

**SUCCESSES AND
STRATEGIES:
responses to
forced evictions**



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1

INTRODUCTION

The forced eviction of individuals and communities from their homes and lands is a growing global phenomenon affecting millions of people in both rural and urban areas. In a majority of cases, it is the poor and other oppressed groups that are forced to give up their homes and lands and thus pay the price for development strategies that rarely benefit them. Forced evictions are therefore not only profoundly unjust and illegal, but are also counterproductive to human development.

There is, however, a growing wealth of positive innovations in the work of community organisations, social movements, non-governmental organisations (NGOs), and local governments where forced evictions are being averted and viable alternatives are being developed. This report aims to draw on that wealth of experience to create a useful resource for people – be they in government, NGOs, community organisations, or social movements – wanting concrete information about how forced evictions can be avoided and security of tenure achieved. The report explains and briefly assesses nine case studies from eight countries in order to provide a variety of recent examples of successful strategies developed by a range of social actors in different circumstances.

1.1 Defining forced evictions and security of tenure

The term ‘forced evictions,’ as defined in General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, is “the permanent or temporary removal of individuals, families and/or communities against their will from the homes and/or land that they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹ Therefore, any action that results in the removal of people from their homes or land against their will, without adequate notice, access to legal remedy, and adequate compensation or rehabilitation, is considered a forced eviction. Forced evictions are most common, but not limited to, situations where dwellers do not enjoy security of tenure.

Security of tenure can be defined as freedom from fear of forced eviction. Security of tenure is not restricted to ownership but includes full legal protection against arbitrary eviction for all occupiers, including tenants. It is best guaranteed via specific legislative interventions but also by policy decisions against forced evictions. The declaration of moratoriums on forced evictions or the declaration of areas as ‘eviction-free zones’ can be effective in granting security of tenure.

1.2 Key causes of forced evictions

Forced evictions are a result of a variety of processes that disadvantage certain sections of society. Research by COHRE around the world has revealed the following causes of forced evictions to be the most common:

- tenure insecurity/absence of formal tenure rights;
- authoritarian top-down planning;

¹ ‘General Comment 7: The right to adequate housing (art. 11 (i) of the Covenant): Forced Evictions’, Committee on Economic, Social and Cultural Rights, 1997, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument), last accessed 1 December 2008.

- development and infrastructure projects;
- large international events, such as major sporting events, conferences, etc.;
- urban redevelopment and 'beautification' initiatives;
- property market forces and 'gentrification';
- absence of State support for the poor;
- political conflict, ethnic cleansing, and war.

Many of the above causes of forced evictions are most commonly carried out under the guise of 'development' – and, by implication, as something intended for the general public good. Additionally, it is usually the poor and the marginalised that are forced to pay the price for 'development'.

1.3 The cost of forced evictions

The costs of forced evictions almost always include an increase in poverty and often include a severe increase in social stress, which can lead to large-scale societal conflict. Forced evictions disproportionately affect those who are already disadvantaged, including the poor, women, indigenous peoples, ethnic, religious, and racial minorities, occupied peoples, children and others who lack security of tenure. Forced evictions not only deprive people of their homes and lands and the simple dignity of a place to live but also of their livelihoods, their communities and social networks, access to social services, and access to the shared resources of cities such as libraries, sports facilities, and places of worship. At the individual level, forced evictions can also lead to increases in anxiety, depression, and suicide. Forced evictions subject the poorest and most marginalised in society to even deeper poverty, discrimination, and social exclusion. In most cases, evictees find themselves in worse material and social conditions than before the eviction, even if their living conditions were less than ideal prior to eviction.

Forced evictions often involve both physical and psychological violence. It is common practice for governments and private operators to use armed police, soldiers, private security guards, criminal gangs or hired thugs, and bulldozers during forced evictions. COHRE receives regular reports of the use of violence during forced evictions, which include beatings, rape, torture, and killings. Women suffer disproportionately from the practice of forced eviction, given the extent of statutory and other forms of discrimination against women with respect to home ownership and inheritance rights, or rights of access to accommodation, and their particular vulnerability to acts of violence and sexual abuse during and after eviction.

Forced evictions resulting from 'development' projects invariably negate the developmental outcomes claimed by the implementing governments or agencies. For instance, the root causes of the emergence of shack settlements are so varied and multi-layered that resorting to forced evictions as a solution amounts to little more than a futile gesture. Evicted individuals, families, and communities do not disappear. Nor do they tend to remain for very long in far-flung relocation sites where social progress, and sometimes even basic survival, is impossible. Around the world, people relocated to sites at great distances from cities often return to unoccupied land closer to services and survival opportunities to resettle, rebuild, and continue their lives. Governments that respond to this phenomenon as if it were a law and order crisis requiring police, intelligence, or even military action, rather than a housing crisis requiring urgent support for universal access to adequate housing, compound the problem still further by their *de facto* exclusion of the poor from the city.

The assumption that 'development' and the rights of the poor to adequate land and housing are in conflict is a dangerous myth. It is a myth that tends to be sustained when decision-making is undertaken in a top-down and authoritarian manner by planning elites in governments, international institutions, and some NGOs. When ordinary people, including the rural and urban poor, are allowed to participate in planning,

it often quickly becomes clear that all kinds of productive alternatives can be negotiated.

1.4 Forced evictions and international law

The right to adequate housing is recognised as a human right in several international human rights instruments including the Universal Declaration of Human Rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the key international human rights instrument that articulates the right to adequate housing. Article 11(1) of the Covenant explicitly recognises the right to adequate housing. As interpreted in General Comment No. 4 and General Comment No. 7 of the UN Committee on Economic, Social and Cultural Rights, the right to adequate housing includes protection against forced eviction. According to General Comment No. 7, “the State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.”² It states that: “Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights,”³ and prescribes procedural protective mechanisms for evictees in those highly exceptional circumstances where eviction is unavoidable.

In 1993 the UN Commission on Human Rights indicated, “forced eviction constitutes a gross violation of human rights.”⁴ And in 1998, the UN Sub-Commission on the Protection and Promotion of Human Rights reaffirmed that “the practice of forced eviction constitutes a gross violation of a broad range of human rights; in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right

² ‘General Comment 7: The right to adequate housing (art. 11 (i) of the Covenant): Forced Evictions, Committee on Economic, Social and Cultural Rights, 1997, paragraph 8.

³ Ibid paragraph 16

⁴ Commission on Human Rights resolution 1993/77, 10 March 1993, paragraph 1.

to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment.”⁵

While mega development projects or urban renewal can be important, it is always at least equally important that communities and individuals have a right to be protected against “arbitrary or unlawful interference” with their homes. Development imperatives can never justify violations of human rights. As the Vienna Declaration and Programme of Action (1993) states: “while development facilitates the enjoyment of human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights.”⁶

Therefore, international human rights law clearly guarantees everyone the right to protection against forced eviction. Evictions are permitted only in highly exceptional circumstances, and then only under strict conditions. Eviction always has to be the last resort, reverted to only after all other possibilities and alternatives have been exhausted. In those exceptional cases where there is absolutely no alternative to eviction, procedural protections should include, as a minimum standard, the following:

- implementing authorities should engage in meaningful consultations with affected persons;
- adequate and reasonable notice for all affected persons should be provided prior to the date of the eviction;
- information on the proposed eviction should be made available in a reasonable time to those affected;
- government officials or their representatives should be present during an eviction;

⁵ Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 1998/9 on Forced Evictions, paragraph 1.

⁶ Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, paragraph 10.

- persons carrying out the eviction should be properly identified;
- evictions should not take place in particularly bad weather or at night;
- legal remedies should be available;
- legal aid should be available to those in need of it to seek redress from the courts.

Furthermore, if all of these procedures are complied with and an eviction is allowed to take place, the state is obliged to ensure that no individual or family is rendered homeless as a result of that eviction. Irrespective of whether it is a state, private actor, or an international agency that carries out a forced eviction, the state must take all appropriate measures to ensure that adequate alternative housing, resettlement, or access to productive land, as the case may be, is made available.

States are always legally responsible for forced evictions that take place on territory under their jurisdiction. This is because forced evictions can always be attributed either to the specific decisions, legislation, or policies of states, or to the failure of states to intervene to halt forced evictions by third parties. Furthermore, when third parties, such as international agencies like the World Bank or corporations, are responsible for forced evictions, there is often outright collusion or *de facto* toleration from national governments.

The right to protection against forced evictions is part of the broader right to adequate housing. International law deems forced evictions to be a gross violation of human rights, depriving women, men, and children of the human right to adequate housing. The right to adequate housing guarantees security of tenure and legal protection against forced evictions for all people. Nevertheless, despite the protection of international law, forced evictions are a widespread and growing problem that affects millions of people in rich and poor countries each year.

In addition to violations of the right to adequate housing, the practice of forced eviction can result in the violation of a number of other human rights, including but not limited to:

- the right to non-interference with privacy, family, and the home;
- the right to be protected against the arbitrary deprivation of property;
- the right to the peaceful enjoyment of possessions – many forced evictions occur without warning, forcing people to abandon their homes, lands, and worldly possessions;
- the right to respect for the home;
- the right to freedom of movement and to choose one's residence;
- the right to education – often children cannot attend school due to relocation;
- the right to life – violence during the forced eviction which results in death is a common occurrence;
- the right to security of the person – implementing authorities rarely provide evicted persons with adequate homes or any form of compensation, thus rendering them vulnerable to homelessness and further acts of violence;
- the right to effective remedies for alleged human rights violations.

1.5 The scale of the problem

Despite evidence of the terrible damage that forced evictions inflict on individuals and communities, despite the social conflict often caused by forced evictions, and despite the fact that they are illegal in terms of international law, forced evictions are a global phenomenon. COHRE's Global Survey *Forced Evictions: Violations of Human Rights, 2003-2006*⁷ revealed that almost six million people were reported to have suffered forced eviction between 2003 and 2006. The actual numbers are likely to be much higher, as many evictions go unreported and official enumerations tend to underestimate the number of affected persons.

1.6 Resisting forced evictions

For the past decade or more, resistance to forced evictions has been on the rise around the world. Community organisations, social movements, and NGOs have increasingly stood up, often at considerable cost, to oppose evictions. Instances of mass forced evictions, such as that instituted by *Operation Murambatsvina* in Zimbabwe and the uprooting of hundreds of villages resulting from the construction of large dams on the Narmada river in India, have resulted in global campaigns that have significantly compromised the international standing of the governments in question. In countries like Mexico, South Africa, Brazil, and India, forced evictions in rural areas and cities have led to the development of innovative social movements that have made a considerable impact on the political landscape and have challenged existing decision-making processes, power relations, and notions of justice. However, innovation has not come only from popular movements. In some instances, NGOs have developed creative responses, and some municipal and national governments, as well as regional inter-governmental bodies, have developed widely heralded laws and policies. These include:

⁷ COHRE's Global Survey: Forced Evictions: Violations of Human Rights, 2003-2006 is available online at http://www.cohre.org/store/attachments/Global_Survey_10.pdf

- The Kaantabay sa Kauswagan Ordinance, Naga City, Philippines, 1997⁸
- The European Charter for Women in the City, 1998⁹
- The European Charter for Human Rights in the City, 2000¹⁰
- The Statute of the City, Brazil, 2001¹¹

1.7 Housing crisis in the cities

The most common manifestation of the housing crisis in cities around the world is the growth and spread of informal settlements, characterised by overcrowding and the lack of access to basic facilities, including adequate water and sanitation. These settlements are often called slums. The operational definition of slums is that they have at least one of the following characteristics¹²:

- inadequate access to safe water;
- inadequate access to sanitation and other infrastructure;
- poor structural quality of housing;
- overcrowding;
- insecure residential status (i.e., tenure insecurity).

Among networks and communities in some countries, the term ‘slum’ has a history of pejorative connotations and a strong link to the now

⁸ The Ordinance is online at <http://abahlali.org/node/3438>

⁹ The Charter is online at <http://habitat.aq.upm.es/boletin/n7/acharter.html>

¹⁰ The Charter is online at <http://www.comune.venezia.it/flex/cm/pages/ServeBLOB.php/L/EN/IDPagina/2198>

¹¹ The Statute is online at http://www.polis.org.br/obras/arquivo_163.pdf

¹² See United Nations, Millennium Development Goals (2000), and UN-HABITAT, The Challenge of Slums: Global Report on Human Settlements 2003).

widely discredited policy of 'slum eradication'. As a result, community organisations and social movements of people living in areas declared slums have often opposed the use of the term 'slum' and replaced its use with other words, such as 'neighbourhoods' or 'communities' "to 'rename' the socially stigmatized slum areas."¹³ For instance in South Africa, shack dwellers' movements like the Abahlali baseMjondolo have firmly rejected the use of the word 'slums' to describe their settlements, arguing that it is irreducibly linked to the idea that residents of such areas, rather than the conditions that produce poverty, are the problem that must be 'eradicated'.¹⁴ A number of academics have also argued that the term is dangerously pejorative.¹⁵ COHRE, however, uses the term 'slum' in its non-pejorative form to denote informal housing characterised by overcrowding and the absence of access to basic public goods and services.

The urban housing crisis has been firmly on the global agenda since the Millennium Development Goals (MDGs) were adopted in September 2000. Target 11 of MDG 7 is to "significantly improve the lives of at least 100 million slum dwellers by the year 2020." This is an extremely modest goal as, depending on the rate at which slums grow till 2020, the 100 million figure would account for only around 6 or 7 percent of the world's slum dwellers. However, the MDGs have influenced plans and policies and there has been a rapidly increasing recognition that the global housing crisis needs to be urgently addressed.

It is important to recognise that the inclusion of the global housing crisis in the MDGs emerges from a wider recognition of the crisis, which can

¹³ The Challenge of Slums, p. 44.

¹⁴ See, for instance, Abahlali baseMjondolo, 'Operation Murambatsvina Comes to KwaZulu-Natal: The Notorious Elimination & Prevention of Re-Emergence of Slums Bill', [press statement], <http://abahlali.org/node/1629>

¹⁵ See, for instance, Tom Angotti, 'Apocalyptic Anti-Urbanism: Mike Davis and His Planet of Slums', *International Journal of Urban and Regional Research* 30/4 (Dec. 2006), pp. 961-7; see also Alan Gilbert, 'The Return of the Slums: Does Language Matter?', *International Journal of Urban and Regional Research* (2007), pp. 697-713.

be attributed to grassroots and popular politics and a variety of people's movements. In Brazil, the Movimento dos Trabalhadores Sem Teto (MTST), has become an important part of national life, while in South Africa, shack dwellers' movements in Durban and Cape Town are among the largest social movements to emerge since the end of apartheid. Similarly, in Zimbabwe and Kenya, opposition to authoritarian regimes has been concentrated in shack settlements, and in France the crisis in the Banlieu has occupied centre stage.

In 2003, a United Nations report entitled *The Challenge of Slums* declared that in 2005 a majority of humanity would, for the first time in history, be living in cities. The report also concluded that almost 1 billion people (32% of the total human population), were living in slums, and that this number was expected to double in the next 30 years if "no firm and concrete action"¹⁶ is taken to secure housing rights. In this report, the United Nations warns against responding to the housing crisis by returning to the 'slum eradication' policies that only entrenched the housing crisis and worsened poverty by destroying the self-built housing of the poor. Instead, it recommends a more holistic response that understands informal settlements to be merely one manifestation of urban poverty.

There are a number of underlying causes for the sustained and rapid growth of urban informal settlements, particularly in developing countries. A key factor has been that agricultural trade policy in the developing world over the past three decades has frequently resulted in the collapse of labour-intensive rural economies, leading to rural-to-urban migration and resulting in housing shortages. The housing shortages have often been exacerbated by policies such as the privatisation of public housing and reduction of social support for the poor. Yet governments in developed countries and international financial institutions continue to set conditions on poor countries to implement policies, such as reducing agricultural trade barriers, privatising housing and the supply of essential services, and reducing expenditures on social support. Governments

¹⁶ The Challenge of Slums, p. 27.

in poorer countries are often given little option but to agree to these conditions if they want to continue to access loans and grants to sustain their economies.

Slums are, therefore, to a large extent, a physical and spatial manifestation of urban poverty, and the fundamental importance of this fact has not always been addressed by past policies aimed at either the physical eradication or the upgrading of slums. Rights-centred policies should, therefore, seek to support the livelihoods of the urban poor, by enabling urban, informal sector activities to flourish, linking low-income housing development to income generation, and ensuring easy access to jobs through pro-poor transport and low-income settlement location policies.¹⁷

The Cities Alliance, a collaboration project between the United Nations and the World Bank, has called its MDG Target 11 Action Plan, 'Cities Without Slums' and has adopted 'Cities Without Slums' as the general slogan of the organisation. The Cities Alliance action plans aim to support progress towards MDG Target 11 and to measure progress via increases in (i) the proportion of people with access to improved sanitation, and (ii) the proportion of people with access to tenure security.

However, a number of academics have argued that the slogan 'Cities Without Slums' has been widely misconstrued. For instance, Marie Huchzermeyer has observed:

As any marketing expert could have predicated, the brand said more than the content. Many country governments have failed to differentiate between the normative principle of the slogan, that cities should not have slums, and the operational target of improving the lives of 10 percent of slum dwellers. Instead, tragically, the slogan became the target, namely to eradicate slums – through mass evictions in Zimbabwe

¹⁷ The Challenge of Slums, p. 56.

in 2005 and Abuja, Nigeria, in 2006 and through slum elimination legislation in South Africa in 2007.¹⁸

1.8 The crisis in rural communities

With the growing focus on housing in the cities, rural housing often escapes the attention of planners, policymakers as well as the international community. For instance, in South Africa more than a million people were evicted from farms and more than two million were displaced from farms in the first 10 years after the end of apartheid in 1994.¹⁹ This massive human tragedy largely passed without significant attention from urban elites as the tenth anniversary of the end of apartheid was celebrated.

The housing crisis in rural areas is largely characterised by massive displacement caused by the construction of mega development projects, conservation and tourism projects, processes of land alienation as well as by the lack of access to basic services and facilities, including water, sanitation, health care, and education.

However, in some parts of the world, social movements have been drawing attention to the crisis in the countryside. Brazil, Mexico, Korea, and parts of India have had considerable success in putting this crisis on national and, to a degree, international agendas. The ongoing worldwide spate of farmers' suicides, which is a phenomenon in rich and poor countries alike, has also attracted considerable attention. The most publicised of these was the September 2003 suicide of Korean farmer Lee Kyung Hae at the World Trade Organisation ministerial meeting in Cancun, Mexico. Within days, peasant farmers around the world were marching and chanting: "We Are All Lee!"

¹⁸ Marie Huchzermeyer, 'Elimination of the Poor in KwaZulu Natal', Pambazuka News (2007), <http://www.pambazuka.org/en/category/comment/42386>

¹⁹ See Abahlali baseMjondolo, Social Surveys Africa Summary of Key Findings from the National Evictions Survey (2005), http://abahlali.org/files/Nkuzi_Eviction_NES_2005.pdf

The commodification of all aspects of agriculture in the interest of securing private profit in global markets – driven by corporations but often organised by global institutions like the World Bank – has rapidly made rural life unviable for millions of people. Both farm workers and peasant farmers are being driven off the land at previously unimaginable rates. Raj Patel's recent book, *Stuffed and Starved*,²⁰ has brought this crisis to popular attention in the same way that Mike Davis's *Planet of Slums* has done for the crisis of the cities.

