

# URBAN SHELTER

## SECURITY OF TENURE

Did you know that 61 percent of all countries have national legislation on protection against forced evictions.



Timuras Onah/Topham Picturepoint/UNEP

### The Right to Adequate Housing

The Universal Declaration of Human Rights recognizes the right to adequate housing as essential to an adequate standard of living.

Increasingly, this right is seen to comprise a number of elements, leading international organizations to discuss packages of policies and practices rather than a single (ultimately unenforceable) right. Such packages include: ensuring secure tenure, preventing illegal and mass evictions, removing all forms of discrimination, and promoting participation, gender equity and freedom of infor-

for the progressive realization of the right to adequate housing should be included: provision for legal security of tenure and equal access to land as well as effective protection from forced evictions that are contrary to the law.

### A starting point for change

Tenure security is a means of recognizing the rights of the poor by extending a sense of permanence and stability to previously marginalized people, allowing them to design shelter and survival strategies on the basis of their protected human rights. Security of tenure alone does not solve the problems of homelessness, poverty, unsafe living environments and inadequate housing, though it is one of the essential elements of a successful shelter strategy.

Security of tenure implies that the right of access to and use of land and property is underwritten by a known set of rules, and that this right is justifiable. The tenure can be effected in a variety of ways, depending on constitutional and legal frameworks, social norms, cultural values and, to some extent, individual preference.

In practice, households having secure tenure rights are protected from involuntary removal from their land or residence. Evictions could happen only in exceptional circumstances by means of known and agreed legal procedure, which must be objective, equally applicable, contestable and independent. Exceptional circumstances would include situations where physical safety of life and property is threat-

### What is Tenure?

Tenure is defined in the Bathurst Declaration on Land Administration for Sustainable Development issued in October 1999 as the way in which the rights, restrictions and responsibilities that people have with respect to the land (and property) are held. Different forms of land tenure such as ownership, leasehold and different types of common, communal or customary land tenure system may be recorded. The mass privatization process in Eastern Europe has resulted in a complex mixture of tenure systems where public and private ownership, owner-occupied and rental dwellings can exist under one roof.

mation, especially with respect to land markets. Among the actions that governments should take

**Housing Programme in the peripheral areas of Xalapa, Veracruz-Mexico**

Due to lack of access to suitable land, nearly half of the 400,000 population of Veracruz had settled in 80 irregular settlements on un-serviced, peripheral public land. The project involved a plan for all these zones, using participatory planning methods for negotiating land and services provision with the state and city authorities. As a result, a large section of the population was trained in settlement issues and self-construction methods, and urban service provision extended to the peripheral areas. Access to land (with secure tenure) was granted on a state government reserve for construction of low income housing.

ened, or where the people have taken occupation of the property by force or intimidation, or kept occupying the property without fulfilling their parts of the contractual agreements with landlords.

Although secure tenure is an issue affecting primarily the poor, human rights implications make it relevant for every individual. There are many forms of residential tenure - with varying degrees of social legitimacy - constraining or enhancing the use of tenure rights as defined by legislation throughout the world. In the case of squatter housing and informal settlements, which attain a *de facto* status, legal recognition through regularization depends upon the constitutional and legal frameworks of each country. When a social consensus can not be reached for a particular

form of regularization, the conflict between housing rights and property rights should be resolved with due respect to the human rights aspect of this issue.

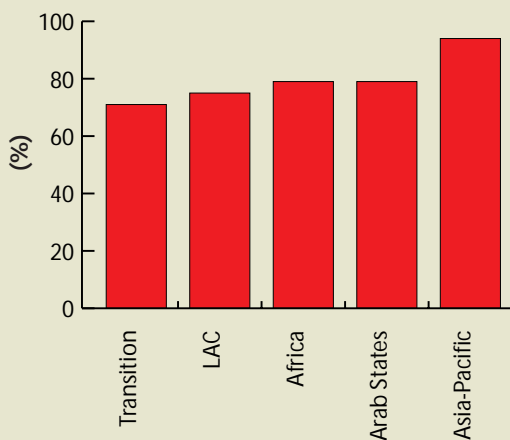
Data for the year 1998 suggests that in the constitution or national laws of more than 70 percent of countries, full and progressive realization of the right to adequate housing is being promoted. This encouraging result is further supported by other data confirming that national constitutions, and laws that include protection, range between 55 percent and 79 percent of countries according to regions. Almost all countries in the Asia-Pacific Region promote housing rights in their legislation, and the Arab States provide greatest protection against eviction.



**Economic benefits to society**

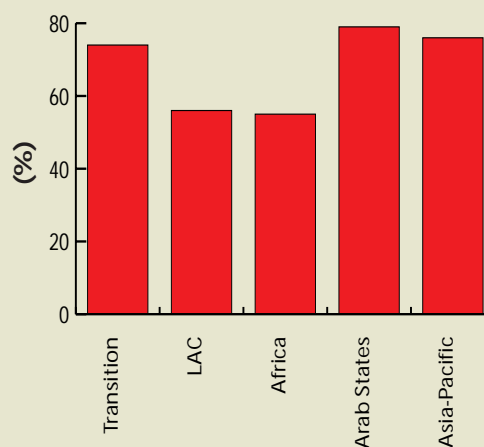
In *The Mystery of Capital*, Hernando de Soto estimates that illegally occupied property - commercial, industrial as well as residential - in the developing countries represents a value of US\$9.3 Trillion. But there are obstacles to receiving legal tenure. In Lima, the cost of obtaining legal land registration was found to be \$1231, 31 times the monthly minimum wage and can take 728 steps over 3 years.<sup>8</sup> Illegal business development and operation is hardly cost free. Because they do not own their property they cannot incorporate; consequently, entrepreneurs cannot raise capital by selling shares and cannot receive bank loans. They cannot reduce risks by declaring limited liability, or by obtaining insurance coverage. Lack of secure tenure thus has a three-fold effect on society: firstly, people and business enterprises in the informal settlements are deprived of essential public services; secondly, the municipal governments receive no tax income to pay for any of the services they should provide to the settlements; and finally, the potential value of these properties constitutes personal and national wealth which remains inaccessible and unusable as collateral for borrowing for further investment. This potential wealth can only be released by bringing these properties into the formal sector, with their registration and taxation through legal municipal measures as a means of providing secure tenure.

**Right to Adequate Housing**



Proportion of countries with constitutions or national laws that promote full and progressive realization of the right to adequate housing

**Evictions**



Proportion of countries with constitutions or national laws that include protections against evictions