the urban poor."* The experience of pilot projects under RAY, however, has highlighted the important need to integrate the human right to adequate housing framework in its implementation. It is important to understand, and also to reflect in policy, that tenure security is integrally linked to other elements of adequate housing. Housing that provides tenure security but is inhabitable and is located on the outskirts of a city, away from places of work, education and healthcare, cannot be considered adequate. Similarly safeguards need to be built into the policy to ensure that land reserved for economically weaker sections is not diverted for commercial purposes under the guise of providing "security of tenure" through public-private partnerships, as experience has shown. Security of tenure, therefore, as a component of the human right to adequate housing has to be linked to the human rights to work/livelihood, health, education, food, water, and security of the person and home.

In Ahmedabad, in a settlement named Pravinnagar-Guptanagar, under the Slum Networking Programme, residents were given a 10-year "no eviction guarantee". This provision of *de facto* tenure resulted in an improvement in several indicators such as literacy, employment, income, as well as an increase in the size of dwelling units and institutional delivery of basic services.

Linked to the principle of "minimising displacement" is the critical need to consider, as another cornerstone of housing policy, the imperative of *in situ* upgradation of housing and the promotion of inclusive planning and integrated neighbourhoods.

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[2] The UN Basic Principles and Guidelines on Development-based Displacement and Evictions provide valuable guidance for such an approach. Several High Court judgements in India have referred to these guidelines in asserting for a human right to adequate housing approach to the issue of displacement in India's cities.

Demolition of an informal settlement in Delhi / Photo Credit: HLRN Delhi

A third principle in understanding the importance of security of tenure for realising the human right to adequate housing, is the implementation of the concept of social function of property and land into law, policy and practice.

The social function of property/land essentially integrates the notion of human rights into property rights. It also expands the concept of property from an individual right to that of a collective right. In this sense, property is not merely an economic asset of an individual who owns it, but includes a concomitant purpose of promoting social well-being, equity, justice, gender equality, and environmental sustainability in society. It implies that property ownership must be equitable, and must enable all residents of rural and urban areas to access, use, own and benefit from it.

Integrally linked to the social function of property and land is the concept of the "right to the city/village". The right to the city can be understood as a collective right of everyone to the enjoyment of the city and a right to participate in its development, within the equitable principles of social justice, environmental sustainability and democracy.[3]

Several new policies and laws aimed at addressing the housing and land rights crisis in India are in the process of being developed. These include the draft Model State Affordable Housing Policy for Urban Areas, the Draft Model Property Rights to Slumdwellers' Act, and the draft Real Estate Regulation Bill. While

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[3] See "Taking the Right to the City Forward: Obstacles and Promises", Miloon Kothari and Shivani Chaudhry, 2009.

the provision of affordable housing and *in situ* upgrading occupy the rhetoric of these draft policies and laws, the challenge is to ensure that the implementation is based on human rights standards and not on market interventions and private investment. In a significant step forward, the government has recently passed the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013, which replaces the 1894 Land Acquisition Act.

Recommendations Towards the Implementation of the Social Function of Land

Any housing and land policy and legislative initiative that the Government of India takes has the potential to positively change the housing and living conditions of the vast majority of India's population that continues to reside in precarious conditions. It is imperative, therefore, that these initiatives of the government are firmly based on its human rights obligations as contained in the Indian Constitution and international human rights instruments. It is also important for the implementation of human rights principles, including: the indivisibility of human rights, non-discrimination and inclusion, gender equality, progressive realisation, participation and consultation, non-retrogression, and sustainability to ensure the practical application of the social function of property and land, and realisation of the human rights to adequate housing and land in India.

The adoption of a human rights approach will include the insertion of human rights safeguards that are a necessary component of policy reform, as the country moves forward in its attempt to balance the realization of housing and land rights with development. The following recommendations contain a brief sketch of what such an approach would contain.

The principle of "social function of property" should guide all land use planning to ensure that land is not diverted to meet the interests of the rich at the expense of the poor. For example, shopping malls must not be allowed to come up on land reserved for public housing or public schools and hospitals. Social function of property also implies that there should be limits on the size of landholdings to promote equality in land ownership. For property and land to meet its social function to protect and promote human rights of the larger section of society, it is imperative that human rights-based land reform is undertaken, in both urban and rural India. To this effect, the Government of India has drafted a National Land Reforms Policy and has proposed the introduction of a Right to Homestead Act, aimed at redistributing land to the landless across India to enable them to construct housing as well as cultivate a "kitchen garden" or subsistence crops to supplement their food and/or income. It is of critical importance for the majority of Indians that both the policy and law are passed and implemented at the ear-

liest. The government should also implement policies that allow for public and private properties which are vacant, unused, underused, or unoccupied to be put to full, productive use, including by redistribution to the homeless and landless. Given the significant variations in income and nature of housing and living conditions in India, it is important that the notion of security of tenure is premised on the concept of the "continuum of housing" needs. Tenure should accommodate rental, ownership, and cooperative forms of living. The provision of security of tenure, as a collective right of communities, must also accommodate the needs of large populations of indigenous and tribal peoples for whom security of land tenure is critical. The crucial links between housing, livelihood and health must be recognised to enable work places to be situated close to places of residence. Facilities for home-based work, especially for women, should be provided.

Private investment in areas such as housing and delivery of basic services must be controlled. The state should regulate real estate speculation by developing suitable policies to fairly distribute the burdens and benefits of development processes, and by adopting economic, taxation, financial, and budgeting tools that seek to realise equitable and sustainable development. The Real Estate (Regulation and Development) Bill needs to include stringent controls on indiscriminate speculation, including punitive action against those who violate planning laws such as reservations for low cost housing.

Efforts should be taken to ensure that the urban and rural poor are provided adequate housing and basic services, and to progressively ameliorate their living conditions, *in situ*, as far as possible. Their contribution to the economy must be acknowledged and laws should not discriminate against them or criminalise them. In this regard, all state and central anti-vagrancy laws should be repealed, including the Bombay Prevention of Begging Act, 1959.

The right to land must also be recognised and upheld to ensure equality in ownership and use of land. This includes the right to collectively own and manage land and property. This would ensure protection against forced evictions, check real estate speculation and land aggrandisation, enable sustainable development of settlements, promote collective agriculture and natural resource management, and prioritise social uses of land for purposes such as public housing and playgrounds. Land laws and land use policies should also define "public interest" to prevent the takeover of land for undemocratic purposes and should revoke the principle of "eminent domain" since it is largely misused by the state.

Adequate policy measures and budgetary allocations must be made to promote social housing for the economically weaker sections. Participatory planning processes should be encouraged that ensure the creation of mixed land use and integrated neighbourhoods, and non-discrimination in allocation of housing and basic services within cities, towns and villages. Legal security of tenure must

be provided to all families. This should encompass multiple tenure options and include provisions for collective ownership of housing and land, including by groups of women. Rental policies should be strengthened in favour of tenants and measures should be undertaken to promote the use of vacant housing. The principle of non-discrimination, which calls for special protection and priority to the rights of the most marginalised groups, and the principle of gender equality, which insists on substantive equality for women at all levels, must be respected and implemented in all schemes, plans, policies and laws.

While the Government of India has initiated some progressive legal and policy changes, the realisation of housing and land rights for the majority of Indians will be possible only through the consistent adoption of the human rights-based approach and a strong political will, at all levels of governance, to implement national and international human rights and environmental laws.

Residents filling water at the resettlement site of Savda Ghevra, Delhi / Photo Credit: Kidwai Nagar

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The Right to Inherit in Customary Law: an Obstacle to Women's Emancipation in Côte d'Ivoire[1]

PAULINE YAO / MARCH 2013

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In Africa, there is a permanent conflict between two different legal spheres: customary law and modern or state law. State law is based on colonial legislation and different legal texts adopted after the country's independence. Whether prior to independence or not, most of these texts reflect values which are foreign or even in contradiction with customary methods of managing land, water and forests. Customary rules still exist and are currently enforced. This leads to a genuine struggle between both legal rationales. When faced with the power of state regulation, traditional rules propose the centuries-old nature of customary law concerning land and other resources.

For rural women, cultural barriers and customary law are discriminating. A regional study[2] carried out in 10 countries throughout the continent shows that because of statutory and customary law, most women in Sub-Saharan

Africa, regardless of their marital status, cannot own or inherit land in their own capacity. On the contrary, when it comes to land, women wholly depend on their relationship to a man. In Africa and more specifically in Côte d'Ivoire, the issue of women's inheritance goes beyond the major challenge of establishing the necessary legal framework for women to be able to own and inherit land.

The fact that women cannot lease, rent, own or inherit land and housing is not just the outcome of sexist statutory laws, it also due to discriminating customary laws. Indeed, in most African traditions, only men can inherit from parents, since women are destined to get married and thus become part of another family. Therefore, women are barred from inheriting land because it might go to their husbands. When there are only girls in a family, the father's possessions are usually passed on to his brothers upon his death.

Ignorance: the Heart of the Reproduction of Inequalities

Women's right to land is a human right; women farm most of the household's food and they should therefore have more control over the nourishing earth – alas, this is not the case. The bitter truth is that most women who grow food are unaware of their right to land. Even worse, they are unaware of the fact that they can claim their share of inheritance. In these conditions, they will always be dispossessed of their rights. In a nutshell, this explains why nowadays millions of rural women in the world have limited land tenure rights, i.e. very limited rights to own, control and use land. In most cases, their husbands could all of a sudden take the land away from them without a reason.

Women's rights to land and to decent housing are part of the fundamental rights enshrined in numerous international legal instruments, namely the Universal Declaration of Human Rights. During the 1990s, awareness of women's right to housing increased and since 1996 many governments have defined or revised their policies in order to account for the different aspects of women's rights.

Market, Côte d'Ivoire / Photo Crédit: Pauline Yao

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[1] This paper was presented at the Land Forum, organised by HLRN-HIC in Tunis in March 2013.
[2] "Egalité à la maison: Promotion et protection des droits des femmes à l'héritage, enquête sur la loi et la pratique Afrique subsaharienne"

Legal Progress at the International Level

Women can turn to more and more international legal texts on human rights to claim their rights. One of the most interesting and recent developments is Resolution 2000/13 on "Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing". This Resolution was adopted by the Human Rights Commission at its last session and is a watershed for women's rights as it is the first international document which clearly links women's property, housing and inheritance rights to the gender-based aspects of economic, social and cultural rights. There are other tools: Sub-commission Resolution 1998/15 dated August 21st, 1998, on "Women and the right to land, property and adequate housing".

These standards are particularly useful for women who live in situations of conflict or in states whose domestic legislation prevents them from enjoying land ownership, property ownership and the access to housing – indeed, these resolutions are tools which provide the means to demand that their respective governments comply with their legal obligations and be held accountable for them.

Land is at the Centre of the Crisis and Conflict in Côte d'Ivoire

Physical confrontations between opposed parties and the frequent resort to customary courts or to administrative or judiciary courts are indicators of contentious situations and of the prevalence of customary rules regarding the status of land or other natural resources. Numerous examples from recent conflicts are the outcome of different phenomena:

As population growth skyrockets and production factors become scarce, natural resources are turning into a decisive element to be factored into the analysis and comprehension of the country's socio-economic evolution and the social relations of production between different communities. Land, forestry and water are variables which have changed over time as a result of Man's actions.

Côte d'Ivoire is traditionally a country of farmers. Villagers' rights over the bush, their living space, their farmland and hunting and fishing are based on initial migrations which granted lasting rights to the first inhabitants. This age-old right of native inhabitants or of the first inhabitants, combined with the control over resources it goes with, has changed over time with the overwhelming flow of migrants from neighbouring countries. All business sectors, rural as well as urban, are concerned by this magnetic pull.

Women are already at a disadvantage because of socio-cultural barriers and have been further marginalised in this difficult conquest. They are no longer able to access sufficient farm land to feed their families or to send their children to school and they are increasingly facing health problems – sending children to school is no longer a priority. The result has been more poverty for these women.

Despite Legal Progress, Women Still Do Not Have Access to Land

UN Resolutions are supranational legislative measures which are meant to prevail over the Ivorian Constitution, or the Burkinabe Constitution. Along with other UN legal provisions, they have pushed many states to adopt legislation which encourages women's right to land ownership and to property in general. Hence, many African Constitutions have set forth land and property rights for African women. Nonetheless, it is sad to note that in rural areas it is still hard for women to participate in public discussions on sensitive topics such as rural land tenure, as they are not landowners.

In order to enforce women's rights to land, to ownership, to inheritance and to housing, states should:
— Review their laws in a holistic and participatory manner to ensure that all legislation adequately protects women's rights to land and housing, namely inheritance rights, and if need be, adopt new laws and new policies to guarantee the full enforcement of these rights.
— Design and implement awareness-raising and broader education programmes based on women's right to equality and non-discrimination. States must verify that these programmes are based on a human-rights approach and include the right to decent housing, to land and to inheritance.
— Design and implement legal education programmes specifically targeted at women of all social categories and geographical areas, namely rural areas, where awareness of rights is usually low. All women should be informed not only of their rights but also of how to demand and impose respect for them.
— Establish law enforcement mechanisms, namely a special political and judiciary assistance unit to make sure women can effectively demand their rights without having to fear retaliation. These law enforcement mechanisms must be backed unsparingly by financial resources and any other necessary resources.
— Create shelters for women whose property was seized and provide them with legal, financial and any other required support until their property claims have been settled. The main goal should be to guarantee that these women do not end up homeless once their housing, their land or their property has been seized.
— Ensure that women can equally enjoy, like men, access to all legal proceedings and to land reform.
— Ensure that legal mechanisms are easily accessible to women, which

requires establishing a non-discriminating legal system and an unbiased judicial system able to adequately defend women's rights, as well as affordable or free of charge legal assistance for women who cannot afford an attorney's services.

The State must enforce international human rights law and therefore respect women's rights to land, to ownership and to housing. Women must fight for their own social wellbeing and fulfilment and recognize and echo militant claims on their own behalf, in order to enjoy their human rights. The government must protect women in rural areas: since all land belongs to the State, the State must devise the adequate means for women to be owners as well and for land to provide them with social wellbeing.

Women's gathering, Côte d'Ivoire / Photo Crédit: Pauline Yao

02

THE RIGHT TO LAND, ACCESS TO LAND: A MAJOR TRIGGER OF REBELLIONS

Introduction

Reclaiming the City for Anti-Capitalist Struggle

DAVID HARVEY / APRIL 2012

If urbanization is so crucial in the history of capital accumulation, and if the forces of capital and its innumerable allies must relentlessly mobilize to periodically revolutionize urban life, then class struggles of some sort, no matter whether they are explicitly recognized as such, are inevitably involved. This is so if only because the forces of capital have to struggle mightily to impose their will on an urban process and whole populations that can never, even under the most favorable of circumstances, be under their total control. An important strategic political question then follows: to what degree should anti-capitalist struggles explicitly focus and organize on the broad terrain of the city and the urban? And if they should do so, then how and exactly why?

The history of urban-based class struggles is stunning. The successive revolutionary movements in Paris from 1789 through 1830 and 1848 to the Commune of 1871 constitute the most obvious nineteenth century example. Later events included the Petrograd Soviet, the Shanghai Communes of 1927 and 1967, the Seattle General Strike of 1919, the role of Barcelona in the Spanish Civil War, the uprising in Cordoba in 1969, and the more general urban uprisings in the United States in the 1960s, the urban-based movements of 1968 (Paris, Chicago,

Mexico City, Bangkok, and others including the so-called "Prague Spring" and the rise of neighborhood associations in Madrid that fronted the anti-Franco movement in Spain around the same time). And in more recent times we have witnessed echoes of these older struggles in the Seattle anti-globalization protests of 1999 (followed by similar protests in Quebec City, Genoa, and many other cities as part of a widespread alternative globalization movement). Most recently we have seen mass protests in Tahrir Square in Cairo, in Madison, Wisconsin, in the Plazas del Sol in Madrid and Catalunya in Barcelona, and in Syntagma Square in Athens, as well as revolutionary movements and rebellions in Oaxaca in Mexico, in Cochabamba (2000 and 2007) and El Alto (2003 and 2005) in Bolivia, along with very different but equally important political eruptions in Buenos Aires in 2001-02, and in Santiago in Chile (2006 and 2011).

And it is not, this history demonstrates, only singular urban centers that are involved. On several occasions the spirit of protest and revolt has spread contagiously through urban networks in remarkable ways.

The revolutionary movement of 1848 may have started in Paris, but the spirit of revolt spread to Vienna, Berlin, Milan, Budapest, Frankfurt, and many other European cities. The Bolshevik Revolution in Russia was accompanied by the formation of worker's councils and "soviets" in Berlin, Vienna, Warsaw, Riga, Munich and Turin, just as in 1968 it was Paris, Berlin, London, Mexico City, Bangkok, Chicago, and innumerable other cities that experienced "days of rage" and in some instances violent repressions. The unfolding urban crisis of the 1960s in the United States affected many cities simultaneously. And in an astonishing but much underestimated moment in world history, on February 15, 2003, several million people simultaneously appeared on the streets of Rome (with around 3 million, considered the largest anti-war rally ever in human history), Madrid, London, Barcelona, Berlin, and Athens, with lesser but still substantial numbers (though impossible to count because of police repression) in New York and Melbourne, and thousands more in nearly 200 cities in Asia (except China), Africa, and Latin America in a worldwide demonstration against the threat of war with Iraq. Described at the time as perhaps one of the first expressions of global public opinion, the movement quickly faded, but leaves behind the sense that the global urban network is replete with political possibilities that remain untapped by progressive movements. The current wave of youth-led movements throughout the world, from Cairo to Madrid to Santiago – to say nothing of a street revolt in London, followed by an «Occupy Wall Street» movement that began in New York City before spreading to innumerable cities in the US and now around the world – suggests there is something political in the city air struggling to be expressed[1].

[1]   The saying "*city air makes one free*" comes from medieval times, when incorporated towns with charters could function as "*non feudal islands in a feudal sea*". The classic account is Henri Pirenne, *Medieval Cities*, Princeton, NJ: Princeton University Press, 1925.F

Two questions derive from this brief account of urban-based political movements. Is the city (or a system of cities) merely a passive site (or pre-existing network) – the place of appearance – where deeper currents of political struggle are expressed? On the surface it might seem so. Yet it is also clear that certain urban environmental characteristics are more conducive to rebellious protests than others – such as the centrality of squares like Tahrir, Tiananmen, and Syntagma, the more easily barricaded streets of Paris compared to London or Los Angeles, or El Alto's position commanding the main supply routes into La Paz.

Political power therefore often seeks to reorganize urban infrastructures and urban life with an eye to the control of restive populations. This was most famously the case with Haussmann's boulevards in Paris, which were viewed even at the time as a means of military control of rebellious citizens. This case is not unique. There-engineering of inner cities in the United States in the wake of the urban uprisings of the 1960s just happened to create major physical highway barriers-moats, in effect between the citadels of high-value downtown property and impoverished inner-city neighborhoods. The violent struggles that occurred in the drive to subdue oppositional movements in Ramallah on the West Bank (pursued by the Israeli IDF) and Fallujah in Iraq (pursued by the US military) have played a crucial role in forcing a re-think of military strategies to pacify, police, and control urban populations. Oppositional movements like Hezbollah and Hamas, in their turn, increasingly pursue urbanized strategies of revolt. Militarization is not, of course, the only solution (and, as Fallujah demonstrated, it may be far from the best).

The planned pacification programs in Rio's favelas entail an urbanized approach to social and class warfare through the application of a range of different public policies to troubled neighborhoods. For their part, Hezbollah and Hamas both combine military operations from within the dense networks of urban environments with the construction of alternative urban governance structures, incorporating everything from garbage removal to social support payments and neighborhood administrations.

The urban obviously functions, then, as an important site of political action and revolt. The actual site characteristics are important, and the physical and social re-engineering and territorial organization of these sites is a weapon in political struggles. In the same way that, in military operations, the choice and shaping of the terrain of action plays an important role in determining who wins, so it is with popular protests and political movements in urban settings[2].

The second major point is that political protests frequently gauge their effectiveness in terms of their ability to disrupt urban economies. In the spring of

[2]   Stephen Graham, *Cities Under Siege: The New Military Urbanism*, London: Verso, 2010.
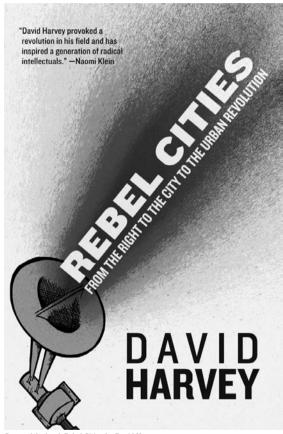
2006, for example, widespread agitation developed in the United States within immigrant populations over a proposal before Congress to criminalize undocumented immigrants (some of whom had been in the country for decades). The massive protests amounted to what was in effect an immigrant workers' strike that effectively closed down economic activity in Los Angeles and Chicago, and had serious impacts on other cities as well. This impressive demonstration of the political and economic power of unorganized immigrants (both legal and illegal) to disrupt the flows of production as well as the flows of goods and services in major urban centers played an important role in stopping the proposed legislation.

The immigrants' rights movement arose out of nowhere, and was marked by a good deal of spontaneity. But it then fell off rapidly, leaving behind two minor but perhaps significant achievements, in addition to blocking the proposed legislation: the formation of a permanent immigrant workers' alliance and a new tradition in the United States of celebrating May Day as a day to march in support of the aspirations of labor. While this last achievement appears purely symbolic, it nevertheless reminds the unorganized as well as the organized workers in the United States of their collective potentiality. One of the main barriers to the realization of this potentiality also became clear in the rapid decline of the movement. Largely Hispanic-based, it failed to negotiate effectively with the leadership of the African-American population. This opened the way for an intense barrage of propaganda orchestrated by the right-wing media, which suddenly shed crocodile tears for how African-American jobs were being taken away by illegal Hispanic immigrants[3].

The rapidity and volatility with which massive protest movements have risen and fallen over the last few decades calls for some commentary. In addition to the global anti-war demonstration of 2003 and the rise and fall of the immigrant workers' rights movement in the United States in 2006, there are innumerable examples of the erratic track and uneven geographical expression of oppositional movements; they include the rapidity with which the revolts in the French suburbs in 2005 and the revolutionary bursts in much of Latin America, from Argentina in 2001-02 to Bolivia in 2000-05, were controlled and reabsorbed into dominant capitalist practices. Will the populist protests of the *indignados* throughout southern Europe in 2011, and the more recent Occupy Wall Street movement, have staying power? Understanding the politics and revolutionary potential of such movements is a serious challenge. The fluctuating history and fortunes of the anti- or alternative globalization movement since the late 1990s also suggests that we are in a very particular and perhaps radically different phase of anti-capitalist struggle. Formalized through the World Social Forum and its regional offshoots, and increasingly ritualized as periodic demonstra-

[3]   Kevin Jonson and Hill Ong Hing, "The Immigrants Rights Marches of 2006 and the Prospects for a New Civil Rights Movement", *Harvard Civil Rights-Liberties Law Review* 42:99-138.

tions against the World Bank, the IMF, the G7 (now the G20), or at almost any international meeting on any issue (from climate change to racism and gender equality), this movement is hard to pin down because it is "a movement of movements" rather than a single-minded organization[4]. It is not that traditional forms of left organizing (left political parties and militant sects, labor unions and militant environmental or social movements such as the Maoists in India or the landless peasants movement in Brazil) have disappeared. But they now all seem to swim within an ocean of more diffuse oppositional movements that lack overall political coherence.

Cover of the book *Rebel Cities*, by David Harvey.

[4]   Thomas Mertes (ed.), *A Movement of Movements*, Londres, Verso, 2004; Sara Motta y Alf Gunvald Nilson (eds.), *Social Movements in the Global South: Dispossession, Development and Resistance*, Basingstoke, Hants, Pal grave Macmillan, 2011

Lands of the Arab Spring[1]

JOSEPH SCHECHLA / JUNE 2013

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Before and since the Arab Spring uprisings, much world attention has fixed on transforming central government institutions: presidency, legislatures and key ministries. However, contention at a far more-fundamental level, the "land question" is raging across the Middle East and North Africa Region (MENA) and promises to be a transitional justice priority for years to come.

Diverse forms of official corruption remain a central theme of the uprisings, and land fraud has emerged as a constant feature. Common are the privatization of public land and related resources and confiscation of private property to enrich the head of state and his entourage. Other patterns in the denial of land rights in the region have targeted already-disadvantaged groups, deepening their impoverishment, marginalization and taking their source of livelihood.

Yemen: Threat to Social Peace

Domestic land grabs across Yemen, especially in the provinces of Hudaida and Aden, were a major subject of popular disgust with the regime of former Yemeni President Ali Abdalah Sālih.

Already in 2008, Yemen's parliament investigated confiscations of public and private lands by high-ranking government and military officials. The fact-finding committee revealed in an important 500-page report (2008) how 15 military and political figures used their coercive power to appropriate much of the lands in

[1] This article was originally published here:
www.digital-development-debates.org/issue-10-hunger--for-resources--lands-of-the-arab-spring.html

five governorates: Aden, Dhala, Ta'iz, Abyan, and Lahj. That report recommended that then-President Sālih choose between patronizing his 15 loyal land-grabbing accomplices, or instead seek legitimacy with the 22 million citizens of Yemen. He chose the loyalty of his entourage.

A second parliamentary committee in April 2010 addressed 400 encroachments on land in Hudaida Province, favoring 148 long-standing political, economic, religious and tribal leaders. There 63% of the province's agricultural lands were taken from local producers, reportedly using armed gangs to consolidate the theft. In 2012, after Sālih's fall, parts of the 2008 report's details were leaked. That confirmed the looting of 1,357 houses and 63 government properties in Aden alone. The problem gained severity in the southern region to spark resurgence of the secession movement.

The south Yemen land confiscations alone reportedly amount to an area equal to all of Bahrain. The Yemeni Parliament's 2010 report warned that unlawful land acquisition would spawn new unrest in Yemen and threaten social peace for years to come.

Bahrain: Land is Scarce

The land grabbing in Bahrain is marked by its severity, by sheer proportions. Bahrain has the smallest land base of any country in the region (760 km²) and is greatly dependent on food imports. Characteristic, too, is the looting carried out by a single family: the monarchic Al Khalifa clan. This is in an island nation where nearly half of its landed property remains foreclosed to Bahrainis while occupied by United States military bases serving the U.S. Navy's Fifth Fleet. Land is scarce.