Moreover, mega development projects like dams and mines as well as the creation of golfing estates, game parks, and wildlife sanctuaries, have led to large-scale forced evictions in rural areas. These kinds of developments are usually either designed to extract resources for urban industrialisation or to create elite refuges from that urban industrialisation. In both instances, the rural poor are forced to pay an often hidden price to subsidise the lives of the urban elite.²¹

1.9 Key solutions for avoiding forced evictions

COHRE's research undertaken around the world since 1991 has indicated that the following strategies for avoiding forced eviction have often been highly effective:

1.9.1 Legislation and policy

Governments can enact and enforce legislation guaranteeing universal security of tenure. This is one of the most effective actions a government can undertake to curtail the practice of forced eviction. Governments can also take a policy decision to declare an immediate moratorium on forced evictions. Security of tenure

²⁰ Raj Patel, *Stuffed and Starved* (London: Portobello Books, 2007).

²¹ See, for instance, Arundhati Roy, *The Cost of Living* (London: Flamingo, 1999).

– the legal right to protection from arbitrary or forced eviction from the home or land – plays a significant role in discouraging evictions. Additionally, effective rent control laws and policies can ensure that an increasing number of disadvantaged people have access to rental markets and that the poor are not pushed out of well-located areas due to gentrification.

1.9.2 Providing housing to the poor

Governments that are concerned about conditions in informal settlements or overcrowded and poorly maintained formal housing can act to ameliorate the situation by providing housing to the poor via a range of strategies that include in-situ upgrading, rapid land release programmes, provision of credit, supporting savings schemes, subsidising building costs, subsidising rentals, and building new housing.

1.9.3 Community organisation and NGO strategies

Community organisations and NGOs can use a number of strategies to prevent forced evictions. These include: mass mobilisation; exposing and publicising planned evictions; establishing housing rights campaigns; publicly refusing to move; linking with similar groups from other areas and sharing information, ideas, and strategies; engaging the government in dialogue about planned evictions; developing and publicising viable alternative plans; and legal action. These responses to threats of forced eviction have been successful in many cases around the world, resulting in the prevention of the forced eviction and sometimes also encouraging positive legislation aimed at reducing the prevalence or scale of evictions.

1.9.4 Land sharing

Land sharing is an innovative approach that can often provide a practical alternative to forced eviction. This involves the redistribution of the land in question into parts – some to be reserved for housing the people who live on the site, and some to be reserved for the landowner to develop. Land sharing has been used as a strategy to prevent forced evictions in several countries including the Philippines²² and Thailand.²³

1.9.5 Invoking international and regional legal remedies

Invoking international legal remedies can also prevent and remedy evictions, such as appeals to UN special procedures, treaty monitoring bodies including the UN Committee on Economic, Social and Cultural Rights, the Human Rights Council's Complaint Mechanism and various regional human rights mechanisms. In 2008 the Human Rights Council adopted the Optional Protocol to the ICESCR. Although not functional yet, the Optional Protocol will allow individuals to seek remedies and justice internationally for violations of economic, social and cultural rights. While some of these mechanisms are only quasi-legal and more political in nature, they can, if used in conjunction with strategies on the domestic front, effectively contribute to the prevention of forced evictions.

There are many other strategies, some of which are discussed in the case studies considered in this report. But if there is one general lesson, it is that the avoidable imposition of social distress, and the consequent need for conflict-driven solutions in averting forced

²² See UNESCO, 'Kaantabay sa Kauswagan, An Urban Poor Program in Naga City, Philippines', <http://www.unesco.org/most/asia8.htm>, accessed 16 June 2008.

²³ See Shlomo Angel and Somsook Boonyabancha, 'Land Sharing as an Alternative to Eviction', *Third World Planning Review* 10/2 (1988).

evictions, can best be avoided by recognising that planning should be a democratic rather than an authoritarian activity. This means recognising the validity of what Marcello Lopez de Souza, writing in the urban context, calls “grassroots urban planning”,²⁴ recognising the right of the poor to form organisations to advocate for their interests and recognising that state plans for the poor, or that affect the poor, should be developed with the poor in genuinely consultative processes.

1.10 This report

The nine case studies in this report highlight some unique and innovative solutions to forced evictions developed in eight different countries in a range of different contexts, both rural and urban. In some instances, states and municipalities have assured tenure security, while in others, they have sought to evict illegally and violently. The case studies do not exhaust the positive innovations that have been developing in recent years, but they are representative of the numerous ways in which forced evictions, and therefore human rights violations, can be averted. The first section of the report looks at instances where evictions were halted. In Colombo, Sri Lanka, swift legal action supported by an international outcry stopped and reverted the eviction of Tamils from the city. In Motala Heights, in Durban, South Africa, the city administration, seemingly under the influence of a local business man, was stopped from illegally and violently evicting shack dwellers after a local shack dwellers’ movement was able to secure a court interdict and, with the support of COHRE, gain access to knowledge about legal protection for housing rights and thus persuade the police to compel city officials to act within the law. In the Vila União settlement in the Municipality of Almirante Tamandaré in Brazil, a threatened eviction was averted when community protests and international lobbying by NGOs led to an engagement with technical organisations, resulting in the

²⁴ Marcello Lopez de Souza, ‘Together with the State, Despite the State, Against the State: Social Movements as Critical Urban Planning Agents’, City 10/3 (2006), pp. 327-42.

development of an alternative plan. The Municipality eventually accepted this plan and expropriated the land in order to secure tenure rights for the shack dwellers. The general lessons learned from these case studies include the importance of media coverage, the use of litigation, and the value of expropriation as a deadlock-breaking mechanism.

The second section of the report documents community-developed alternatives to evictions. The first case study is Pom Mahakan in Thailand, where a community threatened with eviction was able to develop an alternative on-site development plan together with architecture students and win Municipal support for the plan. The second case study in this section is Group 78 in Cambodia, where the community has created its own development plan and actively lobbied for support in its opposition to the threatened forced evictions and for its alternative plan. At the time of writing this report, the community continues to successfully resist the eviction but has not yet won Municipal support for its plan. The general lesson from these two cases studies highlights the value of community-driven counter-proposals.

The third section of this report examines two starkly contrasting cases where governments have had to balance the rights of people with nature conservation projects. In the first instance, the Botswana Government sought to evict people from the Central Kalahari Game Reserve in Botswana, resulting in a bitter fallout that led to an international scandal and successful legal action against the eviction. In the second instance, the South African Government enabled the Makuleke community to regain ownership of land from which they had been evicted in 1969 to, among other apartheid-related reasons, enable the expansion of the Kruger National Park. After regaining ownership, the community chose to keep the area under Nature Conservation management but to extract resources in various sustainable ways. The general lessons from these two studies point to the value of negotiations over the unilateral imposition of policy, as well as the potential value of NGO support, and the need to break away from the mindset that assumes an inherent conflict between conservation and community land rights.

The final section of this report considers two cases in which urban planning undertaken in partnership between communities and municipalities has resulted in positive innovation. In Máximo Tajes in Uruguay, an unavoidable relocation was agreed to and collaboratively planned to mutual satisfaction. The second case study in this section is that of Naga City in the Philippines, where a whole range of positive innovations by the Municipality has ensured its recognition as a world leader in the development of policies and practices that support tenure security and avoid forced evictions. Much of the positive practice developed in Naga City is directly consequent to the formal entrenchment of a widely acclaimed and highly effective planning partnership between the City and the urban poor. These two case studies bring out the value of 'win-win' solutions and the critical importance of accepting the right of the poor to organise, and of engaging positively and in good faith with organisations of the poor.

2

HALTING EVICTIONS

This section discusses three case studies where threatened evictions have been halted. It gives a brief explanation of the background and facts for each case and then moves on to consider some general lessons.

2.1 Colombo. Sri Lanka

2.1.1 General background

Since 1983, the Democratic Socialist Republic of Sri Lanka has been intermittently convulsed by civil war between the State and the separatist Liberation Tigers of Tamil Eelam (LTTE), also known as the Tamil Tigers. A ceasefire was declared in 2001 and, after a process of mediation, a ceasefire agreement was signed in 2002. However, in late 2005 hostilities resumed, and by the middle of 2006 major military operations resumed. The conflict has resulted in severe and sustained human rights violations. Both sides have targeted civilians and have been accused of ethnic cleansing in certain areas.

Both the ethnic nature of the conflict and the common conflation between civilians and military personnel has resulted in ordinary people being treated as combatants purely by virtue of their ethnicity. As a result, there have been attempts to reserve parts of the country for people of certain ethnicities. It is estimated that

there are around 750,000 internally displaced persons (IDPs) in Sri Lanka, one of the highest numbers in any country in the world.²⁵

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles') are designed to provide practical guidance to states, including Sri Lanka, as well as to the international community, including UN agencies, on how best to address the complex legal and technical issues surrounding housing, land, and property restitution. The Principles aim to ensure that the right to housing and property restitution is realised in practice. The Principles are universally applicable and provide a clear standard based on international human rights, humanitarian and refugee law, as well as best practices adopted around the world, for the implementation of restitution laws, programmes, and policies.²⁶ The Pinheiro Principles include the following commitments:

- Principle 3: The Right to Non-Discrimination
- Principle 5: The Right to be Protected from Displacement
- Principle 6: The Right to Privacy and Respect for the Home
- Principle 9: The Right to Freedom of Movement

Moreover, as a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government of Sri Lanka is legally obligated to respect the right to adequate housing, including the prohibition on forced evictions, as guaranteed under Article 11(1) ICESCR, for everyone within Sri Lanka.²⁷

²⁵ Centre on Housing Rights and Evictions (COHRE), 'Sri Lanka: Housing and Land Rights of Displaced People', http://www.cohre.org/view_page.php?page_id=167#i687

²⁶ COHRE, 'Applying the Pinheiro Principles in Sri Lanka', http://www.cohre.org/view_page.php?page_id=167#i687

²⁷ There is, however, a gap between Sri Lanka's international obligations and the domestic legal situation. In Sri Lanka, housing rights are not guaranteed for citizens in the Constitution

2.1.2 Tamils evicted in Colombo

On 1 June 2007, the then Inspector General of Police for Sri Lanka told the media that: "Those who are loitering in Colombo will be sent home. We will give them transport We are doing this to protect the people and because of a threat to national security."²⁸ He was speaking about Tamil migrants to the city, many of whom had migrated to Colombo in search of livelihood options, while others had fled situations of great violence and conflict.

At around 4 a.m. on 7 June 2007, armed police and army personnel invaded a number of lodges and boarding houses in the Pettah, Maradana, Kotahena, and Wellawatta districts of Colombo, where Tamil migrants to the city often sought temporary accommodation. A number of local newspapers reported that in most cases, people were not allowed to use toilets and were given as little as 30 minutes to pack their belongings. According to the police, 376 people – 291 men and 85 women – were detained and then placed on eight buses that drove to the predominantly Tamil towns of Vavuniya in the north and Trincomalee in the East. One man forced to board one of the buses telephoned the private local radio station *Sirasa FM* from a mobile phone. "The police came and took us and put everyone on the bus," he said, reporting that the bus was about 32 km (20 miles) outside the capital, heading north-east. "We don't know where we are being taken."²⁹

but mention in the Directive Principles of State Policy, Article 27 (c) of the Constitution does provide that the "State must ensure the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities." However, the Directive Principles are not justiciable in a court of law.

²⁸ Amal Jayasinghe, 'Sri Lanka Government Seeks Peace Talks', Agence France-Presse, 1 June 2007.

²⁹ 'Police Evict Tamils from Colombo', BBC, 7 June 2007, http://news.bbc.co.uk/1/hi/world/south_asia/6729555.stm

Hours after the forced eviction took place, the Government's defence spokesperson, told Parliament that the security forces had only been facilitating the "voluntary departure" of Tamils. In addition, the Inspector General of Police declared that the forced evictions had been necessary to secure the "safety of innocent people living in Colombo and its suburbs." His deputy, attempted to justify the expulsions by saying that the Tamils involved had "no valid reasons"³⁰ to stay in Colombo. Later, a Government statement declared that the "action by the police is required, considering security demands such as the recent Tamil Tiger bomb explosions resulting in several innocent lives lost, and severe damage to property."³¹

Such comments raised the prospect that tens of thousands more Tamils living in the city would now be at risk of expulsion. Concerns about acts of terrorism by the Tamil Tigers were being used to argue that no Tamil people could remain in Colombo without a 'valid reason'.

2.1.3 Responses

The evictions evoked immediate and sustained national and international attention from the media and a number of human rights, anti-racist, and progressive policy organisations. Based on available information, it is clear that both groups subjected to eviction, lodge owners and workers, contacted the local media while the evictions were in progress, thus facilitating wider publicity.

³⁰ W.A. Sunil, 'Sri Lanka: Hundreds of Tamils Forcibly Expelled from Colombo', World Socialist Website, 12 June 2007, <http://www.wsws.org/articles/2007/jun2007/sri-j12.shtml>

³¹ 'Police Evict Tamils', BBC 7 June 2007, http://news.bbc.co.uk/1/hi/world/south_asia/6729555.stm

Sri Lankan and the mainstream international media, such as the *BBC* and *Al Jazeera*, gave immediate and extensive coverage to the forced evictions on the day of the evictions and over the following days. Much of the coverage directly contradicted the explanations given by the police and the army. For example, a Pettah lodge owner, speaking to *Sirasa TV* on the day of the evictions, described events as follows:

The police and the army came early morning, at about 3 a.m. and took the people out from the rooms. There were about seven or eight people aged more than 65 years old. A lady, who was about 65 years, cried and lamented and knelt before the police officers and pleaded not to send her back. They didn't care [about] that and there were another four elderly women and four elderly men. There was one who returned after days in an intensive care unit of Colombo hospital and he showed his medical reports to the police. But they didn't even look at them and he too was taken away. We don't know the real purpose but the police said no one could stay for more than two weeks in Colombo.³²

The following day, 8 June, the *Daily Mirror*, a local paper, reported that among those forcibly carted off was a 23-year-old Tamil girl, who was staying in a lodge with her aged mother and waiting to get married. They had booked a reception hall for the ceremony in a week's time. She was expecting her bridegroom to arrive from London. Despite producing a receipt issued by the reception hall owners, police said they had "no valid reason" to stay in Colombo and ordered them to return to Karaweddi in Jaffna. They complained that they had nowhere to live in Karaweddi, as their properties had been mortgaged to cover the wedding expenses.³³

³² W.A. Sunil, 'Sri Lanka'.

³³ Ibid.

There was also very swift action from a number of NGOs, often in concert with popular people's organisations. The day after the forced eviction, there was a public protest supported by the People's Alliance for Human Rights, and a number of Sri Lankan human rights organisations working in the field of human rights advocacy, policy alternatives and law sent an open letter to President Mahinda Rajapakse condemning the forced eviction.³⁴ The letter gave an account of the event and showed that the explanations given by the police were not credible. In particular the police statement that "they were simply assisting the Tamils to return to their hometowns"³⁵ in accordance with their desires, while a wide variety of eyewitnesses reported that evictions were very clearly forced onto unwilling people. The letter acknowledged a "current security situation" and the view that it was necessary to "maintain close surveillance of the city and its environs." However, it carefully explained that the agreement for the need for measures to ensure security was itself driven by human rights considerations. It was argued that the forced evictions of Tamils "is NOT capable of guaranteeing security and rather creates further polarization of the different ethnic communities that share this island, and heightens the sense of marginalization and alienation of Tamil people of this country."³⁶ The letter concluded by noting that the forced eviction was a flagrant violation of the principle, enshrined in the Constitution of Sri Lanka, that guarantees all Sri Lankans, independent of ethnicity, the right to choose their own place of residence (temporary or permanent) and the right to freedom of movement. This letter was widely reported on in the international media and widely cited by international human

³⁴ Centre for Human Rights and Development (CHRD), Center for Policy Alternatives (CPA), Free Media Movement (FMM), INFORM Human Rights Documentation Center (INFORM), Institute of Human Rights (IHR), International Movement against All forms of Discrimination and Racism (IMADR), Law and Society Trust (LST), and Rights Now (RN), Open Letter to President Mahinda Rajapakse to stop the expulsion of Tamils from Colombo, 8 June 2007.

³⁵ Ibid.

³⁶ Ibid.

rights organisations. In fact, it became the key point of reference for international solidarity.

Political parties were also quick to issue strong statements against the evictions in the Sri Lankan Parliament, with opposition leader, Ranil Wickremesinghe of the United National Party (UNP), comparing the government's treatment of Tamils to the persecution of Jews in Nazi Germany. Such statements also won a considerable degree of national and international media attention.

The Sri Lankan Constitution states that all persons are equal before the law, and that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth, or any such grounds (Article 12). The Constitution also grants "the freedom of movement and of choosing his residence within Sri Lanka" (Article 14). While this right may be restricted to protect national security, restrictions must be lawful and consistent with the other protected rights. Policies that are arbitrary and discriminatory are not permitted or considered legitimate restrictions under international law. Based on constitutional guarantees of protection against discrimination and restriction of freedom of movement, a number of commentators felt confident to describe these evictions as "blatantly illegal."³⁷ Furthermore, these guarantees provided strong legal grounds for challenging the evictions through the judicial process.

The day after the eviction, the Centre for Policy Alternatives (CPA), a public policy advocacy group, filed a 'Fundamental Rights' petition with the Supreme Court in public interest on behalf of the evicted people. The petitioners argued that evicting Tamils from Colombo is wrongful, unlawful, and illegal, and violates the fundamental rights of those persons who were so evicted. The petition held that the evictions violate the fundamental rights of those persons

³⁷ Ibid.

who were so evicted, guaranteed by articles 11, 12 (1), 12(2), 13(1), 13(2) and 14(1) (h) of the Constitution. Article 11 provides that no person shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. Article 12 provides that all citizens are equal before the law and ensures that no citizen shall be discriminated against on grounds specified in the Constitution. Articles 13 (1) and (2) provide protection from arbitrary arrest and detention. Article 14 (1)(h) provides for the freedom of movement and the right to choose his or her residence within Sri Lanka. The response from the Court was swift. It issued an interim order restraining the Inspector General from carrying out any eviction of Tamils on the same day the case came up for hearing. The next date for a hearing was set for 28 November 2007.

Soon after, President Rajapaksa ordered the Inspector General to initiate an immediate inquiry. A statement from the President's office declared: "Allegations that officials exceeded their authority in implementing this initiative will be thoroughly investigated and appropriate remedial action taken, including disciplinary action against any wrong doing on the part of any government official."

2.1.4 Results

On Saturday, 9 June, subsequent to the interim order, many of the people evicted were brought back by the police to their lodging houses. A total of 186 of the 376 people who were forcibly removed from the capital on Thursday, 7 June 2007 were returned to their homes on Government buses. The others apparently decided to return to their home towns. This was widely covered in the international press (France, Australia, India, etc.).

On Sunday, 10 June 2007, the Sri Lankan Prime Minister Ratnasiri Wickremanayake expressed regrets to the hundreds of Tamils for their eviction from the city, saying it was a "big mistake" by the

Government. "I express regret regarding the shifting of people from here to various other places," Prime Minister Wickramanayake said at a news conference in Colombo. "That should have never been done. The government accepts responsibility," he said, adding that it will not happen again. President Rajapaksa's office launched an inquiry into the police operation, and has said that any wrongdoers would be disciplined.³⁸ On the same day, the *Sunday Leader*, a local newspaper, published parts of a letter written by Senior Deputy Inspector General of Police for the North and East, Mahinda Balasuriya, that detailed directives issued by Defense Secretary Gothabaya Rajapakse for the forced eviction of Tamils from Colombo.³⁹

When the case was heard in the Supreme Court on 28 November 2007, counsel for the police agreed, as suggested by the Court, to consider whether to proceed for argument in view of the apology tendered by the Prime Minister to the Tamil lodgers of Colombo. The Supreme Court emphasised that no person was to be evacuated in this manner without suspicion and without a valid order of a court of law.

