

3 AGFE MISSION REPORTS

1. Mission to the Dominican Republic (8 – 13 March 2005)¹

Introduction

The AGFE Mission visited the Dominican Republic between 8 and 13 March 2005 on the invitation of the Municipalities of Boca Chica and Caleta, Santo Domingo, as well as from the organisation ‘Espacio de la Tierra’, which coordinates more than sixty civil society organisations. (Copy of invitation added as Annex 7.) The AGFE Mission to the Dominican Republic carried out its work in an exceptionally complex situation, yet persisted in its attempts to open up new ways and new commitments between the diverse stakeholders involved, in order to find effective solutions to stop the forced evictions in the country.

Context

The Dominican Republic extends over two thirds of the island of Santo Domingo with an area in extent of 44 422 km², a population of 8 562 541 inhabitants, a coastline of 1 575 kilometres, and a 388 kilometre border with Haiti. It has 32 provinces, a Federal District and 120 municipalities.

The majority of the population (63%) reside in cities, with the remainder of the population living in the National District and Santo Domingo Province. There is an annual population growth rate of 2%. Although 20% of the population controls 50% of the income, at least 32% of the remaining population live below the poverty line.

The country commits fewer resources to education than the country average in Latin-America and has an illiteracy rate of 17%. Thirty five percent of the population have inadequate access to drinking water; 22% have no access to sanitation; and the infant mortality rate is higher than the regional average.

Seventy five percent of housing is self constructed, whilst 50% of the population have no deeds for the land on which they live. The lack of deeds and insecurity of tenure are the main causes of forced evictions.

Geographical location of evictions

Forced evictions are a common practice all over the Dominican Republic, but are even more prevalent in the Federal District and in Santo Domingo Province. The provinces of San

¹ This is a translated extract from the report of the AGFE mission team that visited the Dominican Republic from 8 – 13 March 2005. The team was composed of Yves Cabannes, Carlos Escalante and Pedro Franco, who collectively prepared the present report.

Francisco de Macorís, La Vega, Samaná, Puerto Plata, La Altagracia, San Pedro de Macorís, Azua, Barahona also suffer forced evictions.

In the Federal District, more than 200 000 inhabitants from La Zurza, Capotillo, Simón Bolívar, 24 de Abril, Gualey, Los Guandules y La Ciénega neighbourhoods are currently under the threat of forced eviction. More than 30 000 people would be displaced to enable the opening of the Avenida del Río Occidental (Rio Occidental Avenue) according to the RESURE Plan.

Santo Domingo province is the most affected by the lack of title deeds, a situation that affects more than 75% of the population. Neighbourhoods such as Los 3 Brazos and others from the eastern margin of the Ozama River face the threat of eviction because of the construction of the Avenida del Rio Este (East River Avenue). A similar situation is faced by the inhabitants of Brisas del Este, Villa Esfuerzo, Isabelita and Los Frailes in Santo Domingo Este Municipality, as well as Valiente, La Caleta, Campo Lindo, Brisas, Santa Lucía in Boca Chica Municipality. Forced evictions also take place in Santo Domingo Norte Municipality and in Santo Domingo Oeste Municipality.

Relationship between ‘Espacio de Coordinación Urbano’ and AGFE

The structure ‘Espacio de Coordinación Urbano Popular por la Defensa del Territorio’ (Espacio de la Tierra) coordinates more than sixty urban civil society organizations. During the past five years, these organizations have resisted forced evictions, in addition to making a concrete proposal to overcome the practice of forced evictions – such as the Bill on Urban Land Tenancy (*‘Anteproyecto de Ley del Suelo Urbano’*).

In 2003, Espacio de Coordinación Urbano Popular por la Defensa del Territorio presented a report on Economic Social and Cultural Rights, and in 2004 delivered a complementary report on Forced Eviction Cases to AGFE. These reports were analysed and discussed during the WUF in September 2004. In February 2005, an updated report on Forced Evictions was also presented.

Composition, motivation and activities of the Mission to the Dominican Republic

Mission Team

The AGFE Mission was composed of Yves Cabannes, AGFE Coordinator; Carlos Escalante from Campaña por la Seguridad de la Tenencia, Perú; and Pedro Franco, from the Dominican Republic who has international experience in the defence of the ESCR and a relationship with the UN-HABITAT Campaigns.

Objectives

The following were defined as the Mission’s Objectives:

- To evaluate the actual situation in the field of Economic, Social and Cultural Rights, and specifically Housing Rights.

- To submit its experience and knowledge to the Central Government, Municipalities, the Congress, the Judicial System and the NGOs in the enforcement of laws and international agreements on human rights pertaining to housing rights and protection against forced evictions.
- To suggest the exchange of experiences and good practices from other countries to prevent and avoid forced evictions.
- To propose alternatives at the local level to stop the forced evictions.
- To agree on a timetable to monitor and study the progress in addressing forced evictions.

Activities

Visits were conducted to the following neighbourhoods to assess the situation and experiences of forced evictions in these areas:

- Boca Chica: Santa Lucía, La Caleta, Valiente.
- Santo Domingo Este: Isabelita (Av. España, Calle 12, Paraíso, Los Hoyos de los tres ojos, Parque del Este); Brisas del Este, El Tamarindo y Villa Esfuerzo.
- Santo Domingo Oeste: Guaricado y Sabana Perdida (Barrio La Islita y Proyecto INVI La Virgen)
- Distrito Nacional: La Cienaga, Gualey y Los Guandules.

Other neighbourhoods presented their experiences and testimonies during the Public Session which the AGFE Mission held on Saturday 12 March 2005. A dossier containing testimonies, press clippings, Dominican legal documentation was also delivered to the team by Espacio de Coordinación Urbano Popular and other organizations.



Photo: Antonio Perez

A resident holding her title deed addresses the AGFE Mission team during a consultation in the Dominican Republic

Location, description of problems and current situation in the neighbourhoods visited

Barrio Valiente

Plots No. 213, 210, 210B-4, 210B-6, 214 and 215 among others in District No. 32, situated 23 kilometres along Autopista de las Américas (Americas Highway), in Boca Chica Municipality, Santo Domingo Province.

This neighbourhood has suffered forced evictions since 1999. According to Santos Carvajal Mota, President of the Community Council of Valiente (CODECOV - a central organisation that fights against forced evictions and a member of the Espacio Urbano Popular), more than ten thousand families face the threat of forced evictions, among these are included three thousand families living on Plot 210-B.

Mr. Pedro González, together with other five families, and Mr. Bautista Angeles, whose house was destroyed in two incidents by a private company, also face the threat of forced eviction.