Bahrain's land includes more than 70 km of coastline reclaimed over the past thirty years. That increased the landmass by over 10%. Reclaimed land, by law, is public and not subject to privatization. However, by 2008, some 94% of the newly created public resource was turned into private wealth of the ruling family. Because of the commercialization of coastal land, many of Bahrain's traditionally small family fisheries have lost their livelihood and community.

For several years before the wholesale uprising against the Al Khalifa ruling family in 2011, youth and regime opponents openly protested against the lack of housing and livelihood prospects that result largely from the "royals"' and their supporters' self-enrichment with the land's natural resources. The rulers' confiscation of precious lands and all access to the sea coincided with material discrimination in public goods and services to the favor of minority Sunnis and other loyal expatriates.

The conspicuous royal grabs' avarice even compelled the lower house of parliament (Council of Deputies) to investigate. Its March 2010-published study uncovered how the scheme ran, whereby 65 km² of public land (>US$ 40 billion worth) transferred to private hands since 2003 without proper payment to the public treasury. No fewer than 16 techniques emerged, mostly involving the king transferring state property to private hands at the expense of the general citizenry[2].

These include:

1.   Creating chaos in the inventory of state property;
2.   Encroachment on private lands re-registered to Khalifa family members at no charge;
3.   In the north around al-Manama, most land grants were distributed free of charge, of which just 12 grabs comprised an area of 37km²;
4.   Public land granted to the Al Khalifa-controlled Stone Co. before its registration as state land;
5.   Issuing replacement title deeds on the claim that the original was lost, without requesting the replacement deed, which violates the Land Registration Law;
6.   Granting constitutionally nationalized reclaimed lands for private investment;
7.   The Land Survey and Registration Authority unilaterally dissolving state ownership;
8.   Land reclaimed from the sea with state funds, such as Jufair and the Diplomatic Area, illegally excluded from state property, with some title deeds having disappeared from the Ministry of Finance with changes in the file numbering sequence to hide the missing files;
9.   The lack of an accurate inventory of state land;
10.   Poor planning and management of the stock of state land, whereas many important public projects have been carried out on lands without proper ownership documents (e.g., the University of Bahrain campus);
11.   Forfeiting valuable archaeological sites by failing to register them in the name of the state;
12.   Land acquired for public purpose over some 22 years, but not registered as public, as in the case of Dilmun Paradise Water Park;
13.   The absence of strategic planning of housing projects, exacerbating the scarcity of land;
14.   Ambiguity and withholding of information relating to land-use and planning;
15.   Shortcomings in the Ministry of Finance's maintenance of state lands, validating royal orders to amend land records;
16.   The lack of integrity of the Land Survey and Registration Authority in its role to uphold the public interest.

[2]   More info in: www.ispu.org/pdfs/640_ISPU%20Report_Bahrain_Aziz_Musalem_WEB.pdf

The official investigation found the prime minister's advisor Shaikh 'Isa bin 'Ali al-Khalifa receiving bribes of $ 2 billion dollars (an amount equivalent to the state's budget for a year). In the international bribery scandal over the royal-controlled Alba company (Aluminium Bahrain BSC), the king issued royal pardons for the defendants, while the cases were still before British and U.S. courts.

The byzantine nature of corruption in the management of Bahraini state property is so complex that the 2010 parliamentary report recommended a follow-up at the legislative, executive and judiciary levels, including a Committee on Financial and Economic Affairs to manage state property with investigatory and subpoena powers. The lack of access to needed information and documentation had seriously hampered parliament's pursuit of the whole truth.

Egypt: The Discovery of Slowness

In the land of the pharaohs, deprivation of small-producing farmers has been a policy of state since the adoption of infamous Law 96, cancelling protected land tenure arrangements (1992). Over three years before the masses converged on Tahrir Square to topple President Hosni Mubarak's regime, People's Assembly deputy Gamal Zahran announced in a 12 November 2007 parliament session that the state had lost some L.E. 800 billion (€98 billion) through illicit privatization benefiting senior officials and businessmen.

Two years after Egypt's 25 January uprising, court cases proceed at pre-climate change glacial speed, although some high-profile convictions of land fraud have resulted. In March 2011, Egypt's Central Bank issued a letter, revealing the names of 138 persons alleged of corruption and influence peddling. The Attorney General ordered their monies frozen, and some of those figures still await trial. In December 2011, the auditors of the Urban Communities Authority issued report No. 755 about former President Husni Mubarak, Prime Minister Ahmad Nazif and other ministers taking state property, granting lands and villas to senior officials, select companies and elites of other Arab states. All such operations had the backing of the president himself, his ministers and the premiers 'Atif 'Ubaid, Ahmad Nazif (serving in 1999–2004 and 2004–11, respectively).

In late December 2012, current Prime Minister Hisham Qandil issued a decree forming a committee to investigate land fraud by the deposed regime. This new committee is headed by the president of the Cairo Court of Appeals Judge Ahmad Idris, and joined by 15 men with administrative, military and agricultural expertise. Among the emblematic land fraud cases is the 1,950 feddan (819 hectare) transfer to businessman Ahmad Bahgat for a pittance, which is the subject of a separate investigation. The depth and breadth of official corruption is sure to keep Egyptian investigators and revolutionaries busy for years to come.

Tunisia: Monopolistic Matrix

In a final act, Tunisia's falling President Zineddine Ben Ali formed three committees to manage the crisis, but that did not save his presidency. Among them was a National Commission to Establish the Facts about Corruption and Embezzlement. Its November 2011 report explained how the corruption regime gradually spread and tightened its grip on all state institutions, distorting economic, judiciary, political institutions and social development. The Commission received over 10,000 files, investigated 5,000+ and referred some 300 cases to the judiciary. Certain administrative institutions (e.g., Ministry of Justice) declined to cooperate. The Central Bank refused to provide information for the crucial 2006–10 period.

With available information, including victim accounts, the Commission ascertained that most corruption took place where administrative authorities and economic institutions intersect, and fraudulent land deals were at the forefront. It uncovered the mechanisms of corruption to shed light on just how the executive profited by rezoning agricultural or fallow land for construction, or from one type of built-up land to another. They thus multiplied the economic value of the land for the land-holding members of the former president's extended family and close associates. The Real Estate Bureau is implicated in forging titles to land suitable for construction, and illegally turning over state land for privatization at cheap prices, and sometimes for a symbolic one dinar, as was the case with farms handed over to ministers and others close to the former president. Such practice also arbitrarily annulled standing state contracts with local peasants who had cultivated the land for many years.

Much essential food production in Tunisia came directly under the control of the ruling clique not only by land grabbing. Distribution and importation also formed part of a monopolistic matrix involving most economic fields within the state, encompassing trade in everything from wheat to second-hand clothing.

Morocco: Under the Radar

Maneuvering barely under the radar of popular scorn is Morocco's King Mohamed VI. Despite the global economic and financial downturn, this monarch actually doubled his personal wealth in the last five years. Mohammed VI comes in seventh in ranks of richest royals overall, with an estimated 2.5 billion dollars fortune, six times the treasures accumulated by either the Qatari or Kuwaiti monarchs.

The king is described as Morocco's principle banker, insurer, exporter and cultivator, controlling the production and distribution of energy and food, as well as much of the communication sector. That moniker follows his 1999 enthronement as the touted "king of the poor".

The state (land, people and institutions) subsidize the king with a monthly salary of $40,000, while the public pays "the king and his court" $31 million annually (18 times maintenance costs of Queen Elizabeth II and 60 times the French president's budget). Locally, the palace's annual budget exceeds the combined budgets of four Moroccan ministries: Transportation & Public Works, Justice & Freedom, Culture, and Agriculture & Fisheries. One calculation equates the king's official budget with that of 375,000 average Moroccan citizens.

Today's royal Omnium norde afrique (ONA) holding company contains dozens of subsidiaries in most strategic sectors of the Moroccan economy: food production, processing, distribution and export, related land and real estate, housing, mining and banking. While these companies were officially privatized in favor of the monarch, they continue to tap into the state budget by receiving subsidies that ensure their expansion with huge profits that further enrich the royal family. In a country where most farmers eke out a living on less than five hectares, the king's massive land holdings allow him not only to enrich himself with disproportionate advantage, but also to distort the agricultural system and sector.

The land administration in Morocco suffers from some of the same distortions that afflict the entire region. The land information system remains opaque and conceals the facts of who actually owns much of the country's land.

Official data can be misleading. In fact, some 400–450,000 hectares (4–4,500 km²) disappeared from the land registry at independence in 1956, and even after the "moroccanization" of former colonial lands in 1970. Assumptions have pointed to a royal "land grab", but the lack of a transparent land-information system obscures the record.

Struggles Yet To Come

The story of land in the Arab Spring countries continues to unfold under our feet. The revelations of usurping the people's land, the essence of sovereignty, echo across the region. They shed new light on the nexus between corrupt governance and the mismanagement of the people's land.

In building a new phase of governance aligned with popular will, one can imagine the contours of social struggles yet to come. They are the products of the past. The transitional justice processes that emerge reflect the understandable umbrage of a people who choose now to stand their ground.

The Urban Roots of Gezi, Istanbul

TOPLUMUN ŞEHIRCILIK HAREKETI / SEPTEMBER 2013

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It is now a truism to state that the Gezi Park Revolt in Istanbul, represented much more than a resistance against the demolition of a public park. It has articulated long-time grievances, mostly cultural in their content, against Erdogan's neoliberal and socially conservative government. On May 28th when a handful of urban activists and environmentalists resisted the municipal bulldozers entering Gezi Park at Taksim Square, they had no idea that their defense of the park would lead to the biggest urban revolt of Turkish history during which 2.5 million people in 79 cities took the streets at the very least.[1] At the heart of the initial conflict was an urban redevelopment scheme that has planned the construction of the replica of 19th century Ottoman Barracks called Topçu Kışlası to be used as a shopping mall. This was part of a broader urban plan of transforming Taksim Square contested by the urban activists in the year prior to the protests.

Between May 28th and May 31st, activists put up peaceful resistance, organized sit-ins, and camped out in the park, each time with growing numbers in the face of persistent and ever more brutal police violence. This escalating urban conflict took place in the political context of increasingly blatant authoritarianism

[1]   Estimates of Ministry of Interior Affairs in *"2.5 milyon insan 79 ilde soka a indi"* Milliyet Gazetesi, June 23, 2013.

of the government which was manifest in various acts including a recent law restricting the sale of alcohol, government censorship on media pertaining to a massacre in Reyhanli near the Syrian border, and the police crackdown on May 1st demonstrations among many others. In this socio-political context, invested with meaning transcending the original protest, Gezi both as a symbol and a concrete physical space has become a nodal point representing the frustrations of a heterogeneous mass of people with the consolidating authoritarianism in Turkey and their democratic aspirations.

Although this argument certainly has a merit, it does not do full justice to the urban specificity of the Gezi protests. We must ask how has the Gezi Park resistance acquired this incredible capacity for representation in the absence of an organized campaign to invest it with such significance? Was there anything immanent to Gezi Park resistance that made the fierce police crackdown on initial protestors resonate with the broader public more easily than all-too-routine incidents of the same sort?

Neoliberal Urbanization under AKP

We think that the distinct role of the urban question came to occupy in contemporary Turkey under Justice and Development Party (AKP) rule[2] is central to our understanding of the Gezi Rebellion. More succinctly, we argue that the urban policy arena has become the microcosm revealing AKP's broader authoritarian mode of ruling. For urban citizens, Gezi was indeed the all-too-evident but also physically accessible manifestation of this mode of ruling that has been engraved on the physical and social space of the city in the last decade. This authoritarian mode of ruling was in many ways the political requirement of the political economic functions the urban policy started playing in the AKP period (2003-) as a key mechanism for generating economic growth and distributing material favors. More than any other government in Turkey's history, AKP utilized the urban policy tools for its broader neoliberal economic growth-oriented policy. In doing so, not only it drastically changed the institutional and legal setting but more importantly unsettled the long entrenched patterns of urbanization. Increasingly, the radical make up of the urban fabric started enmeshed in Neo-Ottoman aesthetics as a discursive strategy of reconciling blatant neoliberal consumerism with conservative populism that constitute the contradictory political ideology of AKP.

[2]   AKP is an offshoot of the Islamist movement, which came into being in 2001 when a faction led by Tayyip Erdogan and Abdullah Gul broke away from the Virtue Party and joined forces with center-right cadres. The party won 34 percent of the votes in 2002 general elections, formed a single party government and has remained in power for three terms by increasing its vote shares. The Istanbul Metropolitan Municipality, currently under AKP rule, has been run by mayors from the Islamist tradition since Erdogan's election as a mayor from Islamist Welfare Party in 1994 local elections.

Urban populism was a key tenet of the Islamist movement in the 1990s and Recep Tayyip Erdogan, as the mayor of Istanbul, was its most popular face. When AKP under Erdogan rose to power in 2003, this focus on urban policy took a new neoliberal shift within the austerity conditions of the post 2001 crisis era. AKP embarked on a neoliberal urban agenda that reconfigured urban policy as the key tool for economic growth/capital accumulation. This included massive infrastructural investments, penchant for mega projects, massive sale of public assets to private investors, an urban redevelopment agenda targeting working class and popular neighborhoods in the center and the periphery, ultimately a policy logic that prioritized the valorization of urban rent more than any other concern with public good. Social housing policy within this policy landscape emerged as a tool to relocate the urban poor and a relatively quick and concrete fix to manufacture the image of a party that is "accomplishing things". It could be argued that it served a limited lower middle class constituency.

AKP's urban policy agenda seeks to address three distinct objectives: boosting economic growth and employment, addressing the demands of the major deve-lopers and nurturing a pro-AKP contractor class, and manufacturing the populist image of a party serving its constituencies. As urban scholars often noted, urban neoliberalism often requires authoritarian mode of ruling in order to circumvent the popular pressures that might be challenging it. This is more so the case when urban policy is conceived as an instrument of transferring massive public assets and wealth to a new crony capitalist class. Under AKP, this was not simply limited to the formation of entrepreneurial municipal governance; it instead meant a major institutional transformation that re-scaled urban policy-making to the central state authority. After 16 legal changes, the Housing Development Administration (TOKI), directly connected to the Office of the Prime Minister, emerged as an urban leviathan with draconic powers over the use and distribu-tion of urban lands and public assets. Not only it acquired the command over all public lands and the right to sell and develop them for private sector projects, but it was also granted the permission to keep its public auctions outside of any accountability mechanism, most importantly that of Court of Auditors. Through two laws on urban renewal of historic neighborhoods and poor and dilapidated zones, TOKI in collaboration with the metropolitan and district municipalities gained the capacity to demolish the valorized working class neighborhoods, relocate the "entitled" residents under the terms of long term debt and open the emptied lands to large-scale urban development projects. After 2010, the Ministry of Urbanism acquired these exceptional rights over the entire country through a "disaster law" enacted purportedly to take precautions against the looming earthquake.

The outcome of these laws under the conditions of high financial liquidity was a construction spree not leaving a single area untouched, including the globally cherished vista of the historical peninsula. The monotonous construction of

low quality public housing complexes across the urban landscape of Turkey accompanied these private projects and the demolition of squatter and historical neighborhoods became common news. The mega projects seeking to privatize and redevelop such public assets and spaces like ports, train stations, schools and open to construction remaining forest areas were personally branded as "crazy projects" by Erdogan himself. He was the one taking the helicopter ride to decide the exact location of the Third Bosphorus Bridge, and presenting the projects of building a new canal, satellite city and an airport on the remaining green areas and water basins of Istanbul, the grandest mosque of Turkey on the Camlica hill overlooking the Bosphorus and finally a shopping mall dressed as a revived Ottoman Barracks replacing Gezi Park. Thus urban authoritarianism was quite visibly associated with the figure of Prime Minister Erdogan. Moreover, the cronies of the party and the prime-minister including the firm of his son in law, Calik Holding were directly involved in these numerous construction projects. In other words, urban development was a mechanism for accumulating personal wealth and transferring rents to the pro-government elites.

Resisting Neoliberalism

For the larger public, these authoritarian neoliberal urban policies meant a number of things. First, they initiated a series of local resistance movements against specific projects by the coalition of actors including the Chambers of Planners and Architects, local residents, urban activists and organizations. These movements pressed legal challenges, organized street protests, waged media campaigns, etc. They failed in some, achieved partial victories in others. But they certainly created a degree of public awareness of numerous projects that were violating law and citizenship rights, detrimental to ecology, enmeshed in corrupt practices. For the middle class who are certainly not anti-capitalist or for that matter even necessarily anti-neoliberal, the endemic corruption among the central and local government and the contractors involved in these projects were all too visible. As the construction spree started targeting the remaining green areas and iconic cityscapes with an increasingly conservative symbolism, not so long terms consequences of AKP's urban policy agenda for their urban life and ecology were more visible.

Gezi Protests emerged at the backdrop of these urban processes. The urban activists had already been organizing a campaign against its demolition for around a year before the initial protests began. The barrack project was consi-dered as a chain of the broader project of reconfiguring the Taksim-Beyoglu area for a global tourism industry, which would make it increasingly inaccessible to popular sectors, and strip it from its historical cultural and political heritage as the demolition of the iconic Emek Cinema and the re-closing of Taksim Square to May Day demonstrations revealed. The initial resistance against the demo-

lition was organized by the established network of activists and turned into a collective action to occupy and appropriate the public space as a "common" to protect it from encroachment. Within three days despite and perhaps because of state violence, the occupation managed to gather more than around 10 thousand people to protect the park, on its own one of the largest urban struggles in Turkish history. For those participating, it not only meant saving one of the few green spaces remaining in the city center but also resisting the broader urban policies encroaching on entire Istanbul. Moreover it signified a collective defiance to the figure of the Prime Minister who dismissed the protests and claim for participation, thus in a way articulated the Gezi as yet another instance of his condescending authoritarian discourse and practice dismissing and ridiculing public opposition.

Thus, when the police violently cracked down on a peaceful press release on 2013 May 31st, it touched upon one of those deep moral strings that otherwise apolitical or unorganized people have. The authoritarian intrusion in the city and the park perfectly resembled the other forms of intrusions in people's lives including but not confined to education, the female body, alcohol consumption, etc. The on-going resistance was considered legitimate and necessary. The fact that the urban conflict has not been part of the ossified social and political polarizations such as the Kurdish issue that used to render state violence against its participants relatively unproblematic in the eyes of the larger public, also made this round of police violence unacceptable for the masses.

If AKP's urban policy is key to our understanding of this historic event, we must not underestimate the articulatory power of the social and physical space. Its accessibility and habitual presence in the daily routine of Istanbul's middle class youth certainly made a protest of this size possible; perhaps its historic and contemporary importance in the collective imaginary even more so.

Today, the Gezi Rebellion unleashed an immense potential for reinvigorating and expanding the urban struggles over the future of Istanbul. Neighborhood assemblies, which could not have been imagined only a few months ago, spread across the city and currently comprise more than 50 neighborhoods. Weekly protests on a diverse array of local issues are organized. A new youth generation gets politicized around urban issues to demand the democratization of urban space and local politics and become more vocal against the neoliberal assault on Turkish cities. The central task ahead is to build linkages between these emerging forms of struggles and the existing conflicts in the working class neighborhoods of Istanbul which face and experience dislocation, dispossession and socio-spatial isolation. The prospects of accomplishing these challenging tasks look much more promising after Gezi.

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Gezi, Istanbul, May 2013 / Photo Credit: Uğur Çolak

Developing the Social Function of Property in Brazil: Between Progress and Social Tension

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A Critical Approach to Developing the Social Functions of the City

The urban policies regulations and tools set forth in the Brazilian Constitution of 1988 must be analysed. On the one hand, granting municipalities more political and institutional authority to promote urban development policies, which create fairer and more inclusive cities, was positive. Nonetheless, at a social and territorial level, the different requirements – such as a federal law and a municipal master plan – clearly weakened the effectiveness of the collective right of the social function of property, at least in the short term.

The social groups which have historically benefitted from the distribution of land in Brazil – large rural landowners and urban building owners – made sure

that their representatives in political parties delayed the implementation of urban policies by municipalities for as long as they could, in order to prevent cities and urban properties from fulfilling their social function. The 13 years it took the Brazilian Parliament to approve the Charter of the City in 2001 clearly illustrate this strategy.

When President Luís Inácio da Silva was elected, the Charter of the City was adopted, along with the creation of the Ministry of Cities, of the National Cities' Council and the organisation of the National Conferences on Cities. These were significant steps to promote the principles of the social function of cities and of property, the democratic management of cities and the recognition of the right to the city as the master framework for national urban development policies.

The "Mega-Events" at the Core of the 2013 Social Tensions

The progress made in designing these national policies to combat social and territorial inequality in cities has not yet been concretely translated into measures by municipal authorities. It is still necessary to include the social function of property and the right to the city both as goals and as indicators in the appropriate solutions to collective urban land conflicts. The areas inhabited by low income people who are concerned by the work for the FIFA World Cup are an illustration of this.

Specific factors must be considered regarding the achievement of the effective enforcement of a national urban development policy which emphasizes the social functions of the city and of ownership. Also, fundamental values must be observed and manifested in a concrete way in order to solve the collective conflicts of urban land:

— Since 2009, the program "My House, My Life" has entailed an assignation of 20 billion Real for the building of 2 million urban homes. The construction of these homes, however, didn't make use of tools designed to ensure that property fulfils its social function. As a result, many of these homes were built on the outskirts of cities.

— The organisation of international mega events, namely the FIFA World Cup in 2012 in 12 Brazilian cities, such as São Paulo, Belo Horizonte, Porto Alegre, Curitiba, Fortaleza, Recife, Salvador; and the 2016 Olympic Games in Rio de Janeiro.

— Representative democracy has prevailed over participative democracy in decision-making processes on mega urban development projects.

— The lack of policy on land conflicts. There are more and more, leading to human rights violations in the communities concerned by the work related to the mega events.

"No evictions" - Vila Autodromo, Rio, June 2012 / Photo Credit: Charlotte Mathivet

These factors explain why the 2013 scenario seemed absolutely contrary to political agendas of urban reform in cities or expressions such as the huge demonstrations in Brazilian cities where millions of people rallied in June.

The demonstrations first set forth the specific demands of the "free pass" movement, which stemmed from people's dissatisfaction with the increasing prices of public urban transportation. These demands then became broader, involving a yet imprecise agenda on the right to the city based on the following claims:

1. The defence of the right to transport as a fundamental right;

2. The establishment of free transports and the enhancement of the quality of public transportation;

3. The prioritizing of collective public transportation, instead of individual transport by car;

4. The right to participate in the strategic decisions concerning the city, such as the public budget;

5. The right to demonstrate in public space;

6. The right to access quality education and health care;

7. The allocation of public resources in such a way that priority is given to meeting the needs of the inhabitants of the city and not to major constructions such as the enhancement or building of football stadiums:

8. Political reform, strengthening direct and participatory democracy;

9. The improvement of the living conditions in favelas and city outskirts;

10. The prevention of the eviction and displacement of people from their homes because of real estate projects or preparation for mega-events like the FIFA World Cup or the Olympic Games.

In 2014 the FIFA World Cup will be held; there will be national elections for the President of the Republic and the parliament; and the governors of federated

states and state parliaments will be elected: this context may contribute to bringing together these fragmented demands.

If massive street demonstrations were to return with more organised claims for the right to the city and urban reforms, set forth both by traditional urban movements and new urban movements, this could lead to a new political deal aimed at making Brazilian cities more fair and democratic.

Next Steps for the Assertion of the Right to the City

In 2012, a Working Group on Decent Housing was created within the Human Rights Council: it launched research and field missions in the cities of Fortaleza, Curitiba, Porto Alegre, Belo Horizonte, Rio de Janeiro and São Paulo, with the goal of analysing the impact of the mega events on the concerned populations, especially the FIFA World Cup. The study evidenced the following common issues:

1. The difficulties the population faces accessing information on the projects and plans which affect their right to housing as well as on the housing solutions for the people concerned;

2. The lack of communication, conflict resolution and collective negotiation with the concerned population;

Favela Vila Autodromo, Rio de Janeiro, June 2012 / Photo Credit: Charlotte Mathivet

3. The lack of popular participation in the definition of mega-projects or mega-events;

4. The absence of grassroots organisations' participation in the definition of publicly funded housing projects;

5. Inadequate compensation for the people who have been displaced because of the mega-projects;

6. Justice's lack of enforcement of the right to the city and of the social function of property and of cities in conflicts on the right to housing which were submitted to its appreciation.

As a result of this initiative, in October 2013, a report was published with a series of recommendations for adoption by state authorities and public institutions.

Enforcement of the Resolutions of the 5th National Conference of Cities

The 5th National Conference of Cities was held from November 20th to 24th 2013 on the topic "We can change the city: Urban Reform Now!". Among the major themes were incentive policies and the implementation of tools to promote the social function of property.

The National Forum of Urban Reform set forth and defended a series of measures to promote the social functions of cities and property[1]. These included:

1. Immediately putting to use unoccupied or underused public buildings for social housing; creating special "social interest" areas in low income neighbourhoods or unoccupied areas to build social housing;

2. Having public authorities adopt tools and policies to make the use of private property subject to collective interests. This entails, among other things, making social participation and oversight mandatory for the approval of urban and real estate projects;

3. Making collective ownership a social right recognized by the public authorities. The right to housing could thus be put into practice by groups;

4. The National Congress should approve amendments to the Bill reforming the Civil Proceedings Code changing the legal proceedings for repossession and possessory actions.

The approval of the following measures is proof of some positive outcome of the 5th National Cities Conferences:

1. Mapping out land to identify urban vacant lots and unoccupied buildings in public and private areas;

2. Establishing and implementing, by the end of 2014, policies to prevent and

[1] "Por la función social de la propiedad urbana: la ciudad no es un negocio, la ciudad es de todos nosotros" www.forumreformaurbana.org.br

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solve land conflicts, to prevent dispossessions and violence in urban and rural occupations;

3. Immediately suspending projects and initiatives which involve assigning funds without a previously established and democratically determined resettlement plan by the Ministry of Cities;

4. Proposing a law which would stipulate that in the event of land conflicts, repossession is performed only in cases where there are guarantees of a court hearing, conflict resolution and verification of the enforcement of the social function of property;

5. Enacting a bill establishing a legal status for social ownership, to fulfil the right to decent housing.

It is undeniable that over the last few years progress has been made in Brazil regarding the design of urban public policies geared at sustainable development for cities. Nonetheless, these policies still haven't brought about concrete changes in the situations of social and territorial inequality. The political controversy over models and visions of the city which could be favourable to the agenda for the right to the city and urban reform at the level of national policy will depend on the alliances and coalitions between social movements. More specifically, traditional urban movements, which have been fighting for fair, democratic and sustainable cities will have to ally with emerging movements, which can renew practices of citizenship, solidarity, organisation and social mobilisation.