2.2 Motala Heights, Durban. South Africa

2.2.1 General background⁴⁰

Motala Heights is a small suburb of Pinetown, an industrial town just outside of the port city of Durban, the second largest city in the Republic of South Africa. Pinetown is administered by the

³⁸ Report to COHRE on the Colombo evictions.

³⁹ Lasantha Wickerematungela, "Ethnic Cleansing" in Sri Lanka? Time, 11 June 2007. <http://www.time.com/time/world/article/0,8599,1631473,00.html>

⁴⁰ Special thanks are due to Shamita Naidoo and Lousia Motha of the Motala Heights Abahlali baseMjondolo branch for all the historical information referred to here.

same Municipal Government of Durban, known as the eThekweni Municipality. Motala Heights is home to a number of wealthy residents living in large houses and many more poor residents living in long-established tin shacks scattered among the big houses and a wooden shack settlement adjacent to the suburb.

There has been a community of people of Indian descent living in Motala Heights since the First World War when Motala Farm was divided into plots for housing. In 1953 Motala Heights was threatened with wholesale forced removal under the Group Areas Act,⁴¹ a legislative cornerstone of apartheid that sought to restrict different areas to different 'race' groups. As Pinetown became less agricultural and more industrial, the value of land increased significantly. In 1966 Motala Farm was zoned as a 'white area' under the Group Areas Act and the entire Indian and mixed-race community faced a threat of forced removal. The lack of tenure security meant that people stopped investing in their homes and living conditions worsened. Forced evictions that occurred in many other areas of the City as a result of this process of racial zoning did not, however, take place. In 1983, owing largely to the ongoing representations of the wealthier residents, Motala Farm was deproclaimed as a white area and proclaimed as an Indian area, thus allowing the Indian residents to remain in the area. However, the mixed-race residents were moved out to the nearby area of Marianridge, reserved for them under apartheid laws. Some of the wealthier residents of Motala Farm began to invest in their houses and to buy land, leading to a situation where there were a few wealthy residents in large suburban-style homes and a poorer majority living as tenants in tin shacks.

In 1990 Richard Nzuza was the first African resident to move into the area. He built a wooden shack amidst the gum trees on the hill behind the suburb after being evicted from land owned by the

⁴¹ 'Conference Urged To Discuss Group Areas', Highway Mail, 11 Nov. 1953.

nearby Marianhill Monastery that was sold off for the development of factories. Others soon followed him and a shack settlement grew to include people from further afield attracted by proximity to jobs and schools. Close relationships were soon formed with the Indian shack dwellers, with whom transport and schools were shared and with some of whom there were familial connections going back generations.⁴²

In 1994 South Africa achieved a non-racial democracy and legal reform was swift. In 1996 a new constitution was approved. The new Constitution offers specific protection for housing rights. Sections 26 (1), (2) and (3) of the South African Constitution state that:

Everyone has the right to have access to adequate housing; The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

This was given legal force by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 (PIE Act), which applies to everyone who occupies land without “the express or tacit consent of the owner or the person in charge.” The PIE Act essentially renders illegal the eviction of an unlawful occupier, unless the eviction is authorised by an order of the court and complies with a

⁴² The tin shacks were initially all Indian and the wooden shacks settlement all African, but over time some Africans moved into the tin shacks and some Indians moved into the wooden shacks.

number of procedural requirements. Section 8 of the PIE Act makes eviction without a court order a criminal offence.⁴³

While most major municipalities in South Africa tend to abide by the PIE Act, the eThekweni Municipality is known to consistently violate the Act and, thereby, the Constitution. Mahendra Chetty of the Durban office of the Legal Resources Centre (LRC) is unaware of a single instance where the City has evicted in accordance with the law.⁴⁴

Apart from protection against evictions, the post-apartheid strategy for housing is based on a standard subsidy system that allocates a subsidy to all qualifying citizens,⁴⁵ which is then paid to private contractors to develop housing. While the subsidy system has significantly reduced the housing backlog in countries such as Chile, for example,⁴⁶ it has also resulted in a number of serious problems. These include: the location of most new housing developments on the urban periphery, with a consequent increase in poverty; an increase in social problems, including family violence in relocation settlements; a failure to integrate housing development with other forms of development; and the dominance of large construction companies in driving housing policy.

Durban initially declared that it would “eliminate” all shack settlements by 2010 but has now shifted the date to 2014. This

⁴³ However, the Centre for Applied Legal Studies (CALS) notes that South African Police Service (SAPS) officers are notoriously reluctant to respond to complaints of illegal eviction and that CALS is unaware of a single successful prosecution in terms of Section 8 of the PIE Act since its promulgation.

⁴⁴ In-depth interview, 13 Sep. 2007.

⁴⁵ To qualify for a housing subsidy, a person must be a South African citizen in possession of an Identity Document, over the age of 21, have dependents, and earn less than R3500 (US\$445) per month.

⁴⁶ See Warren Smit, ‘International Trends And Good Practices In Housing: Some Lessons For South African Housing Policy’, Institute for Housing in South Africa (Conference, Oct. 2004), <http://www.dag.org.za/docs/research/4.pdf>

has caused great anxiety among shack dwellers, as the current rate of house building is failing to keep pace with the increasing demand. While Durban has been hailed as the most successful of South Africa's municipalities in terms of the numbers of houses built via the housing subsidy system, Abahlali baseMjondolo, the membership-based and controlled shack dwellers movement that represents people in 36 of the City's 540 shack settlements, has argued that the system has four primary faults in Durban: shack settlements are largely left without adequate support and services (water, electricity, sanitation, refuse removal, etc.) while waiting for housing developments; when housing developments are built, settlements are destroyed, leaving those who do not qualify for subsidy houses homeless; the new houses tend to be very small and of very poor quality; and the new developments are often on the periphery of the city, far from livelihood opportunities, schools, clinics, libraries, churches, etc.

2.2.2 Threatened evictions in Motala Heights

The first conflict between the wealthier residents and the shack dwellers occurred in 1997 when Harry Govender, a local landlord, used industrial earth-moving equipment to dig up the road leading to the largely African wooden shack settlement. The first conflict with the local Government occurred in 2005. Earlier that year the local Government had built a much appreciated ablution block in the settlement, but later in the year the local councillor informed the community that they would be moved to Nazareth Island – a relocation site at a considerable distance from Motala Heights. Residents who were aware that they would not be given houses in Nazareth Island, mostly because they were tenants rather than shack owners, and residents who did not want to leave Motala Heights, largely because they were working in the area and had children at the local schools, formed a branch of Abahlali baseMjondolo to oppose the forced relocation.

In the same year, landlords began to threaten individual families in the tin shacks with eviction before eventually evicting some. For instance, Mr. and Mrs. Pillay were given a letter from the Govender Family Trust on 16 August 2005 that gave them 30 days to leave their house.⁴⁷ They had been given written permission by the then owner of the land to build a shack there in 1986⁴⁸ and had lived on that land since. None of these evictions or threatened evictions were accompanied by a court order and were therefore all illegal.

On Saturday, 17 June 2006, a holiday weekend, Ward Councillor Derek Dimba arrived at the wooden shack settlement with municipal officials and five carloads of Municipal security guards to mark out shacks to be destroyed by the eThekweni Municipality's armed Land Invasions Unit. In response, the Motala Heights Abahlali baseMjondolo branch gathered detailed information from residents and prepared affidavits, which they took to the Legal Resources Centre (LRC). The LRC sent a letter to the Municipality on their behalf indicating that the threatened evictions would not be legal.

The local Abahlali baseMjondolo committee then met with top local official Mr. Geoff Nightingale. Nightingale confirmed that the Municipality planned to move 63 families to a housing development on Nazareth Island and to evict the residents of the 164 shacks that were not on the housing list. He said that they could not build houses on the land where the people were living because local businessman "Ricky Govender [son of Harry Govender] wants to develop the area himself."⁴⁹ He also confirmed that Councillor Dimba had asked the Municipality to immediately destroy all

⁴⁷ Letter from the Govender Family Trust.

⁴⁸ Letter from Adisesh Jayabalan Naidoo to Ballaram Pillay, 19 Aug. 1986.

⁴⁹ Meeting notes taken by Richard Pithouse.

new structures that had been erected since the last Municipal enumeration.⁵⁰

The Abahlali branch pointed out that all the new shacks and developments (all well-made wooden cabins) had been built by long-standing residents who needed more space for their growing families. According to Nightingale, this was a matter for Dimba and the Abahlali baseMjondolo committee to resolve and he promised that no demolitions would take place until a meeting was set up with Dimba. He also said that the land was owned by the local businessman, Govender and that the Housing Department could not afford to buy the land from Govender.⁵¹ Many of the 63 families scheduled to move to Nazareth Island said that they would rather stay in Motala Heights, where they were closer to work and the other benefits from being nearby Pinetown. Most of the 164 families facing eviction said that they were determined to continue opposing eviction.

The meeting with Councillor Dimba did not materialise and on 29 June 2006, Officer Pillay of the South African Police Services arrived at the settlement with police and private security back up and tried to mark the homes to be demolished with large red crosses. The community stopped the process by blocking access to the targeted shacks. Pillay left, unable to complete his task but promised to return soon and break down the shacks.

⁵⁰ The eThekweni Municipality does not allow the construction of new shacks or the expansion or development of existing shacks, but while Councillor Dimba's instruction is in line with Municipal policy, it was in violation of the law and the constitution as evictions without a court order are illegal, and when evictions are carried out lawfully, alternative accommodation must be provided.

⁵¹ Govender claims to have purchased the land from the Municipality for the sum of R1 (US 12 cents) but this is not reflected at the deeds office, which indicates that it is in fact owned by the Municipality.

On the major national holiday of Women's Day, 9 August 2006, Councillor Dimba returned to the settlement with a pistol holstered to each hip and flanked by a cohort of armed men. He summoned the community to a meeting, which he began by gesturing to his weapons and promising to "chase away" named individuals on the democratically elected Abahlali baseMjondolo committee. He then said that the 164 families would have their shacks demolished and would have to "go back where they came from" after the 63 families were relocated to Nazareth Island on 27 August 2006. Residents alleged close links between Councillor Dimba and Govender and that Councillor Dimba was seen visiting Govender before and after his visit to the settlement.

2.2.3 Responses

The Abahlali baseMjondolo branch in Motala Heights approached the Abahlali baseMjondolo secretariat for help. They in turn contacted COHRE to seek legal advice. Through COHRE they were put in touch with Stuart Wilson at the Centre for Applied Legal Studies. Wilson advised them to find a lawyer, have everyone who did not want to be evicted sign a power of attorney form, and then have the lawyer write to the city manager and mayor informing them that the evictions would be illegal, and that their clients did not wish to be evicted. This had been enough, Wilson explained, to stop threatened evictions in other cities.

Shanta Reddy, a highly respected labour lawyer who had done *pro bono* work for Abahlali before, agreed to take up the case and the letter was duly sent off to City Manager, Mike Sutcliffe and Mayor Obed Mlaba on 26 October 2006. There was no reply.

On 28 October about 25-30 security personnel from the Municipality arrived at the settlement with 12-15 labourers equipped with large hammers. Without any warning, they set about demolishing the

tenant-occupied shacks, leaving the owner-occupied shacks intact. The demolition team was led by Bhekani Ntuli and Kumbuzile Mkhize of the Housing Department, while the security team was led by Mr. Mthembu. While shacks were being demolished, residents were informed that the entire settlement would be demolished after the removals to Nazareth Island had been completed. There were also threats that the ablution block and water supply would soon be destroyed in order to drive away those who did not want to move. Some residents alleged that bribes of R2000 were requested to get on the housing list by members of the local Branch Executive Committee of the African National Congress.

At the invitation of Abahlali baseMjondolo, Dr. Richard Ballard, a researcher in the School of Development Studies at the University of KwaZulu-Natal, visited the settlement soon after the evictions. He sent out a press statement in which he noted that: "One could be forgiven for thinking that a tornado had ripped through Motala Heights shack settlement on Saturday. About 20 shacks have been reduced to mangled piles of timber, which their former residents pick through in order to salvage their belongings."⁵² Most of the people left homeless were accommodated in the remaining shacks but a few had to sleep out in the open that night. On Sunday, the settlement was filled with echoes of hammering as shacks were hastily reconstructed.

Although press releases had been sent out by Abahlali baseMjondolo at every point in the series of events, the first newspaper coverage was achieved on 30 October 2006 in response to Dr. Ballard's press statement. The *Mercury*, a local newspaper, reported that local official S'bu Gumede had said that the eThekweni Municipality would continue to forcibly remove people from informal settlements and into proper housing:

⁵² Statement to the media by Dr. Ballard, 28 Oct. 2006.

"As long as there are people that need to be removed, there will be such removals," he said.

He added that the council was battling to control the growth of slums.

"We have adopted a zero-tolerance attitude to control the amount of informal settlements, and with the pressure of 2010 [when the football World Cup will be held in South Africa], we are trying to eradicate such settlements. When there are houses built for people from informal settlements, they do not want them and yet, when such removals occur, we as the council are seen as the harassers."⁵³

A second letter was sent by Reddy to the Mayor and City Manager on 31 October 2006 requesting a reply to the first letter and protesting against the illegal evictions on 28 October. But later that morning, the Municipality returned with police and security guards to re-demolish the newly erected shacks. Bheki Ngcobo, the elected chairperson of the Motala Heights Abahlali baseMjondolo branch, was assaulted with pepper spray and beaten when he attempted to present the police with a copy of the letter that had been sent by Reddy to the Mayor and City Manager. As a crowd gathered, rubber bullets and stun grenades were fired and people scattered. After receiving medical treatment, Ngcobo, on the advice of the lawyer, tried to open an assault charge against the police. The police refused to open the case and referred him to Ricky Govender, who they described as the 'Mayor of Motala'.⁵⁴

⁵³ Se-Anne Rall, 'Council Vows To Get Rid Of Shack Dwellers', *The Mercury*, 30 Oct. 2006, <http://www.themercury.co.za/index.php?fSectionId=2867&fSearch=1&fQuery=informal+settlements>

⁵⁴ These events were all witnessed and attested to by a researcher from the London School of Economics, Antonios Vradis.

On that same day, Mahendra Chetty of the Legal Resources Centre sent a letter to the Municipality explaining that their behaviour was illegal and requesting an undertaking that they would desist from further evictions and that they would rebuild the demolished structures. He did not receive a reply.

On 1 November representatives of the Municipality returned to the settlement with armed municipal security as municipal workers loaded building materials from shacks they had demolished a few days earlier onto trucks. A student visiting from London and living in the settlement was recording the demolition on his video camera. Lousia Motha, deputy chairperson of the local Abahlali baseMjondolo branch, asked the officials if the residents could retain the metal from the rubble in order to take it to recyclers to sell it for money for food. She told COHRE that a security staff member warned her that once the camera was gone they would assault her. She later received death threats via anonymous phone calls.

The LRC sent another letter to the Municipality on 2 November, which was the first to receive a reply. The reply sent from Mr. M. Sibisi of the City's Legal Services Department, however, failed to respond to any of the requests made previously and simply instructed the LRC to "stop harassing our officials."⁵⁵ Another letter from the LRC on 7 November received a second reply from Mr. Sibisi on the same day. He wrote: "I advise that I give you no undertaking whatsoever as there is no need for one. As for the threat of taking us to Court, that is your prerogative," and repeated the instruction to "stop harassing municipal officials."⁵⁶

⁵⁵ Faxed letter from Mr. M. Sibisi, eThekweni Legal Services Department, to the Legal Resource Centre, 2 Nov. 2006.

⁵⁶ Faxed letter from Mr. M. Sibisi, eThekweni Legal Services Department, to the Legal Resource Centre, 7 Nov. 2006.

After a considerable amount of preparatory work shared by the LRC and the residents, the Durban High Court was approached on 29 November on behalf of 14 residents. An interdict was granted, preventing the City from demolishing the shacks of 14 applicants without a court order. However, no relief was given to people who had already been forcibly relocated or left homeless and others, many of whom had been too scared to join the court action as a result of the death threats made to Lousia Motha, remained unprotected.

The City later unsuccessfully sought to oppose the interdict. The answering affidavit from Mr. Sibisi declared that the City was opposed to the order compelling them not to demolish shacks without a court order because the shack dwellers in question “are quite happy with the demolitions.” It made various unsubstantiated claims about the individuals who were protected by the court order, declared that Bheki Ngcobo had no right to speak for the residents, and stated that their organisation had no status to appear before the court. However, no affidavits or any other evidence were adduced to support these claims. It was simply stated that “persons who are beneficiaries of housing upgrade projects often have poor literacy skills, uncertain living arrangements, and are easily influenced by rumours and agitation,” and that for this reason it was “not possible to obtain written relocation contracts or acknowledgements.”⁵⁷

Abahlali baseMjondolo once again approached COHRE for support. This was forthcoming in the form of a COHRE-supported housing rights workshop. Participants were amazed to learn that the Breaking New Ground policy indicated a clear preference for *in situ* upgrades rather than relocation to peripheral sites, and that funds were allocated for this purpose. They were also amazed to learn that there were simply no circumstances in which the City could

⁵⁷ Answering Affidavit, Mr. Sibisi, 28 Nov. 2006, Paragraph 71.

evict people from shacks or demolish shacks without a court order, even when they were tenants rather than owners.

Motala Heights residents had been informed that there would be further evictions on 13 December. Ngcobo spent three days moving between the settlement, the officers of the LRC, and the Pinetown police station. Initially his attempts to persuade the police that the evictions would be a criminal act were brusquely rebuffed and he reported that he was, again, told to take his concerns to Govender. But with support from the LRC, in the form of telephone calls and a fax to the Station Commander, they were finally persuaded that Ngcobo was in fact correct.

However, the City returned to the settlement on 13 December and immediately began to demolish shack number B83, leaving Thathazile Mkize, S'bu Mhlongo, Sibongine Danisa, Bheki Mkize, Zama Nzuzi, and Bafana Gumede homeless. Ngcobo requested the police to come to the scene, explained that the municipality workers were breaking the law, and demanded their arrest. After some discussion with the police, the municipality workers left the settlement. There have been no further evictions from the wooden shacks. There was, however, an entirely unexplained renumbering process that caused considerable anxiety. A letter from the LRC on 9 January 2007 requesting an explanation of the renumbering process and demanding that it not be used to put those shacks protected by the court order at risk was not answered.

On 2 August 2007, 20 families living in commercial, low-cost housing constructed by Govender received letters from the Govender Family Trust indicating that they had seven days in which to purchase their property at R499,000 (about three times their market value) or they would be evicted in one month. On 4 August Mr. James Pillay, living in a tin house, was given verbal notice by Govender to move out of his house by the end of August. On 5 August 2007 Shamita Naidoo, chairperson of the Abahlali

baseMjondolo branch in the tin shacks, reported that she had been assaulted and subjected to death threats by Govender. On 31 August a journalist from the *Mercury* newspaper and a COHRE researcher were both abducted and subjected to death threats by Govender. They were released when the municipal police arrived on the scene and forced Govender to release the two at gun point. This was reported in the press. Abahlali baseMjondolo was able to put the Pillays in touch with a lawyer, Juliette Nicholson, who helped the Pillays obtain a High Court order restraining Govender from evicting them or intimidating or assaulting them. There have been no further evictions from the tin shacks since this time, although Abahlali activists continue to report intimidation from Govender and his employees and relatives, including assaults, damage to property, and death threats.