La Caleta

Plots 218B, 218A in the Boca Chica Municipality:

This neighbourhood was originally settled on the current site of the airport, and was displaced in order to allow the construction of the airport and the Autopista de Las Americas (Las Americas' highway). The neighbourhood, as well as other plots in Campo Lindo, has been severely affected by forced evictions, and residents continuously receive citations of eviction. This is despite the fact that the original deeds belonged to the inhabitants, as was pointed out by Sócrates Peguero, the Coordinator of FRENPROCA, and local Coordinator of the Espacio Urbano Popular Committee.

Santa Lucia and Boca Chica neighbourhoods

In these neighbourhoods, situated in the Boca Chica Municipality, south of Las Americas Highway and north of Las Americas International Airport, plots 483-3, 485 and 486 are currently facing the threat of forced evictions. There are 249 families who are in danger of being evicted.

Among the claimants, the Santa Lucia Neighbours' Committee mentioned Mr. Julio Puello, Mr. Ramón Emilio Simó Santos, and Mr. Miguel Clan. It has been announced in Boca Chica, that the inhabitants of plot 305-1 are in danger of being evicted by Mr. Hugo Arias Fabian who claims 1522 tareas of the land (1 tarea = 629 m²). The same Mr. Fabian sold this land in 1996, when he was a member of the Accounting Chamber of the Republic, to Compañía Inmobiliaria Inversiones Dominico-Españolas SA, the same company that he now claims to represent. He sold the land even though it was occupied by more than two thousand families, and these families are today in danger of eviction. The families of Manuel Bernal, Domingo Pérez, Julio César, Daysi Rijo, José de los Santos and Felix Javier, amongst others, are threatened with eviction in this matter.

Brisas Del Este

This neighbourhood is situated in Santo Domingo East Municipality, parcel 185-171, D.C. 6. The neighbourhood was established after the forced evictions of 1986-1992. In accordance with *Decree No. 381-92*, some of these plots were declared of public utility, and today the inhabitants face the threat of a forced eviction.

According to a report presented by the President of UPROBRISAS, Mr. Soler Pérez, more than thirty thousand inhabitants currently face serious threats of being evicted by private claimants who present citations signed by the State Attorney. Among other cases, Pérez cites the following: the Primary School 24 de Abril, built by the community and with 600 students is under threat of eviction; as well as many families from Villa Elisa II including Miguel Ángel, María Bidó, and Teresa Leiva Javier.

Isabelita neighbourhood

Situated adjacent to the Caribbean Sea, this neighbourhood is part of the Santo Domingo Municipality. It was established after the fall of Trujillo's Dictatorship, and grew between 1979 and 1992, after several migrations of inhabitants from other provinces and from neighbourhoods in the central area of the city. In accordance with Decree 90-74, the plots on which the neighbourhood is situated (plots 178, 179, 203) were declared of public utility.

Club Hábitat is the organization which coordinates the struggle against forced evictions and promotes the issuing of deeds. Its coordinator is Argentina Peña.

The neighbourhood has suffered several forced evictions (1986-1992, 1997, 2004). For example the following claimants have evicted residents: Joany Radhamés Ruiz Pou y José Rojas Canaan (against family Checo, 8/8/97); Nioves Peña González (evicted 20 families on street No. 12 on 8/11/97); Miguel Ángel Velásquez Matos (evicted Mr. Fausto Brito and the shop Super Gavi on Spain Avenue).

The following are currently the most serious cases of evictions:

- Twenty six families living at km 26 of Autopista de las Américas (Las Americas' Highway)² are under threat of being evicted. According to the inhabitants, on 9 July 2004 attempts were made to execute the eviction with the help of with a group of armed civilians protected by Police, destroying the houses and stealing property and money.
- Nineteen families that live in Street No. 12, No. 116 reached an agreement with the claimant, Sócrates Olivo, and bought the land. This consequently stopped a forced eviction against them which was ordered by the Supreme Court of Justice.

² As in other parts of Latin America, outlying settlements in the Dominican Republic are named with reference to their distance along the highway from the centre of the city.

Parque Del Este

This neighbourhood is situated south of Las Americas Highway at Plot 178-B. The land was declared of public utility by *Decree 381-92*. More than 20 families were evicted to build the south lane of the Highway. Many others have been notified by the Secretary of Public Works of eviction for the construction of the highway and other public works.

The community proudly claims a situation of zero evictions, and voluntary relocation with full compensation of any families that have needed to move. Club Habitat is the community organization which coordinates the struggle against evictions and assists people in their negotiations with the authorities.

Los Tres Ojos is a neighbourhood situated in the surroundings of Isabelita neighbourhood, close to the Touristic Park. With precarious houses, built in hollows called 'Hoyos de María', it lacks public services and title deeds.

Villa Esfuerzo neighbourhood

This neighbourhood, situated in Santo Domingo East Municipality, on plots 2 and 28 of District 6, has 60 thousand inhabitants. These plots were rented by the Porcella Family to the State Council of Sugar in 1958. During the privatization process of the public companies (1996-2000), the land was returned to the Porcella family, without granting any protection to the inhabitants of the settlement, although the State issued deeds by *Decree 784-02*.

Many companies are currently promoting forced evictions, such as La Esperilla Land, Paraiso Caribeño, Los Corales, and Inmobilia – this company is owned by the Secretary of Tourism.

On 9 March 2005, a violent forced eviction took place in this community, moments after the Mission had a meeting with the State Attorney, the Governor of Santo Domingo Province and the President of the Presidential Commission for Neighbourhood's Development.

Heavy machinery destroyed 600 houses, according to the press (*El Caribe* newspaper) and the representatives of the community Hilario and Amparo Ruiz, even though 105 families had deeds issued by the government. The Mission visited the place and the Governor of Santo Domingo Province promised the government's intervention to repair the damages caused to the homes of inhabitants that have deeds.

Los Frailes neighbourhood is situated at km 10.5 of Autopista de las Américas (Las Americas Highway), in Santo Domingo Este Municipality, on plots 217-B-A-1, in District No. 6. Some of the inhabitants of the neighbourhood who were at the Public Session held on 12 March, denounced the threats of eviction and the summonses received by the inhabitants.

San Bartolo neighbourhood is situated between km 12 and 13 of Las Americas Highway adjacent to the Caribbean Sea in Santo Domingo Este Municipality. In the Public Session of the Mission, it was announced that 8 families are currently facing the threat of a forced eviction.

La Cienaga, Gualey, Los Gandules

These neighbourhoods situated in the Federal District next to the Ozama river. More than 30 thousand families live in this and other neighbourhoods threatened with eviction by the RESURE Plan, that intends to displace these families and relocate them to other neighbourhoods. In discussions with the Mission representatives, Ciudad Alternativa and COPADEBA explained a proposal called 'Plan Cigua' that attempts to obtain relocation agreements with the inhabitants. It is estimated that a similar number of families could be displaced from the east margin of the Ozama River for the construction of the Avenida del Río (River Avenue) according to the RESURE Plan.