This support implies solidarity and support from low-income communities and vulnerable groups which promote initiatives – administrative and legal – as well as mobilisations in favour of the right to the city and to decent housing, in order to remain in the consolidated urban areas they live in. With the increase of public and private investment in real estate projects for well-off people, as well as the construction and renovation of sports facilities, airports, avenues and metro lines in low-income areas, communities' and social groups' organisation and mobilisation to fight for their rights has been sparked.

The struggles and the international mobilisations and articulations in favour of the right to the city, such as the World Charter for the Right to the City or research, studies, summits and international campaigns, must be given utmost importance: their strategic aim is to develop the social functions of the city and of property. All these strategies must be encouraged in the next few years, especially considering the upcoming 3rd United Nations Conference on Human Settlements – Habitat III, in 2016.

The promotion of fair, democratic and sustainable cities by an alliance of different movements and organisations for the right to the city must be at the heart of the next global urban agenda.

The Role of Low-Income Housing in Devaluing the Social Capital of the Oglala Lakota

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Background on the Oglala Lakota Nation

Home of the Oglala Lakota Nation, the Pine Ridge Reservation was established during the 1868 Fort Laramie Treaty and encompasses a territory of approximately 2 million acres of the Northern Great Plains in southwest South Dakota. With a population of over 26,000, the Reservation exists today as one of the poorest places in the United States and lags far behind other parts of the United States in virtually all standards of human well-being. The historical legacy of the U.S. Government forcefully alienating people from their allotted lands has contributed to the unequal land-use patterns on Pine Ridge today, where 20 people control nearly 46% of the land base.

Traditional Lakota government was organized around the band or tiospaye (One-Feather 1974). Each tiospaye was an autonomous political and economic entity, engaging with other tiospayes for ceremonies, limited trade, and warfare (Pickering 2000). Leadership responsibilities within the tiospaye were centered

in a camp council composed of band chiefs, headmen, war leaders, active warriors, and holy men (Price 1991). Each council recognized one or more tiospaye chiefs who were usually people with good reputation within their tiospaye. In addition to the chiefs, each family appointed a senior male to participate in the camp council. All tiospaye leaders were bound by obligations of mutual aid and respect and were subject to ostracisms and desertion for violation of these Lakota values (Cornell and Kalt 1992; Price 1991).

Most decision-making within the tiospaye was conducted informally and the loosely organized Lakota Camp Council convened only in situations of great importance such as the Sun Dances, warfare with other tribes, or treaty making with Euro-Americans (Price 1991). When decisions were to be made by the camp council they usually occurred through deliberate periods of dialogue with the objective being consensus rather than majority rule (Price 1991).

Euro-Americans who were charged with negotiating treaties with the Lakotas as early as the 1850's failed to recognize the decentralized political structure of the Lakota as well as the individual status of representatives from particular tiospayes favoring negotiating with Chiefs with no formal or informal legitimacy to represent the entire Lakota people (Price 1991). Recognizing the chiefs as the principle negotiator rather than spokesman for the tiospaye compromised the consensus of the tribal council. Furthermore, Euro-American commissioners recognized particular chiefs as leaders of all of the tiospayes, compromising the decentralized political structure of the Lakota (Price 1991). This presented a two-fold challenge for the Lakota: first, the chief's primary obligations and expectations were to his tiospaye and not necessarily to other tiospayes. Second, people did not recognize the leadership of a single individual within the tiospaye, and especially an individual from another tiospaye.

This conflict of loyalties challenged the internal relations within the tiospayes as well as between tiospayes. The tiospaye-centered norms of reciprocity, solidarity, and mutual-aid are derived from habitus, as these are unregulated dispositions shared by the Lakota. As such, Lakota habitus, being the product of the historic dialectic between itself and the objective structures of the Lakota society, experienced less internal conflict and change than when they were placed in a dialectic with the foreign structure of Euro American forms of government.

The Impact of Housing Clusters on Lakota Extended Families

Low-income housing projects, called "cluster housing" have played a large role in disrupting micro-level social capital among the Lakota. Started in 1960s, cluster housing was designed to be a cost effective solutions to the housing

Oglala Sioux winter camp in the woods, 1882 /
Photo Credit: Denver Public Library, Western History Collection

needs of the Reservation (Pickering 2000b). However, the disruption it caused to the effectiveness of the social capital of the tiospaye. The spatial dislocations it caused, the high cost of heating, and the dilapidated state of the houses, has had the negative effect of creating communities of place where people feel no sense of reciprocal obligation to their neighbors.

To understand how the cluster housing impacted the embedded social capital of the Oglala Lakota we must first look at the prior patterns of shelter and how it related with their habitus. In doing so we will look at three distinct housing orientations; the pre-reservation, early reservation, and contemporary cluster housing.

The pre-reservation housing orientations were the most spatially and socially fluid fitting well with their nomadic lifestyle and the fluid nature of their political system. Prior to the reservation system, the Oglala Lakota lived in lightweight and moveable structures called tipis.

Family's that made up a tiospaye would set their tipis up in a single camp in close circular orientation. The tipi was intricately related to their hunter-gatherer lifestyle, the fluid nature of politics, and the symbolic importance they place in the circle. The shape of the tipi also had symbolic significance to the Lakota as well. The Oglala people see the circle as a symbol many relationships including the cycles of the seasons and the cycles of life and death. As such, it is believed the tipi has a great deal of power.

After the establishment of the reservation system the different tiospayes settled along the creeks, which flowed off the white river. By this time the Lakotas were receiving treaty payments in the form of rations from the United States Government for their land. They were told that anyone who built a log cabin on a piece of land would receive a cookstove, doors, and windows. They would also receive a plow, wagons, mowing machines, and other equipment for free if they farmed the land. In the early stages of the reservation, eight head chiefs

were recognized by the United States. The head chiefs from each area were responsible for picking up the rations and distributing them to the members of his tiospaye. "*Through the respect people had for their head-man, the Lakota were able to continue the old way of life in the new setting. The headman always thought of his people before himself*" (One-Feather 1974: 19).

The different tiospayes were distributed in this way until the early 1960's when the pressures of population demanded that new houses be built.
"*Cluster housing, introduced as part of an attempt to reduce federal and tribal spending on utilities, concentrated many of the reservation's residents in densely settled clumps of new housing and severed the connections many families had to particular pieces of land traditionally held by their tiospaye. The allotments abandoned by the new cluster housing tenants were immediately swept up by Indian and non-Indian ranchers, who today use the land primarily for grazing purposes.*" (Record and Hocker 2002).

The housing clusters had the negative effect of breaking apart traditional communities bound by close familial connections and placed individual families in clusters with other families to whom they shared no connection with. One Lakota man from the village of Oglala explains:
"*The cluster housings came in 1962 in Oglala. I moved, and my tiospaye dissipated, all moving towards the housing. So did other communities, they all moved to a central location. And you know what happened, those old tiospaye feuds are still active, still there, so you have those nasty looks they give each other, progresses to words, then it progresses to hissycups, broken windows, crime, because you have several tiospayes living together. That's why I moved.*"

Another participant illustrates the difference between the two types of living and how it impacts reciprocity and mutual aid within his tiospayes:
"*Years ago, people used to live in Tiospayes and we all live together, helping each other and working together. We had a lot of time to make things for each other, with everyone's help. But today, we don't all live together like we used to. I don't think that it's that they don't have the value, or don't want to be that way. It's hard socially and economically. Because when we have ceremonies or give away, it pretty much falls on the immediate family...*"

Cluster Housing community in Wanblee, SD. / Photo Credit: USGS

where it used to fall on the whole tiospaye and people helped each other. Over a hundred years ago, they had to help each other...everyone in the extended family has to help. Now it's only a smaller part of the family. Giveaways are huge and expensive and people have to prepare now for a whole year. But the value is still there, the circumstances have just changed" (URBAN – 2: 89 – 89).

The breakup of the traditional communities that the cluster housing caused had a negative effect on social capital found within the tiospayes. The durability of habitus, the disposition for the expectation and obligation of trust within the tiospaye did not necessarily change because of the imposition of the structural reorientation that cluster housing presented. Rather, people's reliance on their tiospaye as their primary locus of identity, mutual-aid, and social support remained regardless of the fact that people are now living in an area away from their family and in a community comprised of families from different tiospayes.

However, despite the durability of the tiospaye networks, the fragmentation of the extended families that the cluster housing has had a negative effect, forcing a change in the habitus of its occupants. One woman, while explaining the negative impact television has had commented that *"The housing did that too with these big houses. People just don't live as close a*s they used to." (YLFinterviewsa00: 751 – 752).

The cluster housing has created communities of place by forcing people to leave their traditional communities in order to find housing and how once those individuals were in the cluster housing the closed and cohesive nature of the tiospaye made it difficult for people to extend trust to new people. This, combined with how the centralized structure of the government divided families along the lines of those who are in power and those who are not, makes the clusters housing the battle ground for the conflicts between habitus and structure.

Resistance to Cluster Housing and a Return to the Land

Despite the impositions, and negative impacts created by the cluster housing, there has always been a strong resistance of Lakotas at the grassroots calling for "land-use" and "land-recovery". These concepts refer to a general movement to restore traditional Lakota Governance and to recover their natural resources from a Tribal elite and non-tribal lessees. Related to this movement is the broader demand for a recognition of their Treaty Rights (e.g. Return of the Black Hills) and broader aboriginal claims shared by Tribes throughout North America. Grassroots groups on the Pine Ridge Reservation who make up this movement include the Knife Chief Buffalo Nation who has been working since the 1990s to restore bison to the Reservation, modeling their organization on traditional Lakota governance models.

The Wounded Knee Tiospaye Project, since 2003, has been working to mobilize the various tiospayes in the Wounded Knee District to be recognized as legitimate units of organization and governance. Families like the Red Clouds, the No Braid's, White Plumes, and the Brave Hearts represent families who have reclaimed their legally allotted lands in an attempt to restore their tiospaye communities. There is also a growing user-built-home movement growing on Pine Ridge – a critical step to freeing one's family from the cluster housing projects. Organizations like Earth Tipi, Winyan Maka, Lakota Solar Enterprises and Buffalo Boy Foundation are developing low-cost and energy efficient housing such as straw-bale, rammed earth, compressed earth block, earth bag, and log cabins.

One of the biggest obstacles to land reform on the Pine Ridge Reservation today is the lack of information available for tribal members about their lands, the opportunities that exist, and the procedures for doing things like consolidating fractionated lands, partitioning undivided lands, and creating wills. Village Earth has sought to lessen these obstacles by providing training workshops across the reservation, providing one-on-one consultations with families, advocating on the behalf of allottees, and developing the Strategic Land Planning Map Book, a valuable tool for allottees to locating their lands and identify the options and procedures for recovering, protecting, utilizing and managing those lands.

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The Mapuche People's Struggle in Chile: Land and Territory

FABIEN LE BONNIEC / DECEMBER 2013

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The struggle of the Mapuche, an indigenous people from the south of Chile and Argentina, is often illustrated by the literal translation of the term "Mapuche" as well as by their historical resistance first to the Spanish conquistadores then to the Chilean military invasion. Indeed, like many indigenous peoples' ethnonyms, the term Mapuche refers to their relationship to their territory: Mapu means "land" or "country" and Che means "people" or "persons". Today, the Mapuche live in Chile and Argentina. Referred to as Araucans in travel literature, they are viewed as one of the few populations which was able to fend off the Spanish. By alternating strategies of armed resistance and peace treaties, they preserved an independent territory for half a century after Chilean independence was claimed in 1810.

Nonetheless, neither the etymology of their name nor their military victories suffices to explain the vigour with which up until now the Mapuche have struggled for their land and their territory. The Mapuche population is made up of

Trawun (traditional gathering) of Lafkenche (Mapuche of the coast) in Puerto Saavedra, 2004 / Photo Credit: Fabien Le Bonniec

approximately half a million people[1] living on both sides of the Andes Mountains. The recent explosion of the "Mapuche conflict" on domestic stages and even on the international stage speaks to the utter vibrancy of this struggle. Over time this struggle has changed and adapted, turning towards new strategies, renewing its narratives and practices: the land claim has gradually shifted to a territorial claim. Far from being absorbed by other Latin American social struggles, the Mapuche have continued their age-old combat. While mindfully preserving their specificity, they have, at the same time, fit into these other struggles.

Once Upon a Time the Mapuche Fought...

Resistance against the Chilean, the Spanish or the Inca invasion… There is no need to try to identify the founding event in the Mapuches' struggle. These different moments were marked by violent confrontations, but also by peace treaties which were conducive to proliferating material and spiritual exchanges. These, in turn, shaped Mapuche and Creole societies by their mutual influence (Zavala 2000). Hence, we will arbitrarily settle on the date of December 4th 1866 to begin this Mapuche epic. On this date, the National Congress adopted a law establishing indigenous reservations. It was only enforced 18 years later, since it took that long for the Chilean army to "pacify", thanks to canons and bayonets, the territory historically occupied by the Mapuche. This "independent Araucan land", as it was called in 19th-century travel literature, was invaded and militarily

[1]   Census data is controversial: there are an estimated 600,000 to 1,200,000 people who self-identify as Mapuche in Chile and 200,000 to 300,000 in Argentina.

conquered before being included as an administrative part of Chilean territory. In order to reassert its control over the Mapuche population and territory, the Chilean State granted 3,000 community ownership deeds between 1884 and 1929, in application of the 1866 law.

This arbitrary and unfair reorganisation of Mapuche society led to what we now call "communities", at the time called *reducciones*. This term was most fitting since their establishment legally dispossessed the Mapuche of 90% of the territory they controlled prior to their military annexation. The large areas of land they were deprived of were given to domestic and European colonists, considered more competent to farm the land and make it fertile (Le Bonniec 2012). From this time on, the Chilean administration, applying its bureaucratic rationale, dealt with the claims on these dispossessed lands. Beginning at the end of the 19th century, commissions, then special courts, then indigenist institutions were in charge of settling land disputes. Despite the fact that these community deeds were untransferable, much usurpation took place during the beginning of the 19th century. Thousands of complaints, which can still be found today in archives, bear witness to these practices. They highlight the scope of the disputes as well as the courts' and indigenist institutions' inability to settle them. Even worse, they evidence the gradual breaking up of communities where families were randomly gathered by the Chilean administration under the authority of an illegitimate chief, on land which shrank alarmingly fast. These conditions were the seeds of division and rebellion.

Mapuche Politics for Land Recovery

Faced with this loss of sovereignty and of land, it only took the Mapuche twenty years to reorganise after their military defeat: they created political organisations which successfully elected several representatives to the Chilean parliament between the 1920s and the 1950s. These Mapuche politicians focused their demands on the recovery of the usurped land and on putting an end to the abuse against their communities as well as achieving equality with Chileans, namely regarding education. Depending on the context, they established political alliances with different political parties of all leanings. These strategies were moderately successful: they brought to power a Mapuche minister, Venancio Coñuepan, achieved the adoption of different laws in favour of indigenous peoples, often questioned by the Mapuche, and led to the creation of a Division of Indigenous Affairs in 1952. Headed by Mapuches, this public agency was in charge of returning land but also of keeping watch over the communities' organisation and the rational use of their land, namely by creating cooperatives, organisations or economic businesses. These institutions, alongside Mapuche political parties and organisations, encouraged a marked politicisation of the Mapuche throughout the XXth century. This political work, carried out at different

levels and at different times, consistently sought to settle the land conflicts which were the legacy of the creation of the communities, as well as to obtain rights and benefits for the Mapuche population which was discriminated against, marginalised and poor.

The 1960s land reform accentuated this politicisation: the Mapuche joined in peasants' mobilisations while reasserting the specific indigenous demands made on Chilean institutions. As elitist and racist Chilean society was veering towards socialism under Allende, at the beginning of the 1970s, the Mapuche were able to recover hundreds of thousands of hectares from major landowners and actively took part in the drafting of a new indigenous legislation. This legislation was a historical turning point as it was not exclusively based on the issue of land; instead, it showed a commitment to the country's development by taking into account "idiosyncrasy and habits". It was a time of genuine taking of power in different fields. Just as the African-Americans' struggle for their civil rights in the United States was a claim to Black Power, so Mapuche leaders in Chile aimed at positioning *Poder Mapuche*[2] (Caniuqueo 2006).

Increasingly, Mapuche mobilisations connected with Latin American peasants' combats, as well as the struggles of other peoples under colonial domination. The 1973 coup and the ensuing repression put a violent end to the recovery of land and the politicisation of the Mapuche movement; nevertheless, the movement began to have a growing presence in international events where representatives of different indigenous peoples met in the 1970s. Repression and forced exile ultimately encouraged Mapuche representatives to attend these international gatherings, allowing them to gain precious knowledge of the notions of territory and autonomy. Meanwhile, in the south of Chile, divided communities were reduced to the role of bystanders as their landscape was flattened and unified by capitalist forestry activities[3].

Territory or Life

The "transition to democracy" and the alternative commemoration of the 500th anniversary of the discovery of America are two contexts which had a profound impact on the contemporary autonomist movement, which started organising at the beginning of the 1990s. The former was an opportunity to define new grounds for the relationship between the Mapuche and the Chilean State, whereas the latter was a platform for voicing the claims of America's autochthonous peoples. As the Indigenous Law in preparation at the time denied any notion of

[2]   Mapuche power
[3]   Decree-law enacted in 1979 put an end to communities and divided them into transferable individual plots; a 1974 decree-law caused a brutal change in the Mapuches' natural environment by suddenly encouraging and rewarding the planting of pines at the expense of the native forest trees.

Mapuche territory at the time of the last *Parlamentos* and treaties (19th century) / Map by Pablo Marimán, in Marimán Pablo (éd.), 2002, *Parlamento y territorio mapuche*, Instituto de Estudios Indígenas, Escaparate, Concepción, p. 54.

territory that was not national territory, the demands of Mapuche organisations became clearly political and built on the experience of other indigenous peoples' struggles. It was no longer a matter of recovering plots of land claimed for decades, but rather of demanding control over land and the possibility of recreating traditional forms of organisation on it. The notion of territory became a means to go beyond the approach and limitations imposed by the Chilean state and to encompass all different political, historical, social and economic aspects. This, then, became a crucial principle in the Mapuche combat.

Mapuche territoriality went from being a simple discourse to carrying out diverse and concrete practices such as productive recovery, territorial control, territorial reconstruction (Hirt 2009) or specific public policies. Likewise, more and more young Mapuches from different generations of Mapuche families have had to migrate to cities but yearn to "return" (Ancan and Calfio 1999) to an idealised community in which they have usually only lived during holidays. The convergence of different socio-historical contexts has brought territoriality to life and made it part of numerous people's experiences, thus becoming a collective aim. The story that has just been told unfolded over a bare century of history, spanning four or five generations, who have passed along orally or through archives and written documents a memory made up of injustice, violence, humiliation, but also the hope of someday recovering their usurped land and becoming "people" again, i.e. becoming Mapuche again…

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The Palestinian Land is the Main Axis of Conflict Confronting the Occupation and Colonialism[1]

MUHSIN ABU RAMADAN / DECEMBER 2013

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When the United Nations welcomed membership of the State of Israel in 1948, it stipulated that Israel implement the Palestine refugees' right to return, which the UN General Assembly affirmed in its resolution 194.[2] That followed the UN GA resolution 181 on the partition of Palestine in 1947[3], which proposed 56% of Palestine as a Jewish state and 44% as an Arab state within an economic union of Palestine. The establishment of the State of Israel undoubtedly has led to the dispersal of the Palestinian people, transferring them to the West Bank and Gaza Strip, part of historic Palestine, in addition to refugees and diaspora, whether in Arab countries or elsewhere. Subsequently, in June 1967, Israel carried out an attack on the Arab countries that led to the occupation of the rest of the Palestinian territories (the West Bank, which was then administered by the Hashemite Kingdom of Jordan, and the Gaza Strip, which was under Egyptian administration), as well as parts of Egypt, Syria and Lebanon.

[1] This text is based on the presentation at the Land Forum in Tunis, March 2013, organized by HIC-HLRN.

[2] "Palestine – Progress Report of the United Nations Mediator", A/RES/194 (III), 11 December 1948.

[3] "Future government of Palestine" and "Plan of Partition with Economic Union", A/RES/181(II) (A+B), 29 November 1947.

In 1994, Israel permitted the establishment of the Palestinian National Authority (PNA) with an administrative autonomy, in order to reduce the burden of the occupation under the *de jure* application of the Fourth Geneva Convention. Today, much of that administrative responsibility rests on the PNA and international donors. Israel has taken advantage of negotiations toward "final status" issues with the PNA as a cover to impose facts on the ground, continuing and expanding settler colony activities, confiscating land, judaizing Jerusalem, establishing a system of enclaves and cantons containing Palestinian populations, and building an annexation wall across the West Bank.

In the first decade of the "Oslo Process", Israel had already doubled the area of land confiscated for the purposes of Jewish settlement in the West Bank, as well as doubled the number of Jewish settlers who inhabit these areas.[4] Today, there are at least 268 settler colonies, with over 670,000 settlers.[5] Meanwhile, Israel has controlled the Jordan Valley, which forms about 23% of the West Bank and is the breadbasket for the Palestinians to achieve food security. Israel also controlls the water aquifers, which form about 80% of water in the West Bank and 86% of Golan Heights water.[6] As a result, the Palestinian West Bank resident consumes 1/15 the share of water compared to the Israeli settler who lives in one of the illegal settlements built in the West Bank.[7]

Israel persists in undermining the idea of an independent Palestine state separating Gaza from the West Bank, and in the building of settler colonies. Thus, Israel has incarcerated Palestinian communities in ghettos in areas that do not exceed 58% of the land occupied in 1967, only 22% of historic Palestine. Israel's blockade of the Gaza Strip has continued even after implementing its redeployment plan in 2005. Israel, also maintains a brutal occupation force to control the so-called "buffer zone", a restricted-access area of about 500m² on the northern and eastern borders of the Gaza Strip. Israel prevents Palestinian fishermen from fishing, except for the specific surface area not exceeding three nautical

[4]   Craig S. Smith, "Israel Says Settlement Population Has Doubled Since '93," *The New York Times* (31st December 2003), at: www.nytimes.com/2003/12/31/international/middleeast/31MIDE.html
[5]   As of July 2012, the Israeli Interior Ministry counted 350,150 Jewish settlers living in the 121 officially recognized settlements in the West Bank, 300,000 Israelis live in 15 settlements in East Jerusalem and over 20,000 living in 32 settlements in the Golan Heights and controlling 80 of the plateau, as well as 80–86% of the water resources. Israel also maintains over 100 unofficial "outposts." Foundation for Middle East Peace, "Statistics and Tables," www.fmep.org/settlement_info ; B'Tselem, "Settlements are built on 1.7% of West Bank land and control 41.9%," 13 May 2002, at: www.electronicintifada.net/content/settlements-are-built-17-west-bank-land-and-control-419/55.
[6]   Marta Fortunato, "Israel's control of water in the Occupied Palestinian Territories," EWASH, 25th September 2012, at:
www.ewash.org/en/?view=79YOcy0nNs3Du69tjVnyyumIu1jfxPKNuunzXkRpKQN7Iw2MTDTG
[7]   Al Haq, "Water for One People Only: Discriminatory Access and 'Water Apartheid' in the oPt" (Ramallah: Al Haq, 2013), at: www.alhaq.org/publications/Water-For-One-People-Only.pdf ; Assemblée Nationale, "La géopolitique de l'eau", (13 December 2011), at: www.semide.net/media_server/files/semide/thematicdirs/news/2012/01/french-parliament-report-accuses-israel-water-apartheid-west-bank/c1112025.pdf ; World Bank, "Assessment of Restrictions on Palestinian Water Sector Development" (April 2009), at: www.siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf.

miles. This forms part of a policy of harassment of the Palestinian farmers and fishermen, which affects the people's food security.

The conflict on Palestinian land and resources reflects people confronting the expansionist colonial settlement that aims to marginalize and impoverish the Palestinian people. This occupation methodology aims to deepen Palestinians' dependency on the occupation economy and on external aid, and disables the local dynamics of development and depletes the economic viability and vitality needed for the establishment of an independent state on the borders of June in 1967, as upheld by annual UN resolutions.

Arab-Bedouin citizens have endured forced evictions, population transfers, demolition of homes and entire villages, confiscation of land / Photo Credit: HLRN

Legal Progress To Stop Land Grabbing in Benin

ERIC AHOUMENOU / DECEMBER 2013

NOVOX

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A Situation Conducive to Land Disputes

During the colonial era, land was assigned for a trial period first: after a probationary period, the beneficiary was granted ownership if he had demonstrated his ability to value the land, by building on it or farming it.

Since 1965, the law allows the purchase of land tenure deeds. Several players intervened to transform the previous residential permits into land tenure deeds. Thus, today three different mechanisms for land tenure coexist: the customary system, based on oral tradition; the registration system; the residential permit system.

This diversity partly explains the regrettable land tenure insecurity: on the one hand, there is a lack of reliable and definite ownership deeds and on the other hand there are almost no graphic and literal documents inventorying all land properties and identifying their beneficiaries.

The following land tenure problems exist today in Benin:
— People's lack of knowledge of their rights and of the way judiciary institutions operate: this prevents people, especially the poorest, from obtaining their ownership deeds which prove ownership over their plots and allow them to

perform the required administrative procedures.
— The Beninese state's inability to regulate land, to map out and keep a registry of urban centres which would, through the establishment of a permanent land agency, allow the implementation of a policy of granting ownership to the people to whom it may concern
— A share of private savings is rendered useless because of land hoarding
— Unbridled land speculation
— The questioning of buyers' rights by the vendors' heirs.