On Sunday, 24 February 2008 the two Abahlali baseMjondolo branches in Motala Heights – one constituted by the people in the wooden shacks in the settlement on the hill just outside the suburb and the other by the people in the tin houses scattered around within the suburb – united to form one Abahlali branch. The first act of the new united Abahlali baseMjondolo branch was to march in their hundreds on the office of Councillor Dereck Dimba and demand land and housing in Motala Heights. He told the protestors that the poor would have to leave Motala Heights, as the only development in the area would be undertaken by Govender.

Within days of the march, Shamita Naidoo came under pressure from her landlord and she is, at the time of writing, being threatened with eviction.

2.2.4 Results

Largely, evictions have been halted in both the wooden and tin shacks in Motala Heights. The two communities, once divided by apartheid, are now united in one democratic organisation. However, there is tremendous uncertainty about the future and there appears to be no plan on the part of the State to secure the communities' tenure rights and upgrade their housing. On the contrary, the state seems determined to continue to try and expel the poor from Motala Heights and to allow Govender to develop the area for private profit. But the shack dwellers remain united and are working to develop their own plan for housing for the poor in Motala Heights. Once it is completed they intend to mobilise in support of it. If their plan is accepted by the Municipality the residents of Motala Heights will not only have secured housing but they will have reversed an attempt to expel the poor from Motala Heights and they will have created a new community that transcends the racial divisions of apartheid.

2.3 Vila União, Municipality of Almirante Tamandaré. Brazil

2.3.1 General background

The Federative Republic of Brazil is characterised by extreme inequality that is very evident in the contemporary structures of its cities. It is usually argued that while racist legislation enforced by the armed power of the State created "[t]his compartmentalized world, this world divided in two,"⁵⁸ in Brazil "exclusion has been characterised primarily by unchecked market forces or speculation."⁵⁹ However, this explanation is not

⁵⁸ Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 2004) p. 5.

⁵⁹ Marie Huchzermeyer, *Unlawful Occupation: Informal Settlements and Urban Policy in South Africa and Brazil* (New Jersey: African World Press, 2004), pp. 85 and 94.

entirely adequate, as numerous studies⁶⁰ have indicated strong links between race and class in Brazil.

The first shack settlement in Brazil was constructed in Rio de Janeiro in the late 1890s by a group of former slaves who joined the army but found themselves left homeless after being demobilised.⁶¹ There was rapid growth in shack settlements following the first major wave of rural to urban migration in the 1930s and a steady increase thereafter.⁶² In the populist period from 1946 to the military takeover in 1964, State policy towards shack settlements was uneven and often characterised by a politics of patronage. This enabled certain communities to negotiate and make deals in exchange for political support, but the broad policy thrust was, as in apartheid South Africa, towards forced removal of shack dwellers and relocation to the periphery of the cities.⁶³ However, neither the use of zoning laws nor sustained police harassment succeeded in stopping the growth of shack settlements, or *favelas*.⁶⁴ Under the military dictatorship, shack settlements were seen as a potential political threat as well as a threat to a purely market-based conception of the value of land. As a result *favela* removal via demolitions and relocation to peripheral modern housing developments was aggressively enforced.⁶⁵ Indeed, the scale of forced removal in the first decade of military rule in Brazil was similar to that of the first decade of apartheid.⁶⁶ And, as in South Africa, it

⁶⁰ For example, see COHRE, 'Housing Rights in Brazil: Gross Inequalities and Inconsistencies', (Geneva: COHRE 2003), p. 17, http://www.cohre.org/view_page.php?page_id=120#i244; see also Huchzermeyer, *Unlawful Occupation*.

⁶¹ Robert Neuwirth, *Shadow Cities* (New York: Routledge, 2006), pp. 58-9.

⁶² Janice Perlman, *The Myth of Marginality: Urban Poverty and Politics in Rio de Janeiro* (Berkeley: University of California Press, 1976), p. 13.

⁶³ Huchzermeyer, *Unlawful Occupation*, p. 87.

⁶⁴ *Ibid.*, p. 94.

⁶⁵ Perlman, *The Myth of Marginality*, pp. 195-241.

⁶⁶ Huchzermeyer, *Unlawful Occupation*, p. 96.

was accompanied by severe repression of the expression of dissent. In 1976 the Government set a target date of 1983 for the 'elimination' of all *favelas*. In this year, a well-known study by Janice Perlman concluded that most *favela* residents opposed relocation, that it generally worsened their lives considerably, and that:

[...] *favela* residents are not economically and politically marginal, but are exploited and repressed; that they are not socially and culturally marginal, but as stigmatized and excluded from a closed social system. Rather than being passively marginal in terms of their own attitudes and behaviour, they are being actively marginalized by the system and by public policy ... *Favela* removal is perversely creating the marginalized population that it was designed to eliminate.⁶⁷

Across Brazil, the political space for shack dwellers to organise opened up considerably after the fall of the military dictatorship in 1985. *Le Monde Diplomatique* reported:

Over the next few years the National Movement for Urban Reform – a broad coalition of NGOs, trade unions, professional organisations, churches and popular movements – united around the call for equal rights in Brazil's towns and cities, and played an active role in drawing up the 1988 constitution, which recognised the right to adequate housing and provided for the expropriation of any land or building that fulfilled no useful social function.⁶⁸

⁶⁷ Perlman, *The Myth of Marginality*, p. 195.

⁶⁸ 'The Long Struggle for Housing Rights', *Le Monde Diplomatique*, Nov. 2007, <http://mondediplo.com/2007/11/13rights>

The Brazilian Constitution, adopted in 1988 by the civilian government that came to power in 1985 after two decades of military rule, does not expressly guarantee the right to adequate housing. However, in Article 6, it does consider housing to be a social right and requires positive action by the State as a means of executing public housing policies.⁶⁹ Brazil ratified the **International Covenant on Economic, Social and Cultural Rights (1966)** in 1992. Since the collapse of its National Social Housing System in 1996 and the approval of its new democratic constitution in 1988, Brazil has experienced new policies and programmes aimed at promoting the right to the city and the right to housing. National programmes to support the production of social housing, land regularisation, and slum upgrading have been implemented by the Ministry of Cities, created in 2003. Civil society, social movements, and NGOs have been leading the implementation of such policies together with the Federal Government and consistent with the principles and instruments provided by the Federal Law on Urban Development — the City Statute.⁷⁰

The City Statute was promulgated in 2001. It has been described as a legal framework governing urban development and management, which recognises the ‘right to the city’ as a collective right.⁷¹ In other words it sees Brazilian cities as “fulfilling a social function, particularly with regard to the access, usage and the fair and equitable distribution of the opportunities and wealth”⁷² of cities. It includes regulations designed to guarantee the social function of property, to regularise land occupation, and achieve the democratic management of cities.

⁶⁹ COHRE, ‘Housing Rights in Brazil’, p. 6.

⁷⁰ Law no. 10.257/2001.

⁷¹ Edésio Fernandes ‘Constructing the “Right to the City” in Brazil’, *Social Legal Studies* 16 (2007), pp. 201–19.

⁷² COHRE, ‘Housing Rights in Brazil’, p. 17.

However, implementation and the development of associated policies has been uneven. A 2003 COHRE report on housing rights in Brazil concluded that: "State-level policies range from those that have achieved great success in fulfilling the right to adequate housing to those that are clear and intentional violations of that right."⁷³ It also argued that:

[...] the status of housing rights in Brazil continues to be plagued by gross inequalities and inconsistencies with respect to the full enjoyment of the right to adequate housing. These disparities not only have a geographical correlation, but a racial and ethnic dimension as well. Indeed, the disparities are especially striking with respect to the Afro-Brazilian and indigenous populations.⁷⁴

In 2004 Miloon Kothari, United Nations Special Rapporteur on the right to adequate housing, carried out a mission to Brazil. In his findings, he described the City Statute as a "tool for participatory design of development plans and allocation of resources ... [that] ... is unique in the world and is binding by law." But on a more sobering note, he observed that insecurity of land tenure remained particularly acute among indigenous and black people and that there was an urgent need to elaborate a national policy for the regularisation of ongoing land invasion, for the Government to adopt measures and national legislation to ensure protection against forced evictions, and to ensure that such actions are carried out in strict conformity with existing international obligations.⁷⁵

⁷³ Ibid., p. 4.

⁷⁴ Ibid., p. 7.

⁷⁵ Graciela Dede, Report of the UN Special Rapporteur on Adequate Housing, Miloon Kothari, on the Official Mission to Brazil, http://www.socialwatch.org/en/noticias/documentos/Informe_brasil_SW_eng.doc

The UN Special Rapporteur's report also noted that evictions continue in Brazil "with frequent reports of excessive use of force, ill-treatment, torture and extra-judicial executions by military police."⁷⁶ Militia killings of social movement activists continue, and in October 2007 Via Campesina activist Valmir Mota was murdered in Santa Tereza West (Paraná).⁷⁷

Some studies have shown that Government housing projects in Brazil have consistently been driven by "principles of enterprise and profit making" that are driven by clientelist relationships with the State that are "incompatible with a target population of the poorest."⁷⁸ It has been argued that this tendency has continued into the current Government, despite its commitments to participatory democracy and that: "Much will now depend on the vitality of social movements, especially those related to the improvement of housing and urban living conditions."⁷⁹

Brazil now has some of the largest and most vibrant poor people's organisations in the world, many of which have organised around land and housing issues and made use of the legal instruments provided by the Constitution. These include the National Movement for the Struggle for Housing, the National Union for Popular Housing, the National Confederation of Residents' Associations, the Landless Workers' Movement (MST) and the Movement of the Homeless Workers (MTST). All these social movements, and in particular the MST, also participate in land occupations.

⁷⁶ Ibid., p. 9.

⁷⁷ 'Militante da Via Campesina é executado por milícia no Paraná' Agência Brasil de Fato, 22 Oct. 2007, <http://www.brasildefato.com.br/vo1/agencia/nacional/militante-da-via-campesina-e-executado-por-milicia-no-parana>

⁷⁸ Márcio Moraes Valença, 'Poor Politics – Poor Housing. Policy Under the Collor Government in Brazil (1990-92); Environment and Urbanization 19/2 (2007), p. 8.

⁷⁹ Ibid., p. 17.

The city of Curitiba in the state of Paraná in the southern part of Brazil has often been called a global model for development and is particularly well known for its public transport system and its pedestrian-orientated city centre.⁸⁰ However, UN Habitat's Advisory Group on Forced Evictions has reported that since 2001 there have been regular and often illegal and violent evictions from shack settlements carried out by the Municipal Guard.⁸¹

Vila União is located in the Municipality of Amirante Tamandaré, which falls under the metropolitan area of Curitiba. The settlement was founded by a land occupation on the morning of 17 January 1995. At the time, 80 families occupied 69 400 m² of land, which had been abandoned for 32 years. The occupation was organised via the Movimento Nacional de Luta pela Moradia (MNLN) – National Movement for the Struggle for Housing – and in a decade, the occupiers built paved streets and exerted sufficient popular pressure, including a number of occupations of the prefecture, to win access to water and electricity from the Municipality.⁸²

MNLN is a popular movement that emerged in the opening political spaces of the 1980s and was formalised in July 1990. It organises workers without housing and works for urban reform. It seeks to achieve this by campaigning against property speculation and for access to public education, health, and sanitation as well as popular participation in urban planning. The MNLN, like the MST

⁸⁰ See, for instance, Bill McKibben, 'Curitiba: A Global Model for Development' Common Dreams, 8 Nov. 2005, <http://www.commondreams.org/cgi-bin/print.cgi?file=/viewsof/1108-33.htm>

⁸¹ Mission UN-HABITAT-AGFE to Curitiba, Brazil (24-25 Feb. 2005), <http://www.habitants.org/filemanager/download/74>

⁸² 'Vivienda 1 de Maio na Vila União: mobilizar para morar!' (29 Apr. 2006), <http://cmi-curitiba.blogspot.com/2006/04/1-de-maio-na-vila-unio-mobilizar-para.html>

in rural areas, organises the occupation of vacant land in order to assert the social function of property.⁸³

2.3.2 Threatened evictions in Vila União

By 1996 around 400 families were living in Vila União and had substantially upgraded the settlement by building houses and successfully struggling for access to electricity, public nurseries, and schools. In that year, however, the landowner began trying to evict the occupiers through lawsuits presented before the local court.

In mid May 2003, an occupation of 62 families was violently evicted from the neighbourhood of Cachoeira in the region on the border between Curitiba and Almirante Tamandaré. The families had occupied the area in 1995. Military police carried out the initial eviction, and gave the families 15 minutes to leave their huts before burning them down, with all of the residents' personal belongings still inside. The people lost the few possessions they had, including beds, mattresses, blankets, cloth, food, etc. With nowhere to go, most of the families spent the night on the pavement of a street near the settlement. After three days, the Municipal Guard violently expelled the families from the street and confiscated whatever possessions they had managed to salvage. Most of the families then went to live with another group of people in a large hut collectively rented by the MNLM. Others went back to houses of relatives or to unknown places.

There were numerous attempts by residents and the MNLM and its allies, including churches and human rights organisations, to

⁸³ Luciane Moura, MNLM inicia calendário nacional de lutas por reforma urbana, (20 June 2005), http://www.mail-archive.com/direitos_humanos@yahoo.grupos.com.br/msg00416.html

negotiate a settlement which would allow the families to continue to live in the area. But the State of Paraná did not take the required steps to find a feasible and amicable solution with the landlord. On 31 January 2006 Elisiane Minasse, the judge on the bench in the Civil Court of the Municipality of Almirante Tamandaré (lawsuit n. 59/96), ruled that the eviction could go forward.

2.3.3 Responses

A series of community protests and mobilisations were immediately carried out by the MNLM and a number of Brazilian and international NGOs. This led to an engagement with development organisations to undertake technical research to see if the area was suitable for housing. It was concluded that the area was indeed suitable for housing and this gave the MNLM and its supporters a positive vision of an alternative to eviction around which they built their campaign. Local human rights activists also sought to mobilise international pressure via an 'international day of action against evictions,' and there was also a high profile visit by Mr. Yves Cabannes, Convenor of the Advisory Group on Forced Evictions, UN-HABITAT.

In March 2007, the Municipality of Almirante Tamandaré expropriated the area from the private owner and halted the eviction (Decree 01/2007) to the benefit of the families, who are now allowed to continue living there. The Municipality paid US\$60 000 to the private owner for the area.

2.3.4 Results

The most immediate result of the successful mobilisation that led to a Municipal decision to expropriate the land is that a forced eviction was averted. But there were also other positive results,

including the enhancement of collective campaigning abilities through the formation of new alliances.

2.4 General lessons

Forced evictions are illegal and violate, among other things, the human rights to housing, food, water, health, and education. Often times forced evictions are carried out against some of the most socially, economically, and politically marginalised sections of our society. The case studies documented in this section point to a few of the numerous contexts in which forced evictions occur. While the Colombo case study highlights direct State involvement, Motala Heights and Vila União document the involvement of both State and private parties. Regardless of the context, however, forced evictions can always be attributed to the State — through acts of commission or omission. Averting or resisting evictions requires strategic use of available tools – including legal intervention, the use of civil society organisations, and media – to rally national and international public opinion, and negotiating with local authorities to find an acceptable alternative. The three case studies presented in this section highlight the effective use of some of these strategies.

2.4.1 Media support

Although forced evictions are a global phenomena, there continues to be a lack of public awareness of the scale of evictions as well as their impacts. Often eviction drives go unnoticed, supported by an all-pervasive apathy towards the poor and their housing strategies. In such circumstances, the electronic and print media can be used as effective tools to raise awareness about the brutality and illegality of forced evictions, and the crippling impact they have on numerous lives.

The Colombo case study highlights the positive contribution of local and international media attention in averting evictions. Widespread media attention in this case, however, needs to be contextualised within the ongoing conflict in Sri Lanka and the use of 'national security' as the rationale for the evictions. Media attention, therefore, may not be as easily forthcoming in other situations. In fact, as seen in Motala Heights, the community had very little initial success in gaining media attention, despite sending out regular press releases to all significant local and national media. Media coverage of the threatened evictions in Vila União increased significantly only after local and international mobilisation coupled with the visit of Mr. Cabanne. Regardless of timing, however, media support played a significant role in all three case studies discussed in this section, as in a number of cases throughout the world.

Given the key role played by the media in drawing attention to injustice and impacts of evictions, and in order to maintain sustained media interest, housing rights groups have followed several long- and short-term media strategies that include preparation of documents for the media, press conferences, site visits, and the involvement of eminent personalities. Using human rights language has also proved to be a useful tool to draw media attention and to highlight the damaging effects of forced evictions.

2.4.2 Litigation

In many countries, approaching the courts can be highly effective in stopping evictions. As a result, legal action is a very valuable component of any campaign against evictions. Legal decisions are often useful beyond the particular case and set a precedent for future cases. Favourable legal decisions can often help in shaping public opinion by legitimising claims, as seen in the case of Motala Heights, where media interest and public sympathy both picked up significantly once the court decision was found to be in favour of

the shack dwellers. In several countries, intervention of the courts can be invoked through the use of provisions for public interest litigation (as seen in the case of the Colombo case study) or class action suits.

Litigation, however, can often be an expensive and, in some cases, a long, drawn out process that is often inaccessible to the poor. Experiences in Durban, as elsewhere, indicate that communities that are not organised into larger movements often find it difficult to access affordable legal support, while larger networks that develop over time through collective organisation often enable swift access to legal support. Further, experience shows that accessing courts for remedies against forced evictions should be resorted to after much deliberation and weighing of possible consequences in the event of an unfavourable decision. Strict legality and an adherence to black letter law can further erode the rights of those who do not enjoy security of tenure. An active media and public information campaign outside the courtroom, as seen in the Colombo evictions case, must complement legal strategy. Additionally, the implementation of legal decisions needs to be monitored by a strong people's movement in order to ensure that the decision of the court is being followed in letter and spirit.

2.4.3 Expropriation of land

As seen in the case of Motala Heights residents, while the court order won them respite and relief, they continue to live in highly inadequate homes and remain vulnerable to eviction at a later date.

Several communities throughout the world that are forced to live in shack settlements due to the failure of the state to provide affordable, adequate housing for lower-income groups live in similar situations of vulnerability. With increasing pressure on

available land resources, especially in the urban areas, residents of shack settlements, whether living on public or private land, are often forcibly evicted and pushed to the peripheries. Eviction often results in a radical decline in the affected people's well-being, as livelihood opportunities and access to education, health care, libraries, sports facilities, and so on all diminish as people are moved away from the urban core. Faced with poor living conditions, many have no option but to abandon relocation sites and move back to the city centre.

Compensated expropriation, where possible, is a way in which the state can make an active intervention to affirm and defend the social value of land, as has been illustrated in the Vila União case study. Although most legal systems allow for compensated expropriation, in most cases, expropriation of land for housing the poor rarely takes place without a strong people's movement and active campaigning. The Vila União case study is an excellent example of constructive collaboration between local and international NGOs, technical research groups, and the media that resulted in not only averting eviction of an entire community from their homes and lands but also in persuading the State to play a positive role and protect the community from further evictions by granting security of tenure.