Barrio La Islita, Sabana Perdida Sector. Project INVI – “La Virgen”

On a visit with COPADEBA to sectors La Islita and Proyecto La Virgen, Mission representatives witnessed alternative community work. This zone is isolated in rainy weather due to flooding. To address this situation, Father Nelson Acevedo, the parish priest of the zone, facilitated the voluntary relocation of 80 to 90 families to the State Housing Program 'La Virgen'.

As commonly happens (as related to the Mission by the settlers), the programme originally established to relocate families living in flood plains ended up benefitting families linked to the government party. Currently only 30 families have been relocated; 14 additional families have not been relocated because available housing has been invaded, according to settlers, and they will have to wait for another project.

The area has 440 housing units of 50 to 55 square metres in construction size. Residents have electric energy service, however the cost of the energy bill is higher than what was initially agreed upon. There are sanitation services, but the area is infested with mosquitoes, and the water supplied by truck tanks and at the housing units is not properly treated ('no cuentan con acabados'). According to settlers, only 200 to 250 housing units are occupied and other settlers have not been authorized to move in. Settlers have to pay an initial fee of 20 000 Dominican pesos (about US\$ 400 at the current exchange rate), and must pay a monthly rent that fluctuates between 730 to 2000 pesos. However, settlers indicated that families relocated from La Islita are not paying the rent because they have not yet received an official contract. They only have a permit to occupy the housing units.

Meetings with official institutions

Mission members held meetings with representatives of the following state institutions, namely:

- 'Espacio de Coordinación Urbano Popular'
- Municipal governments of Boca Chica and la Caleta
- President of the Chamber of Deputies
- Governor of Santo Domingo Province
- President of the 'Comisión Barrial'
- State Attorney
- Parliamentary blocks of the National Congress

- Central Government: Coordinator of European Funds, National Housing Institute INVI, National Commission of State Reform CONARE, General Directorate of National Resources.

Mission members also held the following multi-sectoral meetings:

- National Federation of Municipalities FENAMA, Municipality of Santo Domingo Este, Municipality of San Pedro de Macoris, “Espacio de Coordinación Urbano Popular”, Central Government Institutions: Provincial Governor, State Attorney, General Directorate of National Resources;
- Central Government Institutions: INVI, CONARE, ONFED, National Resources;
- Public Hearing with social organizations.



Photo: Yves Cabannes

The AGFE team met with the Mayors of Boca Chica and Caleta and a group of women on International Women’s Day

Media participation

The Mission’s activities, in particular the Parliamentary session, were widely covered by national television channels, radio stations and newspapers. In addition, the Mission was invited to three prime time television presentations of 30 minutes each on the following television channels: State Channel RTVD, Channel 15 Telemicro, and Channel 45.

Results / outputs

Results reached during the AGFE Mission are organized according to the Mission’s first four objectives. Follow-up activities are detailed in item 5 and correspond to the fifth objective of “agreeing on a timetable to monitor and observe advances in controlling evictions” (‘desalojos’).

Regarding Objective 1: Appraisal of the status of Economic, Social and Cultural rights, particularly in regard to Housing Rights

- The Dominican Republic has traditionally lacked a state policy for safeguarding the housing rights of the economically poorer social sectors. On the contrary, its housing policy has been oriented to fostering urban development in cities that favour those interests that are closer to the power elite, and evicting the poorer families toward peripheral areas. This policy has been moderated to some extent in recent years, a fact that is included in the Report to the Committee of DESC. Evictions were reduced and even stopped. However, it is of concern that these practices have now restarted, as demonstrated by the eviction of 600 families from Villa Esfuerzo.
- These recent evictions in Villa Esfuerzo mark the resumption of the practice (against which there has been a moratorium for the past 6 months) of violently removing families from land which they have occupied for several years. In these evictions, the State did not take into account that more than a hundred settlers had title deeds ('títulos') which were granted by the State Sugar Council CEA; that settlers had built their houses; and that State agencies had granted them water and sanitary services as well as roads. This case illustrates how one State entity implemented the destruction of institutions and services which other State agencies had helped to develop.
- In the same way, the Mission has been able to corroborate the existence of state organisations and procedures which concentrate the power of decision over evictions. These State organisations, in their assessment of the 'carácter ejecutorio' of the land property deeds, then authorize the evictions with the participation of third parties which do not represent state agencies, but rather are agents of the private eviction plaintiff. This situation becomes even more alarming in that there have been official actions that undermine the legitimacy of land ownership. In this sense the Mission has gathered the assertions of provincial and municipal authorities that, for example, more than one deed has been presented for the same plot of land, or that such deeds lack precise geographical references that may facilitate determination of their exact location.
- Furthermore the fact that more than 70% of the population lack title deeds emphasises the point that the problems of safeguarding land ownership and of evictions cannot be seen exclusively from a legal perspective. Stakeholders need therefore to consider the social dimensions of these problems. It must be borne in mind that providing land for the whole population (including those less economically privileged) is a pressing pending task for both state authorities and society as a whole. Such provision should correspond to the magnitude and socio-economic characteristics of the different social groups demanding housing.
- On the other hand, members of the Mission have also witnessed certain positive steps in the activities of diverse agents, both in the government and within civil society. Among these are:
 - Actions of the Governor of the Santo Domingo Province, Señor Renato Garcia, in conflict mediation over land; the establishment of a legal counselling unit to assist settlers; and the search for solutions that take into account the legitimate interests of

- all concerned parties – the legitimate deed holders as well as those that have built housing and urbanised previously inhospitable land. Those lands have gained value and contributed to the appreciation of neighbouring areas.
- Legislative initiatives of state agencies that declare the public value of attending to diverse lands and actions by representatives of civil society such as the ‘Espacio de Coordinación Urbano Popular por la Defensa del Territorio’. This has facilitated a Bill, the *Law Regarding Urban Land Occupation* (*‘Ley sobre Tenencia de Suelo Urbano’*).
 - Several municipalities such as Boca Chica, La Caleta y Santo Domingo Este have demonstrated their commitment to find solutions to the problem of the legal insecurity of land occupancy and forced evictions. These solutions would be based on a social and not exclusively on a legal characterization of the problem. In addition, the National Federation of Municipalities have committed its availability to work in the Territorial Organization (*‘Ordenamiento Territorial’*).
 - A very active civil society, organized in the ‘Espacio de Coordinación Urbana Popular Por la Defensa del Territorio’, is composed of various social organizations with the support of non-profit institutions. This Espacio offers counselling to settlements in their business (*‘gestiones’*) with authorities and private parties in the defense of housing rights and against massive evictions; and has also developed an alternative housing proposal which has been presented as a Bill on urban land occupation. Such activities identify the Espacio de Coordinación Popular as a valid interlocutor, capable of contributing to proposals regarding access to land and housing in this country.