In addition to these problems, other issues contribute to creating a situation of genuine land tenure insecurity:
— Mistakes in rights bearers' identification. There is no certainty regarding the vendor's right to sell the land.
— Poor identification of the land concerned by the transfer. The land people think they have bought is not always the same as that specified in the deed.
— Even the administration considers that if a land tenure deed hasn't been granted for 99% of the territory, it is still entitled to practice a kind of property right, which can include seizing the land if need be.

The New Land Code[1] Seeks to Combat Land Grabbing

This is the context for the new law against mafia practices in rural and urban areas. This law aims at combating land swindling and limiting disputes which may be related to questioned property rights or to inheritance divisions as well as conflicts between land and livestock farmers over land.

The fact that only Beninese nationals can now purchase land in Benin, as long as the sale is for under 800 hectares of land and the aim is the direct use of the land, represents major legal progress.

The new land code establishes new bodies in charge of land matters: a Registry, in charge of all the administrative and technical certificates describing the land property; the National Land Agency (*Agence nationale du domaine et du foncier*, ANDF), the new land management agency; land management committees (*Commissions de gestion foncière*, CoGef) in each municipality.

It also creates sanctions and penalties if these provisions are not respected. This point caused heated debates during the National Assembly sessions on the adoption of this new land code.

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[1] *Code foncier et domanial.*

Some articles in this code are truly groundbreaking:

— **Art.14:** "*Any Beninese national, whether physical or legal person, can purchase a building or land in the Republic of Benin. Non nationals may purchase buildings in urban areas in the Republic of Benin, subject to reciprocity agreements or international treaties or agreements.* [...]". One of the aims was to prohibit/limit sales of land to non-Beninese nationals.

— **Art. 42 and 43:** "*The right of property bestows upon its bearer the right to use, enjoy and dispose freely of the concerned property, in the most absolute manner provided the use given to it is not forbidden by laws or regulations*" – "*No-one can be deprived of his/her property except for reasons of public interest and in exchange for fair and prior compensation.*"

— **Art.149 and following:** They provide for the existence of a land registry, where these land certificates will be recorded along with other documents.

— **Art.196 and following:** In rural areas "*a rural land tenure plan is established upon the request of the village chief and after prior discussion within the village council…*". Each individual must then register as part of this rural land tenure plan. This rural land tenure plan can be referred to in judiciary decisions.

— **Chapter VI** specifies the different models for managing natural resources in Benin "*All Beninese are equally destined to access natural resources in general and namely farm land, without discrimination based on gender or social origins, in the conditions laid out by the Constitution, the laws and regulations.*" The will to provide equal access to natural resources for men and women is apparent here.

— **Art. 351 and following:** Explicitly acknowledge the existence of customary land tenure law in Benin: "*The customary rights assumed to be practiced by individuals or groups on land not included in the rural land tenure plans and not registered are hereby confirmed.* [...] *Any bearer of at least one of the aforementioned rights, wishing to obtain an enforceable deed stating the existence and scope of his/her rights, shall file a request with the municipal office* [...]". It should also be noted that whoever has farmed land peacefully and without interruption for at least 10 years cannot be deprived of the concerned land without a valid reason. Lastly, rural land that has never been claimed as anyone's property belongs *de facto* to the State. The State can then assign it to local authorities.

Forced Evictions and Expropriations: a More Solid Legal Framework

Customary law has led to many land sales and, thus, much fragmentation. When acting under customary law, nothing accounts for the vendor's legal right to sell and whether the amount of the sale can be questioned or not.

The new land code prohibits these kinds of deals. It defines the right to inhabit, more akin to a property right than to a right to housing. Thus, article 51 provides that "*the right to inhabit is the right to use a house attributed to a specific person,*

International solidarity against land grabbing, September 2012 / Photo Credit: No-Vox

as needed by him/her and his/her family, and is established by a convention". Article 52 states that "*the right to inhabit cannot be yielded to a third party unless explicitly authorised by a specific clause.*"

A New Law as a Result of Social Movements

The inhabitants who have been supported by social movements such as the No-Vox network, obtained the adjournment of all evictions until the adoption of the new land and public land code by the Assembly. From now on, evictions and expropriations are codified:

— **Art. 523 and following:** "*any illegal or arbitrary eviction is banned in the Republic of Benin. The State must, in compliance with international conventions, take measures to prevent forced evictions and planned demolitions pursuant to court orders.* [...] *Development projects financed by international or multilateral organisations cannot imply or entail forced evictions.* [...] *In the event of illegal and/or arbitrary evictions, the amount of the compensation as well as the period and means of payment must be just and fair* [...]."

Nonetheless, in Benin, evictions are often the result of procedures started by heirs who question their parents' sale of land because speculation has increased the land's value-added. Thus these heirs obtain justice decisions which state that they have been dispossessed of their property and that the occupants of the land must clear the space.

— **Art. 216 and following:** "*the expropriation process is set off by a declaration of public utility by the competent authority*". Depending on the territorial

level involved in the expropriation, the competent authority is the President of the Republic, of the region or the municipality.

— **Art. 245:** "*when urgent expropriation requires the population to move immediately, the expropriating authority must provide them with housing and/ or a first payment of the eviction compensation*".

In Benin, there have been changes in habits and customs which have had an impact on the social and economic situation: the frenzied pursuit of unlawful wealth and the emergence of a new class of landowners have shattered the customary conception of land as sacred and non-saleable.

Despite the legal progress which has been made, there is still not enough land available to farm food-producing crops, necessary both for food sovereignty and for avoiding the famine and diseases caused by malnutrition.

Land is still farmed for intensive production rather than for families' livelihood; too much money is spent on food imports; there are increasing conflicts over land tenure. These are all meaningful reasons which must impel social movements to continue fighting for more social justice, for a democratic, fraternal and ecological society able to safeguard its inhabitants' rights.

Land and Resources in Madagascar: the Population's Resistance against New Cupidity

JEAN-CLAUDE RABEHERIFARA / AUGUST 2013

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In November 2008, Daewoo Logistics announced it had signed, in July, a memorandum of understanding with the Madagascan government which allowed the farming of 1.3 million hectares of arable land, through a 99-year long-term lease. Thus, South Korea was to produce the corn and palm oil to meet its needs offshore. The Madagascan public opinion voiced its discontent and the project was adjourned. However, after that, Daewoo and the Madagascan authorities made numerous and contradictory statements[1] and since then the South Korean multinational corporation has been carrying out its business via a local nominee. The Daewoo case has come to represent the phenomenon of large farm land acquisitions in dominated countries.

According to the Group in defence of Madagascan land, *Collectif pour la défense des terres malgaches* – Tany, which was created after Daewoo's plans were made public, "*several large projects already underway illustrate the reality of contracts which combine the drastic use of the country's wealth by foreign investors with insignificant benefits for the country and its population*" [2]. These impenetrable transactions dispossess communities and are at the service of what seems to be an agrarian neo-colonialism. Furthermore, in all likelihood they will also be

[1] Cf. "L'approbation n'est pas encore effective", *Madagascar Tribune*, January 14th, 2009.
[2] www.terresmalgaches.info/spip.php?article2

an opportunity to line the pockets of a limited circle of individuals in the State's highest spheres.

From Colonial Land and Resource Appropriations to Neo-colonial Monopolizing

The dominance of financial capital over Madagascar started with the unjust treaty of December 17th, 1885, which ended the first war between France and Madagascar[3]. Annexation and "pacification" were the ensuing phases of a process which laid the grounds for this capital's development at the turn of the XXth century, as the defeated population looked on with widespread hostility.

The need to "streamline" colonial exploitation surfaced more clearly around 1910-1920, as more and more land was monopolized. The registration of land became mandatory in 1911 and was a major attack against lineage-based ownership. Registration made ownership individual and legitimised the delimitation of "plots of colonisation". Food crops were thus marginalised and limited to "indigenous reservations". This predatory plan was completed by making all "uncultivated" or "undeveloped" land, the land for tavy (slash and burn cultivation) or for grazing herds, State property.

For Madagascan farmers, this colonial monopolization of land was a dispossession: the land registration process ensured control over farmers' *tanindrazana*, their land property, which "*can only be owned collectively* – jus uti *prevails over* jus ab utendi"[4]. Legitimate customary law was "phenomenological"[5], since ownership was above all viewed as a "fact". In pre-colonial Madagascan societies, land did not belong to anyone prior to being given to a specific group for usufruct by the "economic director", who was the sovereign, a warrior and religious leader[6].

The powerful image attached to Madagascans' visceral attachment to the *tanindrazana*, the ancestors' land as well as the place of origin and/or of social life, develops as early as a person's birth since his or her *tavony* – placenta – is buried on the land which will also welcome the person once dead. The person will then become a *razana*, an ancestor who is an "invisible presence in the world of the living". This attachment is the cornerstone of the opposition to selling or giving land away to "foreigners"… foreign "oppressors", "predators", who can actually be non Madagascan or Madagascan nationals. As a matter of fact, the first famous

[3]   Boiteau P. (1958-1962): *Contribution à l'histoire de la nation malgache*, Paris, Editions sociales / Antananarivo, MCAR, 445 p.
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[5]   Rarijaona R. (1967): *Concept de propriété en droit foncier de Madagascar*, Paris, Cujas, p.8.
[6]   Boiteau P. (1974): "Les Droits sur la terre dans la société malgache précoloniale. Contribution à l'étude du 'mode de production asiatique'", in Centre d'études et de recherches marxistes, 1974, *Sur le mode de production asiatique*, Paris, Editions sociales, pp.135-168.

case of a controversial land purchase in the last few years was the 2005 brutal police repression of the inhabitants of Ankorondrano-Analavory (150 km from the capital). They were protesting against their eviction; a recreation centre was to be built by a Madagascan businessman. The outcome was that the inhabitants were displaced, the village was destroyed, people were convicted of the death penalty (for "murdering" a policeman), others were given life sentences, etc.[7].

The impact of neo-colonial rates has added to the trauma caused by colonial violence, preparing Madagascar for the attack of transnational financial capital. The forfeited independence of 1960 preserved most of the domination system already in place, nonetheless, since the end of the 1960s Madagascar has been reorganised by the neo-colonial process. First, a declamatory "revolutionary" regime used popular claims (national independence, madagascanisation, decentralisation, land reform, etc.) and misled them by establishing bureaucratic socialism, which paved the way for liberalism and structural adjustment plans, and ultimately State bankruptcy.[8] The last 25 years of increasingly intensive liberalism and State bankruptcy have led to the chaos which is conducive to "juicy deals" at the expense of the population.

Overview

In the data published on March 22nd, 2012, the NGO Grain identified four new foreign investors who are monopolizing land[9]. In June 2013, the independent database Land Matrix identified twelve foreign companies[10]. The civil society platform SIF (*Solidarité des intervenants du foncier* – Solidarity of Land Players) has just set forth "*some cases which illustrate land monopolisation in Madagascar*"[11]. Other corporations have been mentioned in other publications[12].

Depending on the case, these are agribusiness projects for energy crops or for food exports, or investments in extractive industries, in protected areas for the preservation of nature, or for developing tourist infrastructures, etc. Currently,

[7]   www.afaspa.com/article.php3?id_article=213
[8]   Rabeherifara J.-C. (2010): "Madagascar. Le socialisme ratsirakien entre illusions révolutionnaristes et réorganisation néocoloniale", in Arzalier F. (dir.) *Expériences socialistes en Afrique*. 1960-1990, Paris, Le Temps des Cerises, pp.180-207.
[9]   www.grain.org/fr/article/entries/4482-grain-publie-un-tableau-de-donnees-sur-plus-de-400-cas-d-accaparement-des-terres-dans-le-monde
[10]   www.landmatrix.org/get-the-detail/by-target-country/madagascar/
[11]   www.farmlandgrab.org/post/view/22388. This inventory mentions "*descendants of colonists claiming land taken by their ancestors*" then the Italian company Tozzy Green (jatropha), the Madagascan company Bionnexx (artémisia), the British-Australian-Canadian-Madagascan company QMM, of which 80% belongs to Rio Tinto, the Chinese company Mainland Mining and the Australian company Toliara Sands (ilmenite).
[12]   The Chinese company Wisco or Wuhan Iron and Steel Corporation (gold), the Italian company Delta Petroli (jatropha) the Canadian-South Korean-Japanese joint venture Sherritt International (cobalt and nickel), the Norwegian company Mada Woodland (reforestation).

Madagascar Land / Photo Crédit: Creative Commons

the "End of Crisis Roadmap" dated January 20th, 2011, (point 6)[13], prevents the national unity transition government from committing to new long-term projects: multinationals' current projects in Madagascar usually operate within long-term leases of different durations, covered by exploration agreements which some-times insidiously amount to quasi operation.

The neighbouring communities are rapidly swindled and sometimes fall apart in the face of a highly unequal balance of power: few or no consultations, unbea-rable pressure, promises made to divide the community, etc. For instance, the traditional land occupants in the East, where the 220 kilometres of pipelines were built for the Ambatovy nickel and cobalt exploitation project by Sherritt International[14], were evicted. The area's water and beekeeping resources were depleted. The ilmenite project carried out by QMM Rio Tinto[15] in Taolagnaro (the South-East end of the island) is another example. The communities that lived in the extraction area or its immediate vicinity suffered from the company's establishment and development[16] as they lost their land and were displaced. But some communities have been presenting a determined resistance to QMM and the local authorities for the last two years, in defence of their territory and their land, as they demand fairer compensation: the consequence for them is legal trouble, repression and sometimes even imprisonment[17].

[13] www.madagascar-tribune.com/Feuille-de-Route-Pour-la-Sortie-de,15421.html
[14] Les Amis de la Terre, *Madagascar, nouvel eldorado des compagnies minières et pétrolières*, France, November 2012.
[15] The only major contract signed before the current political crisis.
[16] Voices of Change, NGO Andrews Lees Trust and Panos, London.
[17] *Je veux ma part de terre – Madagascar*, documentary film by Lambolez Fred and Jean Marie Pernelle.

The evictions suffered by the populations living on desired or taken lands are particularly dangerous for small family food farming and therefore for the whole region's, or even the country's, food safety. The *kijana*, grass pastureland and/or herd pathways in extensive livestock farming, are being placed beyond reach. The surrounding ecosystems and groundwater tables are threatened by the extraction of some minerals[18]. The cultural heritage (gravestones, traditional places of worship) of the population living in these areas is sometimes flouted or destroyed.

Official Documents and Legitimate (Customary) Law

Multinational corporations' operations on the island are performed thanks to liberal mechanisms created for them by the different governments over the last ten years, which were pressed to do so by international financial organisations. The State only recognizes private property if it is backed by official documents: the ones created by colonisation or the ones managed by communal land offices pursuant to the 2005 land reform (which is now practically on hold because international subsidies were withdrawn due to the ongoing political crisis). Only roughly 10% of plots have deeds: therefore, families experience insecurity because their land could potentially be assigned to national or foreign investors. The 2005 reform, advocated by civil society networks to gradually ensure the farmers' right to farm their land, has turned the presumption of state ownership (which attributed land with no deed to the public domain), into a presump-tion of ownership in favour of the land's occupants. Even though this reform acknowledged rights of occupation and use as a form of ownership, encouraged decentralisation in the management of non-titled land by municipalities ("to be closer to users"), recognized the need to draw up a local land tenure plan and granted decision-making power ("to make what is legitimate legal") to a "local acknowledgment committee" made up of village elders, the mayor and neighbours of non-titled plots, the demand for land titles by very poor farmers – who are wary of any confusing land policy – has not been massive. Moreover, even though the Land Code still forbids selling land to foreigners, law 2003-028 which sets out the organisation and control of immigration, and law 2007-036 on investments, have authorised and simplified land sales to companies owned by a majority of foreign capital but with a Madagascan partner.

Overall, these texts do not favour small farmers who make up the bulk of the population. The desire to make land purchasing easier for foreign investors is even stated in the controversial Constitution of November 2010, in its 1st article: "*The modalities and terms of land sales or long-term land leases in favour of foreigners will be determined by the law*".

[18] Such as the endangered water resources of Mikea populations: cf. www.lexpressmada. com/5595/toliara-sands-madagascar/45509-les-ressources-en-eau-des-mikea-menacees.html

The fees (royalties, tax income, etc.) paid to the State, to regions and municipalities are unknown because of the opacity of these issues, which fuels suspicions of corruption. "*Some contracts mention compensations such as the construction of roads, schools, wells, sometimes health care centres, which investors provide in lieu of the State. In other cases, nothing is put into writing and compensations are agreed upon orally with local authorities! The compensations for the State and the population must be examined closely and concretely to verify their impact. Indeed, it is the main argument set forth by authorities and investors' partisans, whose concern is neither the country's sovereignty nor the food independence of future Madagascan generations.*"[19]

Managing Land as a Common Commodity

The current multiplication of land conflicts in Madagascar is inherent to the fact that increasingly, farmers' communities are refusing to surrender their natural territory to transnational capitalist interests which deny their very existence. A serious exit from the Madagascan chaos cannot leave these communities on the sidelines. The SIF Platform seems to have adequately integrated this element, since it proposes to establish a "*communication and guidance mechanism for major land investors*" to "*enhance the transparency of large land acquisitions:* […] *encourage the population to contribute to identifying and monitoring major land investments; favour communication between investors, central and local administration and the population; contribute to establishing a 'Charter on Major Land Investments'* […] *promote sustainable land investments while securing the rights of local populations*" [20].

The *fokonolona* (local traditional grassroots communities) know how to implement the Madagascan secular tradition of self-organisation through *dina* (social contracts), which can help citizens fight back, support each other and build together. In several regions, *dinas* are already used to prevent communities from splitting up over the few ridiculous benefits promised by multinational corporations. In this perspective, rural and peri-urban land planning can stem from a common management of communal heritage, which would set aside inalienable communal spaces yet to be defined[21] – for inhabitants' food safety, for further development, for resource preservation and management for future generations. Legitimizing the relationship between farmers' communities and their natural territory, which is a peaceful alternative to the current disaster, will only make sense if it is carried out at the national level and established by a law of the Republic.

[19] *Midi-Madagasikara*, 25 juillet 2013: www.midi-madagasikara.mg/economie/grandes-exploitations-faible-contreparties-des-occupations-foncieres-selon-la-sif.
[20] www.sif-mada.mg/Land-Matrix-Madagascar
[21] www.terresmalgaches.info/spip.php?article61 and www.madagascar-tribune.com/Collectif-pour-la-Defense-des,18263.html

The Struggle Against Land Grabbing in Mali

CHANTAL JACOVETTI & MASSA KONÉ / DECEMBER 2013

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From the Social Function of Land to Land as a Commodity

Beyond its productive, environmental and economic functions, land has a crucial social function. Societies were built on land and natural resources. Human beings have given land two main functions: a nourishing function (hunting, picking, fishing, caring) and a spiritual function, by which some spaces are symbolic, others are key to initiation and others are taboo.

Gradually, land was domesticated and farming and livestock developed, leading to settlement and the idea of land and natural resource management. Increa-

Farmers' sit-in against land grabbing at the Markala courthouse, Mali. /
Photo Credit: Union/No Vox

sing population growth and urbanisation have changed our relationship to land, even more so as over the last few centuries our social organisation has been based on capitalism and liberalism. This vision has changed the paradigm of the social function of land: land has been cut off from its social functions to become a "soulless" commodity for sale, speculation and profit. The notion of ownership lies at the very heart of this approach. Mother Earth has been completely cut off from her social functions, as well as her environmental functions. From a common good, land has become a private commodity. How was this shift performed on the African continent, in western Africa and more specifically in Mali?

The Colonial Legacy of Land Grabbing

Land is a source of life for humanity. It has a marked social function for collective management, as village chiefs perform the management of land as property: land is collective, granted to families or lineages even though this distribution was often discriminatory (against women, youth, migrants…). Land was managed within a space where farm land, fallow land and grazing land were mixed and rights of use and customary rights were passed on from generation to generation.

Nowadays, in many western African countries, land ownership has been taken over by the state. This has led to much abuse including land grabbing. The social function of land as well as its environmental, economic and spiritual function has been overlooked in the process. This shift took place at the same time as colonisation. There are different figures but approximately 80 to 200 million hectares are concerned. According to the most conservative estimate, this land could be redistributed by plots of 3 ha[1] of arable/irrigated land to 26.7 million families[2], considering there are 20 to 30 members in a family, including 2 or 3 active workers who themselves make up a household. The 14 million dollars exclusively destined to bio-fuel and the 11 million dollars of grants for the year 2006 could benefit over 4.5 million families and help them develop a lasting pea-

[1]   In Africa and Asia, the average is 1.6 ha (Via Campesina meeting books, São Paulo, September 21st to 30th 2011)
[2]   A family is made up of 20 to 30 members including 2-3 active workers who themselves constitute a household.

sant farming activity, based on the promotion of agro-ecology. It must be noted that the rural world represents 80% of the population, 75% of employment and over 40% of the overall GDP in western African countries.

In Mali, the state has been giving land away: it is displayed on geographical maps specially drawn up for investors, based on satellite data. How can a satellite map be grounds for stating that arable land is available? These arable lands have been occupied by peasants' families for generations. They have preserved the land through collective management, often with great wisdom and environment- and territorial-friendly farming practices.

Millions of hectares of living spaces cannot be seen from the sky. These include corridors and spaces for transhumance, picking activities (food, or plants and trees with medicinal virtues), woods, fallow land, hunting, fishing, sacred space… There is no way of representing the natural balance of ecosystems on satellite maps.

More important still, the lifestyles, culture and knowledge of local populations are neglected: this land is managed according to ancestral rights of use which are not formally registered with land authorities. The assumption, like during the French colonisation, is that this land is "vacant and masterless"!

An Increase of Land Grabbing in Mali

Land grabbing, which has been encouraged by the state's assumption regarding ownership, has increased recently. The state makes inhabitants leave the area without respecting any rules whatsoever, even less so international conventions or human rights. Whether in urban, peri-urban or rural areas, inhabitants are dispossessed of their land and their homes in the name of urbanisation, neighbourhood development or agro-industrial projects – most often by force.

Indeed, the three tools used by the state and investors at the expense of inhabitants are corruption, the elite's connections to administration and justice and the reliance on law enforcement. These last ten years, land deeds have appeared magically, sometimes up to three times for the same plot of land. The impunity of these actions and the state's lack of organisation regarding the enforcement of the rule of law are leading to disastrous situations on the ground. Public policy which should govern and protect the people of Mali has been misappropriated by private interests, who only care about themselves.

Urban, Peri-Urban, Rural: Land Grabbing by Speculation

Farmers' sit-in against land grabbing at the Markala courthouse, Mali. /
Photo Credit: Union/No Vox

Land grabbing does not only concern rural land: in urban areas, whole neighbourhoods are seized to satisfy the appetites of real estate developers with the frequent excuse of "embellishing" cities thanks to the addition of an airport or supermarkets, which entail major waves of forced evictions. These neighbourhood enhancement projects involve evictions, the demolition of old housing and much profit for the developers. They are aided by local authorities in their endeavour to house new categories of inhabitants, thus violently evicting most of the population, usually without compensation or rehousing.

In the context of urban sprawl, peri-urban land is also quite coveted: all the farmland in these areas, including villages, is at the centre of negotiations – or rather land scheming – at the inhabitants' expense. Land grabbing has terrible effects. Its negative impact demonstrates how crucial the social function of land is for village life, as well as for urban and peri-urban territories.

This is the context for the coordination organised by the Union/Uacdddd with inhabitants in neighbourhoods of Bamako threatened by massive evictions. In addition to this coordination, a few years ago, the Union/Uacdddd decided to go out into the field and meet people house by house to create solidarity and build collective struggles with the peasants in villages menaced by land grabbing and destruction. Today, nearly 300 villages are members of the Union/No-Vox Mali.

This led the movements, organisations and unions to create the CMAT[3] to share their analysis and take action together. A collectively performed study in different villages concerned by land grabbing and supported by the CMAT in their struggle leads us to conclude that:
—   Inhabitants now realize that they are not viewed as actual players in the

[3]   CMAT: The Malian Group Against Land Grabbing – *Convergence malienne contre les accaparements de terres* – is composed by 5 organisations: AOPP (*Associations des Organisations de Professionnelles paysannes*, Professional Peasant Organisations Group); CAD-Mali (*Coalition des Alternatives Africaines*, Coalition of African Alternatives); CNOP-Mali (*Coordination Nationale des Organisations Paysannes du Mali*, National Coordination of Malian Peasant organisations); LJDH (*Ligue des Jeunes Juristes pour le Développement Humain*, League of Young Legal Experts for Human Development); and UACDDDD (*Union des Associations et Coordination d'Associations pour le Développement et la Défense des Droits des Démunis*, Union of Organisations and Coordination for Development and the Defence of the Rights of the Underprivileged).

situation – land grabbing is carried out without consultation or dialogue. Thus, thousands of men and women are neglected when weighed against the appetites of investors, who act with the complicity of governments and local authorities.
—   In addition to losing their land, access to natural resources and water, the inhabitants are victims of repression – pregnant women have lost their babies – some are gassed or imprisoned for months for no reason.
—   "*We don't have anything left, I've never had to buy millet and now I have to and my cup isn't full*" [4]. Jewellery, loincloths – everything has been sold to resist.
—   Areas considered as Mali's grain attic, with peasants who fed their own families as well as the Malian population, have been degraded to areas that aren't fertile enough to guarantee their food sovereignty. They are forced to replace basic grains such as millet and sorghum by rice.
—   Able workers leave the village to work in other fields, sometimes over 20 kilometres away.
—   Young women head off to urban centres to be exploited as maids.
—   Young and older men risk their lives doing gold washing, crossing the Mediterranean or even enlisting in armed groups.
—   Investors' works disturb usual transit channels, for instance, in Sanamadougou the investor Modibo Keita built a canal without building a bridge, thus forcing villagers to travel 10 km to reach a village or other places such as the health centre 40 km away. A young father drowned and the law enforcement agents in the investor's building cause the villagers numerous nuisances every day.
—   The chemicals sprayed on the seized land make women and children sick and they cannot afford health care.
—   Bulldozers destroy harvests, trees, houses, cemeteries, religious spaces, etc.

Land grabbing totally besmirches the social function of land. Men and women are questioning their social role and their say as citizens of their country. Social organisation and territorial identity are radically called into question. Customary rights are denied, including the role of village chiefs. As a direct consequence of this situation, each village or territory member's role is disturbed and many families are breaking up.