3

COMMUNITY-DEVELOPED ALTERNATIVES TO FORCED EVICTION

This section of the report documents two case studies in which communities have been able to develop alternatives to forced evictions. It gives a brief explanation of the background and facts for each case before discussing some general lessons for best practice.

3.1 Pom Mahakan. Thailand

3.1.1 General background

Pom Mahakan is a community of around 300 residents located in the old part of Bangkok – Rattanakosin Island, Kingdom of Thailand. The island was formed by a moat built around the Grand Palace two and a half centuries ago. For the last 150 years, the community has been living and earning a livelihood by selling traditional crafts on the 100-foot-wide piece of land between the ancient city wall and the canal. Many residents have also built their ancestral shrines on the land.

On 23 January 2003, the Bangkok Metropolitan Administration (BMA) served the 75 families in the Pom Mahakan community with eviction notices that required them to vacate their homes. Residents were offered relocation to a site on the periphery of Bangkok, 45 km

away. As part of the government-sponsored Rattanakosin Island Development Plan, the BMA wanted to turn this strip of land on which the community was living into a park. It was stated that this would “improve tourism.” Two arguments were advanced in this regard. Firstly, that by removing the community and creating an open space, tourists would have a dedicated site from which to view the Palace and, secondly, the safety of tourists would be enhanced by removing the community, which was perceived as including criminal elements. The BMA provided no supporting evidence that their plan to replace the community with a park would do more for the tourism industry than the community’s historic homes and 150-year-old traditional crafts business. They merely asserted that the greater good would be served “by the construction of a public park, attractive to tourists and integral to the administration’s ecology-sensitive plan of expanding the green spaces within the city.” They described the Pom Mahakan community as a “slum” and its residents as plagued by “drug problems and by petty criminality.” However, even the local police did not agree with the manner in which the BMA presented the community. They made it clear that in their view, the community was poor but not criminal.

3.1.2 Responses

The community’s public refusal to accept forced relocation to the periphery of the city attracted the attention of the architecture department at King Mongkut’s University of Technology Thonburi (KMUTT). After careful negotiations between the department and the community, it was decided to develop a community plan for the development of the area. In November 2002, seven students began working with a small community at Pom Mahakan as part of their fourth-year Community Workshop Studio. The original premise of this study was to implement the Habitat Agenda by use of participatory planning.

The first major presentation of initial findings from the students was set for 25 January 2003 —the same day the BMA served the 75 families in the Pom Mahakan community with eviction notices to vacate their homes. Despite the bad news, the students made their presentation to the community. One of the central points of discussion, however, concerned the prospects for having the plan accepted by the BMA. The community made it clear that they would need to be able to use the students' design as a negotiating tool. For this to be an effective strategy, the students not only had to devise an alternative plan for the community and the park, but they also had to present a rationale for that alternative that would speak to the general interests as well as the rights of the community. Among other challenges, this involved:

- Thinking through the question of how history and historical preservation are understood in the context of tourism – e.g., Is it necessary to preserve artefacts and architecture alone or is it necessary to preserve communities?
- Asking critical questions about the process of development – e.g., How are decisions made? Who makes them?
- Thinking about who benefits from development and who pays. Was BMA evicting these people simply for tourism? Should the community be expected to pay such a devastatingly high price for the social costs of tourism?
- Developing an understanding of the use of urban parks and how they work.
- Considering ways in which the apparent conflict between green and brown issues (in this case 'parks or housing') should be resolved. Here the critical question was: Must we make a choice between one or the other?

- Coming to a shared understanding of human rights and the right to the city. Here the key issues were the right to space, to land, and access to services.
- Discussing ways in which conflict could be avoided in the development process.
- Looking critically at the balance between gentrification and community economic development.
- The most important questions were: Does the community have the right to be part of the overall economic development in the city? If so, how?

The project moved well beyond the infrastructural needs of the community and into the broader issues of urban development. It was clear that the plan developed by the students and the community would have to respond to the BMA's claim that the park would be in the general interest. Over the next six weeks, the students worked out an alternative plan with the community. As Graeme Bristol explains, this required a careful collective process:

The students spent the first month of the four-month studio gathering data and talking with/interviewing the people in the community. In the second month they consolidated this data into a preliminary program from which they developed a series of proposals that met the program. These proposals were intended to promote discussion rather than to present plans.⁸⁴

⁸⁴ Graeme Bristol, 'Pom Makhan Community Design and Human Rights', *Claiming Public Space* (Jan. 2007), <http://www.claimingpublicspace.net/modules.php?name=News&file=article&sid=6>

It soon became clear that the community was, if anything, more concerned about tourism than the BMA. As with the BMA, they envisioned tourists coming through the community on their way to Wat Saket. The community, though, had knowledge of various traditional crafts and wanted to capture some of that tourist trade to expand its own economic base. The community members wanted to tell tourists about their own history and to sell their own products. The community decided that they had no disagreement with the city about a park being developed on the site. But as Bristol explains: "Their disagreement was that they had to leave for the design of the park to work. In other words, the disagreement here was not about whether there should be a park or not, but about how the park was designed."⁸⁵

The plan that was developed through collective discussion included the renovation of the older buildings and the integration of the residences into an historical park. The key innovation was to reblock the existing housing to allow for a series of mini parks between blocks of housing around small courtyards. Along with these practical plans, the community and students also had to develop an argument that the history of this community was as important to tourism as the palaces and temples and that their products could have commercial viability as well. In other words, the community was seeking to become part of the economic development of Rattanakosin Island — the economic development that motivated the original master plan that precipitated the BMA's call for the eviction of the community.

The residents even started implementing part of this plan, and this persuaded many outsiders to rally to the call to support them in this process. This in turn created a support network of individuals and groups, including academics, NGOs – in particular the National

⁸⁵ Graeme Bristol, 'Strategies for Survival: Security of Tenure in Bangkok', case study

Human Rights Commission (NHRC) of Thailand⁸⁶ – and United Nations agencies.

The study was completed at the end of February 2003 and submitted to the National Human Rights Commission of Thailand on 4 March 2003. Representatives of the BMA, the governor's office, and the National Housing Authority were there to present their interests. On the other side of the table, the Pom Mahakan community leaders and the KMUTT students presented their plan and their arguments in support of it. After nearly two hours of presentations and arguments, the community persuaded the NHRC that the eviction would violate the rights of the community and that it was not in the interest of tourism. While the process was far from over, it was clear that the plan – legitimised by the process through which it was developed – was an integral part of the argument.

Throughout this process, the community leaders in Pom Mahakan had a firm grasp of the tools that they had at their disposal and could use them to lobby for ongoing support. These tools included:

- Design – Positive design proposals were a useful tool to rally broader support and to enable positive proposals during negotiations.
- Media – The community kept the public aware of what was going on and what their arguments for alternatives were. They also alerted the press each time the authorities (BMA, police, army) came onto the site.
- Academia – Academics were useful for getting international recognition for the case in general and the counter proposal

⁸⁶ The National Human Rights Commission of Thailand, function from 13 July 2001 until 19 Sept. 2006, when it was closed after the Thai military seized power in a coup.

in particular. This recognition played a role in highlighting their cause. Furthermore, students were put to good use in collecting data, and in participating in meetings and symposia on various aspects of the community's plight.

- The National Human Rights Commission – for support regarding national eviction legislation and best-practice principles.
- COHRE – for support in understand and utilising international law as well as getting support from the United Nations.

All of these tools were used at different times as needed. Furthermore, all of these tools supported one another. Throughout, it was clear that the law was not the only means through which human rights could be supported. Design itself, at least in this case, was able to provide an effective argument against eviction.

3.1.3 Results

The BMA approached the court seeking permission for the eviction, and in August 2003 an administrative court ruled that the proposed eviction was legal and could proceed. In January 2004, the authorities started work on the unoccupied areas of Pom Mahakan, including moving the canal pier and excavating certain areas. The authorities continued to announce their intention to evict the entire community. Some community members lost hope and left, but the majority kept up their attempts to negotiate with the authorities and to put forward alternatives. Eventually, after yet another attempt to implement the evictions, the Bangkok governor finally agreed to resolve the issue through negotiations. This won the community some time.

An election was held in August 2004 and a new governor was elected. The new governor made some preliminary proposals to

the effect that the community be granted a 30-year lease on the land and that the plan the students worked on with the community may be implemented.

On 19 December 2005 the governor confirmed that negotiations between the community, the BMA, and the King Mongkut's University of Technology Thonburi had resulted in an agreement to preserve and develop the area as an "antique wooden house community".

However, the junta that came to power following the military coup on 19 September 2006 abrogated the Constitution, dissolved Parliament and the Constitutional Court, detained and later removed several members of the Government, and declared martial law. Although the declaration of martial law was partially revoked in January 2007, Thailand is certainly not a constitutional democracy governed by the rule of law. Given the history of paranoia and violence with which authoritarian regimes – from the apartheid state in South Africa to the Brazilian military dictatorship in the 1970s to the Mugabe dictatorship in contemporary Zimbabwe – have treated the urban poor as a security threat, the foothold that the Pom Mahakan and other communities have secured in Bangkok can be seen as a fragile victory.

3.2 Group 78, Bassac. Cambodia

3.2.1 General background

Group 78 is located near the Bassac River in Village 14, Tonle Bassac commune, Chamkar Mon district, Phnom Penh, Kingdom of Cambodia. It is in the heart of one of the fastest-growing areas of the city and is close to the new National Assembly building and

adjacent to the site of the new Australian Embassy. As a result, the land occupied by the community is highly valuable.

On 22 June 2006 the governor of Chamkar Mon district issued a notification for the residents of Group 78 to relocate to Trapaing Anchanh area, approximately 20 km from the city centre.⁸⁷ The plots of land at the relocation site are 5 metres by 12 metres and are not adequately equipped with any basic amenities such as water, sewage, shelter, or electricity. There are few prospects for sustainable livelihood or educational opportunities, given the distant location of the resettlement site. Nonetheless, authorities are trying to convince the families to move despite the inadequate resettlement and compensation offer.

In May and June 2006 the adjacent Sambok Chap community was violently and forcibly evicted and relocated to an empty plot of land in Andoung, more than 20 km outside the city centre. The families were not provided with shelter, potable water, sanitation facilities, adequate food, or other basic necessities such as schools and health services. Nor were they able to access employment opportunities. The community continues to live in untenable conditions in Andoung and several children have died from preventable diseases, especially water-borne diseases, since the eviction. Some 60 percent of the housing plots in the resettlement sites are now empty because most people have been forced to return to the city centre in order to find jobs. In many cases men have been forced to leave their wives and families in Andoung while they return to the city for work. Families who were renting on the Sambok Chap land and those who could not present evidence of residency were not offered plots of land in the Andoung relocation site and were rendered homeless.

⁸⁷ Notification No. 055/06 N.

The Cambodian company Sour Srun Co. Ltd., claims ownership of the Sambok Chap land and part of the Group 78 land, and, along with the Phnom Penh Municipality, orchestrated the eviction with the assistance of police and military police. The community was not presented with any evidence of Sour Srun's alleged ownership of the land. During the eviction in June, the perpetrators encroached on approximately 10 to 20 m of Group 78 residents' land. The residents subsequently lodged complaints about the encroachment to the National Cadastral Commission and the National Authority on Land Dispute Resolution. Sour Srun reportedly plan to develop a five-star luxury hotel on the site. It is rumoured that Sour Srun intend to extend their development to the Group 78 land, however neither Sour Srun nor the Municipality have been forthcoming with information on the development plans, despite requests.

Group 78 was first settled in 1983 and over the years grew to include 146 families.⁸⁸ The community has built houses on the land and established small businesses. The settlement has been officially recognised by local authorities and the Phnom Penh Municipal Cadastral Office through the issuance of house statistic receipts on 24 October 1992. Other official recognition of interest in the land includes house- and land-selling contracts, title transference contracts, family record books, identity cards, and house-repair requests. Residents have been able to use the land as collateral for loans. In terms of ownership rights, the Group 78 families have it 'as good as it gets' in Cambodia, where poor urban households have not been able to access the nascent land regularisation and registration system to obtain titles. Furthermore, pursuant to Article 30 of the Land Law of 2001, people who settled on the land before the promulgation of the law and can show continuous possession for at least five years have the right to request a definitive title of ownership. To be eligible, possession of the land must also have

⁸⁸ Currently there are about 90 families remaining; as many have reportedly left as a result of both bribes and threats from the Municipality and Sour Srun.

been unambiguous, non-violent, visible to the public, continuous, and in good faith.

Having fulfilled these requirements, in 2004 the residents of Group 78 applied for land titles for their homes, but Tonle Bassac commune officials refused to sign their land title applications or forward their applications to the Phnom Penh Municipal Department of Land Registry. In accordance with Article 45 of the Land Law, the residents filed complaints to the Ministry of Land Management, Urban Planning and Construction, which issued a letter to the Municipal Department to look into the situation. However, no investigation into the matter has ensued.

Thus, like many urban communities, Group 78 has been unable to properly access the formal process for land registration and has been residing on the land without title. Under the Land Law, peaceful, uncontested occupation of the land for at least five years prior to 2001, even without title, constitutes a possessory right to the exclusion of all others. This right is reinforced where the possession has been officially recognised since 1989, as it was for the families of Group 78.⁸⁹ Despite some erroneous suggestions by authorities, the Group 78 land can be lawfully privately possessed under the law because it does not fall within any category of state public land, as exhaustively listed in Article 15. Both neighbouring plots of land are recognised by the Government as being privately owned, suggesting that the Group 78 land is eligible for private possession and ownership. Therefore, to the greatest extent possible for urban poor communities without title, the Land Law supports the Group 78 community's rights to the land. Yet despite the rights afforded under the Land Law, the absence of the rule of law and the lack of implementation all but annul the legislative protections.

⁸⁹ Land Law 2001, Articles 29, 39, and 42.

The Municipality of Phnom Penh has issued a total of five eviction notices, with conflicting reasons for the eviction of Group 78 – either voluntarily or forcibly. The first eviction notice stated the land was needed to contribute to the “beauty and development” of Phnom Penh City.⁹⁰ The second and third notices stated the land was needed to implement City’s development strategy and that the land was an important site for development with good drainage, roads, and parks to benefit tourism.⁹¹ The final two notices say the Municipality will construct riverbanks and roads along the Tonle Bassac River and will build two bridges – one to Village 14 and the other to Village 8.⁹² However, the story of the Sambok Chap community, which lived next to Group 78, suggests the involvement of corporate interests.

The Constitution states that confiscation of land must be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance. Article 5 of the Land Law reiterates this principle. While this protection is explicitly afforded to landowners, it arguably extends to legal possessors who can validly apply for title under the Land Law. Although the ‘public interest’ constraint has not been defined, it is unlikely that development or ‘beautification’ per se fall under this category of permissible reasons to expropriate land; a good faith interpretation would certainly require a higher threshold to be met. The expropriation of the land for drainage or to build a road might meet the ‘public interest’ requirement but only if there were no alternatives to confiscation and eviction. In these circumstances, part of the land could be used – drainage pipes would conceivably only require the subsurface of the land – and permanent eviction would likely be unnecessary. Empty plots of land to the left and right of Group 78

⁹⁰ Notice No. 055/06 S.C.N. dated 22 June 2006.

⁹¹ Notices No. 060/06 S.C.N. dated 14 July 2006 and No. 062/06 S.C.N. dated 24 July 2006 respectively.

⁹² Notices No. 64/07 dated 28 Aug. 2007 and No. 96/07 dated 30 Oct. 2007.

could potentially be used in the alternative. Furthermore, for the Municipality to argue in good faith that the land is required for the 'public interest', as required under the Constitution and Land Law, it should disclose fully and unambiguously all information regarding its claims about the public interest and alternatives explored — something that it has unsurprisingly failed to do. Of course, if ownership of the land is to be transferred to Sour Srun for the development of a luxury hotel, there is clearly no public interest purpose behind the expropriation.

The Municipality has also failed to satisfy the Constitutional requirement to offer fair and just compensation. According to an independent appraisal of Group 78 land value in July 2006, one square metre of land was worth US\$550. Measuring 11 700 m², the total value of the land in question is \$6 435 000. The land's value is heightened by its proximity to the Mekong and Bassac rivers, government ministries, a high-end casino, luxury hotels, and embassies. A subsequent independent land appraisal in November 2007 has valued one square metre of Group 78 land at \$1 200, with a total value for the site at over \$14 million. In stark contrast to this, families in Group 78 have been offered \$1 000 as compensation.

The Land Law allows only "competent authorities" on behalf of the State and public legal entities to forcibly evict occupants without sufficient titles. Thus, if the eviction of the Group 78 community were to occur under the instruction of Sour Srun, as with the Sambok Chap evictions, it would violate the Land Law, Article 35. Under the Law, any person who uses violence against a good faith possessor is liable for criminal sanctions, including imprisonment as well as for civil damages caused by the violent acts.⁹³ Furthermore, under Article 33 of the Law, land upon which violent eviction occurs or which is subject to abuse of power by authorities reverts to

⁹³ Land Law 2001, Article 253 and 261.

ownership of the State, but can be claimed by the lawful possessor that was evicted for up to three years. The evictee must lodge a claim asserting that he or she is the lawful possessor and was violently evicted. According to these provisions, Sour Srun should not be able to claim ownership of the land following the violent evictions.

Sour Srun employees involved in the events of May and June 2006 could be held liable for both the eviction of the Sambok Chap community and the encroachment onto Group 78 land, and the land could revert to State ownership. However, in practice, Cambodian prosecutors are unlikely to charge the well-connected perpetrators of violent forced evictions.

3.2.2 Responses

In response to the threatened evictions the community has organised itself and has selected a number of strong leaders and representatives to take its advocacy efforts forward. The community representatives meet regularly to discuss updates and strategies. They are aware of their rights under the Land Law and are adamant that their strategies will remain lawful and peaceful. Although the authorities have attempted to divide the families – by sending ‘spies’ to integrate into the community and convince individuals to accept the compensation and move – with a few exceptions, the community has sustained a high level of organisation, solidarity, and commitment to resisting the eviction. The community, while opposing eviction, maintains that its legal rights must be respected, and that possession rights of families should be converted into ownership rights in accordance with Cambodian law. Furthermore, in the event that there is no alternative to eviction, all affected families must be provided with just and fair compensation prior to eviction.

After receiving the first eviction notice, the community was able to negotiate the support of various organisations, including the Community Legal Education Center (CLEC). With support from CLEC, the residents filed an application to the court to have the eviction notice quashed; however, the court held that it did not have jurisdiction in the matter and (illegally) referred the case to the Municipality of Phnom Penh — the authority that had issued the eviction notice. Representatives also filed a complaint with the National Assembly's Chairperson for Human Rights Protection and Complaint Receipt, requesting intervention by the district office. However, despite these protests, a second and third notification to relocate were issued by the Municipality. The eviction notifications were accompanied by threats and intimidation by armed police and military forces.

The community has also developed a vigorous media strategy that has included holding press conferences, providing regular updates to journalists who have published articles in local newspapers, and working to attract the interest of foreign media. There has been some success and the popular Australian current affairs programme, *Foreign Correspondent*, aired an extensive report about the Group 78 case, and evictions and land-grabbing in Cambodia more broadly, on Australia's ABC network in October 2006.