It is important to highlight the willingness to enter into dialogue and agreements demonstrated by various role players, which has made possible the joining of multiple forces to improve the existing normative instruments. The President of the Chamber of Deputies merits a special mention for his openness in developing norms aimed at overcoming the insecurity of land occupancy and the threat of evictions of poorer families beyond traditional party lines. Similarly during the presentation of conclusions of the AGFE Mission and the meeting with central government agencies linked to the housing sector, diverse national, provincial and municipal agents manifested their openness to processes of dialogue and agreement to find solutions that would be beneficial to all parties concerned.

Regarding Objective 2: To offer experience and knowledge to Central Government agencies, municipalities, Congress, the Judiciary, social movements and NGOs regarding the application of international laws and treaties on human rights insofar as they apply to housing rights and protection against eviction

Significant proposals have been made for the improvement of the Bill ‘Espacio de Coordinación de la Tierra’ with regard to the following areas: ‘Titulación’ (Deeds); ‘Procedimiento y valorización para las reubicaciones’ (Procedures and establishment of value for resettlement); ‘Indemnización para mejoras’ (‘Indemnization’ for improvements); ‘Procesos de planificación de los barrios’ (Planning processes in neighbourhoods); ‘Fondos y Recursos para la regularización y el mejoramiento de la vivienda’ (Funds and resources for housing regularization and

improvement); ‘De las instancias, del concepto de vivienda digna’ (Concept of proper housing), etc. In a similar manner the Mission team offered suggestions to different state institutions, municipalities, and the Chamber of Deputies.

Regarding Objective 3: To exchange international experiences on proper practices to prevent evictions

Based on the presentation of experiences in land regulation in Thailand, México, Brazil and Peru, the Government of the Province of Santo Domingo has shown a willingness to turn the case of Villa Esfuerzo into a symbolic case (‘emblemático’) that would put eviction practices in a different light; recognizing the rights of property owners and investors, and at the same time recognising the rights those of settlers who with their work have added value to the land. The Government also supports housing reconstruction based on a loan programme from a fund for popular housing.

Regarding Objective 4: To propose local alternatives that may lead to the elimination of forced evictions

For this objective, the Mission achieved the following results based on bilateral coordinations and multi-actor meetings:

- Establishment of a multi-party Parliamentary Commission to review legal proposals submitted to the Congress by social organizations. Such a commission would be entrusted to formulate a normative framework and normative standards which integrate and actualizes such proposals and any others deemed necessary to eliminate the practice of forced evictions and bring land tenure security to economically disadvantaged settlers.
- Establishment of a national tripartite ‘Round Table’ (mesa nacional de concertación tripartita) which, based on congressional activities, will include municipal representatives through the national municipalities federation, and the ‘Espacio de Coordinación Urbano Popular por la Defensa del Territorio’ which would represent civil society. This Mesa de Concertación would also participate in the analysis and formulation of the abovementioned normative proposals.
- Institutionalisation of support offices for settlers faced with eviction in different areas through the Provincial Government, Boca Chica Municipality and community organizations related to the ‘Espacio de Coordinación Urbano Popular por la Defensa del Territorio’.
- Agreement of mayors (‘síndicos’) to petition the National Government and the Congress to stop forced evictions until the law to safeguard land occupation is developed (‘formulada’).

Other Results

The following very important issues have been made part of the national agenda: deeds (‘titulación’); evictions; forced evictions; public usefulness declarations (‘declaración de utilidad pública’), land exchanges (‘permuta de tierra’). These topics have been discussed in several public institutions such as the National Congress, the Governor of the Santo Domingo Province, Mayors (‘Síndicos’) from diverse municipalities. Similarly, initiatives and progress in dialogue and agreement to eliminate the practice of eviction and safeguard land occupancy

have been widespread through the mass media, such as television, radio and newspapers.

Follow up activities

Chamber of Deputies

The Mission met twice with in the Chamber of Deputies. On 8 March 2005 it met the President of the Chamber, Señor Alfredo Pacheco, and then on 10 March 2005 held a meeting, coordinated by the President, with the various political blocks represented in the Chamber of Deputies. Deputies agreed to initiate the process to submit a Bill titled '*Proyecto Consensuado de ley de Titulación*' and to attain its approval within ten months, with the following obligations:

- To name the Parliamentary Commission (by 31 March 2005).
- Inform AGFE, the Executive, and the Espacio Urbano Popular y FENAMUS
- Submit a letter addressed to the President of the Republic, with a copy to the State Attorney (regarding a moratorium on evictions until there is a vote on the law).

Espacio de Coordinación Urbano Popular

In two meetings with the Espacio de Coordinación Urbano Popular, this organization confirmed its willingness to participate in the round table and established the following timetable:

- Socialize the results of the Mission (before 31 March 2005)
- Convene a workshop to update the Bill (8 and 9 April 2005).
- Public information (“difusión”) and awareness (“sensibilización”) of the Bill (April-June).

FENAMU

The Municipal Federation agreed to participate in the Mesa de Diálogo for the approval of the Bill, with the National Congress and the Espacio de Coordinación Urbano Popular and the acquiescence of the Central Government. It agreed to:

- Promote the approval of a Municipal Resolution ('Resolución Municipal') to stop forced evictions.

Provincial Governor / Espacio

The Mission met several times with the Governor of the Santo Domingo Province, Señor Renato García, first on 9 March 2005, and he agreed to the following:

- Activate the multiparty office ('Oficina mixta') on evictions (12 April 2005).
- Coordinate between lawyers from both institutions.
- Move for the immediate solution favouring the families that were violently evicted in the barrio Villa Esfuerzo.

Congress, Espacio y Fenamu

Due to the Mission's activities the following agreements were reached:

- Establishment of the Mesa Nacional de Concertación (by 30 April 2005).
- Documentation ('levantamiento') of eviction threats.

AGFE

The Mission received ample documentation and testimony about evictions and had the opportunity to directly assess the situation in visits to barrios and in massive meetings, such as Valiente, Isabelita, Brisas del Este, Los Tres Ojos and Parque del Este; and at the Public Audience with some 500 persons on Saturday 12 March 2005. Thousands of families participated in the Mission visit to Villa Esfuerzo, the barrio subject to eviction, on Sunday 13 March 2005.



Photo: Archives, Ciudad Alternativa

During public consultations the AGFE mission heard testimony of forced evictions at places such as *Brisas del Este* in 2004

In addition, all stakeholders demanded follow-up, monitoring and the collaboration of AGFE during the process of elaboration and promulgation of the '*Ley de Titulación*'.