Land is a major issue in Mali. The struggle carried out by movements, organisations and unions gathered within the CMAT to ensure respect and enforcement of inhabitants' rights in urban and rural areas has many different expressions: meetings, protest rallies, legal aid and counselling. It also relies on international solidarity.

[4]   All accounts are from land grabbing victims and were collected during our numerous trips and studies in villages.

PROPOSED ACTION FOR THE SOCIAL FUNCTION OF LAND AND HOUSING

Introduction

Removing the Speculative Nerve from the Right to Property

MARC UHRY / SEPTEMBER 2013

Marc Uhry is the Director for the Rhône-Alpes Region of the Abbé Pierre Foundation and the coordinator of the Housing Rights Watch network.

A Social and Economic Must

Economists with different viewpoints agree on at least one point: the excessive return of private income compared to productive investment is choking our societies' economies.
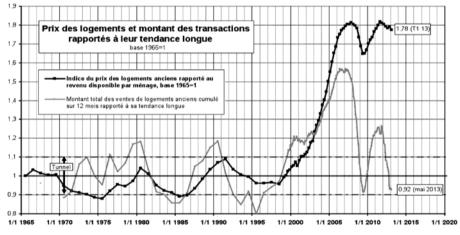
This is especially true when it comes to housing. The current crisis has been characterised by an unprecedented hike in land prices over the last fifteen years, which has resulted in three problematic impacts:

1. Investors' resources have been eaten up by this price increase rather than by building, which has exacerbated the shortage.

2. The user costs of housing have skyrocketed well beyond households' means.

3. There are numerous and overlapping public policies to keep private capital on the real estate market. Public authorities are thus contributing to inflating prices, which in turn require new public initiatives to ensure return on investment… This has been feeding into a speculative bubble, which eventually bursts with a "crash landing": a drop in prices brutal enough to severely damage the production apparatus and its numerous jobs, as has been demonstrated in several European countries.

The issue at hand is squaring the following circle: how can housing be made less expensive for users but equally attractive for investors?

The traditional solutions to this dilemma are ideologically polarised, which does not contribute to making headway: on the one hand, liberals believe that if private initiative is unbridled thanks to return on investment, production will increase and eventually meet social needs, which will in turn make prices decrease. Alas, this solution has prevailed for the last thirty-five years and the market has failed to reach self-regulation. The financialisation of the real estate market has set off a growing divide between the housing ownership market and the housing users market. Prices are constantly running out of control and periodically construction becomes sluggish, even though the existing stock is sufficient to solve the shortage problem. Over the last decade, an unprecedented gap has grown between housing prices and households' income, in which market elasticity no longer relies on price trends but rather on sales volumes, as illustrated in this chart: as soon as prices seem to stabilise, even at an extremely high level, sales drop and production slows down.

Source: Jacques Friggit, CGEDD (General Council for the Environment and Sustainable Development), 2013

On the other hand, advocates of market regulation overlook its discouraging impact on investment, in a context where private players – including households – account for over 80% of new production. Markets have not been regulated for a long time now and demonstrating this hypothesis is problematic, but it is a deeply rooted belief among private housing players.

This observation has led to new initiatives around the world which seek to combine individual freedom and general interest. The unsolvable dilemma is no longer being debated by advocates and opponents of private property – rather, it is being played out through more fruitful experiments which strike

new balances between users and ground rent. These initiatives are carried out within the very framework of the right to property and are impelled by the evolution of international law.

International Law: Ownership versus Ground Rent?

In June 2013, the European Court of Human Rights (ECHR) dismissed a request made by Dutch landlords who were attacking rent regulations in their country[1], on the grounds of Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

The Dutch landlords had not caught on to the idea that the right to property is sacred, but only within the boundaries defined by public authority. French law also sets out similar boundaries, with the following definition: "*Property is the right to enjoy and have things in the most absolute manner, provided that one does not make of it a use prohibited by the laws or regulations*" (article 554 of the Civil Code). In French law, as in international law, the right to property is limited by general interest. As a matter of fact, urban planning regulations prohibit building anything on land one owns; a landlord cannot let substandard housing; the tax on vacant housing penalises a specific use, etc. Property is an "artichoke-like right" [2], since its layers can be peeled off without altering its nature, as long as its core is not damaged.

Beyond this agreement on the law's faculty to limit the freedoms granted by the right to property, there is a substantive difference. In our Roman law country, property is linked to the deed, which is an exclusive legal bond between a person and an object. In English, the other official language of the EHRC, the right to property takes on a quite different meaning. Property based on a deed is called ownership. But the Treaty uses the term property, which refers to John Locke's philosophy and defines property as what is proper to the individual. The French version of the treaty "*toute personne a droit au respect de ses biens…*" is not an exact equivalent of the English version, in which the idea of possessions goes beyond the idea of "goods" (which is a more accurate translation in English of *biens*).

[1]   Nobel against the Netherlands, 27126/11.
[2]   This expression was used by François Luchaire, a member of the Constitutional Council, in a memo to the Council on the right to property.

This concerns the very nature of what is protected by the right of property: the EHRC defines possession as having a "substantial interest"[3]. Administrative authorisations, ranging from the right to remove gravel[4] to fishing permits[5] and drivers' licenses, are included in this definition of possessions[6]. There is an important element, however, regarding housing: the Court acknowledges the rights entailed by being a tenant[7] as a possession. The right of property consists in having a substantial interest in something. A legitimate hope can be viewed as a substantial interest and thus becomes a possession protected by the right to property. Not renewing a lease has been considered as an infringement on the right to property[8], just as a non-fulfilled expectation of a service accommodation, guaranteed by internal law[9].

This definition of property, focused on use, opens legitimate fields for public policy. In Mellacher v. Austria (1989), the Court determined it would *"hardly be consistent with these aims nor would it be practicable to make the reductions of rent dependent on the specific situation of each tenant.* […] *It is undoubtedly true that the rent reductions are striking in their amount* [22 to 80%]. *But it does not follow that these reductions constitute a disproportionate burden. The fact that the original rents were agreed upon and corresponded to the then prevailing market conditions does not mean that the legislature could not reasonably decide as a matter of policy that they were unacceptable from the point of view of social justice"*. Beyond rent regulation, this also applies to the extension of valid leases or to the adjournment of eviction orders (Immobiliare Saffi v. Italy, 1999). In its Marckx v. Belgium decision (1979), the Court specifies the relationship between *possessions* and *property*: "[…] *By recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 (P1-1) is in substance guaranteeing the right of property. This is the clear impression left by the words 'possessions' and 'use of property' (in French: 'biens', 'propriété', 'usage des biens'); the 'travaux préparatoires', for their part, confirm this unequivocally: the drafters continually spoke of 'right of property' or 'right to property' to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1 (P1-1)."*. Consequently, the Court has considered that the notion of property can be used to defend inhabitants in illegal slums (Oneryildiz v. Turkey, 2002): *"The Court reiterates that the concept of 'possessions' in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law"*.

[3]   The Court considered that the idea of respect for possessions means right to property. EHRC, 1979, Marckx v Belgium.
[4]   EHRC, 1991, Fredin v Sweden.
[5]   EHCR, 1989, Baner v Sweden.
[6]   EHCR, 1992, Pine Valley Developments v Ireland.
[7]   EHCR, 1990, Mellacher v Austria.
[8]   EHCR, 2002, Stretch v United Kingdom.
[9]   EHCR, Shevchenko v Russia (2008), Burdov v Russia (2004), Novikov v Russia (2008) Nagovitsine v Russia (2008), Ponomarenko v Russia (2007), Sypchenko v Russia (2007), etc.

The European Human Rights Court has pressed for amending the French definition of the right of property, in favour of user property. International law and its definition of the right of property are absolutely not an obstacle to voiding it of its speculative nature, on the contrary.

"Let a Hundred Flowers Bloom and a Hundred Schools of Thought Contend!"

The remaining issue is the cultural and political acceptation of a redefined right to property, after a twenty-year consensus which ensued from the fall of the Soviet Union. *"It doesn't matter whether it's a white cat or a black, I think: a cat that catches mice is a good cat"*, stated Deng Xiaoping on the dawn of this era of consensus.

Quickly, the imbalances caused by this evolution have made it necessary to call into question, once again, the relationship between individual freedom and collective wellbeing. The most significant element in this process was the 2009 Nobel Prize in Economic Sciences, awarded to Elinor Ostrom and Oliver Williamson for their research on the "commons". The Nobel Academy established the idea of reaching a new balance between individual and collective interest, within the right to property, as a new paradigm in economic theory. This confirms a myriad of initiatives, all over the world: inhabitants' cooperatives in Germany, community work and living units in Catalonia, popular investment funds, slum renovation cooperatives, popular urban planning initiatives in Sri Lanka…

These initiatives also exist in France and in the housing sector, and they are reshaping the right to property. Several initiatives have received support from local authorities and aim at developing non-speculative mutual benefit initiatives: in the Ile-de-France region (the Paris area) and in Lyon, players have been considering adopting the American Community Land Trusts (which have already been imported in the UK and in Belgium). These Land Trusts distinguish between land ownership and property of the walls, allowing for a cheaper access to land use in exchange for giving up ground income. In Alsace, fair self-promoting neighbourhoods are being encouraged. Social landlords sell homes to their inhabitants, with non-speculative clauses. Inhabitants' cooperatives are thriving, with diverse legal forms and statutes. These collaborative projects are redefining the functions of habitat and creating a neighbourhood-based form of democracy. Ground rent is no longer an obvious component of the right to property. This novel situation is an opportunity to live differently, to gain ownership over other elements of habitat: its design, occupation statutes, the definition of user costs, its relationships with the surrounding environment. This change is an opportunity to replace competition-based relationships with cooperation-based relationships. Individuals, organisations and local authorities are now

experimenting with it. Regulating land uses, types of construction, financial engineering, collective and individual legal statute… France, Europe and the world are saving the seeds of sustainable development within the chipped vault of an all-consuming individual property.

The ground rent society is overheating and self-management experiments, as well as systemic transformations based on firmly grounded theoretical constructions, are currently coming together to overthrow an obsolete form of organisation.

Cooperative, Communal and Collective Forms of Land Tenure and their Contribution to the Social Function of Land and Housing[1]

YVES CABANNES, THE BARTLETT DEVELOPMENT PLANNING UNIT, UNIVERSITY COLLEGE OF LONDON / DECEMBER 2013

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Cooperative, Communal and Collective Forms of Land Tenure: Why Are They Relevant?

Cooperative, communal and collective forms of land tenure – CCCFTs – cover a broad range of types of land tenure and use. Most people are unaware of them, as there is little information about them. However, their existence is crucial if the right to decent housing, as defined by the United Nations, is to exist. These forms are the cornerstones of the utopian right to the city, defined by Henri Lefebvre as the superior right. Furthermore,

[1] This article is drawn largely from a desk review and research paper that I prepared in 2013, with the research assistance of Christopher Yap, on collective and communal forms of tenure (CCFT). A contribution to the Special Rapporteur on Adequate Housing's study on security of tenure, this study's aim was to assist the Rapporteur in the preparation of her report for the 68th Session of the General Assembly (Document A/68/289) and the Human Rights Council in March 2014. I intend to expand this research, which will result in a publication in 2014.

we are positing here that these non-individual forms of land tenure, of housing, and more generally of the city guarantee its social function as a right. Indeed, most legal and institutional studies, practices and mechanisms focus on the social function of private property in Brazil or Colombia[2] and stress the regulatory function of land tenure, mostly based on individual and private ownership. This is definitely positive and deserves to be pursued and developed. Nonetheless, we believe that an alternative route for positioning social and spatial justice and achieving a social function of land tenure is to document, to highlight and to strengthen the many non-individual forms of land tenure and use, which are sometimes based on customary law, or are the result of 19th century philosophies and social struggles, or even of recent or ongoing experiments.

Communal forms of ownership are not homogenous; their diversity is linked to the multiple uses, legal practices and cultures, as well as the social struggles which have impelled their creation or their continued existence. The series of different solutions gathered under the global term CCFT – "Collective, Communal and Co-operative forms of Tenure" is not a set typology but rather a structured inventory of non individual forms of land tenure and use which are currently enacted to access housing within and on the outskirts of cities. Overall, these solutions have proved their effectiveness and are a perfect illustration of what Erik Olin Wright calls "real utopias"[3], meaning that they "*capture the spirit of utopia but remain attentive to what it takes to bring those aspirations to life*".

An Attempt to Organise Various Non Individual Forms of Land Tenure

Cooperative Regimes

Cooperative Housing and Cooperative forms of tenure are by far the most commonly known systems, existing under a wide range of modalities. We have selected two of the most influential ones, still in expansion, as illustrations:
The seminal Scandinavian Cooperative model, also known as the Mother-Daughter Cooperative model, was developed by HSB Riksföbund in Sweden. In this model, the "mother" (also known as "parent" or "secondary") cooperative associations are responsible for building housing developments, which are then sold to "daughter" (also known as "subsidiary" or "primary") cooperatives. The daughter cooperatives often purchase management and administrative services from mother cooperatives. Although there is no obligation to do so, this process helps preserve the organisational relationship. Tenants are members of both the mother and daughter cooperatives simultaneously. The model is also noteworthy

[2]   See the article in this book "The Social Function of Property in Latin America", Leticia Osorio, p. 150.
[3]   Erik Olin Wright, *Real Utopias*.

in that it combines housing and saving schemes within one organisation. Financial risk for members is limited to their daughter cooperative only (NATCCO National 2004, HSB 2012, HSB 2012).

Mutual Aid Cooperatives

Mutual Aid Cooperatives promoted by the Uruguayan Federation of Mutual Aid Housing Cooperatives (FUCVAM), deserve special attention. They are normally built as a result of a collective process which involves the future occupants; ownership is collective and indivisible. As Nahoum highlights in the reference book on the FUCVAM experience: "*A very high proportion of mutual aid cooperatives are 'users' or 'sole mortgage' co-ops which means that the ownership of the houses (and therefore the responsibility for the mortgage) belongs to the co-op as a whole and not to each individual member*". (Nahoum 2008)

Community Land Trusts

Community Land Trusts, existing under a wide range of modalities, are a second essential regime. One of the most adapted means of securing the social function of property, they also go beyond that by helping to build the Right to the City. Statutory definitions vary from country to country; however the one proposed by the Building and Social Housing Foundation (BSHF) clearly illustrates its unique features:
"*A community Land Trust is a not-for-profit community controlled organisation that owns, develops and manages local assets for the benefit of the local community. Its objective is to acquire land and property and hold it in trust for the benefit of a defined locality or community in perpetuity*" (Diacon, Clarke et al. 2005).
CLTs have been expanding over the last fifty years, primarily in the USA. According to the national network, close to 250 CLTs were active there as of June 2013. A number of CLTs exist in the UK as well and a limited number of cases have been or are being implemented in countries as diverse as Australia, Belgium (Brussels), Kenya (Voi) and Canada (Milton Park, Montréal). A growing number of governments have recently shown interest in this system.

Letchworth Garden City, situated a half an hour by train from London, was the first Garden City to be built based on the blueprint elaborated by Ebenezer Howard. It still retains a central relevance within CLTs since it is the only CLT existing, not as a single initiative or a series of initiatives on the same territory, but rather as a freehold and communal tenure alongside very long-term individual leases. Letchworth Garden City (LGC) Heritage Foundation was established as a Charitable Industrial and Provident Society. Various other organisational structures preceded the current one. The first objective of the Foundation is to "*pro-actively manage assets and income*". When the city was founded, all land was held in trust. However, during the 1970s, part of the trust's land was lost. This was the result of a national law which allowed people to buy their houses, thus shifting from leaseholders of the Trust to individual Freeholders. Despite

this loss of housing plots, most of the city is still held in trust and its assets were estimated to be around £110 million in 2012. The foundation *"explores all opportunities to optimise the commercial returns from their asset in order to maximise funding available to support their charitable commitments"* (Letchworth Garden City Heritage Foundation 2010).

Mixed Community Funds and Collective Agreements in Asia

The Asian Coalition for Community Action (ACCA), an Asian Coalition for Housing Rights (ACHR) programme implemented from 2009 to 2011, set out to improve housing for the urban poor in over 150 cities across fifteen countries through a combination of large and small community-led development projects. Collective Land Tenure agreements were widely used to secure access to land for urban communities.

Over the span of three years, the ACCA carried out 111 large housing projects at a total cost of almost $4 million. 8,611 households directly benefitted from the projects and a total of 42,760 households received secure tenure either through collective or individual tenure agreements. Collective agreements were used in 36 out of the 111 big housing projects (32%) (Asian Coalition for Housing Rights 2012).

One of the reasons for the ACCA's success in implementing collective forms of land tenure was the successful precedent set by existing urban development organisations and governments. In Thailand, the Community Organisation Development Initiative (CODI), part of the Thai government, had successfully used collective land agreements for urban slum dwellers throughout Thailand, particularly through its Baan Makong Programme, (literally, secure housing). By January 2011, the CODI had worked with 92,458 households in Thailand; 44% of households had cooperative land ownership and 39% had a long-term lease on community cooperative land (Community Organizations Development Institute 2008).

Similarly, in Cambodia there were well-established mechanisms for improving housing and security of tenure for the urban poor, which included city development funds, community savings initiatives and government collaboration. Cambodia also has a well-developed system of commons regimes in rural areas; however, to date the mechanisms relating to indigenous communities and natural resource governance have not been employed in urban areas.

Communal Tenure and Customary Rights.

Communal tenure *"refers to a situation in which a group holds secure and exclusive collective rights to own, manage and/or use land and natural resources, referred to as common pool resources, including agricultural lands, grazing lands, forests,*

Bangkok upgrading work / Photo Credit: Creative common, Flickr

trees, fisheries, wetlands or irrigation waters. Communal tenure can be customary and age-old, its rules relying on community decisions, or it can be newly designed for a specific purpose" (Anderson 2011).

Common property regimes and Customary Land are not limited to land in remote forests or rural areas, but can also be found on the fringes of cities. As these lands are absorbed by the expansion of cities, the result is the dispossession of massive numbers of poor villagers and land users.

In Latin America, there are numerous well-documented examples of successful rural, collective land systems, such as in Tierras Altas in Bolivia. However, to date there have been very few attempts to adapt and apply rural collective systems in urban settings. In the case of Bolivia, the strong rural bias in the 2009 Constitution has even made urban communal spaces illegal. It is the author's recommendation that the Special Rapporteur set up a task force to address the arbitrary division of tenure solutions by encouraging the sharing of experiences between rural and urban communities and the systematic evaluation of the potential for collective rural solutions to be applied to urban environments so that the security of tenure for insecure groups is improved. Three sub-categories could and should be expanded at that level:

—   **Mexican Ejidos and Indigenous Communal Lands** when absorbed by urban expansion. Article 27 of the Mexican Constitution was modified in order to allow the privatization of *ejidos*, one of the conquests of the Mexican Revolution. Despite this, communities, in varying situations, have continued to retain

a collective regime on these lands.

— **Shareholder cooperatives** have recently introduced in China an interesting communal tenure system which, in differing forms and under certain conditions, might enable hundreds of millions of people to maintain their livelihoods.

— **MTDCC, Maharashtra, Pune, India.** One final innovative example of communal tenure comes from Pune, the second largest city in the State of Maharashtra, India. The Magar agricultural community, faced with increasing losses of farmland to rapid urbanisation, pooled their 400 acres of farmland in order to collectively develop, manage and own a mixed-use township in the rapidly developing peri-urban area. The construction process, which began in 2000, is managed by the purpose-formed Magarpatta Township Development and Construction Company (MTDCC), a private limited company. As the farmers had previously owned the land privately, shares in MTDCC were divided amongst the families by a simple method in which one share is equal to one square metre of land contributed to the collective. The shares could be traded exclusively amongst the member families, not on the open market. The result has been a high degree of tenure security and livelihood diversification. About 70% of the member families are earning a minimum of Rs 400,000 (approximately US$85,000) per year (Sami 2013). The success of this project has been attributed to exceptionally strong leadership and the development of highly effective multi-stakeholder coalitions, formed as a result of a political power and leadership vacuum in Pune (*Ibid*).

— **Usucapiao Colectivo (Collective Adverse Possession)** A fifth category deserves closer attention because of its recent contribution to housing the poor while retaining the collective aspirations of human flourishing. Only a handful of cases exist to date in Brazil. This regime of quasi ownership on land is still in an early phase of development.

Looking Forward: Proposals for Future Actions

In addition to the recommendations made by the Special Rapporteur to the General Assembly of the United Nations, three more proposals, conducive to the social function of property, are briefly presented:

Facilitating Urban Policies for CCFT
One of the findings of the desk review is that successful CCFT depend largely on Housing and Land policies that go beyond a specific program. Such was the case in 1968, when the Co-Operative Law in Uruguay paved the way for turning cooperatives into a subject of collective credit eligible for the National Housing Bank. This is also the case for the Social Inclusionary Law in the USA through which 15 %, and sometimes more, of new housing developments should be earmarked as affordable housing for families whose income is below that of the

median local income. Without such a law, Community Land Trusts would not have expanded as they did and would not have become an international reference in a relatively short period of time. It is therefore suggested that knowledge concerning policies facilitating and/or supporting CCFT, in their wide variety of forms, be consolidated.

Addressing Land Rights for Women through CCFT Practices
This paper indicates that some interesting practices favouring women's rights do exist around the world. CCFT does not, however, necessarily mean that land and housing security of tenure and land rights for women have increased. The information on innovative practices in most cases is not complete enough and deserves in-depth and systematic analysis in order to feed into a global and mutual learning exercise.

CCFT: Going Beyond "Land for Housing" Only
The existence of CCFT demonstrates the need to go beyond the limited definition of "land for housing", expanding the definition to include the categories of non-housing CCFT, tenure for mixed housing / non-housing uses, land for growing food or for other activities through which people make their livelihoods. Available information suggests that these types of commitment which extend beyond housing would be a key strategy in broadening households' assets, allowing them to improve their livelihoods and making them more resistant to external economic shocks. Therefore, their capacity to stay in place and reach a long term secure tenure would be increased. The broadening of cooperative, communal and collective forms of tenure from land to housing to urban and peri-urban land as a whole is needed in order to guarantee a social function for land. In this way, real possibilities of transforming the utopian idea of the Right to the City into real utopias could be brought to life.

Introducing Social Rental Agencies in Hungary. An Innovative Housing Programme

**JÓZSEF HEGEDÜS, VERA HORVÁTH & ESZTER SOMOGYI /
DECEMBER 2013**

The project "Introducing Social Rental Agencies in Hungary", implemented by the Metropolitan Research Institute and Habitat for Humanity Hungary and funded by the Open Society Institute, aims at developing a model for an affordable rental sector by utilising vacant private housing in social housing provision.

Housing Privatization

The privatisation process began in the late 1980s, and accelerated after the transition, when firstly the state housing stock (19% of the total stock in 1990) was transferred to local municipalities, and secondly the sitting tenants were offered a preferential right to buy, allowing them to purchase their home for a fraction of its market price. By 2012, the number of municipal rental units shrunk to 119 thousand, of which about 103 thousand were habitable (accounting for less than 3% of the total housing stock); while people in need of, and technically qualifying for, social housing is estimated at around 400-500 thousand. (Hegedüs-Horváth, 2013)

The Great Financial Crisis and the Need for New Approaches in Housing

The need for affordable housing has only become graver in recent years due to the economic downturn following the 2008 crisis. The depreciation of the Hungarian forint increased the mortgage repayment for borrowers. The variable rate foreign currency loans accounted for 65% of the total mortgage loans; on average such loan repayments grew by 30–40%. The payment burden increased not just because of HUF's depreciation, but also because the banks increased variable interest rates. These two developments inevitably increased the likelihood of payment arrears. (Hegedüs, 2013)

Today, according to our estimation, 25-35% of households may face serious difficulties in covering their housing related spending; and for most of these households, it is a long term and systemic issue. This phenomenon goes beyond the poorest groups, and is reaching the lower middle classes; as they are an important voter basis, addressing their problems is becoming inevitable even for popular (or populist) political forces.

Households have been losing their security of tenure due to their financial instability ever since the crisis hit. Mortgage debts and the growth of loan payments is only one reason for this; although many of the mortgage rescue programmes were only available to middle class mortgagors, which left the least well-off unaided. The crisis also led to a massive loss of stable jobs in Hungary and to the indebtedness of households.

Private Rental Sector – a Missed Opportunity

In the research we showed that one possibility for the government to move away from this critical point is the use of the private rental sector for social purposes, which is a sustainable and cost-efficient solution for expanding the social housing sector, and over time it could even become a model for other public housing programmes.

In Hungary, a rational consumer would move into owner occupation rather than into the rental sector, because they would realize higher individual "profit" in owner occupation. The three key reasons for this are the lack of imputed rent in Hungary's taxation system; the lack of tax incentives for potential landlords; and centrally funded subsidier towards owner occupation. The housing related tax and subsidy system possibly lacks tenure neutrality in favour of ownership as a manifestation of public policy efforts aiming at developing market economy and encouraging the culture of private property. This, however, results in a heavy financial burden to lower income groups, who cannot afford home ownership, and who are not provided with a well-functioning rental sector.

The private sector is underregulated, and the legal conflict resolution system is slow, expensive and inefficient; as a result, many landlords will be discouraged from letting out their property. When private landlords rent out their apartment, they face a few major risks: (1) tenants could leave without paying the rent; (2) tenants could accumulate massive utility payment arrears; (3) the unit will be run down or damaged. Economic constraints, stemming from these legal insecurities, will drive up the rent levels in the whole sector. Based on interviews with landlords and real estate agents, we estimated the price of the risk, and we concluded that to cover their expected costs, landlords have to raise the rent level by 23% on average. Consequently, the market rent has to cover the expected return on equity (53% of the full market rent could be sufficient for this purpose only), the management cost (accounting for roughly 8% of the full market rent), the Personal Income Tax rate (16% on the rental income), and the cost of the risks (23%). We came to the conclusion that, because of the risk and the tax/subsidy disincentives, market rents are hardly affordable for the average or lower income households.

While market rent is high due to legal uncertainties and the tax/subsidy environment, the number of vacant housing units has been increasing in the last decades. The 2011 National Census found nearly half a million residential housing units. According to Census data, 6% of the total stock was vacant in 1990; this proportion increased to 9% by 2001, and then 11% by 2011, indicating a slow but constant growth. (CSO Census 1990, 2001, 2011) These facts indicate both a market failure and a state (regulation) failure, where a strong demand is unable to meet a large supply, resulting in the under-utilization of national asset. In our research we concluded that – while some of these units may be uninhabitable, remote from the job market and basic services, or simply unreported private rentals – an important part, up to around 150 thousand apartments, are located in an accessible area, near the job markets, are in a decent state of repair; and with the right conditions, they could be very well utilised for rental purposes.