The community has also sought support from the ruling elite. This has involved sending letters requesting intervention to the King, Prime Minister Hun Sen, and to the Australian, French, American, Vietnamese, Canadian, and other foreign embassies. Particular advocacy efforts have been focussed on obtaining support from the Government of Australia, given that the community lives right next to the site of the new Australian Embassy. For instance, community representatives and advocates met with the Australian ambassador to explain their predicament and request assistance. However, despite repeated requests by community representatives for the support of the Australian Government, the Australian ambassador

has refused to get involved to end the ongoing housing rights violations.

The community's primary advocacy approach has revolved around an on-site development plan that it has designed with the help of NGOs and architecture students. The objectives of the renovation plan were to improve the site and the families' living conditions and also to incorporate the Municipality's stated development plans. The plan includes a public road running alongside apartment blocks for the families. The families hope that the Municipality will allow them to reside on their land, based on the community's plans, and in compliance with their legal rights under the Land Law. The idea for 'land-sharing' and designing a development plan was inspired by the Pom Mahakan community in Bangkok, Thailand, which successfully negotiated with the relevant authorities about plans that were based on their own on-site renovation plans.

Once the development plans were ready, the community and its NGO and legal representatives held a press conference in May 2007, inviting media, Government officials, and foreign diplomats, including the Australian ambassador. The launch was organised with the intention of obtaining support – financial and otherwise – for their plan. To the community's disappointment, very few Government officials or foreign diplomats attended the event — the Australian ambassador failed to attend, despite appeals from the community and COHRE's Asia and Pacific Programme, based in Melbourne, Australia.

As an international NGO, COHRE has supported the community's efforts in exploring a variety of avenues. COHRE has written a protest letter to the Cambodian Government, issued a media release, and written a letter to the editor of a high-profile Cambodian local newspaper to coincide with the launch and media conference. COHRE also wrote to and met with the Australian ambassador to

Cambodia to urge her to intervene in this case, and later wrote directly to the Australian foreign minister seeking support. COHRE also sent a letter requesting information to Sour Srun Co. Ltd. to no avail.

Meanwhile, Group 78 leaders and local representatives are continuing to sustain the organisation and strength of the community through weekly meetings to discuss legal, political, media, and other strategies.

3.2.3 Results

The community has not been able to obtain full title nor does it have access to financial resources — often the only effective power source in Cambodia. The votes of the community, and even the accumulated votes of other sympathetic communities, have little significance in the face of powerful, wealthy, and well-connected individuals and corporations with a vested interest in evicting the community. The concept of corporate social responsibility has not taken root in Cambodia, making the lobbying of corporations on moral or ethical grounds a virtually worthless exercise.

Yet the Group 78 community has successfully resisted eviction so far. Undoubtedly, this has occurred as a result of the community's own strength, determination, and the importance it has placed on good organisation, collaboration, and strategy development. The support of local NGOs, and especially the CLEC, has been crucial. Local advocates have prioritised Group 78, often above other communities, in terms of resources, probably because of the community's ability to organise itself and strategise and because of the strong legal basis for the argument that the community should remain on the land. The innovative on-site development plans of the community – which seek to meet the interests of the Phnom Penh Municipality as well as the families – are part of a

sophisticated strategy that has subsumed a considerable amount of the limited financial and human resources of advocates. As a result of these factors, in many ways the plight of this community has come to signify the potential for success for all other communities threatened with eviction in urban Cambodia.

Small signs of success are starting to emerge: No new eviction notices have been issued and the Municipality has informally agreed not to evict the community without some process of negotiation. The Municipality's current official offer to Group 78 residents is a plot of land and \$1 000. CLEC has evidence to show that the families who have recently settled with the Municipality have received a plot of land and \$5 000, but the Municipality will not publicly admit this.

Furthermore, in a meeting with community members, the Phnom Penh deputy municipal governor assured community representatives that the Group 78 community would not be evicted, although he refused to put this statement into writing. The eviction notices the community has received have not been revoked either.

Despite numerous limitations and restrictions, most Group 78 families have so far resisted eviction and at least marginally increased their bargaining power. The community has not surrendered under the pressure of setbacks and rejections but instead continues to fight for its land and rights.

3.3 General lessons

The two case studies discussed in this section illustrate the benefits of creative resistance, which presents an alternative to eviction that fits into the broad development agenda of the State.

Communities living in Group 78, Bassac and Pom Mahakan settlements both found themselves facing the prospect of forced relocation to the periphery of the cities. In both instances they were placed under pressure due to the increase in value of the land that they occupied. In both cases communities were unable to resolve their crisis of threatened evictions by recourse to the courts. However, both communities were well organised and able to make alliances with local professionals to develop alternative plans that could meet the demands of the communities as well as the municipalities seeking their eviction. Being able to put a positive counter proposal forward gave the communities a very useful negotiating tool, which was also key in winning wider support. Although Group 78, Bassac has not yet achieved the official guarantee of tenure security that was eventually won in Pom Mahakan, evictions have been averted thus far.

3.3.1 Counter proposals

Evictions from shack settlements are often carried out under the guise of 'development' and justified on grounds that the evictions would serve the larger interests of communities. Therefore, putting forth counter proposals to evictions while still working within the development discourse is often an effective strategy to avert evictions and also gain security of tenure.

For reasons of credibility and viability, as seen in both the case studies, it can be useful to involve professionals while developing alternatives to evictions. For instance, the involvement of architecture students and professionals in Group 78, Bassac and Pom Mahakan lent credibility to the exercise.

There are, however, risks attached to the development of counter proposals. For a start, the exercise is time-consuming and therefore may not be the best strategy in situations of urgency. Secondly, care has to be taken in order to ensure that the process is participatory and the risk of ordinary members of the community being sidelined because they lack certain skills must be averted. The best interests of affected persons and their effective participation need to be centralised in the planning process. Without the active participation of all sections of the community, including women, there is risk that their needs may not be addressed in the alternative plan. Furthermore, there is a need for all relationships between affected communities and professional organisations to be negotiated, with particular attention paid to the existing power imbalances. The breakdown of trust between various parties involved can paralyse the process and, therefore, full transparency about alliances must be a precondition to participation.

It is also essential for development professionals to understand that while they are likely to have valuable expertise with regard to the policy, legal, and technical frameworks within which planning can take place, community knowledge and experience with regard to their particular situation is equally important. Development professionals need to be open to innovation from communities, as in many instances communities already have a plan in place, as well as a considerable wealth of planning experience. In his writing on the successful development of a counter proposal in Pom Mahakan, Graeme Bristol cites Arif Hasan's observation that: "In the whole planning process anywhere in the world there are three players; the politicians, the planners and the people. What happens in all countries like ours is that politicians and planners get together. They give a plan to their people."⁹⁴ An inclusive and democratic planning process will have to make a decisive break with this logic.

⁹⁴ Graeme Bristol, 'Strategies for Survival', p. 11.

3.3.2 A multi-pronged approach

While the presentation of counter proposals and alternatives to official plans was the main strategy used, it is important to note that in both case studies, all available avenues were explored simultaneously. As a result, there were efforts to build alliances across sectors and to make use of specific skills available in each of these sectors. Therefore, while students were involved in creating alternative plans, civil society organisations – including international organisations – were involved in advocacy initiatives, ranging from writing protest letters to petitioning various authorities and seeking involvement of bodies like the Australian Embassy or the United Nations. In both cases, media attention was actively sought and legal recourse was also explored. Furthermore, it is significant that the Group 78 community drew from the Pom Mahakan experience to avert imminent evictions.

The two case studies in this section present examples of proactive, community-led attempts at averting evictions through creative engagement that exemplify the value of using a multi-pronged strategy, alliance-building, and skill-sharing.

4

NATURE RESERVES AND PEOPLE

4.1 Central Kalahari Game Reserve. Botswana

4.1.1 General background

In 1997, 2002, and 2005 there were major forced evictions from the Central Kalahari Game Reserve (CKGR) in the Republic of Botswana. The game park was established in 1961 and covers more than 52 000 km². It is one of the largest conservation areas in the world. It was founded both to conserve the natural ecosystem and to conserve the autonomy of the G//anakhoen, G/wikhoen Gwi and Bakgalagadi people, who had been living on the land since ancient times.⁹⁵ Relocations were first proposed by the Botswana Government in 1986 and began 11 years later, resulting in approximately 5 000 people being relocated to the New Xade and Kaudwane relocation sites outside the Reserve.

⁹⁵ The G//anakhoen and G/wikhoen Gwi groups, as well as the Bakgalagadi, are part of the larger group of people known variously as Bushmen or San. However, both terms are often considered derogatory, and in Botswana the term Basarwa has been preferred since the late President Seretse Khama successfully campaigned for these terms to replace derogatory seTswana terms. Basarwa are a small and vulnerable minority and are often viewed with contempt by mainstream Tswana society, suffering systemic marginalisation, casual violence, and police hostility. See Neil Parsons, 'Makgowa, Mahaletsela, and Maburu: Traders and Travellers Before c. 1820', *Pula Journal of African Studies* 11/1 (1997), p. 30, and Morris Nyathi, 'The Social Exclusion of Basarwa' *Mngeni* 23/185 (2006), p. 28.

Although the Government of Botswana maintains that the relocations were entirely voluntary, evidence suggests otherwise. A fact-finding mission conducted by the Botswana Centre for Human Rights, Ditshwanelo, reported that while some people were offered vastly inflated compensation packages, others reported being threatened with arrest or violence. Most people reported that the push factor had been the Government's insistence that they would terminate all essential services in the Reserve. In January 2002 the Government publicly cut off water supplies, literally rendering the decision to remain in the Reserve or to accept relocation a matter of life or death.

The people forcibly evicted were sent to resettlement camps set up by the Botswana Government. Describing living conditions at the resettlement camps, Survival International reported that: "Rarely able to hunt, and arrested and beaten when they do, they are dependent on government handouts. They are now gripped by alcoholism, boredom, depression, and illnesses such as TB and HIV/AIDS."⁹⁶ Research has also indicated that most of the people who had been in favour of resettlement were not as positive after relocation due to "an impoverished natural resources base and an almost complete absence of income generating opportunities."⁹⁷

Numerous displaced people returned to CKGR after being evicted, and in 2002 the Government set up a special Task Force to investigate the reasons behind the stream of people trying to return to the Reserve. Critics argued that if they had consulted the people in the first place, there would be no mystery to investigate and no conspiracy to unravel.

⁹⁶ See Survival International (SI), <http://www.survival-international.org/tribes/bushmen>

⁹⁷ James Suzman, 'Kalahari conundrums: relocation, resistance and international support in the Central Kalahari Botswana', *Before Farming: News Headlines*, 2002/3_4 (12) (Dec. 2002), p. 4, http://www.waspress.co.uk/journals/beforefarming/journal_20023_4/news/survival.pdf

When the forced evictions first began in the late 1980s, they were justified on the basis that game numbers were declining in the park and that the evictions were necessary for conservation. The government had also argued that people were being evicted so that they could be “developed”. The Minister of Local Government wrote that “the Government has the interests of the Basarwa at heart. The decision to relocate was taken with many positive things in mind. We as a Government simply believe it is totally unfair, to leave a portion of our citizens underdeveloped under the pretext that we are allowing them to practice their culture ... all we want to do is treat Basarwa as humans not Game, and enable them to partake of the development cake of their country.”⁹⁸

Survival International (SI), together with some other organisations, argued that the evictions are linked to plans by De Beers to mine diamonds in the park. According to SI, the Reserve lies in the middle of the world’s richest diamond fields. Diamond mining in Botswana is controlled by a company called Debswana, which is half owned by De Beers and half by the Botswana Government. There is a definite diamond industry–government nexus, which is known to be highly secretive. Although in early 2002 De Beers said that it had no plans to mine “for the foreseeable future”, later that year a De Beers spokesperson said “we can’t say that we will never mine it.”

There is a long and bitter history in southern Africa of people being evicted from land proclaimed as game reserves. This history is highly racialised, as evictions – certainly since the 1930s – took the form of Africans being dispossessed of their land and livelihoods in order to create what Shirley Brooks, a leading scholar of this process, calls “the emergence of marketable constructions of ‘wild nature’” for the consumption of white tourists. Her work tells the story of the brutal dispossession and exclusion that underlies the often violent creation of game reserves as “romantic spaces in which tourists

⁹⁸ Cited in the judgement, p. 243.

could experience wild nature and an 'unspoilt' African landscape."⁹⁹ In post-apartheid South Africa, the trauma of this history has been widely recognised, with the result that contemporary practice usually seeks to negotiate some balance between the needs of people, conservation, and the tourism industry. However, although the mining industry was also implicated in a variety of abuses throughout the region during the colonial and apartheid areas, its enormous influence has ensured that it remains close to new governments and well-insulated from popular pressure.

4.1.2 Responses

In early 2002 legal action was launched to declare the actions of the Botswana Government unlawful. The case was taken up by a range of local organisations and international NGOs and received major international attention through a well-funded and very high-profile international advocacy campaign. This has included articles and paid adverts in the world's most influential newspapers and the support of celebrities, like the model Iman and the leading American feminist, Gloria Steinem. In October 2003 the South African Constitutional Court ruled on the Richtersveld case, which stated that the Nama people of the Richtersveld (related to the Basarwa) "have the legal right to the ownership of their land and its minerals, despite the fact that they have never been given title deeds and the government has always assumed that they had no rights to it."¹⁰⁰ The outcome of this case was widely considered to be important for the situation in Botswana and galvanised further support. In July 2004 SI assumed financial responsibility for the court case.

⁹⁹ Shirley Brooks, 'Images of "Wild Africa": Nature Tourism and the (re) creation of Hluhluwe Game Reserve, 1930-1945', African Studies Seminar, University of KwaZulu Natal (22 Apr. 2004).

¹⁰⁰ See judgement in the *Alexkor Limited v. The Richtersveld Community and Others*, case CCT19/03, <http://www.constitutionalcourt.org.za/Archimages/758.PDF>

In April 2005 there was a setback as the Botswana Government pushed a bill through Parliament to scrap the key clause in the Constitution protecting Basarwa rights. The major argument in the court case had been formed around this clause.¹⁰¹ At the same time, SI reported that the US State Department had condemned the Basarwa relocation sites as being “threatened by the lack of employment opportunities and rampant alcohol abuse” and noted that Basarwa groups “have called for the Government to recognize their land use system and to grant them land rights.”¹⁰²

In August 2005 the Letloa Trust Board on behalf of the Kuru Family of Organisations (KFO), a network of largely Basarwa-constituted local organisations, issued a press statement expressing their disapproval at the actions of SI.¹⁰³ KFO asked SI to focus on the court case and to allow the organisation and local community groups enough space to deal with the issues confronting them on a daily basis as they saw fit, and to negotiate with De Beers about mining rights in the area. Shortly afterwards, the Working Group of Indigenous Minorities in Southern Africa (WIMSA) issued a statement emphasising their commitment to the Basarwa of the CKGR, but expressed their concern that “the wider political, economic and social situation that the San face” should not be ignored and that they “believe that any campaign which is focusing its efforts and attention upon a single case needs to adopt an approach which is sensitive to the wider cause of the San population in the region and which does not risk damaging the wider advocacy and development efforts being made by the

¹⁰¹ See Integrated Regional Information Networks (IRIN), ‘BOTSWANA: Minority Ethnic Groups Feel New Bill Still Discriminates’, (13 Apr. 2005), <http://www.irinnews.org/report.aspx?reportid=53901>

¹⁰² SI, ‘Botswana: US State Department Condemns Evictions’, (6 Apr. 2005), <http://www.survival-international.org>

¹⁰³ Kuru Board Forum’s response to criticism from Survival International, Aug. 2005.

San in the region.”¹⁰⁴ Earlier that year, a group of San had marched on the officers of WIMSA in the neighbouring country of Namibia, demanding the resignation of the organisation’s head.¹⁰⁵

These actions inaugurated intense and often public debates, on occasion quite personalised, between De Beers, the Botswana Government, academics, and local and international NGOs with claims and counterclaims. Along with the question of whether or not there are plans to mine the Game Reserve, other issues are: whether or not Basarwa organisations should seek to make a deal with de Beers; whether or not it is strategic to develop an international campaign that is openly antagonistic to the Botswanan Government; whether or not the rights of the Basarwa should be seen in terms of universal human rights, the rights of Botswanan citizens, or the particular claims of indigenous groups; and who has the right to speak for the Basarwa.

However, despite these disputes, the campaign continued to attract major international attention. In December 2005 a Right Livelihoods Award was presented in the Swedish Parliament to Basarwa activist Roy Sesana for “resolute resistance against eviction from their ancestral lands, and for upholding the right to their traditional way of life.”¹⁰⁶

¹⁰⁴ Working Group of Indigenous Minorities in Southern Africa (WIMSA), Statement from WIMSA and WIMSA Botswana, (8 Aug. 2005).

¹⁰⁵ Tanja Bause, ‘San Group Demands Immediate Resignation of WIMSA Head’, *The Namibian* (28 Feb. 2005), <http://www.namibian.com.na/2005/February/national/0599C8E9D6.html>

¹⁰⁶ KhoisanPeoples.Org, ‘Arrested Bushmen Win “Alternative Nobel Prize”’, (29 Sep. 2005), <http://www.khoisanpeoples.org/>

4.1.3 Results

The court case was heard over two years and was the longest and most expensive in Botswana's history. It finally came to conclusion on 13 December 2006, when the Botswana High Court ruled that the eviction by the Government was "unlawful and unconstitutional", and that the Basarwa have the right to live and hunt inside the Reserve on their ancestral land.¹⁰⁷ Justice Phumaphi said in his ruling that "the simultaneous stoppage of the supply of food rations and the issuing of SGLs [hunting licences] [was] tantamount to condemning the remaining residents of the CKGR to death by starvation."¹⁰⁸ Sesana, who had come in for considerable criticism in the judgement for refusing to be cross-examined on various statements he had made, was quoted outside the court as saying: "Finally we have been set free. The evictions have been very, very painful for my people. I hope that now we can go home to our land."¹⁰⁹ The 400-page judgement was wide-ranging and made very important and clear statements in a number of areas.¹¹⁰ Because there had been no opportunity to explore in-depth statements made about the link between evictions and potential diamond mining, this question was left unexamined. However, the issue of ethnic prejudice was brought to the fore. The judgement noted that: "The Applicants belong to an ethnic group that has been historically looked down-upon, often considered to be no more than cheap, disposable labour, by almost all other numerically superior ethnic groups in Botswana."¹¹¹ The judgement also made

¹⁰⁷ For information on the case, see <http://www.survival-international.org/news/kits/bushmencourtcase>

¹⁰⁸ SI, 'Botswana: Six Bushmen Arrested For Hunting, [press release], (3 Sep. 2007).

¹⁰⁹ SI, 'Bushmen Win Landmark Legal Case', (13 Dec. 2006), <http://www.survival-international.org/news/2128>

¹¹⁰ See the full High Court of Botswana judgement in *Roy Sesana, Keiwa Setlhobogwa and Others v. The Attorney General*, MISCA NO. 52 at <http://www.survival-international.org/files/news/ruling.doc>

¹¹¹ Ibid

the point that under colonialism, 'development' was about coercing people into a particular mode of life and that this understanding had continued into contemporary thinking in Botswana.