Lessons learned

Many lessons can be learned from the Mission's activities in the Dominican Republic. The following are highlighted:

- The existence of forced eviction practices in this country, which in some way have been justified by national laws, in particular *Ley 1542*, which shall hopefully be repealed by a recently approved '*Ley de Registro Inmobiliario*'. *Ley 1542* established the authority of the State Attorney before the Land Tribunal, which represents the State and has multiple functions. As Sr. Nelson Montás himself expressed to this Mission: "I represent persons that have title deeds" and "evictions always have to be violent".
- The Mission discovered that there was a willingness among different political actors (blocks from all political parties represented in the National Congress), municipalities and the Central Government, as well as the Espacio Urbano Popular, to reach agreements that may facilitate solutions and alternatives to forced eviction.

- With the Mission's participation, consensus was reached with the different actors in order to:
 - Make evictions a multidimensional topic: legal, social, political and institutional.
 - Present solutions to problems associated with title deeds ('titulación').
 - Seek the implementation of preventive policies - funds, bonds ('bonos'), land exchanges ('permutas de tierras'), city statutes ('estatuto de la ciudad'), land bank ('banco de la tierra').
 - Re-establish the role of the State as mediator in land conflicts (between communities and the private sector, or between private entities).³

³ The full mission report on file with AGFE includes the following addenda, which are unfortunately too large to reproduce here: 1. Espacio de Coordinación Report to AGFE; 2. National Eviction Map; 3. Santo Domingo Eviction Map; 4. List of persons located, position, mailing addresses, phone numbers; 5. List of visited barrios, persons present and map; 6. Documentation of examined cases and documentation memo; 7. Photographic review and videos; 8. Legal Documents: a) Constitución of the Dominican Republic; b) Land Law 1542 ("sobre tierra") 1947 (modified by the "ley de registro inmobiliario" 2005, not promulgated); c) Extract from the "Ley de Registro Inmobiliario" (Recently approved and not Promulgated) that substitutes "Ley 1542 sobre Tierras" (establishes the authority of the State Attorney); d) "Proyecto de Ley Presentado y aprobado por el Congreso Nacional en el 2001"(Not promulgated); e) Anteproyecto de Ley ("bill") presented by the Espacio de Coordinación Urbano Popular; f) DECRETO 93-01 (Plan Nacional de Titulación de Tierras Del Estado Dominicano); g) DECRETO 784-02 (Orders deeds favoring persons occupying Dominican State-owned land); h) DECRETO 976-03 (Creates a Commission for the application of Decreto 784-02); i) DECRETO 90-74 (Declares the public utility ("Utilidad Pública") of numerous land plots in barrios Isabelita, Los 3 Ojos y Parque del Este. These populations suffer evictions); j) DECRETO 381-92 (Favors communities in barrios Parque del Este, Brisas del Este, San Bartola y El Brisal, whose lands have been declared of public utility); 9. Peruvian references; 10. Mission members' CVs.

2. Mission to Curitiba, Brazil (24-25 February 2005)⁴

Background information and justification for AGFE field mission to Curitiba, Brazil

In the meeting of the UN-HABITAT Advisory Group on Forced Evictions (AGFE), which took place during the Urban Social Forum in Barcelona (September 2004), several cities where forced evictions had been implemented or were being planned were identified, according to the petitions presented to the group. The petitions included cases in Curitiba (Brazil), Santo Domingo (Dominican Republic), Accra (Ghana), Rome (Italy) and others.

AGFE approved the need to carry out missions to such cities to promote social dialogue and to seek feasible alternatives to these forced evictions. According to the UN-Habitat Governing Council Resolution of 2003, these missions should aim at producing consensus among the stakeholders involved in the matter, with no imposition of any sort of solution to the involved members, except in cases in which agreements could be produced with recommendations and proposed solutions.

AGFE had received a number of reports of illegal forced evictions in Curitiba. These evictions were implemented by the Municipal Government of Curitiba in 2003 and 2004 in the communities of Sambaqui, Vila São Brás, Pedro Machado, Vitória and Vila Ilha do Mel in the Municipality of Curitiba; and Vila Leonice in the Municipality of Almirante Tamandaré; which resulted in 2 500 people being evicted. Even prior to the establishment of AGFE, current members of AGFE had been involved in initiatives to have evictions stopped or, in cases where they had already been implemented, to seek redress. On 17 February 2005, the Ministry of the Cities formalized an invitation to UN-Habitat, Memorandum No. 787, inviting AGFE to carry out a mission to Curitiba, Brazil on 24 and 25 February 2005. (Copy of invitation attached as Annex 8.) On the basis of the reports received and the invitation to conduct a mission to Curitiba, the Convenor of AGFE approved a mission to Curitiba, to be undertaken on 24 and 25 February 2005.

The mission team was composed of the following:

- Leticia Marques Osório, AGFE member, Americas Programme Co-ordinator, COHRE (Centre on Housing Rights and Evictions);
- Paulo Teixeira, AGFE member, city councillor in the Municipality of São Paulo;
- Inês Magalhães, representative of Minister Olívio Dutra, Ministry of the Cities;
- Patrícia Menezes Cardoso, representative of the National Rappourteur on the Right to Adequate Housing and Urban Land, from Polis Institute;
- Leandro Gorsdorf, co-ordinator of NGO Terra de Direitos;
- Movimento Nacional de Luta pela Moradia (Brazilian Movement for Housing Struggle).

⁴ This is a translated extract from the report of the AGFE mission team that visited Curitiba, Brazil, from 24-25 February 2005. This report was written by Leticia Osorio, Mission Coordinator. The names of the members of the team are given below.



Photo: Adriano Bardo

Eviction in progress: Curitiba, Brazil, 2003

The situation in Curitiba

In 2004, the NGO ‘Terra de Direitos, Movimento Nacional de Luta pela Moradia’ and representatives from the affected communities presented a report on the following forced eviction cases implemented by the City Hall of Curitiba from 2001-2004:

Case 1 - Sambaqui

On 1 October 2003, a group of 72 people were violently evicted during the early morning from a region of land known as ‘Sambaqui’ by the Municipal Guard of Curitiba. The Guards destroyed huts built to shelter people and lit a bonfire into which they threw utensils, mattresses and personal objects of the evictees, even a small cat belonging to an old lady. The Municipal Guards, who carried weapons throughout the illegal execution of the eviction, assaulted more than five people. The actions of the Municipal Guards of Curitiba were unauthorised as the officials were not in possession of any judicial mandate authorizing the eviction and none of the Guards carried any type of identification. The evicted families were provisionally sheltered in a Labour Union building in the centre of the city.