Proposal for Social Rental Agencies

Our key idea is to propose Social Rental Agencies (SRAs) which intermediate between the potential landlords and the social renters. SRAs – functioning under the central coordination of a National Housing Agency (NHA) – offer a guaranteed, low risk arrangement to landlords. SRAs contact potential landlords who are willing to commit to a long term contract (3, 5 or 7 years, tentatively), for a rent level approximately equal to the 70% of the net rent (market rent minus PIT). In this arrangement the SRA guarantees regular rental income to the landlord, manages potential risks and amortisation in a way that the landlord's rate of return over the contractual period is still about 10% higher than it would be under individual market renting, and guarantees the preservation of the condition of the property.

It is necessary, though, that the landlords contracted by the NHA are granted PIT exemption (which figures as tax expenditure in the national budget); furthermore, an amount equal to 20% of the rent level has to be provided from the national budget as a contribution to the NHA's Risk Fund (which is accounted as an outlay from the budget). The rent level to be paid by the tenant is 80% of the net market rent level. This includes the rent to be paid to the landlord, and part of the cost of the risks. On top of the 20% rent discount, the tenant will receive a housing (rent) allowance from the NHA (again, outlay from the budget) to make this rental option affordable. The tenant and the SRA have to contribute to the Risk Fund with an amount of 2 months' rent (this corresponds to the deposit). Moreover, the SRAs will be eligible for a special grant to support the social work related to the sub-groups of the tenants who require this kind of assistance. This is a special risk-sharing financial model, where the cost and risk of social housing is shared between the landlord, the local SRA, the NHA (Risk Fund) and the tenants.

The financial risk-sharing model was based on the private market risk analysis. Our goal was to present all costs related to social housing in a transparent way, in order to guarantee the sustainability of the model. The costs to be covered by the central of the budget are:

1.	20% of the net rent per SRA rental unit, per month;

2.	social work compensation;

3.	housing allowance (direct outlay from the budget); and PIT allowance (tax expenditure).

Due to tax avoidance, the latter has largely been missing from state tax revenues, therefore providing PIT exemption means no real loss for the central budget; while it gives a convenient opportunity to landlords to turn their leasing activity legal without profit loss. Housing allowance depends on the income of the households, and their total housing cost (rent and utility). The main model's goal is to provide housing to households for a maximum of 40% of their total household income, where at least a modest disposable income remains with the household after covering all housing costs. Based on a model considering three income groups and three submarkets, we came to the conclusion that the average housing allowance would be 25-30% of the total housing cost (around 20 thousand HUF/month/household).

Local SRAs will be approved by the NHA; the maximum eligible rent will also be centrally set by the NHA. The operational cost of SRAs are covered by 10% of the rental income (the difference between the rent paid by the tenant and the rent paid to the landlord); and the grant for cases requiring social work input has to be covered by the central budget through the NHA. The two months' contribution to the Risk Fund has to be paid by the SRA's own sources, which gives an incentive for efficient management. The Risk Fund is managed by the
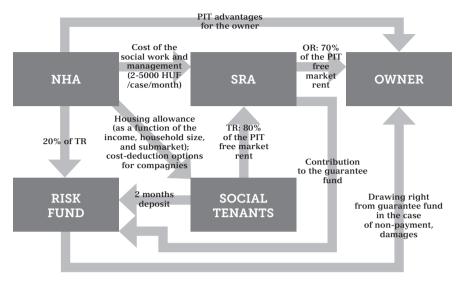
NHA, and approves payments only when an SRA proved that it has done everything that can be expected to manage the properties in order (rent collection, property control, etc.).

Financial model of the Social Rental Agencies, coordinated by a National Housing Agency (NHA)

Financial sustainability is guaranteed by the realistic cost estimates and the proper incentive structure in the model. A number of measures need to be taken to ensure organisational sustainability, namely ensuring tenant cooperation, and the appropriate protection of the property managed by the SRA. Unless the tenant is facing force majeure – which they should immediately indicate to the SRA – uncooperative behaviour will have to be sanctioned with a swift reaction in the form of social work and/or the intervention of a mediating agency on behalf of the SRA; and if no satisfactory agreement is reached, the SRA will have to provide a way out for the tenant, either towards the homeless provision system, or to lower quality social housing (if available).

Finally, we proposed a pilot project to test the sustainability of the model. Different institutions already expressed their interest in the program, including NGOs, and local governments. One municipality, the city of Szombathely, has already made a decision on the municipal level to introduce a pilot project following a similar model, but without the state subsidy, and only on a smaller scale (local level). Private landlords contacted by us during the research or by our project partners were open to the idea of an organisation that could take over some of their risks for a slightly reduced rental income. Furthermore, even some actors of the economic environment – financial institutions, state agencies – have expressed

their support; and the introduction of Social Rental Agencies could unite these fragmented interests under a single framework. Policy makers occupying key positions have not been committed yet, but they have already realized the need for new solutions in order to create an affordable housing sector with a reliable, stable tenure form. The key question of the future role of the model is that the kind of institutional political interest can be mobilized for the introduction and for leveraging the activities of Social Rental Agencies.

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Recognizing an Enforceable Right of Use for Unoccupied Housing: a Necessity

CHRISTOPHE DRIESBACH / DECEMBER 2013

JEUDI NOIR

Christophe Driesbach is an architect and an activist in Jeudi Noir, an French organisation created in 2006 to denounce poor housing and specifically the sudden rise in rents[1].

The occupation of vacant real estate properties is an old and controversial practice, whether it be carried out in buildings which are immediately occupied or on plots of land which need makeshift constructions. According to archaeological findings, these struggles first took place in the Bronze Age[2]. The history of political squats in France, on the other hand, highlights the beginning of the XXth century and the role played by Georges Cochon[3]. A pioneer of the different groups and organisations which exist today, Georges Cochon combined explicitly useful actions, such as the occupation of unoccupied housing for the poor, with political and media-oriented actions, such as the occupation of the Police headquarters courtyard or the building of shacks in the Tuileries gardens[4].

[1]   Collectif Jeudi Noir, *Le petit livre noir du logement,* La Découverte, 2009, 166 p.
[2]   www.sciences.blogs.liberation.fr/home/2013/06/la-propri%C3%A9t%C3%A9-du-sol-na%C3%AEt-%C3%A0-l%C3%A2ge-du-bronze.html
[3]   www.militants-anarchistes.info/spip.php?article911
[4]   www.archyves.net/html/GeorgesCochonetlessanslogie.html

DAL - Jeudi Noir squat, 2 rue de Valenciennes, Paris, France / Photo Crédit: Jeudi Noir

Squats: the Heart of the Debate on the Right to Property

Squats call into question the idea of property as a fundamental building block in our societies, establishing by necessity – and sometimes by the use of force by law enforcement agents or agencies – a specific geographical and temporal relationship to law and justice.

In France, justice contrasts the right to property, which is a constitutional right, with the right to housing, which is merely recognized as a "Constitutional objective". Therefore, the former is established as the superior right to justify occupants' eviction. Hostile or misinformed people even demand imprisonment for squatters. However, though the idea of illegality can be disparaged, it is important to stress that squatting is not illegal. Indeed, no law prohibits taking shelter in a vacant building – on the contrary, squatting is a legal way to access ownership, at least since the 1804 Civil Code[5].

Ownership may be a central notion in French law, but as for all rights, society has created a balanced system in which using or holding property is also important. Legal property is not an undividable block; it can be split into bare ownership and usufruct (the right to use the land without owning it). In the event of an occupation, it must be noted that the usufruct is not concerned – because this would certainly imply trespassing – and that the bare ownership, which is the right to alienate the property, is not affected by the occupation: an owner can sell a squatted unit. Similar to a forced requisition, squatting can therefore be defined as a deprivation of property[6].

The Right to a Home Versus the Right to Property

During an occupation, the right to housing is not the only claim set forth. According to the courts, only the state can be held accountable for making this right enforceable. The right to privacy and the right to a home are also at stake in these claims.

[5]   Usucapio, cf. Civil Code art. 2258 to 2275.
[6]   Constitutional Court, DC n°98-403, recital 31, and more generally on deprivation of property QPC n°2010-60

European law, just like French law, considers the protection of the right to a home vital. For individuals, trespassing was established in 1832 and since then the Court of Cassation has developed an elaborate case law in this regard. Unlike in other countries, the home is a broad-ranging notion, since it designates *"the place where, whether the interested party resides in it or not, he/she is entitled to claim that he/she is at home, regardless of the legal deed of occupation or the use given to the premises."*[7]

Hence, business premises are considered the business's home and protected by this law[8], as are secondary homes or occasional homes, even and especially if no one is occupying them at the time of entrance. In practical terms, the presence of furniture often defines a home. In this case, beyond the criminal response which can be the imposition of fines or imprisonment, the law forces the police to evict the occupants after a simple claim made by the legal occupant, with a minimum 24h delay for any potential submission.[9]

It must be noted that the legal protection of the home does well and truly apply to squats and slums, since the fact that occupants have sleeping and cooking equipment makes the occupied space their home.[10] Nevertheless, in practice it is extremely difficult even to file a complaint in these cases.

More Legal Tolerance for Unoccupied Units

In practice, acquisitive prescription, requiring a 30-year occupation, concerns very few squats. In order to go beyond this prescription and in response to Abbé Pierre's 1954 plea, several provisions protecting housing were included in French law. These provisions, such as the winter eviction break and delays granted by the judge, protect occupants who have no rights or deeds.

The winter eviction break has existed for a long time in housing law. It was established by article 3 of the law of December 3rd, 1956, enacted by the President René Coty and the Minister of Justice, François Mitterrand. At the time, it applied to all, regardless of the legal status of the occupation. As a matter of fact, the first article of the law allows judges to grant extra delays and specifically states that this is a possibility regardless of the occupants' justification of the occupation with a deed – it is therefore open to squatters. The only exception the law provides is for occupied units under a decree of danger: if the building is dangerous, law enforcement can carry out the eviction.

For thirty-four years, this law's wording was not amended. It was quite simply included in the new Building and Housing Code in 1978. Only in July 1991 was this law on winter eviction breaks modified, with the addition of a small but meaningful phrase: *"The provisions of this article do not apply when the people concerned by the eviction have entered the housing unit unlawfully"*. In June 2012, this provision was included in the latest amendment of the Code of Civil Enforcement Procedures.

The issue of unlawful entrance is regularly brought before courts in the case of squatters. In addition to the winter break, it conditions the granting of an additional 2-month delay after the order to abandon the premises. The length of the delay is dependent on the judge's evaluation.[11] During the 1991 parliamentary debates, the notion seemed straightforward:
"Two conditions must be met for the eviction to be ordered. On the one hand, unlawfulness, meaning proof of assault or breaking and entering. The judge cannot presume there has been unlawful entrance or base his/her decision on the sole circumstance of the lack of deed of the concerned people. There must have been proven assault."[12]

Case law clearly stresses that unlawful entrance is not an assumption and that an occupation without a deed is not a case of unlawful entrance[13]. However, unlawful entrance is proved in the event of deterioration or simply breaking and entering. Indeed, the owner is responsible for enclosing the plot of land or property and an occupant cannot be deprived of legal safeguards when he/she simply pushed the door open.

More and More Evictions

Nonetheless, pursuant to two Council of State[14] decisions, the government presently automatically considers that the winter eviction break does not apply to squats or slums. For the last few years, there have been periodic winter-time evictions.

In addition, the time periods set forth under article L.412-4 of the Code of Civil Enforcement Procedures, initially open to the judge's free will, have been cut back, first to three years then to just one year, in 2009[15].

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[7]   Cass. Crim., January 4th, 1977, n° 76-91105
[8]   This led to the conviction of Greenpeace militants for trespassing when they entered the premises of a nuclear power plant...
[9]   Law 2007-290, March 5th, 2007, article 38.
[10]   Seine Criminal Court, March 16th, 1949

[11]   L412-1 Code of Civil Enforcement Procedures.
[12]   Barreau de Lyon, tribunal d'instance de Villeurbanne, Alpil. L'occupant sans droit ni titre, regards croisés. Actes du colloque, 2009, p.11
[13]   CA Paris 08/02967, TI Paris 8e 12-07-000112, TGI Paris 07/50407, TI Villeurbanne 12-05-000063.
[14]   Council of State November 27th, 2002 n°251898, Council of State, January 27th, 2010 n°320642.
[15]   Law 2009-323 March 25th, 2009 in favour of housing and to combat exclusion, article 57.

This gradual limitation of occupants' rights is not just a French trademark. Squat legislation, previously very favourable in the Netherlands, has recently been toughened. In England and Wales, occupying residential premises became a criminal offence in September 2012[16]. In France, a similar attempt to criminalise occupants and therefore render eviction without a judge's intervention legal was stopped by the Constitutional Court[17].

Though not illegal, in our societies, squatting's legitimacy will always be questioned. This legitimacy is defined by the circumstances of the case – it is legitimate for a person in need to find shelter on vacant premises – but it should also be assessed in light of the State's action.

The usual excuse given for evictions – strict enforcement of judicial decisions – is a hypocrisy aimed at shirking the reality of a policy: first of all, because squat and slum evictions seek to avoid justice by alleging flagrancy[18], and secondly because the State mocks court decisions when enjoined with rehousing the evicted occupants.

[16]   www.squatter.org.uk/2012/09/squat-law-change-alert
[17]   Constitutional Court, DC n°2011-625, recitals 51 to 56.
[18]   www.unmilitant.eu/blog/2013/01/05/la-flagrance-en-matiere-de-squat

Reappropriating the Law to Recover Control of the Use of Land

QUENTIN HECQUET / OCTOBER 2013

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While based on the example of land use in rural areas in France, this article advocates a position which could easily be transposed to an urban environment as well as to other subjects, in any geographical setting: the law is an effective field for enacting social transformation, provided communities have direct and daily ownership of it.

Land, Law, Rights

Using and accessing land as a resource, which includes its essential social functions of providing food and housing, is a cause for competition. Land is a permanent stage of confrontation between public and private interest. The biased uses of land and the inequalities in access to land push actors to find ways to restore a balance, to create regulations and to establish safeguards. In this perspective,

enshrining the right to food or the right to housing would seemingly put an end to the abuses of property rights and the excessive freedom of business.

It is legitimate and necessary to create laws equipped to address new challenges and to take action to establish new rights for the population, especially the most underprivileged. But prior to doing so, the law that already exists must be examined in light of people's effective access to established rights. Indeed, declaring a right does not make it a concrete element of social reality: the right must be adapted, people must know that it exists and how to make use of it.

French land law includes numerous legal and regulatory provisions aimed at, on the one hand, balancing and planning land uses, and on the other hand, privileging the productive function of farm land. Different legal mechanisms exist but they often focus on limiting landowners' freedom to make decisions regarding the purpose and use of his/her property. To illustrate this, let's present some examples.

The Urban Planning Code, along with urban planning documents (territorial consistency plans, local urban development plans, etc.), grant local authorities the competence to define which areas of their territory may be classified as building land and what kind of building they are eligible for. For general interest or public utility projects, public legal persons have pre-emptive rights or can use expropriation processes. Land Development and Rural Settlement companies (SAFER – *Sociétés d'aménagement foncier et d'établissement rural*) have a public mandate to intervene on the rural land market, namely to combat speculation and to establish and strengthen farms, for instance by using their pre-emptive right. In the Rural Code and the Maritime Fisheries Code, the status of tenant farming provides a public regulatory framework for farmland rentals aimed at granting stability and safety to farms. The framework establishes: a minimum 9-year lease, regulations on the price of rental, automatic renewal, lease handover to the spouse or descendant, a pre-emptive right for farmers, compensations for enhancements, strict regulation of reasons allowing the owner to recover the use of the land, etc. Farmers' pre-emptive rights can also be completed by a legal court action to demand that the pricing of their rental be reviewed. The SAFER can determine the price itself at the time of pre-emption. The regulations on oversight of facilities make administrative authorisations for extensions, mergers or new farming facilities mandatory in order to distribute cultivated land between farmers. The uncultivated land process can imply forcing an owner to farm – or have someone else farm – plots designated as farm land. There are also similar legal tools for vacant housing or empty buildings.

Despite these provisions and many others, the momentum of the artificialisation of farmland has sped up: it has become very difficult for new farms to find land; the land is concentrated in already large farms. At the same time, the prices of

farmland and rural built property are increasing, terminations or non-renewals of rural leases are removing the concerned land from farming uses and there are insufficiently farmed plots and too many vacant homes. This shows that the population that most needs these rights is not benefitting from them, despite the fact that many of these rights were conquered through grassroots mobilizing.

Making the Case for an Alternative Approach to the Law

If it has been proved that existing rights are too often ineffective, then it is necessary to delve into the conditions for practising the law. Our modern societies delegate law-making to legislative power, the interpretation and enforcement of norms to judicial power and the defence of legal parties is entrusted to lawyers. This distant relationship between people and the law must be questioned, since the law is a part of every moment of everyone's life and it lays out the set of rules which underpin social life.

The law concerns everyone and it is part of our daily lives: this concrete vision of the law is the basis for the CAJ's action in favour of the access to law in rural areas. Our main goal is to provide participative and group legal support to rural inhabitants. Our methods blend solidarity-based initiatives and the participation of individuals themselves in solving their own legal problems. We do not consider the law as an abstract field exclusively limited to specialists and restricted circles. Elements of law are connected to the concrete facts that they apply to and are considered in their social, human, family, economic, professional and interpersonal context. The CAJ aims at removing barriers to the access to the law and to justice, at making legal texts more tangible, at empowering people.

Our methods are inspired by the legal aid offices that were created in urban settings in the 1970s. In rural areas, they were established by the Drôme Farmers' Organization (*Association des Fermiers Drômois*), which has presently merged into the Drôme CAJ. At the height of the AFD's activity, between 1976 and 1981, most of the cases brought before the five Drôme tribunals competent for conflicts between landowners and farmers or sharecroppers were fought by AFD delegates and the suit was won in 70 to 90% of the cases. Elsewhere, where these initiatives did not exist, farmers and sharecroppers were defended by lawyers and consistently lost their suits in the same proportion.

CAJ: Land Issues and Methods for Action

CAJ was created in 2006 by peasants and almost exclusively deals with situations related to farming, of which two thirds have to do with land. A fair share of the problems we address are related to rural leases. In addition, there are

"Watch out: I think they speack our language..." / Drawing credit: Samson

urban planning and building permit decisions, roads, obligations, facility oversight, SAFERs' operations.

When someone contacts our organization, a volunteer is assigned to organise a first meeting with all or some of the team members. Having a first contact with other rural inhabitants makes the legal support more human, with a greater social and geographical proximity, from the outset. After this first meeting, additional elements are looked into to perfect our knowledge of the situation: documents, field observations, vicinity enquiries, interviews with the other party in the case of a conflict. CAJ decides to support the person if his/her demand is deemed legitimate and the plaintiff and the team agree on a desirable outcome. The person then becomes a member of the organisation. In the event of conflicts or litigation, CAJ systematically tries to reach an out-of-court settlement.

Our volunteers' basic training and experience help them set forth legal solutions. If necessary, they turn to the regional CAJ staff legal experts for guidance. If an appointment with a legal expert is made, several CAJ volunteers participate. The meeting is a three-way and balanced dialogue between the person being given support, the volunteers and the legal expert. So the person is not passing on his/her problem to the legal expert but rather actively participating in finding a solution.

This ownership over the legal process does not cease at the courtroom doors. Though the legal strategy is drafted with the legal expert, and, in the event of a legal proceeding, the legal expert drafts the legal documents (seizure of jurisdiction, conclusions, etc.), the presentation in court is not delegated to the CAJ legal expert nor to a lawyer. If the jurisdiction allows for it, a member of CAJ assists the plaintiff, who acts as his/her own lawyer. If a lawyer is required by the court, CAJ requests one who is willing to accept CAJ's methods and to follow the strategy defined with the plaintiff. In situations of land conflicts, CAJ assists people before the Agricultural Rent Tribunal and the Appeals Court. It provides guidance without being able to assist people before the Administrative Tribunal and less often, before the Court of First Instance or the Regional or District Court.

From Individual to Collective Demands, from Legal to Political Considerations

After an appointment with the Isère CAJ, a farmer came to know his rights and felt that he was not alone: he was then able to get his landlord to review the price of his farm rent on his own, without having to go to court. In the Drôme region, a peasant was forced to seize the tribunal because of a pre-emption with pricing review on her rental farm. She became aware of her rights and convinced the landowner not to sell; she then got involved with CAJ. These two examples illustrate how, beyond solving individual problems, a popular engagement with the law can have a broader impact. People recover their self-confidence and their ability to take action and organize collectively. Going beyond individual situations helps identify underlying political causes. People's ownership of the law can help them contribute to its evolution, by shaping case law, setting forth legal amendments and by having a say in the law's enforcement and interpretation. This can bring about changes in social relationships. The law is not neutral, it is political. It can uphold or strengthen dominations, but it can also be used as a driver for change.

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The Social Functions of Property in Latin America

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Historical Evolution

History shows that the pursuit of property in Latin America by the colonists was framed by European legal and moral traditions. These imported property systems were initially established to surmount the indigenous consuetudinary system of communal property and to accommodate the colonisers' economic interests.[1] In the contemporary era, the scope and application of property rights has been adjusted according to political and economic environments, with public and social concerns also informing the review, enactment and application of property rights.[2]

Certain individuals and groups who hold large land areas are in a position to control the allocation and distribution of property to others. Therefore, the call for property rights responds to increases in scarcity of natural resources, land value and population density in the context of contemporary democratic society. Such rights have been handled in national legal systems in different ways: some Constitutions have recognised the right to property as a fundamental right, equal in stature to other personal liberties, while others have limited the asserted interests in property to those defined by private-law sources. Most Latin American Constitutions have considered the right to private property in

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affirmative terms – in such a way as *"the right to property is guaranteed"* – and some legal systems have adopted a concept of the social function of property, expressing the idea that private ownership rights can be subordinated to the public interest. Moreover, in many Constitutions the right to property is inscribed under chapters that regulate economic and social rights instead of being labelled as an individual right.[3]

Constitutional Approaches to Urban Property

The contemporary application of the social function doctrine, first employed as a tool to restructure land policy and provide a legal basis to justify agrarian reforms, has evolved to include other purposes, such as an ecological function and compliance with urban land reforms, as the examples of Brazil, Colombia and Mexico show. They constitute interesting examples of the evolution of the doctrine of the social function of property in legal systems and are representative of a pattern of unequal distribution and concentration of land in the region, which persists to the present day.

Brazil

The 1988 Brazilian Constitution includes explicit references to the social function of property, which are directly justiciable provisions, as well as housing and land tenure rights. The social function of property figures in the Constitution as a founding principle, of immediate application, of the economic order intended to ensure everyone a life with dignity in accordance with the dictates of social justice. The Constitution links the fulfilment of the social function of urban property to the approval of municipal master plans, which marks a departure from its treatment under the 1916 Civil Code by bringing private ownership into the realm of the public law. The basis of this new paradigm for urban property was set out by the City Statute, a federal law approved in 2001, which has tried to reform the administrative and private law tradition in order to expand the scope of the social function of property.

The City Statute reinforces the power of municipal governments to regulate, induce and/or reverse urban land market trends, especially those of a speculative nature, according to criteria of social inclusion and environmental sustainability.[4] It provides for concrete tools for the fulfilment of the social function of urban property, such as the compulsory obligation of land division or construction on vacant, underused or unused urban property, increases in property taxes over time and expropriation of land through payment of public debt bonds. The full

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[1]   M Benschop, L Osorio and E Zamora, "Law, Land Tenure and Gender Review Series: Latin America" (2005) United Nations Human Settlements Programme (UN Habitat) 5-6.

[2]   T Ankersen and T Ruppert, "Tierra y Libertad: The Social Function Doctrine and Land Reform in Latin America" (2006) 19 Tul Envtl LJ 69, 70.

[3]   This is the case, for instance, of the 1988 Brazilian Constitution, the 1991 Colombian Constitution, the 1982 Constitution of Honduras, the 1987 Constitution of Nicaragua and the 1999 Venezuelan Constitution.

[4]   E Fernandes, "Implementing the Urban Reform Agenda in Brazil" (2007) 19 Environment & Urbanisation 1, 177-189; 182.

development of the social functions of property entails compliance with the following guidelines: fair distribution of the benefits and burdens resulting from the urbanisation process; state's central role in determining an adequate territorial order through a democratic planning and management system; detachment of the right to build from the right to property; regularisation and upgrading of informal settlements occupied by low income population through the establishment of special urban regulatory frameworks; equality of conditions for public and private agents in the promotion of urban development; reinforcement of the power of municipal governments to control urban development.

In 2002 a new Civil Code was enacted and it conditions the exercise of the owner's powers – to use, enjoy and dispose of the property and get it restored from who unjustly possesses or detains it – to the fulfilment of social, economic and environmental functions. It therefore shapes and limits the owner's subjective right to property. The Code provides that the owner can be deprived of property in case it consists of a large tract of land being possessed continuously and in good will, for more than five years, by a considerable number of people who have improved or served the land in a manner considered of social and economic relevance. Although it is not clear if fair compensation shall be paid to the owner in cases where the social function of property has been disregarded, the concept enshrined in the new Civil Code is significantly more compatible with the text of the Constitution than the previous Code of 1916.

Notwithstanding relevant case law has interpreted private ownership in light of the fundamental principles inscribed in the 1988 Constitution and recognised that the social function of property imposes obligations on the owner as a necessary condition to warrant protection from interference, it is difficult to sustain that there is a common understanding produced by the national case law regarding all changes and new aspects brought about by the social function approach.

Colombia

After the 1936 constitutional reform, which was influenced by the thought of Duguit, the Constitution of Colombia recognised the social function of property, and the current Constitution (1991) contains one of the most advanced regulations on this respect. Although it prohibits confiscation of property, it concedes that a judicial sentence may nullify ownership of property acquired by unjust enrichment when it is harmful to the public treasury or to social morality. It also establishes that when public necessity or social interest conflict with individual rights, private interests shall yield to the public interests and that property is a social function that implies obligations. The Constitution legitimates a system of recovery and redistribution of value increments or increases on prices of urban private property, deriving from public investments or from decisions related to territorial planning.