The judgement was very clear that the applicants had a right to choose to form alliances with NGOs, both local and international, that the court had no doubts about their capacity to make informed decisions in this regard and that arguments to the contrary have no constitutional basis. Indeed the judgement went so far as to assert that:

As regards the role of Survival International, like FPK [First People of the Kalahari], Ditshwanelo and The Negotiating Team, it seems to me that these organisations have given courage and support, to a people who historically were too weak, economically and politically to question decisions affecting them. For present purposes, the fact that Survival International is based in the West is neither here nor there. The question is whether or not the Applicants had a right to associate with this group in their attempts to resist relocating and the answer has to be in the affirmative.

The court also took a strong position against the view that relocation was justified by the fact that people would be given land title and thus become property holders. Around the world forced evictions are often justified by the fact that they compel people to exit a life where resources are shared in common to enter a life where land and services are accessed on an individualised and marketised basis. The judge said: "The respondent says those who relocate will get title to land. The question becomes, to do what with it? What is the value of a piece of paper giving one rights to a defined piece of land, typically 40 m x 25 m when one had access to a much larger area?"

The judge also found that the termination of basic and essential services in the Reserve was intended to force relocation and that this was a breach of the right to life. The Government was ordered to restore services to people still in the Reserve and to those who wished to return and – although this had not been asked for – to award damages to those who wished to remain in the relocation sites. It was also found unlawful and unconstitutional to withhold hunting licenses to the applicants.

Following the court decision, the Botswanan Government has, unlawfully, continued to insist that the Gana and Gwi do not have the right to hunt within the Reserve. There have been repeated reports of intimidation, arrests, and even outright torture of Basarwa found hunting in the Reserve. Since the judgement, the Government has also refused to let the Basarwa use the water borehole on their land or to bring their few goats back into the game Reserve.¹¹²

In June and July 2007 there were 21 arrests for hunting in the Reserve. On 3 September 2007 six Gana and Gwi men were arrested by the Botswana police for hunting in the Reserve, and Sesana was arrested for 'rioting' and 'trying to enter the reserve'. More than 50 Basarwa hunters have now been arrested since the court judgement allowing them to return to the Reserve. Large numbers of people have reported that they are too scared to return to the Reserve because of the harassment.

¹¹² SI, 'Botswana: Six Bushmen'.

4.2 Makuleke. South Africa

4.2.1 General background

The Makuleke community were evicted from their land in 1969. At the time of the eviction the community was made up of around 15 000 people and occupied an area of some 23 700 hectares, primarily in the northern section of Kruger National Park. A judgement in a recent case in the Land Claims Court¹¹³ found that they had been there for between 150 and 200 years prior to eviction and had not received any compensation after being evicted. Their removal served three purposes for the apartheid state. The first was to expand the area of the Kruger National Park. At that time, colonialist ideas about the need for African people to be removed from areas in order to make them suitable for both conservation and the enjoyment of white tourists were deeply entrenched. In the 1960s the Park was not a major asset to the international tourist industry, as it is now, but it was accessible to white families of even quite modest means and did play a large role in the national imagination and identity of white South Africans. Most of the land lost by the Makuleke community was incorporated into Kruger National Park.

The second function of the eviction was to expand the Madimbo Corridor. The Corridor was a strip of land owned by the military that ran along the Limpopo River and was used to defend the border marked by the river. At the time, several liberation movements were in exile and the apartheid state was very anxious to defend its borders against incursion from neighbouring countries. Given that such incursion was likely to enjoy popular support, removing people from a border area was seen as a good security strategy.

¹¹³ Judgement in the Land Claims Court Of South Africa, Case Number 90/98: 'In The Matter of the Makuleke Community Concerning Pafuri Area of the Kruger National Park and Environs, Soutpansberg District, Northern Province'.

The third function of the eviction was to expand the Venda 'homeland'. Under apartheid, all African people were divided into ethnic groups, removed from areas proclaimed to be 'white', and forced to live in small fragmented bits of land where they were governed by 'chiefs' on the State's payroll. 'Homelands' served both to exclude African people from 'white' spaces and to place them under a form of despotic political authority. In accordance with apartheid ideology, the community, comprising Tsonga and Venda people, was split up along ethnic lines. Naturally there had been a great deal of intermarriage over time, and this ethnic segregation caused considerable distress. The Tsonga portion of the community (which had occupied most of the land) was relocated to Ntlhaveni, in the Gazankulu 'homeland', and the Venda portion of the community to the Venda 'homeland'. As the writer Bessie Head once remarked, apartheid was about making sure that everything was 'kept in its place'. The removal reduced an economically independent community to poverty and reliance on cheap labour, often in the form of migrant labour, to survive.¹¹⁴

4.2.2 Responses

Soon after the first democratic election, the new Government moved quickly to set up a restitution process for people who had been evicted from their land during apartheid. The Makuleke community lodged a land claim in December 1996 and were one of the first communities to successfully conclude a land claim.¹¹⁵ In October of that year, the Chief Land Claims Commissioner appointed mediators to facilitate the negotiation process. Negotiations began the following month and were concluded in May 1998. During the negotiations, the community received *pro bono* legal support

¹¹⁴ C. Thornhill and D.M. Mello, 'Community-based Natural Resource Management: A Case Study of the Makuleke Community', *Journal of Public Administration* 42/3 (2007), p. 287.

¹¹⁵ *Ibid.*, pp. 284-97.

from the Legal Resources Centre. The negotiations culminated in a settlement agreement that was signed by the Makuleke community, various Government departments, and all the organisations currently occupying the land.

On 15 December 1998 the community's ancestral land was formally restored to them by an order of the Land Claims Court.¹¹⁶ In 2000 they were awarded US\$450 000 in compensation for the eviction by the South African Government. They were also promised that they would be given electricity by 2008. But, in a rare and groundbreaking move, the Makuleke community proposed that the South African Government use the compensation money to provide electricity to its villages immediately.

The Makuleke people negotiated that – in return for exchanging the immediate acceptance of the compensation for immediate electrification – they would receive the \$450 000 in compensation funds, with interest, in 2008 (the date on which the Government had originally decided to provide the villages with electricity). The Makuleke villages were given electricity in September 2004.

At the time when the land was being restored to the community, about 19 000 hectares were within the Kruger National Park. The remaining 3 600 hectares were partly within the Matshakatini Nature Reserve in the Madimbo Corridor, a provincial nature reserve under the control of the South Africa National Defence Force (SANDF), and partly in the informal Makuya Park managed by the Northern Province Department of Agriculture, Land and Environment.

¹¹⁶ See judgement in the Land Claims Court Of South Africa, Case Number 90/98.

As a part of the agreement following the negotiations, it was decided that the land would all become part of Kruger National Park and would henceforth be known as the Makuleke Region of the Kruger National Park. The agreement has thus resulted in enlarging the Park by 3 600 hectares. Only conservation staff had been living on the land at the time of the agreement and it was agreed that no resettlement would take place and that community members would remain where they were living. Rather than returning to live on the land, the community chose to leave it as conservation area and to generate an income from tourism, and, in particular, from the building of a hotel. It was decided that the hotel would be built by a private company but co-managed by the community. The community would receive 10 percent of the income, and after 28 years the ownership of the hotel would be transferred to them.

Negotiations were complex and required considerable patience and willingness for compromise within the community as well as between the community and other social forces. Speaking in an interview with *National Geographic* in 2005, Livingston Makuleke, a community spokesperson, recalled that:

The older people longed for their land and wanted to go back there. They remembered how hard it was for them to lose it. They remembered how they were bundled on government trucks with such belongings as they could take and transported to the new place. It was terrible. Our old people to this day shiver when they talk about that experience. With the younger people it was different. They did not have the same connection as the old people with their ancestral land and were not as anxious to go back there. They could see the advantages of rather letting it remain part of the park. Our argument was that it could be of bigger benefit to the community. We said we could get a fixed income from giving concessions to game-lodge

operators, and our people could get jobs from it. Finally the older people agreed. And as it turned out, we have delivered on our promises.¹¹⁷

In terms of the agreement, a contract between the community and South African National Parks (SANParks) establishes a Game Reserve for 50 years. The agreement can be reviewed after an initial period of 25 years. In exceptional circumstances, if the community's rights are severely limited by conservation legislation in a manner not foreseen in the agreement, the community may terminate the agreement earlier.

A Joint Management Board (JMB), consisting of members of SANParks and the community, will manage the land for conservation purposes. Decisions will be made by consensus. For the initial period, until otherwise decided by the JMB, SANParks will conduct conservation management as agent for the JMB.

The agreement has been widely celebrated as an example of effective social cooperation between government bodies and land-claiming communities and contains many innovative elements.

Chief among these are the advances achieved with regard to community ownership and participation. All the 2 570 households that comprised the community at the time now share collective ownership over the land. The land will be managed by SANParks but this will be done in the form of a partnership with the community. If no agreement can be reached on an aspect of management of the region, SANParks has no veto and the deadlock-breaking mechanisms in the agreement (at final stage involving independent arbitration) can be invoked. The agreement does not lock the

¹¹⁷ Leon Marshall, 'In South Africa, Relocated Community Chooses Jobs Over Lost Land', *National Geographic News*, 19 Oct. 2005, http://news.nationalgeographic.com/news/2005/10/1019_051019_makuleke.html

community into the partnership with SANParks forever. Either of the parties can end the contract agreement after 25 years (with five years' notice). While the community will be bound in perpetuity by the provisions protecting the conservation status of the land, it will enjoy full rights to develop the land for eco-tourism ventures (subject only to principles of conservation). The financial revenue from such ventures will accrue to the community.

The agreement has been widely welcomed by conservationists.¹¹⁸ For instance, it will enable sensitive wetlands in the Madimbo Corridor – recently identified for special conservation status in terms of international conventions – to be brought under integrated conservation management involving SANParks. The fence separating Kruger National Park, the Madimbo Corridor, and Makuya Park will be removed to allow wild animals access to the pristine wetlands along the Limpopo River. The agreement could also contribute to faster progress in the establishment of a transfrontier park in the region, as the Makuleke community has deep familial ties with adjacent communities in Mozambique and Zimbabwe.

Mineral rights will be reserved in favour of the State. Yet to protect the ecological integrity of the area, the community and the Department of Minerals and Energy have agreed that prospecting and mining will be prohibited. If mineral rights are to be privatised at any stage, the community will have a preferred right to acquire them.

In 2000 the Makuleke Communal Property Association (CPA) offered a private safari company the rights to hunt two elephants and two buffaloes as trophies. The company was selected through

¹¹⁸ See, for instance, Bertus de Villiers, 'Makuleke Land Claim and the Kruger National Park Joint Management: A Benchmark for Conservation Areas?', *South African Parks Review* 13 (1998); see also Marshall, 'In South Africa'.

an open tender in which the Kruger Park and Professional Hunting Association of South Africa acted as observers. The first hunt earned the CPA¹¹⁹ about \$80 000 (and this was allocated to a variety of development projects in the village). Meat from the elephants and buffaloes was distributed equally among the community.

In 2001 the Makuleke community issued a newsletter, which examined its achievements over the past years. They announced that they were set to develop a new upmarket lodge in one of the most beautiful areas of the Park and were busy building a new guesthouse and museum in one of their villages. Other projects include the development of a small-tented camp along the course of the Luvuvu River and a set of training programmes in the villages. Local people were being trained to manage the wildlife and to participate in all levels of the tourism industry.¹²⁰ The hotel was built in 2001 and is now fully operational.

An academic study by Hannah Reid concluded that while ongoing reflection on the process would be essential to deal with any problems that could emerge, the prospects are fundamentally positive:

There is clarity about ownership, where management responsibility lies, and how benefits are divided between SANP and the community and within the community itself. Both parties currently feel that the benefits will outweigh the costs of having a contractual national park on the land in the long term. Conservation objectives are met, there is support from influential NGOs and government departments, and the macroeconomic framework of South Africa poses few problems. Conflict resolution mechanisms

¹¹⁹ Marshall, 'In South Africa'.

¹²⁰ Views from the Village, Growth and Development in the Makuleke Region of the Kruger National Park 1 (Apr. 2001).

are likely to be effective, the JMB is legitimate, and there is a good relationship between SANP and the community.¹²¹

In 2005 Livingston Makuleke reported that “the debate about what to do with the land, as well as the planning that had to be done after we decided to leave it as part of the park, all served to bind us together as a community.”¹²²

4.3 General lessons

The two case studies discussed in this section, unlike those discussed earlier, move away from the urban context to ‘undeveloped’ forest areas — another highly coveted and contested terrain. Regardless of the context, however, these evictions also present a situation where the human rights of marginalised communities are sacrificed in favour of a development agenda (which includes conservation, exploitation of natural resources, and tourism) devised to suit the desires and ambitions of the elite sections of society.

While the context of the two case studies may be similar, wherein tremendous devastation was imposed on people by eviction, the processes undertaken by the two governments of Botswana and South Africa, and the results of those processes, could hardly be more different. In Botswana, the unwillingness of the Government to implement the court decision has resulted in a continuation of suffering and human rights violations. In South Africa, the fall of the apartheid regime initially brought with it the will to undo some of the earlier injustices and, in Makuleke, there were genuine efforts at restoration. As a result, while the Makuleke case appears to have been resolved, the Basarwa – despite

¹²¹ Hannah Reid, ‘Contractual National Parks and the Makuleke Community’, *Human Ecology* 29/2 (2001), p. 135.

¹²² Marshall, ‘In South Africa’.

having gained a favourable court order, due to the possible lack of political will to implement it – continue to struggle for survival.

4.3.1 Need for a paradigm shift

The two case studies (although covering different time periods) discussed here present a classic case of conflicting interests between communities and the ruling elite brought about through a top-down approach towards development. Thus, not only are affected people not consulted during the planning process but their eviction and disenfranchisement is seen as an inevitable cost of development. Such a development paradigm is often accompanied by individualised insertion into the market economy via ownership of small plots of land and commodified access to services without the prior informed consent of the communities involved. It is often assumed that this process will inevitably lead to 'modernisation' and thereby the well-being of the community.

Christopher Thornhill and D.M. Mello argue that there are two basic paradigms in nature conservation when it comes to the questions of communities. The first, which they describe as the 'fortress conservation approach', favours the use of coercive strategies to 'protect' nature from communities. This first view has its roots in the 1930s and was dominant in the 1950s and 1960s. They argue that:

The core elements of the fortress conservation consisted ... of conservation excluding local communities, communities forfeiting their rights for consumptive use, and the strict enforcement of rules governing the particular area through fences and fines for any transgressions. This approach included the removal of communitiesfrom their ancestral land.¹²³

¹²³ Thornhill and Mello, 'Community-based Natural Resource Management', p. 289.

However, a new paradigm began to emerge in the 1970s. This paradigm emphasised 'community-based natural resource management'. They cite research showing that the exclusion of people from a central and often major part of their livelihoods was usually politically difficult to implement and often politically and socially counterproductive. However, involving local communities in conservation management could not only avoid these political and social costs but could, in fact, lead to improved conservation of natural resources. In order to achieve these benefits, governments would have to embrace a decentralisation of authority, including decision-making on important matters and the genuine empowerment of local communities.

This shift towards community empowerment requires, among other things, recognition of the planning capacity of ordinary people. Although writing of the urban context, Janice Perlman articulates:

Experience over the past twenty years shows that, since intelligence is not distributed along class or geographic lines, the most promising innovative approaches often come from local experience – from the people, community groups, street-level bureaucrats, and small-scale enterprises closest to coping with problems on a daily basis.¹²⁴

However, expert planners – in government, international agencies, or NGOs – often resist the democratisation of planning. As Marcelo Lopez de Souza warns: "Even progressive professional planners and planning theoreticians usually share with their conservative counterparts the (tacit) assumption that the state apparatus is the sole ... planning agent – for better or for worse."¹²⁵

¹²⁴ Janice Perlman, 'A Dual Strategy for Deliberate Social Change in Cities', *City* 7/1 (1990), p. 7.

¹²⁵ Lopez de Souza, 'Together with the State', p. 327.

The Makuleke model shows what can be achieved and has emerged as a global inspiration.

4.3.2 Lacking political will

The adversarial stance adopted by the Government of Botswana represents the typical top-down approach towards communities and conservations. In several cases, as in the case of the Basarwa of the Central Kalahari Game Reserve, the path to and conceptualisation of development runs contrary to the interests of the affected community, which often does not agree with the imposed 'modernisation'. It is not merely because of a clash between tradition and modernity but a question of the human rights of the affected community, including the right to participation. In the Makuleke case, it is notable that the people chose tourism over traditional modes of land use, but that they simultaneously elected to retain the older idea of communal landownership.

In Botswana the absence of political will to respect court orders as well as the human rights of the Basarwa is evident in the ongoing arrests and other forms of intimidation by the State. Experience with similar situations in other parts of the world points to the need for a sustained campaign by local and international NGOs, after favourable court decisions, in order to ensure their implementation. Continuous monitoring and advocacy to sustain media and civil society interest is essential in such cases.

4.3.3 NGO support

The support of NGOs, as seen in various case studies, can be vital for providing technical support during negotiations as well as in undertaking the advocacy and campaign work necessary

to raise awareness and produce a consensus around the need for negotiations. NGOs can bring vital networks, resources, and technical skills to the negotiating process. Furthermore, NGOs – in close collaboration with affected people and their organisations – can ensure that the case is monitored long after the initial attention has faded.

In the Makuleke case, the relations between NGOs and the community and between NGOs and the Government appear to have been largely unproblematic. In the case of the evictions from the Central Kalahari Game Reserve, however, there were severe conflicts between some local and international NGOs and between some NGOs and the Government. A key point of contention was the question of representation and who really had a right to speak for the people facing eviction. Solidarity, when it is built on solid foundations of mutual understanding and trust, can enable very effective interventions. But when it is cobbled together too quickly, without proper process and an agreed set of non-negotiables, and when it is driven by NGO assumptions about what people want, the best of intentions can result in unfortunate outcomes.

5

PREVENTION: URBAN PLANNING WITH COMMUNITY INVOLVEMENT

This section of the report examines two case studies where states have been able to develop viable alternatives to forced evictions in partnership with communities. It gives a brief explanation of the background and facts for each case and then considers some general lessons for best practice.

5.1 Máximo Tajes. Uruguay

5.1.1 General background

The settlement of Máximo Tajes was established in the period between the late 1980s and early 1990s in the Carrasco neighbourhood of Montevideo, Eastern Republic of Uruguay. During this time there was a general growth in land occupations and the development of informal housing in the city driven by a lack of affordable housing. The Máximo Tajes settlement is in the eastern part of Montevideo, on the Carrasco stream, in one of the most expensive and highly developed areas of the city.

There was a long-standing plan to build a highway exit through the area. The plan had been shelved due to financial considerations, but in 2004 it became possible to move forward with the project, and

planning for its construction started. Resident families, however, were not notified of the possibility of eviction at this time. It was only once actual construction had started in 2005 that around 50 families were informed that they were to be relocated. The official reason given for the evictions was the construction of the highway exit and, also, the development of a park for the neighbourhood of Carrasco. No alternative to the eviction was presented by the Municipality. The residents were not offered monetary compensation but they were offered alternative housing.

5.1.2 Responses

It is a general policy of the Municipality of Montevideo to not forcibly evict any residents off municipal land. This, however, does not mean that the City has committed to a moratorium on evictions. It takes the view that there are times when – for the general interest of the City or the particular interests of the residents concerned – evictions are necessary. The City, therefore, has assigned its Lands and Housing Service to arrange an arbitration process between the Municipality and residents and to propose relocation and housing programmes when there has been a decision to evict.