The eviction occurred despite the agreement signed in 2003 between the City Hall and the State Government to urbanize the area and build housing units in the allotment owned by COHAB / Curitiba. These housing units were intended to benefit 48 families occupying an unused Banestado building, in addition to 500 families who had to be resettled from the edges of River Iguaçu. The residents motivated for the continuation of the urban housing programme and also for the issuing of land titles to the affected families. This motivation was based on the legal concession of the right of usage and the special concession of usage for housing purposes or the purchase of lots in accordance with the socio-economic status of the families. The families also requested that the area of Sambaqui be declared a Special Zone of Social Interest.

Case 2 – Vila Leonice

A settlement of 62 families was violently evicted in the middle of May 2003 from land on the border between Curitiba and Almirante Tamandaré, in the region known as Vila Leonice in the neighborhood of Cachoeira. The initial eviction was carried out by the Military Police Force, who allowed the families 15 minutes to leave their huts, then burnt these down with all personal belongings still inside. The residents lost the very few possessions they had, including beds, mattresses, blankets, clothes and food. With nowhere to go, most of the families spent the night on the sidewalk of David Bodziack Street. After three days, the Municipal Guard violently expelled the families off the street and confiscated their remaining possessions. A number of the families currently live with another hundred people in a large hut collectively rented by the National Movement on the Struggle for Housing (MNLN). Other groups returned to houses belonging to relatives or moved elsewhere.

Case 3 - Vila São Braz

On 14 May 2004, the Municipal Guard of Curitiba forcibly evicted 144 families from Vila São Braz in the west of Curitiba. More than 500 men surrounded the area at 05h00, and at 06h00 entered each house and gave the occupants two hours in which to gather their possessions and leave. At 08h00, the houses were demolished and people's belongings were hauled away in trucks. Many families were taken to the São João Batista Hostel where they were allowed to stay for three days. Some of the families spent the first night sleeping on the street.

No resettlement plan was presented to the families and several people moved to an area called Campo Magro, located in the metropolitan region of Curitiba. A Judge from the 2^a Vara da Fazenda Pública authorized the Municipal Guard to carry out the operation as the public force responsible for fulfilling the eviction order.

Case 4 - Vila Ilha do Mel

In September 2001, 520 families were evicted from a private property 'Vila Ilha do Mel', and transferred to an urban area in the city of Contenda, in the metropolitan region of the capital. Vila Ilha do Mel was one of the settlements in the area called Bolsão Vila Audi, a large group of settlements located on the border of Curitiba with the Municipality of São José dos Pinhais. On 11 September 2001, approximately 700 officers of the Municipal Guard surrounded Vila Ilha do Mel, violently expelled the inhabitants and demolished their huts. The eviction was carried out by the City Hall with no resettlement plan to accommodate the families.

At the same time, 520 people who resided in the area were transferred to another location in the city of Contenda. Contenda is a small rural city, with very few resources to meet the needs of its local population or provide basic services such health facilities or education. The relocation of 85 families represented a huge problem for the municipality as the resettlement resulted in the inability of the Municipal Government to provide basic services to the new families. It also resulted in instability in the provision of services to the native population of the city of

Contenda.

Due to the resulting inequality in the provision of services, the resettled families become the target of discrimination by local inhabitants, as the new families were seen as the reason for the poor provision of basic services to the native residents of the town. In addition, the resettled families were unable to secure local work or access public transport to enable them to continue with their previous employment, as the capital city was now 50 kilometres away from their homes. In several petitions from residents of the area, it was stated that during the resettlement of the evicted families from Vila Ilha do Mel to Contenda three years previously, public servants from COHAB/Curitiba were involved in assisting these families in their relocation. In addition, allegations were made that agreements were entered into for the purchase of these allotments between COHAB and the new residents.

The following cases were also reported during the AGFE mission to Curitiba, in a meeting with representatives from communities who alleged violations of their rights to adequate housing through the practice of forced evictions and resettlements implemented by the City Hall.

Case 5 - Bolsão Sabará

Bolsão Sabará is composed of eight slums in which 14 000 families reside in a private area. The Development Company of Curitiba signed agreements for the payment of occupation fees for the use of this land with several families from 1987 to 1994. Due to lack of payments, the Company filed for an eviction process against several families. A public civil process was filed against the municipality by Ms. Ana Brandão (the public prosecutor) with the objective of suspending the charge of occupation fees by the municipality, once the area was not owned by the municipality.

Case 6 – Vila Pluma/Jd. Esperança

Vila Pluma/Jd. Esperança is a private area of land which was occupied in the 1970s. In 1996, the owner of the area proposed an eviction process at the 3a Vara Da Fazenda Pública but it was not executed. Of the 170 families residing on the land, 108 hold agreements of usage signed with COHAB/Curitiba. These agreements were the result of an agreement between the owner of the area and COHAB. The owner received 90% of the total amount and COHAB held 10% of the occupation fee as well as the charge of IPTU (municipal urban fee). Despite this agreement, the area is still not under the public domain and the owner has not withdrawn the eviction process, which is still in court and therefore threatens the security of the residents. The residents have filed a petition against the municipality before the Public Ministry.

Case 7 – Campo Magro

In Campo Magro, an area located at the border with Curitiba, 28 families of workers suffer under constant threats from brokers who, in addition to illegally selling allotments with no infrastructure, also threaten families who seek legal assistance. The broker had an eviction order issued against the families who have demanded the intervention of the City Hall to mediate the conflict and halt the eviction.

Case 8 – Caiuá/Pedro Machado/Vitória

Approximately 190 families have resided in the area of Caiuá/Pedro Machado/Vitória for two years under the constant threat of being evicted. They have also lobbied for the intervention of the City Hall to mediate the conflict and halt the eviction.

Mission Objectives

- Verifying situations of violation of the right of adequate housing and monitoring the present status of housing rights with a particular focus on the matter of security of tenure of low-income communities;
- Offering experience and expertise from the Advisory Group on Forced Evictions to governments, social movements and non governmental organisations regarding the application of the international law on human rights related to the promotion of housing rights and protection against forced evictions;
- Offering the opportunity to exchange international experiences of good practices implemented to prevent and halt forced evictions in other countries;
- Proposing a local plan of action to prevent the occurrence of planned evictions and propose solutions to the affected communities;
- Establishing a calendar to monitor the proposed plan of action and constitute a local commission to follow the case.

Activities during the mission

The following activities were completed during the mission:

- Meeting with representatives of the affected communities who had already reported their cases to AGFE and also with representatives of new communities interested in presenting their statements – 24 February 2005;
- Press Conference to inform the media about the mission and its objectives – 24 February 2005;
- Public Hearing on 25 February 2005 with the participation of several social actors involved in the cases which reported in this document: AGFE members, Municipal, State and Federal governments, representatives from the affected communities, popular movements in the struggle for housing, non-governmental organisations, universities, professionals, students (around 250 attendants), House of Representatives from the State of Paraná.