The case law of the Constitutional Court conceded that the Constitution relativized the fundamental right to property and submitted it to the interests of the collectivity by limiting the discretion of the owner.[5] In case of the owner's omission in fulfilling his obligations towards the social function, his ownership loses legal protection and can be extinct. The Court has held that compensation is not due in all types of restrictions inflicted to property, but rather, compensation is due when expropriation impinges in the form of excessive sacrifices on an owner in relation to other individuals in the same position. For the Court, ownership can also be limited by legislation issued for the benefit of society, such as for reasons of sanitation, urbanism, environmental conservation, and security. In this regard, it declared constitutional the Law n. 9 which imposes an obligation on private developers to grant an amount of their land gratuitously to the municipality to be set aside for certain uses, such as for roads, for open spaces and for social services.[6] The Court has also recognised that where urban reform pursues a social purpose, such as the redistribution of property, it justifies the application of a special expropriation regime in the context of the cities or a reduction in the amount to be paid.[7] In case the expropriated property was used as the family housing, compensation shall be fully paid in cash in order to assure that those affected are not rendered homeless and are able to afford the purchase of a new property to live in. The Court has also declared unconstitutional the part of Art. 699 of the Civil Code which provided for the "*right to arbitrarily dispose of the thing owned*", as this concept of property was found to be in contradiction with that of the Constitution.[8] For it, the term "arbitrarily" denoted a marked individualistic interest which was not compatible with the principle of the social state governed by the rule of law (*Estado Social de Derecho*) in which the Constitution is rooted. The Social Function Doctrine of the Colombian Constitution imposes the positive obligation on the owner to use property not only in a way that does not cause harm but that is beneficial to the community.

Mexico

The Mexican Constitution of 1917 and the German Weimar Constitution are said to have inaugurated the phase of social constitutionalism by having introduced a number of social rights which articulate different fundamental dimensions of the social and economic life of individuals. The ownership forms recognised by the Constitution – private, public and social – derive from original property rights vested in the Mexican Nation. The main objectives were the restitution of the original lands to indigenous peoples and the regulation of land distribution and ownership through the reintroduction of the *ejido*[9] system as a means to

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[5]   Corte Constitucional de Justicia, Sentencia C-006/1993.
[6]   Corte Constitucional de Justicia, Sentencia C-295/1993.
[7]   Corte Constitucional de Justicia, Sentencia C-107/2002.
[8]   Corte Constitucional de Justicia, Sentencia C-595-99.
[9]   The *ejidos* were the land surrounding the city, collectively owned and designated to common use and mainly to land reserves for the city. Nevertheless, modern *ejido* is a special form of land tenure resulting from Mexican agrarian reform of 1917.

expropriate large land holdings.[10] The reform of 1992 introduced a range of changes in the 1917 Constitution:[11]

1.   removal of the constitutional obligation of the Mexican State to redistribute land to peasants;

2.   the introduction of the possibility of selling and leasing *ejido* land under certain procedures;

3.   the encouragement of private investment through partnerships between *ejidatarios* and commercial companies to develop land;

4.   the creation of new types of owners and such as commercial societies, and the broadening of the size of such properties in order to reverse the multiplication of private small holdings *(minifundio)*.

The modification of the 1917 Constitution also resulted in the elimination of the requirement of use or exploitation from the legal definition of small, rural land holding protected from expropriation. This indicates that landowners became free to use their land as it pleases or even leave them idle, and it might have an impact on the levels of compensation to be paid in case of expropriation due to land reform and on the positive obligation of productive use of property.

Albeit such changes, the Constitution limits property rights by establishing a maximum area of property that can be owned according to the type of tenure and crops, defines the authorised uses and exploitation methods of different types of land, and imposes specific regulations for different types of land. In comparison to the Constitution of Colombia, it genuinely establishes a ceiling on the amount of landed property that can be privately owned and regulates the small properties being protected under such provision. Case law has evolved to recognise the competence of local authorities to likewise impose limitations on the right to private property, especially for the purposes of regulating the organisation of informal settlements.[12] In urban areas all types of land are subject to limitations in the public interest[13] although, as far as the regulation of human settlements is concerned, the dual property regimes established by the Constitution – individual private property and social property (*ejidos* and *nucleos agrarios*) – are said to have produced fragmentation of the control and management of the territory.[14] Even though the Mexican Constitution does not use the term "social function", the concept is clearly implicit and has been developed in the case law of the Supreme Court. The constitutional system has yet to recognise as part of the property regime the rights of the residents of informal settlements that resulted from illegal developments and sub-divisions of rural *ejidos*, which thus

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[10]   MT Castillo, "Land Privatization in Mexico: Urbanization, Formation of Regions and Globalization in Ejidos" (Routledge, New York 2004) 31.

[11]   AG Brito, "Land Tenure, Housing Rights and Gender Review in Latin America: Mexico" (UN Habitat, Nairobi 2005) 44.

[12]   A Azuela and M Cancino, "Los Asentamientos Humanos y la Mirada Parcial del Constitucionalismo Mexicano" (Mimeo, Mexico DF n.d).14.

[13]   See Arts 4 and 5 of the Mexican General Law on Human Settlements of 1976, reformed in 1993.

[14]   A Azuela and M Cancino, 2.

might have to fulfil a social function. Since they are not recognised as such, they would not be subject to limitations imposed by the state on grounds of public interest considerations, as articulated in the Constitution.[15] As a result, informal settlements have spread out throughout the Mexican territory and with almost no regulatory control over the social and environmental functions they should fulfil.

With regards to civil law, the Federal Civil Code enacted in 2000 embedded the constitutional concept of the social function of property. The owner can dispose of and enjoy property according to the limitations and modalities established by the law, which can restrict its usage or impose certain conditions for its enjoyment. The Civil Code limits to the exercise of ownership and prohibits the abuse of rights.

Implementation of the Social Function of Property

Mainstream characteristics of the approach taken to property rights and their social functions in the assessed countries can be identified. Firstly, protection of private property is conditioned by the fulfilment of social interests, which entails a systemic interpretation with fundamental constitutional values, such as the respect for human dignity, for solidarity, and for the prevalence of general interest. This approach is grounded on the notion that the basic function of public law must be to promote social solidarity.[16] Secondly, the conceptualisation of property as having a social function gives rise to positive obligations on states to regulate property rights towards a collective end. The duty of the state goes beyond restraint to include a positive duty to ensure that property fulfils a social function by imposing limitations and restrictions on the scope of property whilst supporting certain classes and functions of property. Thirdly, local authorities at state and at the municipal level are vested with powers to impose limitations and restrictions on private property in order to achieve collective benefits on behalf of public interest. In this context, local authorities acquired the right (and the duty) to interfere with property, through the application of the available legal instruments, where the owner fails to effectively utilise it in the benefit of society.

In Latin America the objectives of land reform aiming at the redistribution of land, provision of security of tenure to dwellers and access to other essential needs, such as food, housing and basic services, remained unimplemented, despite the legal and judicial developments that have taken place in a range of countries throughout the region. About 1.1 billion poor people are landless and almost 200 million do not have sufficient land to provide a decent standard of living. One of the barriers to universal access to housing and land is the strong

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[15]   A Azuela, "Property in the Post-Post-Revolution: Notes on the Crisis of the Constitutional Idea of Property in Contemporary Mexico" (2011) 89 Tex L Rev 1915, 1926-1927.

[16]   F and H Laski (trs), L Duguit, Law in the Modern State [1919] (B.W. Huebsch, New York).

protection assigned to private property which allows for resources and assets to be concentrated in the hands of the few to the exclusion of those coming from low-income sectors. This accrues to the vexing question of law enforcement in a region that has many well-crafted laws, but fall short of implementation.

Although the realisation of fundamental rights through the fulfilment of the social function of property, such as housing, environmental protection and work, is provided for in the Constitutions, not rarely their norms fall short of enforcement. In the case of Brazil, although many municipal master plans have alluded to the social function of property, the majority has not clearly stated how it will be incorporated into territorial and urban policies as to widen access to serviced land to the poor, prevent real estate speculation and induce the social use of vacant and underused property.[17] They are silent about goals and time-frames for the approval and implementation of instruments to recover public investments that have led to the valorisation of urban property and to establish compulsory uses or determine forms of occupation of land in certain areas in the city, to be performed by the owners. Developers' obligations are also few and the burden of infrastructure implementation and service provision has fallen largely on the state. Lack of social participation in urban development decision making, commoditization of land and housing driving up the value of the pro-perties, and exclusive urban planning are undermining the concrete application of social function of property instruments. In 2014, some master plans will be reviewed, such as those of Curitiba and São Paulo, opening up opportunities for civil society to influence changes in urban legislation and policy with a view of implementing the social function of property.

In Colombia, land distribution remains highly inequitable, coupled with millions of Internally Displaced Persons of wich most lack tenure security and connection to basic services and employment opportunities. The retention of vacant or unde-rused lands located in well-serviced areas for speculation is one of major policy issues facing municipal governments intending to implement land regularisation and social housing programmes. Since 2008 the city government of Bogotá has been implementing the Declaration of Priority Development (*Declaratoria de Desarrollo Prioritario*), an instrument intended to produce serviced land for housing through forcible sale by auction of vacant or underused properties.

A social use for housing purposes is attached to properties sold through auction, in order to induce the production of social housing. In regard to developers' obligations towards the social function of property, the Constitutional Court of Colombia has supported the application of Law n. 9 of 1989 which imposes a duty on private developers to assign a certain portion of land for the installation

of social housing, public services, parks or other features of collective use. Under the social function of property concept, non-exercise of possession may also be a justification for termination of property rights. Although Colombia passed regulations reinforcing the protection of collective tenure rights over urban informal settlements, the legal framework for adverse possession could also be explored as a tool for formalizing land rights of urban settlers.

The social function of property is more than a limitation to the right to property as it affects not only its exercise but also the right to property itself. The transfor-mations of the institution of property were not restricted to the reduction of the powers of the owner or the volume of property rights vis-à-vis legal limitations. The social function was consolidated into a general principle that dominated the new role of ownership, which is reflected in its structure and content. The social function became the foundation and justification of the owner's powers over the domain of his property; that is to say a means to control the exercise of the subjective right to property.[18] The right to property in its liberal sense is significantly modified by the social function approach which transforms the core elements of the traditional understanding of ownership. In transforming the structure of the right to property, the social function shapes the rights and duties of the owner and the role of property for the development of society. The "social interest", as a lawful limitation to the right to property, means the social function of property contributes to the realisation of other social rights.

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Andalusia Paves the Way: Popular Occupations and Institutional Responses. From the *Corralas* to the Law on the Social Function of Housing

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At present, Spain is a negative example of the impact of neoliberal policies on the right to housing and on the city. Since the middle of the XXth century, priority has been given to individual ownership, based on the assumption that the real estate market would provide access to housing[1]. The outcome of this is: over three million vacant housing units[2] and at the same time 212 foreclosures and 159 evictions, daily[3]. The evictions are ordered by the banking institutions which are the creditors of the evicted people, when the payments on mortgage loans are no longer made. In addition, thousands of people are being evicted from rental housing, including social housing owned by public authorities.

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[1]   For a comprehensive and detailed account: Naredo, J. M. "El modelo inmobiliario español y sus consecuencias", in Naredo, J.M; Taibo, C. *De la burbuja inmobiliaria al decrecimiento.* Madrid: Fundación Coloquio Jurídico Europeo, 2013.
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[3]   2011 figures quoted in: Colau, A; Alemany, A. Vidas hipotecadas. *De la burbuja inmobiliaria al derecho a la vivienda.* Barcelona: Cuadrilátero de libros, 2012.
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Andalusia Rises: from Previous Experiences, 15M in Squares and Neighbourhoods, to the *Corralas*.

In Andalusia, there has been a public debate on the right to the city for a long time[4], namely regarding housing and public space. In 2011, the 15M assemblies[5] established the 15M Housing Intercommittee which published a report in March 2012 on the impact of evictions in the city. Twelve Housing Information and Meeting Points – PIVEs[6] – were opened to provide guidance and mutual assistance and to support collective organisation.

In one of these, a group of women neighbours, whose situation left them no other choice to access housing, decided to occupy a building that had been unoccupied for several years. They had already appealed to all the competent public authorities, in vain. On March 17th 2012 the occupation was made public and the *Corrala de vecinas la Utopía*[7] (Women Neighbours Utopia *Corrala*) was born.

Since then, other groups have started organising and replicating these women's initiative. The first few months are usually spent on getting to know each other and building ties. People organise and seek guidance from support groups on all the necessary steps – legal matters, technical and logistical details, etc. Communication is crucial: explicitly stating objectives, reasons and the intention to pay for the housing according to one's income[8].

This led to the occupation of other buildings in Seville, Malaga, Huelva, Granada, and in other parts of the state. The Obra Social PAH [9] occupations are among the most famous. Along with other initiatives[10], they have been liberating more and more buildings, thus contributing to the debate on the social function of housing and striving to bring their inhabitants closer to benefitting from the right to housing.

The Andalusian Movement for the Right to Housing (*Movimiento Andaluz por el Derecho a la Vivienda* – MADV) encourages a global approach to the issue of accessing and remaining within housing. The powerful impact of the economic

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[4]   Articles by Ibán Díaz at www.isotropia.wordpress.com
VV.AA. El gran pollo de la Alameda. Seville, 2006: www.nodo50.org/granpollodelaalameda/pollo.html
[5]   May 15th, 2011: camps were set up on main squares in the state's big cities. Shortly after, neighbourhood assemblies were created.
[6]   Puntos de Información y Encuentro sobre Vivienda: Housing Information and Meeting Points
[7]   www.corralautopia.blogspot.com.es
[8]   The communications campaign has been more successful abroad than in the local media's treatment. The Guardian report, March 2013:
www.theguardian.com/world/2013/mar/04/corrala-movement-occupying-spain
[9]   Plataforma de Afectados por la Hipoteca (Platform of People concerned by Mortgages) was created in 2009 by people who could no longer afford to pay their mortgage. More information at: www.afectadosporlahipoteca.com and in Colau, Alemany (2012), op. cit.
[10]   In Barcelona, 159 500x20 ; in Madrid the 159 Oficina de Vivienda; in other cities the organisations 159 Stop Desahucios, among others.

crisis has made the evictions due to mortgage non-payments more visible. The major impact, visibility and acceptance of the PAH illustrates this. Likewise, institutions have been focusing the discussion and their proposals on the issue of foreclosures.

Analysing the Andalusian Law: the Social Function of Housing (All Housing? For Everyone?)

In Spain, even though housing policy is a competence of the autonomous communities, it is the central executive power's ability and obligation to legislate on evictions[11]. The state has sought to preserve the banking and financial institutions' credibility on this matter. The different regulations which were approved[12] have ranged from a Code of Good Conduct to encouraging dation in payment[13]. Another decree-law granted a two-year moratorium and facilitated the access to social rental housing, which was previously limited to extreme cases of social exclusion and therefore to very few people. SAREB (or the *Banco Malo*, Bad Bank) was created to manage the real estate assets from banks that had benefitted from the bailout – only 10% of these assets are earmarked for social rentals. Finally, law 1/2013 did not include in any credible way the three claims set forth by ILP[14]: neither retroactive dation in payment, nor a general moratorium on evictions for economic reasons, nor social rentals for the concerned persons and families [15].

In this context, other autonomous communities have been paying close attention to the proposal of the Board of Andalusia, Law 1/2013 containing measures to ensure the fulfilment of the Social Function of Housing[16]. Called the anti-eviction law by some, it is seen as a solution to the housing problem faced by hundreds of thousands of Andalusians. Others call it the expropriation law and believe it would amount to flawed market conditions and a shortage of loans granted to new – hypothetical – buyers.

A closer look at the law shows that the reasons it sets forth acknowledge a current social and economic emergency. Without admitting to any earlier mistakes made by the institution, the basis for its proposal is the need to change angles: to housing as a right instead of as a speculative commodity. One of its major contributions is highlighting, from an institutional viewpoint, the fact that all housing must fulfil a social function. The creation of a Registry of Unoccupied Housing Units is a highly relevant tool, which had been a long-lasting social demand. It also sets forth a definition of an unoccupied housing unit as a home

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[11] Mortgage Law, based on the Decree of February 8, 1946.
[12] For more information: G. Pisarello, "Vivienda para todos: no quieren, pero se puede", 14/7/2013 www.sinpermiso.info/textos/index.php?id=6155
[13] Total cancellation of the debt if the property is handed over.
[14] ILP: Iniciativa Legislativa Popular, Popular Legislative Initiative. Means through which citizens can set forth bills. One of PAH's first campaigns was the submission of an ILP.
[15] Pisarello, op. cit.
[16] The full legal text is online: www.juntadeandalucia.es/boja/2013/198/1

which remains empty for over six months a year[17].

This Registry stems from one of the regulation's aims: to flush numerous new units out onto the rental market, therefore causing a general drop in rentals. To do so, two measures are proposed. For individuals (physical persons), incentive measures will

Corrala Utopía, December 2013 / Photo Credit: Corrala

be devised: guarantees for owners to bolster trust when renting. For banks (legal persons), penalties of up to €9,000 will be applied to each empty housing unit.

Another interesting measure is the temporary expropriation of housing for use[18]. This can be applied in the final stages of a mortgage eviction process. For a period of up to three years, inhabitants pay up to 25% of their income, and the Board of Andalusia pays the owner an annual 2% of the value the housing was auctioned at. At the beginning of December 2013, 33 cases had been filed and only 2 had been carried out.

Lastly, if the law is approved it will have an interesting series of implications and replace the decree put on hold[19]. It involves different amendments, such as the recognition of cases that had been overlooked when facing expropriation for use. On the other hand, it is definitely a step in the right direction as it recognizes people who have been evicted for non-payment of rent as part of the concerned group of population: they could be eligible for subsidies[20]. However, it must be clearly stated that rental homes are not eligible for expropriation for use.

The major shortcoming of this law is that it doesn't address the situation of the people who have organised and found their own ways to meet their needs, thus benefitting from the right enshrined in Art. 47 of the Constitution. The people who live in *Corralas* are still demanding the expropriation of the buildings they live in.[21]

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[17] It also sets forth criteria for defining housing as unoccupied: quantities of water and electricity used, for instance.
[18] The confusion caused by this measure must be lifted: unoccupied housing is not expropriated, it concerns housing inhabited by the people who purchased the home. Even more, the home must have already been sold at auction and the family will remain in debt if they do not successfully negotiate dation in payment.
[19] In April 2013 a decree-law was approved, which was cancelled by the Constitutional Court – the central government filed a complaint alleging it violated property rights.
[20] Which will also depend on the Housing and Renovation Plan, with no earmarked budget. www.juntadeandalucia.es/fomentoyvivienda/portal-web/web/areas/vivienda/texto/97d169ca-37ec-11e3-9eca-59261f2f7fc0
[21] Manifesto in support of the *Corrala Utopía*: www.corralautopia.blogspot.com/2013/11/manifiesto-de-apoyo-la-corrala-utopia.html

Organisations React and Keep Moving On.

MADV acknowledges the progress this represents, as it involves greater parts of society in this necessary discussion. Nonetheless, it also presents shortcomings: its slow implementation (the Registry and the Observatory are not operational yet); the channels for participation are unclear or absent. The proposal made shortly before the decree was approved illustrates this position. MADV demanded the declaration of a Housing Emergency: this would allow for exceptional measures, prevent utilities cuts and make it possible to expropriate unoccupied housing for use, such as the *Corralas* and other occupations already underway. Today, recognizing the situation of Housing Emergency remains a central claim: every day, more and more people are cut off from basic utilities (water, electricity or gas) because they cannot pay their bills.

Andalusia is paving the way. How? By occupying spaces which legitimately should be used by people: decent housing, spaces within the city. Its methods: making the details of an increasingly precarious reality more and more visible and vivid; creating spaces for dialogue and sparking concrete action, initiatives. The goal: to achieve the full recognition of the social function of housing and the city. This means making unoccupied housing immediately available, in urban settings which are connected to basic utilities, and reconnecting homes to the supply of water, electricity and gas. For each and every one.

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The Social Function of Land Ownership: Social Claims and Legal Decisions in Rural Brazil

MARIA SILVIA EMANUELLI / NOVEMBER 2013

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Τhis article is an excerpt from the Judges'Handbook on Protecting Peasants'Rights[1]. This Handbook is edited by Maria Silvia Emanuelli and Rodrigo Gutiérrez Rivas and seeks to contribute to the broader endeavour Vía Campesina (VC) has been working on for several years with the support of a broad range of allies such as FIAN Internacional: the adoption of a UN Declaration of the Rights of Peasants. One of the most important elements in this Declaration – just as in the World Charter for the Right to the City[2] – is the social function of land, provided under article 4 paragraph 11 of the VC draft[3].
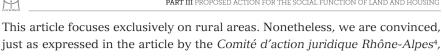
The cases we will present in the following pages highlight the few but nevertheless significant occasions when a judge has had to reach a decision on a land occupation conflict – usually involving the Movimiento de los Trabajadores Sin Tierra (MST) – and has ruled against eviction because the estate holder is not complying with the social function of land.

[1]   Manual para Juezas y Jueces sobre la Protección de los derechos de las campesinas y campesinos, available in Spanish at: www.hic-al.org/noticias.cfm?noticia=1469&id_categoria=8
[2]   The draft version of the World Charter for the Right to the City is the outcome of a collective initiative in which numerous organisations and networks took part, including the Habitat International Coalition (HIC). This has led to joint initiatives with Via Campesina. www.hic-al.org/derecho.cfm?base=2&pag=derechociudad2
[3]   The Declaration is available online at: www.viacampesina.net/downloads/PDF/SP-3.pdf

This article focuses exclusively on rural areas. Nonetheless, we are convinced, just as expressed in the article by the *Comité d'action juridique Rhône-Alpes*[4], that this discussion can spread and shift to the urban environment, as is already happening in some Latin American countries. We also believe that this concept can be developed and further defined to be translated and applied in other regions of the world. In order for this to become effective, we must keep fighting for it to extend beyond its mere acknowledgment in laws and policies and to become tangible in the different fields we all work in.

The Social Function of Property in Brazilian Legislation

Article 5 of the 1988 Brazilian Constitution establishes that ownership must fulfil a social function. Articles 182 and 184 specify the cases that justify expropriation when it is geared towards carrying out urban and agrarian reforms, respectively. Article 184 provides that: it is within the power of the Union to expropriate on account of social interest, for purposes of agrarian reform, the rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of the real value, redeemable within a period of up to twenty years computed as from the second year of issue, and the use of which shall be defined in the law.[5]

The National Institute for Colonization and Agrarian Reform is the body in charge of the expropriation process[6]: it inspects buildings to determine whether their social function is being met, which, in accordance with article 186 of the Constitution, involves analysing the property's productivity (rational and adequate use) as well as the adequate use of available natural resources or environmental preservation; the compliance with labour laws and regulations; and a use which encourages the landowners'and the workers'wellbeing[7]. This procedure is mandatory to obtain the presidential decree declaring the building of social interest for the agrarian reform.

Land occupation by landless families, Brazil / Source: www.mst.org.br/node/15495

Land Occupation, Agrarian Reform and Judges

In light of the systematic denial of the right to land, and in order to impel the State to implement agrarian reform by expropriating rural properties[8] which do not meet their social function requirements, over the last 20 years MST has carried out numerous occupations[9]. The rulings delivered on these occupations basically cover two situations: on the one hand there are expropriation-related situations and on the other hand, civil or criminal suits filed by landowners because of the land occupation with the aim of obtaining eviction rulings. Most case rulings reveal that judges privilege a civil law approach, individualist and patrimonial[10], which is blind to the root causes of a conflict involving a large community voicing very concrete social demands. This explains why most rulings favour private property and prevent expropriations, leading to the movement's eviction and convictions for its leaders.

In these cases, the use of criminal law to criminalize leaders has been analysed extensively in numerous articles.[11] We will now present two decisions which did not fall into this category of making justice. Since this article cannot be too long, we will not discuss several other cases which are analysed in the previously mentioned Handbook.

[4]   See article in this book, "Reappropriating the Law to Recover Control of the Use of Land", Quentin Hecquet, page 145

[5]   Translator's Note: Source of the English translation of the Brazilian Constitution: www.pdba.georgetown.edu/Constitutions/Brazil/brtitle7.html

[6]   The proceeding is set forth in Act 8.629/93 available online at: www.jusbrasil.com.br/legislacao/104141/lei-8629-93

[7]   There is no consensus on this issue. Some authors believe that if a property is productive it is already meeting its social function. On this point, cf.: Diaz Varella, Marcelo, Introdução ao direito à reforma agrária: o direito face aos novos conflitos sociais, Leme-SP, LED Editora de Direito Ltda, 1998, p. 226-256. Quoted by: Reis Porto, Luciano, El poder judicial y los conflictos agrarios en Brasil, Revista de Derechos Humanos y Estudios Sociales, Año I, No. 1, January-June 2009, Facultad de Derecho de la Universidad Autónoma de San Luís Potosí, México, p.85.

[8]   For further information on the number of evictions carried out in the country the last few years, cf.: Balduino, Tomás, Brasil: héroes y víctimas de la antireforma agraria, April 12, 2007, ALAI, available online: www.alainet.org/active/16833&lang=es. La Comisión Pastoral de la Tierra (CPT) also publishes annual reports online: www.cptnacional.org.br

[9]   A document published by the MST National Secretariat in 2004 states: MST has been struggling, for these last 20 years, by putting pressure on the government, the Brazilian State, to comply with the Constitution and carry out a land reform. The rich people in our country, as usual, seek to defend their privileges, even by using the law. They do not, really, defend rights. They defend privilege: land concentration, land income, wealth. The only solution left for por people is to organise to defend their own livelihood. Secretaria Nacional do MST, "Legitimidade das ocupações – O MST e a lei", April 20, 2004. www.lists.peacelink.it/latina/msg05226.html

[10]   Reis Porto, Luciano, El poder judicial y los conflictos agrarios en Brasil, Op. Cit., p. 86

[11]   According to CPT data in the publication Conflictos en el Campo: in 2006 there were 917 jailings for land conflicts; this figure reveals, to a certain extent, the high level of criminalisation of the struggle for land reform in Brazil. In addition to the jailings, the State's repression has been biased against the crimes committed against the landless peasants. The CPT highlights, for instance, that between 1986 and 2006, over 1700 landless peasants were assassinated. For this total there were only 86 trials and merely 7 convictions. Ibídem, p.67.