Around the world, many municipal governments offer alternative accommodation to people who are being evicted, but most often the alternative accommodation is on the urban periphery where there are very few livelihood opportunities. For this reason, communities tend to vigorously oppose relocations away from city centres to peripheral sites. However, in Montevideo, as per the Lands and Housing Service's policy, relocations, as far as possible, should be to other sites in the same neighbourhood in which the community was living at the time of the eviction. It is not unusual for municipal governments to commit to this in principle, but in practice it is often determined that relocations within the same neighbourhood are not viable. In most cases, ensuring that

relocations of poor communities do not result in physical exclusion from the city requires the political will to purchase well-located land on the open market, or via compensated expropriation, and to find creative ways to deal with the anxieties of wealthier residents who do not want a poorer community in their area.

Although the community was not consulted on either the construction of the highway or the possibility of eviction, they were consulted on the relocation programme. Between 2004 and 2005 negotiations were held between the residents of the Máximo Tajés settlement and the City's Land and Housing Service. The Municipality had contracted two NGOs to assist with the negotiations process. All the families voluntarily participated in the negotiations, which were held under some pressure as the City did make it clear that if a resolution could not be found, they would revert to the courts for judicial permission to evict.

It was clear that although it would be possible to house all the residents in the same area, it would not be possible to house everyone on the same site and that the community would have to be broken up and rehoused on three separate sites. Therefore, the discussions included questions of where the families would be relocated, who would be relocated to which site, and what type and quality of housing would be provided on the three new sites. A relocation programme was designed in mutual agreement with the community.

It was also agreed that the community would provide the labour for the construction of the new houses on the relocation sites. The deal was accepted by all the residents, and because there was full agreement, the matter was not taken before a court.

The main problem seems to be the relations with the wealthier neighbours. Meetings were therefore held with people living close to the proposed relocation sites, as there were serious objections

from some of the wealthier residents to the idea of the working class Máximo Tajés families being housed close to their homes. They cited a potential rise in crime and the lowering of the value of their properties as key concerns. In one instance a letter was sent to the City demanding the immediate cessation of the relocation programme. The City has responded to this by putting in place a programme to mediate between the new residents and their wealthier neighbours.

5.1.3 Results

The relocation was implemented as per the negotiated agreement, 18 months after the initial notice. A total of 50 new houses were built on three separate plots – Joaquín de la Sagra (21 houses), Con. Pavia (14 houses), and Santa Mónica (15 houses) – of municipal-owned land in the neighbourhood of Carrasco. The houses were built under the direction of the Municipality, in coordination with Movimiento Tacurú, a church-based NGO. In the view of the City, community involvement was essential in order to create a feeling of ownership and for people to learn their duties related to the building and maintenance of their homes.

In 2005, the first stage of the development was concluded and the first families were relocated. The relocated families are currently tenants, but the notary- and cadastre-related procedures are in progress and it is expected that individual title will soon be allocated to the head of each household.

As per the negotiations, there is a short-term ban on the resale of the houses to prevent ‘downward raiding’, in which richer people buy well-located housing for the poor. An evaluation of the whole process is currently under way and includes the City and the residents. There is also a process in place to check on the quality of the construction and to remedy any faults.

5.2 Naga City. Philippines

5.2.1 General background

Naga City is about 200 miles south-east of Manila, Republic of the Philippines. It is centrally located in the Bicol region, which is the southernmost portion of Luzon Island. The city has a population of around 140 000 and is a regional centre for trade, commerce, finance, and education.

Like other cities in the Philippines, Naga began to face an acute urban crisis starting back in the late 1970s due to the high rate of urbanisation and the lack of affordable housing. The State often attempted to make the housing crisis a policing problem rather than a welfare problem or a social-justice problem. The result was that by the early 1980s, Naga was well known for the generally adversarial relationship between poor communities and their organisations on one side, and private landowners and the City on the other.

Evictions and demolitions were common and failed to resolve the housing crisis. In fact, they worsened the crisis considerably, as people evicted from one place simply moved to even more marginal and unsuitable locations. This resulted in growing animosity and social conflict. By the late 1980s, the poor became increasingly well organised and began to forcefully articulate their concerns. And their numbers were growing rapidly. In 1980, the National Statistics Office (NSO) reported that only 14.6 percent of households in Naga were squatters, but by 1989 they accounted for 25 percent of the total population. In 1980, just under 2 500 households in the city were classified as squatters. By 1990 the figure was around 5 000 of the city's 19 500 households.

5.2.2 Response

The declaration of martial law in 1972 by President Marcos made organising around various human rights issues very difficult for some years. But in 1983 the assassination of Benigno Aquino, one of the prominent opposition leaders, led to widespread street protests, which later became known as ‘the parliament of the streets’. After this popular reassertion of the right to organise, there was a rapid rebuilding of popular organisations, often with strong church support. This flourishing of popular organisations generally took the form of people organising by sector rather than forming a broad front, so there were, for instance, organisations specific to the housing crisis, women’s organisations, and so on.

By the late 1980s the urban poor were well organised in Naga and were able to articulate their concerns effectively. Naga is known for its vibrant media, and organisations of the poor were able to use this to generate public discussion about urban policies and practices.

The success of the People’s Power movement in 1986 – when mass demonstrations caused the dictatorial leader Ferdinand Marcos to flee the country after 21 years in power – opened the society to popular participation. Shack dwellers in Naga City took the opportunity to step up their level of organisation.

In 1986, the Community Organization of the Philippines Enterprise (COFE) started to organise the urban poor by forming democratic, autonomous poor people’s organisations that are able to run their own community affairs and – through mass actions and other uses of pressure – have an effective voice in all the decision making that affects them. It collaborated with other local organisations in this effort. The urban poor were organised into nine urban poor associations in seven *barangays* [areas] and were federated. The initial mobilisation centred around small community problems such as water and other facilities. These needs were resolved fairly

easily. This helped to strengthen the organisations. The community organisations also fought eviction attempts in some of the settlements.¹²⁶

In 1988 Jesse Robredo was elected the new mayor. The new administration pursued a programme of 'growth with equity' through its own initiatives and resources, and mostly without support from the National Government. The programme was founded on the recognition that, while many were benefiting from the steps that had been taken to improve the business climate, an equal number were also being forced to pay the *social cost* of growth. Robredo also made a decisive break with the long-entrenched practice of considering the housing strategies of the poor as a policing problem and of considering organisations of the poor as a threat to be crushed or co-opted.

Over time various strategies to avoid evictions and secure the right to the city were developed through the partnership between the mayor's office and popular organisations of the poor. These innovations have been institutionalised in various ways.

A key moment in the institutionalising of these innovations was the passing of the Empowerment Ordinance of 1997: This landmark legislation, known as 'The Kaantabay sa Kauswagan Ordinance' (Partners in Development Empowerment Ordinance), mandated the city Government to initiate the establishment of a system of partnership with popular poor people's organisations and their allied NGOs into the Naga City People's Council (NCPC). The NCPC was empowered to:

- appoint civil society representatives to various special bodies of the city Government;

¹²⁶ Habitat International Coalition, 'Naga City: An Organized People and an Astute Mayor', (2006), <http://www.hic-net.org/document.asp?PID=233>

- observe, vote, and participate in the deliberation, conceptualisation, implementation, and evaluation of projects, activities, and programmes of the city Government;
- propose legislations, participate, and vote at the committee level of the city council;
- act as the people's representatives in the exercise of their constitutional right to information on matters of public concern and access to official records and documents.

Naga City also implemented a programme known as Naga Kaantabay sa Kauswagan (Partners in Development) Program. The programme is a social amelioration project designed to empower the urban poor by addressing two key linked problems. The city Government was mandated to allocate 10 percent of its annual budget to the programme. The programme's key goals are to resolve two central aspects of the urban crisis:

- 1) the absence of security of land tenure, and
- 2) the lack of basic infrastructure and facilities in their communities.

The programme focuses on two main responses to these problems:

- 1) land acquisition, which provides a sense of permanence to the urban poor's occupancy of a property, and
- 2) site urban upgrading, which provides practical improvements to people's lives where they live.

The programme has both short- and long-term objectives. Its short-term objectives are to:

- provide permanent solutions to all land tenurial problems involving the urban poor;
- uplift the living conditions of urban poor residents in the city;
- eradicate arbitrary ejection and minimise the incidence of eviction/demolition; and
- explore alternative modes of land acquisition.

Its long-term objectives are to:

- empower the urban poor sector in Naga City by providing homelots, basic infrastructure, and services, as well as livelihood opportunities to all in need;
- strengthen the urban poor sector and heighten their participation in local governance;
- integrate the urban poor into the mainstream of development and make them more productive members of society.

The practical action to achieve these two goals has included the setting up of a Municipal office solely for dealing with the concerns raised by organisations of the urban poor (The Urban Poor Affairs Office), institutionalising a mechanism for permanently settling land tenure conflicts between landowners and land occupants, and establishing relocation sites on well-located land in the city when it has been possible to avoid evictions.

Around the world the question of land allocation is among the most critical aspects of any policy aiming to improve the well-being of the urban poor. Numerous policies make very positive statements about the right to the city and about a willingness to reduce evictions and increase access to well-located land for the poor. However, when land allocation is purely driven by market considerations, the poor are systematically excluded no matter how well-intentioned policymakers and officials are. Getting real results requires proactive interventions around land allocation.

The programme has adopted the following proactive strategies to ensure that land can be allocated by a social or rather than market logic when this is necessary:

1. On-Site Development

This mode of development is aimed at facilitating the transfer of landownership from government and private owners to the people who are currently occupying the land. The different modes for achieving this are:

1. *Direct Purchase* – this involves the purchase of land occupied by the urban poor from its owner by the city government. The occupants then amortise the cost of their individual plots to the city government.
2. *Land Swapping* – this involves the exchange of privately owned urban poor-occupied land for a similar lot of roughly equal value, purchased by the city government. Amortisation on individual lots is paid to the city government.
3. *Land Sharing* – this involves working out a mutually beneficial arrangement for a single property that allows both private

landowners and urban poor occupants to satisfy their respective needs.

4. *Community Mortgage* – this is a scheme that allows the wholesale purchase of a private property occupied by members of an urban poor association, using the Community Mortgage Program of the National Home Mortgage Finance Corporation.

II. Off-Site Development

This mode of development is primarily aimed at developing safety nets for the victims of eviction and demolition. The various modes for achieving this are:

1. *Establishment of Resettlement Sites* – properties acquired by the city government, either through direct purchase or land swapping, are consolidated and developed as relocation sites for victims of eviction and demolition. In cases where the resettlement site is underutilised, the site is opened for resettlement by other urban poor families who want to acquire a plot of land of their own.
2. *Disposition of Public Lands* – publicly owned land can be made available for the development of housing for the urban poor after obtaining authorisation from the National Government's Department of Environment and Natural Resources.

The success of the Naga Kaantabay sa Kauswagan Program is anchored by the following strategies:

The adoption of a “partner-beneficiary” perspective in dealing with organisations of the urban poor. This approach sees the urban poor

both as programme partners and beneficiaries, compelling them to actively participate in every step of problem resolution.

The adoption of a “strategy of focus” that aims to maximise the use of scarce resources by limiting programme coverage to the urban poor in Naga. Eligibility for programme support is determined on the basis of a single and simple criterion: presence of a land tenure problem. Where there is such a problem, the programme responds.

The prioritisation of land tenure concerns over shelter. The decision to order priorities in this way stemmed from the fact that while 72 percent of Naga residents own their houses, only 44 percent actually own the land on which they are built.

A policy of dealing only with organisations of the urban poor and not with individuals. The value of this strategy is that it compels interested applicants to take the initiative in organising themselves, thus facilitating community organising and ensuring that the urban poor have a voice in policymaking.

There are basically three sectors that help the city Government and its urban poor partner-beneficiaries attain the programme objectives. These are the property owners – both religious and private landowners selling their properties – national government agencies that provide assistance in financing and developing relocation sites, and NGOs that specialise in the social preparation of beneficiaries and community organising.

Indirectly, the programme is supported by three other city Government departments — the City Planning and Development Office (CPDO), the City Engineer’s Office (CEO), and the Public Employment Service Office (Metro PESO). The CPDO and CEO

provide infrastructure support. Metro PESO takes care of the livelihood component of the programme.

5.2.3 Results

The programme's success can be measured by the following:

Land acquisition and resettlement. As of 31 December 2001, a total of 41 on-site and off-site development projects had covered a total of 6 940 urban poor households, which represents 27 percent of the entire population of the city. The figure is roughly 500 families shy of the 7 400 low-income Naga households that – according to Asian Development Bank (ADB) estimates – live below the poverty line. Also, doing more with the resources allocated under the programme, Kaantabay registered a 305-percent increase in beneficiaries between 1994 and 2001. During the same period, the total land area distributed to these beneficiaries increased by 174 percent — from only 32.3 hectares in 1994 to 88.5 last year.

Urban upgrading. The programme facilitated the upgrading of 27 urban poor communities in Naga, where millions of pesos worth of basic infrastructure like pathways, drainage canals, shallow wells, public faucets, street lights, and multipurpose pavements were provided and/or upgraded.

Institutional. From a low base of only nine associations of the urban poor in 1989, there are more than 70 urban poor associations in Naga today. They are represented in various policymaking bodies, including the Housing and Urban Development Board.

The programme has been enormously popular with poor communities, resulting in the re-election of the mayor in five

separate elections. It has also won support from businesses and wealthier residents. This is because landowners are either paid for land that is dedicated to housing for the poor or given land of equal value. The business community also supports the programme because it has resulted in a general increase in property prices due to a general improvement in the city.

To date, Naga City has received more than 150 awards,¹²⁷ including being named “Most Cost-Effective City in Asia” by the United Kingdom’s *Foreign Direct Investment* magazine (2005); receiving the Public Service Award for Local e-Governance from the United Nations Department of Public Administration and Finance (2004); the Women-Friendly City Award from the UN-Habitat and the UN Development Fund for Women (2004); the Model City for Government Procurement from the World Bank and Procurement Watch (2003); the CyberCity Award for its i-Governance initiatives from the United Nations Development Programme (2002); and the Dubai International Award for Improving the Living Environment from UN Habitat (1998).

In 2003, 2004, and 2006, Naga City was named the “Most Business-Friendly City” by the Philippine Chamber of Commerce and Industry and, also in 2006 it was named “Most Child-Friendly City” in 2006 by the Philippine Council for the Welfare of Children, and received the Galing Pook Foundation’s Award for Continuing Excellence.

On 5 December 2007 COHRE awarded the **Government of Naga City with its annual Housing Rights Protector Award for its exceptional commitment to the human right to adequate housing**. A statement by Jean du Plessis, deputy director of COHRE, said that:

¹²⁷ See Alecks Pabico, ‘People Power, Reforms Thrive in Naga City’, GMA News, 30 Apr. 2007, <http://www.gmanews.tv/story/40365/PCIJ-People-power-reforms-thrive-in-Naga-City>

COHRE commends the Government of Naga City for assisting over 6 000 families to obtain legal title to their land, thereby safeguarding them from the threat of forced eviction, and for improving the living conditions of 27 urban poor communities by providing and upgrading infrastructure The Naga City Government's consultation with civil society and urban poor associations in the development and implementation of housing policies has produced effective remedies for thousands of inadequately housed people. The Kaantabay sa Kauswagan Program's success in implementing housing and poverty alleviation policies, anchored in the understanding that the participation of the urban poor is vital to sustainable development, is commendable ... COHRE praises the proactive initiatives undertaken by the Government of Naga City to effectively guarantee the protection and progressive realisation of the human right to adequate housing. Its efforts provide a powerful example that governments can implement practical policies to realise housing rights and that these are integral to fighting poverty.¹²⁸

5.3 General lessons

The last two case studies presented in this documentation are unique in the sense that they present a situation where the main thrust for a sustainable solution to forced evictions has come from the city administrations. Montevideo in Uruguay and Naga City in the Philippines have both found innovative ways to break with the zero-sum model that comes into play when there is a clash between the market value and the social value

¹²⁸ COHRE, 'Protector Award, Naga City Philippines', (5 Dec. 2007), http://www.cohre.org/view_page.php?page_id=281

of land. These two cities are not alone in looking for, and successfully finding, innovative ways to respond to the contemporary urban crisis. For instance the 2001 City Statute – the legal framework designed to ensure the right to the city in Brazil – seeks to make important changes to the legal framework to ensure the two central aspects of the right to the city: habitation and participation. There is now a move to propose a ‘World Charter of the Right to the City’. Yet in many countries across the world, the poor continue to be forced out of cities and either left homeless or coerced into peripheral relocation sites that are too far from livelihood and other opportunities. In many countries, the self-developed housing strategies of the urban poor are still seen as a problem for police forces – and as in South Africa,¹²⁹ even national intelligence agencies – rather than as a question of social justice and human rights.

5.3.1 Innovative win-win solutions

A win-win solution is most often a solution in which a poor community occupying a piece of well-located urban land faces a challenge to its occupation and this is resolved by a negotiation between the community, the state and, when the landowner is not the state, the landowner. The outcome is most often an agreement by all parties to accept the transfer of the ownership of that land, or a similarly located piece of land, to the community. When the landowner is not the state, she or he is paid the full value of the land or given a similar piece of land by the state.

Negotiating such a resolution usually requires two deals to be struck. The first is between the landowner and the community. Willingness on the part of the state to purchase land or to offer alternative land can often be sufficient to resolve this first problem.

¹²⁹ This is clearly stated in many documents by the South African State and consultants close to the State. See, for instance, KwaZulu-Natal Housing Summit Report 2005, p. 35.

In this instance the logic of the market can resolve the very problem that it creates as long as the state is willing to pay market rates.

However, as the case study of Máximo Tajes in Montevideo shows, there can be a second problem to negotiate, which is the unwillingness of wealthy people to have much poorer neighbours. In such situations, governments need to intervene to influence existing prejudices about the urban poor by facilitating dialogue between communities. One such step is to – possibly in partnership with democratic civil society groups – ensure that the organisations and spokespeople of the urban poor are brought into the mainstream of public life. Prejudice inevitably feeds on assumptions about people rather than engagements with people. Ensuring that elites find themselves talking to rather than about the urban poor can go a long way in eliminating dangerous stereotypes.

5.3.2 Popular organisations and popular participation in decision making

In many countries, membership-based and controlled organisations of the urban poor are often seen as a threat by states even when their conduct is entirely lawful. At times this can take the form of outright repression. One of the underlying reasons for success in the case studies discussed here was people's participation in the planning and implementation process. In Montevideo the administration showed an openness to negotiate with the local community organisation, and in Naga City the Municipality has actively sought to support the development of poor people's organisations and to institutionalise their inclusion in the governance of the city. In both of these case studies, the acceptance of popular organisations as legitimate representatives of poor communities has resulted in positive solutions through which social conflict has been avoided.

There is a growing acceptance that the right to the city includes a right to meaningful participation in decision making. This kind of participation necessarily requires organisation. But successful and credible organisation is also necessary to ensure the success of negotiations. Moreover, there is also a growing recognition that because poor people have less access to the media and to lawyers than richer citizens, popular organisations play a particularly important role in ensuring day-to-day access to structures of governance and provide a sense of substantive citizenship. The willingness on behalf of the administration to work with popular organisations that represent people's concern is an important step towards deepening democracy.

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