Photo: Leandro Gorsdorf

AGFE Public Hearing, Curitiba, 25 February 2005

Communities, organisations and governmental bodies represented at the public hearing

Communities

- Jd. Esperança, Vila Pluma;
- Caiuá (Pedro Machado e Vitória);
- Associação de Moradores das Ilhas – Rio Iguaçu;
- Associação de Moradores de Sambaqui;
- Frente Popular de Luta pela Reforma Urbana;
- Assessoria da Bancada do PT Na ALPR;
- MNLM;
- Ocupação ABV – Campo Magro;
- Vila Sabará;
- Associação de Moradores das Vilas Colombo I e II Jd. Independência;
- Contenda/Ilha do Mel.

NGOs

- Terra de Direitos;
- COHRE;
- Relatoria Nacional do Direito à Moradia Adequada/Instituto POLIS.

Government Bodies

- Ministério das Cidades;
- COHAPAR – Companhia de Habitação do Paraná;
- Instituto de Pesquisa e Planejamento Urbano de Curitiba – IPPUC, representando o Exmo. Sr. Prefeito Municipal Beto Richa;
- Secretaria Municipal de Urbanismo;

- Secretaria Municipal de Defesa Social;
- COHAB/Curitiba;
- Secretaria Extraordinária de Assuntos Metropolitanos;
- Companhia de Desenvolvimento de Curitiba;
- Deputados Estaduais;
- Vereadores.

Others

- Universidade Federal do Paraná

Eviction Highlighted at the Public Hearing: Parque Industrial – Goiânia

The attorney representing the families who were violently evicted on 15 February 2005 in Goiânia, State of Goiás, attended the public hearing in Curitiba. The attorney represented roofless families who since May 2004 had occupied the area of Parque Oeste Industrial, (Industrial West Park) in Goiânia, State of Goiás (GO).

Fifteen thousand workers with no alternative accommodation had occupied the area, these families were violently evicted in an action carried out by the State Government after a Judicial decision ordering the eviction. The action resulted in the deaths of two people, dozens of injured and 800 people arrested. The forced eviction was illegally carried out and represented a violation of the right to adequate housing, in terms of international legislation in protection of human rights. It was only after two people had died, that the Government of the State of Goiás and the City Hall of Goiânia indicated the possibility of resettling the evicted families in the area. A tragedy had to take place before the plight of these families in Occupation ‘Sonho Real’ (‘Real Dream’) could reach the headlines of the national press. It was only after such publicity that the executive power announced action to guarantee housing rights to these families, a constitutional right to which every Brazilian is entitled.

All those present at the public hearing committed their support and solidarity to the families from Goiânia and the attorney committed himself to sending details of the case to AGFE and to request a mission in Goiânia.

Results of the Mission

The statements from communities and from the MNLM (National Movement on the Struggle for Housing) in relation to the evictions that took place from 2001-2004 reflect the need for the Municipality of Curitiba to implement the land ownership regularization tolls provided for by the City Statute and the Master Plan in order to guarantee the right to the city for the low-income population.

The communities and MNLM identified the following issues as illustrated by the reported forced evictions, namely the lack of municipal policy on the following:

-
- Social interest housing which considers the aspects of land ownership regularisation of public and private areas;
 - The production of allotments and housing units;
 - The adequate resettlement of populations which live in areas of risk;
 - Access to basic sanitation and public transport;
 - The promotion of participation;
 - The implementation of action to encourage income generation and the creation of employment for this sector of the population.

From the perspective of the City Hall, it was recommended that AGFE carry out a more accurate analysis of the local legislation and the municipal housing policy, as well as undertake interviews and meetings with technicians from public bodies. IPPUC informed the mission that UN-HABITAT, through Programme Best Practices, recognised positive experiences in Curitiba in the areas of integrated urban planning, including housing.⁵

It was possible to establish a wide ranging and positive dialogue among several social actors representing governmental and non-governmental stakeholders who were involved in the reported eviction cases. Despite the City Hall and the State Government's refusal to sign the proposed 'Terms of Agreement between AGFE / UN-HABITAT and the Municipality of Curitiba / Brazil – For a City Free of Evictions' (copy attached as Annex 9). All those attending the public hearing on 25 February 2005 agreed to the establishment of a working group (equally represented by civil society and government), with the objective of proposing measures to prevent forced evictions and to promote solutions to the cases presented at the public hearing by the affected communities.

The working group will also aim to contribute to the following:

- Suggestions to improve policies and actions to promote, protect and defend the human right to adequate housing and the fulfilment of the right to the city;
- Indicate legal, urban and social alternatives to the land ownership regularization and urbanization of public and private areas occupied by low-income populations, based on the City Statute and the Master Plan, in a mediation process.

The working group (to be immediately constituted), will be composed of representatives from the following bodies and organisations:

- Advisory Group on Forced Evictions (AGFE)/UN HABITAT
- Municipality of Curitiba
- Curitiba Institute of Urban Research and Planning (IPPUC)
- Municipal Secretary of Urbanization
- Curitiba Popular Habitation Company (COHAB)
- Municipal Secretary of Defence
- Ministry of Cities

⁵ For further information see:

http://www.bestpractices.org/database/bp_display_best_practice.php?best_practice_id=844;
http://www.bestpractices.org/database/bp_display_best_practice.php?best_practice_id=2080;
http://www.bestpractices.org/database/bp_display_best_practice.php?best_practice_id=1874.

- Special Secretary of Metropolitan Affairs
- Curitiba Development Company (CDC)
- Paraná Habitation Company (COHAPAR)
- National Rappporteur on the Human Right to Adequate Housing
- Centre on Housing Rights and Evictions (COHRE)
- Paraná Observatory on Public Policies
- Terra de Direitos
- National Movement on the Struggle for Housing
- Centre for Popular Movements
- Municipal Chamber Urbanization Commission
- Paraná Federal University
- State Public Ministry
- Representatives from the communities that attended the public hearing.

The first report on the work group's activities will be presented after two months.

Matters identified and lessons learned during the Mission

In their evaluation, the mission was assessed as being extremely positive by the organisations and movements that presented petitions to AGFE and by the members of the Advisory Group. This was in part due to the fact that the mission coincided with the beginning of the new term of the Municipal Government, which included a conciliatory speech about the search for solutions to the housing problems that the low-income populations in Curitiba have faced for years.

Participation in the mission was quite representative of municipal, state and federal governments, the affected communities, NGOs, municipal and State Houses of Representatives and public ministry. This facilitated open dialogue on matters and also the establishment of a working group, composed of social actors and relevant institutions, tasked to develop proposals for the resolution of the reported cases.