Cases in Which the Social Function of Property Was Applied

Civil Court of First Instance, State of Rio Grande do Sul. Property Restitution Claim Nº 02100885509, October 17, 2001[12].

After a protest staged to demand active land redistribution policies from the State, 600 MST activists occupied 30,000 m² of an 11,563,529 m² farm. The landowner filed a property restitution claim which the judge ruled against – a quite uncommon event – and based his ruling on an analysis of the social function of property in relation to the dignity of persons. First, the ruling states that: the utter ineffectiveness of traditional legal and procedural channels to adequately and reasonably solve collective conflicts must be acknowledged. Indeed, making them individualized and piecemeal stands in the way of their resolution and leaves the situation far from settled, since usually these conflicts are the manifestation of social demands stemming from structural and supra individual issues. To ensure that the right to a decent life prevails over property rights when these two sets of right clash, the judge stresses the fact that property must meet specific criteria for social responsibility. In order to strike a balance between the different parties' interests, the judge addresses this land occupation as part of the broader global socio-political context, as MST activists aim to force the Brazilian state to urgently perform the tasks it is bound to by the Constitution and which have been historically overlooked.

The judge then explains: undoubtedly, should one of these rights have to be sacrificed, it should be that of property, as the Constitution of the Republic (art. 1º, II e III, and art. 3°) has enshrined what German doctrine and case law call the "State guarantee of the existential minimum", meaning the positive guarantee of a minimum resource for a decent life. In fact, how can this minimum be guaranteed while overlooking the need to see to fundamental commodities (work, housing, education, health care) which are essential to human beings, without which persons cannot exist as such?

The judge also took into consideration the occupants' precarious situation and their dependency on land, along with the lack of evidence proving that the property was socially responsible. All of this led him to consider that the eviction notice was out of proportion, especially since the occupation only concerned 30,000 m² of the 11,563,529 m² farm. Therefore, the occupation did not endanger the farm's equipment or its workers, or its overall output. The judge viewed the landless peasants' justifications as legitimate and inspired in the principles of citizenry, as they were addressing shortcomings in the State's action. Any decision depriving peasants of the existential minimum would thus be an attack

against their dignity as persons, which could not be allowed for under any circumstance. Therefore the judge called upon the parties to work together on "*the grounds of the principle of social solidarity enshrined in the Constitution of the Republic (art. 3º, I)*".

Appeals Court, State of Rio Grande do Sul. Recovery of Possession, Nº 598.360.402, 6 October 1998.[13]

A company filed a recovery of possession claim for a farm for which it was a licensee, since it was occupied on September 4th 1998 by 600 families participating in MST. The first instance ruling granted the company its request as a preventative measure. The Movement appealed against this decision. The judge in charge of the first procedural examination decided to suspend the eviction notice until the ownership claim had been definitively solved. Finally, the appeal filed by the peasants against property restitution in favour of the company was accepted. The judge first states that law is not just the written law, meaning that the context had to be taken into consideration. Then, he elaborated on the legal meaning of ownership and the protection of property, stating that the right to private property is conditioned by fulfilling the social use of property.

According to the judge, social peace, which is the horizon for all judicial decisions, has been used as an argument to justify eviction operations by executive authorities, thus evicting poor and miserable families from the land they had occupied. Justice had thus become a mechanism used against social movements. The decision stresses the need to fully acknowledge the complex political situation from which this situation stems. According to the judge, peace cannot be achieved by evictions or actions which seek to make the right to private property prevail, but rather by means of a genuine agrarian reform.

The decision highlights how crucial it is to position the social use of property given the absolute understanding which prevails of this right. Not all the judges who participated in this ruling supported it, though it was adopted by a majority of judges. The judge in charge of drafting the ruling referred to the academic A. C. Wolkmer and developed the function of the judicature in the following terms: a true force for social expression defined by the practice of an autonomous and unyielding practice regarding the other branches of State authority. He also raised the issue of the challenges legal agents meet when it comes to performing this function if they do not act subserviently with Its Excellency the market. Furthermore, the judge defends peasants' right to work by access to land and notes that any land reform should focus on individuals. If no land reform is enacted, peasants are forced to seize their rights in order to make use of them. The author of the decision provides a convincing argumentative presentation on the social function of property in both its active and passive dimensions.

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[12]   The full text of the ruling is available online: www.fian.org/fileadmin/media/publications/Brasil4.pdf

[13]   The full text of the ruling is available online at: www.fian.org/fileadmin/media/publications/Brasil5.pdf

In this case, property was considered to be defined by its productivity (active dimension) as well as by the non-fulfilment of tax obligations by the company which was demanding the eviction of the peasants' families (passive dimension). Considering this non-payment and the non-creation of employment opportunities, the judge concluded that this property was not fulfilling its social function. Therefore the judge sided with the appeal filed by the peasant families against the eviction request.

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Land and Factors of Women's Empowerment: the Cooperative Movement in Egypt[1]

NASHWA ZAIN / DECEMBER 2013

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In Egypt, cooperatives of all kinds are emerging to satisfy needs, such as the consumer's need for goods or services and the need of the producer to maximize her/his labor power by mobilizing limited savings. Through the economic use of limited assets, cooperatives can satisfy more needs with fewer resources.

Thus, the cooperative approach becomes the most appropriate one in the pursuit of balanced development. It is also closely related to human-resource development; i.e., the development that aims to expand available options. Cooperatives allow the collection of small, scattered efforts and small amounts of money into larger entities, without obviating private property, and so realizing the advantages of mass production and economies of scale, despite the meager shares.

The International Cooperative Alliance (ICA) has acknowledged the importance of women's cooperatives, emphasizing that women all over the world choose collaborative projects, because they secure their economic and social needs; whether it is to achieve their personal ambitions, to obtain products and services they need, or to engage in economic activity that is based on values of social

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[1]   This text is based on the presentation at the Land Forum in Tunis, March 2013, organized by HIC-HLRN.

More than 4 million women work in agriculture in Egypt. Source: Better Life for Full Development Institution.

solidarity. So, women's perception is growing to realize cooperatives are the optimal choice in the pursuit of livelihood, especially when cooperatives are democratically owned projects and managed with a leadership based on voluntary work, personal responsibility, democracy, equality, justice and sovereignty, all of which enable its members to exercise their activity through their own decisions democratically taken to reach their ambitions of fulfilling economic, social and cultural rights.

For women, cooperatives respond to their practical and strategic needs; provide organizational effective means for members; work on improving their standard of living through respectable employment opportunities, savings, credit, health, housing, social services, education and training; provide opportunities to participate in and influence economic activities; and allow them to achieve equality and change the bias of state institutions toward specific groups. Cooperatives help women to join the activities of income-maximizing projects by organizing their work in a flexible manner, while respecting the multiple roles of women in society.

The message of ICA refers to the great successes achieved by the cooperatives of women in many countries, led by Burkina Faso, India, Japan, Honduras and the United States. In Egypt, women are the breadwinners in about 35% of families, based on statistics of various research centers. This includes the provision of housing in cases of divorce and widowhood. The role of housing cooperatives to provide adequate alternative housing for families has become clear, especially for the inhabitants of such marginalized communities as the City of the Dead (Cairo) and shantytowns across the country. There cooperatives provide housing facilities and fill a gap left by the state in policies and programs to ensure

adequate housing and adequate conditions of decent human life, which include the provision of clean water supplies and sanitation, paved roads, lighting, basic facilities and even recreational activities.

Egyptian women in rural communitie haves also formed cooperatives as a means to maximize their agricultural production and improve food security. Some recent examples are the women's agricultural cooperatives formed in the Matrkh Governorate and al-Nubariyah, on the country's northern coast.[2]

The 25th January uprising has opened new possibilities for the cooperative movement in Egypt. After President Husni Mubarak's downfall, when the new Minister of Manpower Ahmed el-Borai (2011) decreed the right to form agricultural associations, rural women have formed unions[3] and called upon the state to support them in their efforts to form their own agricultural cooperatives.[4]

The cooperative movement in Egypt has taught women how practical cooperation and the pooling of otherwise meager resources can multiply their economic means. This empowering lesson has demonstrated how women's agency can confront seemingly insurmountable obstacles to their well-being. The components of this collective force specifically include:
— Working to alleviate the impact of poverty resulting from the neoliberal and/or liberal economy, but working to liberate its members from the control and exploitation of private capital;
— Cooperatives are gathering members to manage their economic interests collectively not on the basis of the size of property, but on the basis of one member=one vote; and
— Posing alternatives to the 38% of children of single mothers who are compelled to leave school and work to cover the deficit of their mothers income.

By these collective means, cooperatives can enable the empowerment of the most marginalized groups in society, particularly women wage earners and heads of households. Through cooperatives, development efforts can serve the interest of women to achieve a real change, as well as enhancing their capability to create and innovate solutions to local problems and maximize the scattered capacity into a social and economic force.

[2]   Ministry of Agriculture: Assigning fertilizer distribution to cooperatives in Upper Egypt instead of Development Bank, al-Masry al-Youm (6 May 2011), at: www.almasryalyoum.com/node/425822
[3]   Egypt Women peasants form historic union, ahram online (25 October 2011), at: www.english.ahram.org.eg/~/NewsContent/1/64/25107/Egypt/Politics-/Egypt-Women-peasants-form-historic-union.aspx
[4]   Mona Ezzat, Conference in Matrkh demands the state support women economically and revive cooperatives, al-Sawt al-Masriyya (25 September 2013), at: www.aswatmasriya.com/news/view.aspx?id=7bd72eb3-a03e-4e40-a467-06f33b5c6f95.

Community Land Trusts or Common Land Ownership

SAMUEL JABLON / OCTOBER 2013

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Controlling the cost of land is a major driver for making housing more affordable for poor households. In the United States and England, there is a cost control scheme based on collective land ownership: community land trusts. This system allows an organisation – within a neighbourhood, a city or a region – to become a permanent landowner and manage land occupancy according to its goals: preserving natural areas, building housing or farmland, etc.

Modern urban land trusts started developing in the 1970s in the United States: they were inspired by very old models of collective ownership and joint management (Native American traditions in Northern America, British garden cities, the cooperative movement, South American urban social movements…). Today, there are over 200 in different American cities. They are all based on the idea of "community" ownership of land but they have different objectives, not necessarily related to housing. Their purposes range from revitalising a neighbourhood to establishing "community" control over public financing or community supported agriculture in rural areas. Though initially land trusts were developed through grassroots and activist organising, today local authorities account for many of the new creations.

A Democratic Organisation Which Guarantees "Permanent" Collective Ownership

Land trusts purchase land mostly thanks to public funding and occasionally thanks to donations or foundation grants. Once the land is purchased, it remains within the trust's "portfolio" "permanently": regardless of its use, it can never

be resold at a speculative price. The organisation's Board of Directors gathers different stakeholders. Reselling the land is very difficult and almost impossible since this Board is composed of:

—   one third of representatives of the inhabitants who live in the housing on the land trust,

—   one third of exterior members – community members – who support the organisation, are awaiting housing on the land trust or are just interested in the project (so these are mostly people who will make sure the housing remains affordable).

—   one third of institutional representatives: public financiers, banks, other non-governmental organisations.

This Board is designed to safeguard the land trust's social mandate, as is the rule that land can only be sold with the approval of 2/3 of the Board of Directors and of the majority of the members (the people who live on the land are members, as well as anyone else who is interested in the project).

Striking a Balance Between Safe Proceedings and Price Control by Breaking Up Ownership

One of the CLTs innovations is its combination of collective land ownership and individual housing ownership, two aspects which could appear to be contradictory because of their interests and purpose. By dividing the value of the property, as well as the rights, assets and risks it entails, the CLT satisfies American households' marked aspiration to home ownership. At the same time, it ensures that in the long term, when these homes are resold, they will remain accessible and not lead to speculative operations.

In CLT home ownership programmes, a household purchases whichever home it wants on the private market – within a price limit – and receives a grant which is equivalent to the value of the land. The CLT becomes the owner of the land. The buyer becomes the owner of the home and the tenant on the land, by means of a long-term lease. If the home is an apartment in a building, there is an equivalent legal arrangement: when the subsidy is granted it entails "shared ownership" of the home with the land trust.

This mechanism presents many benefits:

—   It is affordable for the people who have the hardest time accessing home ownership, since it is granted to people with predefined income levels (80% of the median income in the area)

—   The household chooses the home it wants to purchase.

—   The land trust's "portfolio" increases without it having to prospect.

—   The property's future and value (namely if it is to be resold) is jointly control-

led by the buyer and the land trust.

— Homeowners are given advice: checking the bank loan (for unfair terms), training on housing costs, insurance, maintenance…

— It provides guidance and safety for the homeowner during the whole loan repayment period, to prevent defaults and losing the home. At the first payment default, the land trust is contacted and can step in to assess the situation and act as an intermediary (by rescheduling the loan, helping to reduce expenses, providing budget management pointers). If the buyer cannot keep the property, he/she can be rehoused in another home managed by the land trust (rental housing, social housing, cooperative…).

Controlling Prices

When the owner wants to resell the housing, he/she must sell it to the trust. Each CLT has its own resale formula, depending on the context – rural or urban – and the market – tight or slow. The idea is to reach a balance between the land trust's interest – economic affordability – and the owner's interest – recovering part of the added-value). For instance, the owner can sell the home for a premium of up to 25% of the market added-value, in addition to pricing in the enhancements made to the home over the years.

Other CLTs have formulas which are not based on market prices but rather on income trend indexes, on a maximum annual increase in the housing's value or on the valuation of the duration of occupancy… The formula always reflects an attempt to strike a balance that is "fair" for the owner while making sure the home remains affordable for other low-income households.

After the buyback, the land trust sells the home to another low-income family. Every time it is resold, the property's price only increases by 25% of the market price rises, so the property actually becomes more and more affordable.

There are many different CLTs and they each function differently. One of the most famous and biggest CLTs in the United States is the Champlain Housing Trust (CHT) in Burlington, Vermont. This college city of 40,000 inhabitants became attractive in the 1980s and its land costs started to rise. The land trust was created in 1984, as a response to this price increase, in order to preserve a supply of affordable housing for the city's inhabitants.

Today, the Champlain Housing Trust owns and manages 1,500 social rental homes. On the land it owns, it hosts 80 cooperative housing units and 460 homes for home-ownership. Over time, the land trust has also developed related training and advisory activities for owners, as well as loans which enable low-income households to perform work on their homes.

www.champlainhousingtrust.org

A Long-Term Social Mandate Which Combines Collective and Individual Interests

Land trusts are an extremely flexible tool for habitat policy. They can be used for all different kinds of access to housing: once the CLT is the landowner, whatever is on the land can be bought, leased, or built under different legal arrangements or by different persons (companies, households, cooperatives…). On CLT lands, there are families who are individual homeowners, cooperatives, joint ownerships, hostels and shelters, parks and gardens, office buildings…

Given the current real estate market situation, public investment is required to bridge the gap between housing prices and the poorest households' ability to pay. The land trust's strength is to "seize" this initial public investment and give it and the land a long term social function.

In the traditional home ownership scheme – subsidies, tax exemptions –, public investment targets just one household and can even have a negative impact, as it drives up market prices or encourages the production of a supply which does not necessarily match demand. Public subsidies even make the market more expensive and thus less open to poorer households.

On the contrary, with an initial investment the Community land trust ensures a long term social function: for the market – by controlling prices –, and for people – social access to housing, guidance for homeowners. It can be viewed as a tool to help keep prices down and to prevent real estate upsurges. It is easy to implement since property is directly resold to the land trust. This means that it provides a tighter oversight than anti-speculation provisions, which can prove difficult to use after several years have gone by, such as the French provisions. The recent economic crisis also demonstrated how CLTs can be a safeguard, as many home bankruptcies struck poorer households in the US. They therefore act as counter-cyclical buffers and as a shield against crises, from policymaking to poor households' options.

The CLT pragmatic model is both progressive and conservative, namely regarding public funds. It could thus garner support across the political spectrum. It is a creative combination of individual interest: private property, property accumulation and transmission; and collective interest: control over property prices and guarantees of accessibility.

Paradoxically, land trusts only make sense within a broader, more speculative market, where separating the value of land and property constitutes a comparative advantage. This mechanism is interesting because it is a way to act "within the market", to take a step back and establish a relative advantage for poorer households.

Despite these numerous advantages, CLTs are not that commonplace and only own small estates. This is mainly because of public financing limitations on these programmes (in the US, the Federal government has not invested in social housing since the 1980s; today most financing comes from states and cities). They also spark serious ideological oppositions: going beyond a traditional approach to property proves challenging and there are two major objections to this mechanism. The right wing considers that partial ownership is "anti-American" and the left wing believes that this mechanism does not provide sufficient help to poor people, since they only collect part of the profit on the resale ("exploiting the poor"…).

There is another ideological barrier: it has to do with establishing models which are not based on a simple dichotomy between public/private; market/non-market; leasing/ownership, etc. Land trusts are a complex mechanism which stands half way between the free market and totally state-controlled ownership. It is part of an intellectual tradition which posits the idea that land belongs to everyone and can be handled by the community, whereas individual ownership should only apply to constructions and to what is produced on the land.

Despite these remaining obstacles, the subprime mortgage crisis has shed a new light on these mechanisms and has renewed their legitimacy in the United States. This may lead to new experiments in Europe and in France.

FOR MORE INFORMATION:

>   The United States National Community Land trust Network: www.cltnetwork.org
The British Network: www.communitylandtrusts.org.uk
>   The creation of a Community Land Trust in Belgium:
www.communitylandtrust.wordpress.com
>   Different articles and links to websites on the Blog of the International Chair on Cooperative
Housing: www.chairecoop.hypotheses.org/tag/community-land-trust

Re-Shaping the City by Making Urban Land Accessible.
The Case of Housing Cooperatives in Uruguay

RAÚL VALLÉS & BENJAMÍN NAHOUM / NOVEMBER 2013

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Introduction

The claim for the right to housing, which is still very far from being effective, has shifted to the right to the city, construed as an acknowledgment of the fact that the adequate access to adapted urban and housing goods and commodities is a requisite for all inhabitants to enjoy decent living

conditions. This is a claim for urban rights and when these are truly effective, they assert the right to the city and therefore citizenship.

The access to, or lack of, these urban rights is closely conditioned by the access to urban land and more specifically the location of inhabitants on the territory. Traditionally, housing public policies have overlooked this factor and have been based on exclusively economic assumptions. They have therefore privileged cheaper solutions, usually located on poor urban soils, without access to the adequate services and in outlying or remote districts.

At the same time, not only has the market failed to adequately solve the problem of access to land for popular sectors, but it has also, as part of its own rationale, been evicting people and generating permanent social segregation. This segregation is performed by making it impossible for lower-income sectors to afford a decent location in the city.

To enforce the right to the city, urban land must be considered a public good and along with an adequate location, it should be the basis for a decent urban and housing solution.

Uruguayan Housing Cooperatives

For the last 45 years, Uruguay has had a mechanism of social production of habitat: self-managed housing cooperatives. This mechanism has been recognized as one of the most efficient solutions to low-income sectors' housing problem. This problem may not be as serious as it is in other countries in the region, but it has deteriorated these sectors' living standards. Indeed, as they are unable to afford the solutions the market proposes, they are forced to turn to precarious and informal alternatives.

In Uruguay, the cooperative system has different expressions: self-initiatives; mutual assistance; prior savings, with direct management or management by third parties. The most developed form and undoubtedly the most subversive is self-management and mutual assistance under collective ownership – these mechanisms sidestep the market by making families the managers and builders of their own homes. Collective ownership grants ownership to the group whereas families are entitled to use and enjoy the common property. This is a reassertion of the concept of housing as a right instead of as a tradable commodity, thus keeping speculation at bay.

In addition to democratic participation, self-management, mutual assistance and collective ownership, this system relies on: technical guidance provided by non-profit multi-disciplinary teams; and the State's participation as a key

player in policymaking, in planning, in supervising and monitoring programme implementation, as well as in financing, namely thanks to subsidies. This is a role no other actor can play.

Funding for these programmes covers the access to urban land, but since the groups do not have their own resources and State funding is only disbursed once the programme has been approved and the loan signed, a vicious circle sets in: the land can be paid for with the funding, but the financing cannot be obtained if there isn't at least a minimum guarantee regarding the land.

The Land Portfolios

This contradiction was solved when the Housing Act, which was voted in 1968 and lays out the legal framework for housing cooperatives, was first implemented: a public Land Bank or Portfolio was established to allow beneficiaries to access adequate land and pay for it once they had received the funding they applied for. This boosted the cooperative movement significantly; after some initial hesitations, as in any new system, in less than five years cooperatives became the main production line of the Housing Plan.

Then a twelve-year dictatorship imposed a neoliberal economy in which cooperatives and their values of solidarity, democracy and State participation were not welcome. The Land Portfolio was also shut down, as it symbolized an intrusion in the market and a threat to its all-mighty power.

Once the dictatorship had been left behind, reality recalled the need to reopen the Land Portfolio, not just as a necessary tool for the Housing Plan (for cooperatives as for the other programmes) but also because it provided city governments with a crucial tool for urban planning.

Indeed, since the State is providing the land, it can also decide where and how constructions and developments will take place. And since the land is subsequently paid for, the mechanism operates like a revolving fund. The only requirement to start it is seed capital, which can usually be accounted for by land already owned by the State.

Hence in 1990, a Land Portfolio was established by the municipal government of Montevideo, the capital of Uruguay where over half the country's population lives. Other municipal governments soon followed suit and in 2008 a national Portfolio was created under the authority of the Ministry of Housing (the Building Portfolio for Social Housing, CIVIS). These steps were significant progress towards making the right to urban land a tangible reality.

La Ciudad Viva, Montevideo / Photo Credit: Benjamín Nahoum

The State therefore has a decisive role to play and is not just a facilitator for the market. This proactive gesture is an element of public policy which responds to a long-lasting claim from the cooperative movement. Obviously, this potential can be used for better or for worse, depending on the policies the Portfolio authorities adopt for the acquisition and granting of plots. And land can also benefit from it, if sufficient funds are allocated to putting to use idle land, public and private, namely vacant lots and abandoned buildings in urban service areas.

The Adequate Use of Land

Nonetheless, guaranteeing or facilitating access to well located land is not sufficient to ensure the enforcement of land's social function. This social function entails social and territorial responsibilities, such as promoting the adequate use of land, types of use, target densities, and contributing to a suitable urban configuration.

Land policy and the cooperative movement can, hand in hand, prove to be a very powerful driver for materializing urban rights. Examples of this can be found in experiences throughout the city in which popular sectors have undertaken cooperative housing projects and are experiencing collective ownership of land and housing.

For instance, there have been significant experiments in consolidated urban areas with mean densities, as well as urban restoration initiatives in the historical centre of Montevideo (the Old City). Establishing favourable conditions for access to land and implementing high-quality urban and architectural projects have come together to meet the needs and aspirations of urban users.

Though the granted land has not always been given the best use, thanks to the Portfolios collective ownership and access to decent locations have demonstrated that there are alternatives for low-income sectors and that solutions can only come from a State which goes beyond creating a conducive environment for the market and strives towards social promotion.

These initiatives illustrate the need for an adequate legal framework to back these policies, but even more so the crucial role of political determination to make these rights effective.

This mechanism has led to grant buildings which in Montevideo alone cover hundreds of hectares, as well as to the building of over two hundred and fifty housing units of different kinds – of which many are cooperatives. In a small country like Uruguay, these figures are hugely significant.

The following map[1] is of Montevideo and shows the distribution of the initiatives that have been developed thanks to land grants: they are present in bordering outskirts as well as intermediate and central locations, and have been the grounds for programs with different population densities and configurations.

Finally, making urban land affordable and suitable for popular sectors'habitability must be a guiding principle for public policy and above all a social and territorial right that must be rendered concrete. To do so, not only are tools and instruments needed, but also a steady and loud claim and struggle from popular sectors, since in María Lucia Refinetti's terms in the city, land use by some social sectors excludes other sectors'use.

[1]   The authors wish to thank Marta Solanas Domínguez, architect, for her help, namely for the map she designed which is provided here as an illustration.

WEB SITES

AITEC
aitec.reseau-ipam.org

Arab Center for Agricultural Development
www.acad.ps

Arquitectura y compromiso social
www.arquisocial.org

Bartlett Development Planning Unit, University College of London
www.bartlett.ucl.ac.uk/dpu

Comité d'action juridique, Rhône-Alpes
www.comite-action-juridique.fr

Coordination nationale des organisations paysannes, Mali
www.cnop-mali.org

European Federation of National Organisations Working with the Homeless
feantsa.horus.be

Federación Uruguaya de Cooperativas de Vvienda por Ayuda Mutua
www.fucvam.org.uy

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www.fondation-abbe-pierre.fr

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www.fokal.org

Habitat et Participation
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www.raquelrolnik.wordpress.com

No Vox International
www.no-vox.org

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The Latest Issues of Passerelle:
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N°6/2012: Updated version: *Commons, a Model for Managing Natural Resources*
(English and Portuguese)
N°5/2011: *Le pouvoir des entreprises transnationales*

If land, whether rural or urban, were viewed as playing an essential role in all human beings' life, just like air or water, and its value in use outweighed its exchange value, wouldn't our cities and countryside look completely different? Many social movements, researchers, social organisations, local and national authorities as well as international organisations are concerned by the issue of the social function of land and of housing, worldwide. A reflection on different ways to relate to land - other than ownership - must therefore be carried out, i.e. ways that do not entail abusing, speculating or excluding others.

Thanks to contributions by different actors, this issue sheds a light on the progress of the social function of land and housing in the different areas of the world. This issue's singularity is linked to its insight into a potential alliance between inhabitants and peasants, between rural and urban issues. Much food for thought is set forth here on points of mutual interest, alternatives and resistance practices around the world.

AITEC (Association Internationale des Techniciens, Experts et Chercheurs – International Organisation of Engineers, Experts and Researchers) participates in developing an expertise grounded in social struggles and in setting forth proposals to protect and safeguard fundamental rights. The organisation mostly focuses on the right to housing and to the city and on the European Union's trade and investment policies. www.aitec.reseau-ipam.org

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