The proposed “Terms of Agreement between AGFE / UN HABITAT and the Municipality of Curitiba / Brazil – For a City Free of Evictions” should have been presented prior to the public hearing in order to provide sufficient time for the sectors/governmental bodies/communities to reflect upon its terms, formulate amendments where needed and prepare to sign the document.

The mission could have been conducted over three days instead of two, in order to complement the public hearing with site visits to the communities affected with forced evictions who were present at the public hearing.

The mobilisation of civil society (mainly by MNLM and Terra de Direitos) on matters of the right to adequate housing and the right to the city in the Municipality of Curitiba was fundamental to the success of the mission and to the organisation of the public hearing.

Follow-up Activities

The Municipality of Curitiba has undertaken, within 60 days of the date of the public hearing,

to present the information related to the petition and a report on the policies and actions of the city of Curitiba in the areas of social interest housing, tools of urban policies, social inclusion and income generation.

The workgroup that was established will be constituted according to the objectives of Item 4, and the group will present a report on the discussions and activities that have been carried out to AGFE, in sixty days from the date of the public hearing on 25 February 2005.

The City Hall of Curitiba will send a report to AGFE on the evictions reported by the communities present at the mission and at the public hearing.

Recommendations

The AGFE recommends that the group to be constituted be equally representative of all social actors and involved sectors in the issue of housing policies and evictions. The objectives of this group will be aimed at proposing alternatives to the reported cases and the prevention of any future evictions.

To this end it is recommended that the group discuss the following issues:

- Research on the legal, economic and social situation of the low-income settlements presently facing land ownership irregularities;
- Mediation of the evictions that are about to be implemented by legal processes and the role of the Municipal Guard;
- Dialogue among the municipal, state and federal bodies, executive, legislative and judiciary, civil society and vulnerable communities, aiming at the proposal of policies and actions to promote, protect and defend the human right to adequate housing and the fulfilment of the right to the city;
- Legal, urban and social solutions to land ownership regularization and to the urbanization of public areas occupied by low-income populations based on the City Statute and the Master Plan, seeking permanent settlement of families in housing areas which do not present any risks to the health and to lives of these families;
- Development of programmes to generate income and to enable job opportunities, to provide health and education, and to implement urban infrastructure aimed at improving the conditions of life of the resettled or evicted families;
- Activities of capacity building and information dissemination to municipal, state and federal bodies, executive, legislative and judiciary, civil society and vulnerable communities on human rights, especially the right to the city and the right to adequate housing;
- Regulating the tools provided for the Master Plan in order to implement the special concession of usage for housing purposes; concession of the right of usage; the right of pre-emption; surface rights; special zones of social interest; evaluation and characterization of empty urban areas; and democratic management (especially of the constitution of the Collegiate Body mentioned in article 48 of the Master Plan, to be elected in the next Municipality of Curitiba City Conference);

114 Forced Evictions - Towards Solutions?

- Legal and administrative measures aimed at halting the activities of irregular and clandestine brokers, and in the search of solutions to the land ownership regularization and the protection of low-income purchasers;
- Process of the City Conference that will be implemented by the Ministry of the Cities in 2005.

The AGFE also recommends that the proposed document ‘Terms of Agreement between AGFE / UN HABITAT and the Municipality of Curitiba / Brazil – For a City Free of Evictions’ should be discussed in the above-mentioned workgroup, with the expectation of having the Terms of Agreement signed in the near future by the relevant parties.



Photo: Yves Cabannes

After resisting a 2003 eviction on 1 October 2003 at Sambaqui, Curitiba, some residents were severely beaten and had to be admitted to hospital. Situations like this should never be allowed to happen again.

3. Mission to Rome, Italy (15 – 19 February 2005)⁶

Introduction

The private lease sector accounts for the majority of eviction cases in Italy. Of the 2 915 362 families in private lease arrangements, eviction has affected 1 503 846 families between the years 1983 and 2002, equivalent to 51.60% of the families in lease. A total of 365 956 families (12.55% of the total), have experienced the ordeal of an eviction enforced by the police. (See table below.)

These eviction statistics are based on data supplied by the Italian Minister of Internal Affairs and only reflect data on legal procedures up to 2002. There is no data for the years 2003 and 2004. However, estimates are that during this period more than 170 000 new evictions have been initiated, in addition to the numerous evictions carried out illegally or out of the courts' jurisdiction. For example, although the Minister of Internal Affairs has stated that there are 600 pending evictions in Florence, the number has been assessed as actually being closer to 6 000⁷.

According to a study carried out by SUNIA on a sample of over 11 000 lease relationships, the average rent in Italy is 1 025 Euros per month. A comparison of the value of the rents with income levels, highlights that in general the burden is extremely high for middle to low income classes (up to 22 500 Euros per year). For example, families with a yearly income of 7 500 Euros pay 81% of this for a mini apartment and up to 185% for a 4 room apartment. In contrast to these extremes, a family that has available 22 500 Euros per year spends on average from 27% to rent a mini apartment to 62% for a 4 room apartment.

There are two other types of eviction groups which are not recorded in the official statistics:

- Evictions from homes sold in auctions due to mortgage defaults, debts and bankruptcy. This type of eviction is increasing in Italy due to economic pressures and unemployment. They affect approximately 200 000 families nationally⁸. Of these, about 130 000 succeed in repurchasing their homes, while the remaining 70 000 lose their homes, become tenants of the banks or are evicted.
- Evictions of the homeless, immigrants, nomads or the poor from informally occupied real estate. There are situations in which the evictions of foreigners have resulted in the extreme consequence of forced deportation to their countries of origin (for example, the eviction of the Via Adda in Milan⁹). The risk of illegal occupation evictions concerns tens of thousands of families: in Milan an estimated 2 650 people illegally occupy public

⁶ This is a translated extract of the report of the AGFE mission team that visited Rome from 15-19 February 2005. The original report was drafted by Cesare Ottolini, with sections by Jacqueline Leavitt. The other team members were Bernard Birsinger and Olivier Valentin.

⁷ See <http://www.unioneinquilini.it>

⁸ Calculations: CONAFI-Assocond on Istat data "Statistiche giudiziarie civili", 1997/2000

⁹ See <http://www.viaaddanonsicancella.org/>

housing (4.45% of the total public shelters); in Rome 9 040 (13,79%); and in Naples 7 000 (32,71%). In addition to this, due to their desperate need for shelter, people informally occupy abandoned real estate designated for other uses such as factories.

Italy: Evictions procedures in housing real estate (1983-2002)¹⁰

Type of procedure	1983-2002	Annual mean	2002
Evictions carried out	1 503 846	75 192	38 591
Evictions carried out via court officer	365 956	18 298	19 310
Applications to evict	1 504 384	75 219	86 288

Background to the situation in Rome

Rome, the capital city of Italy, has a population of more than 2 600 000 persons, of a provincial population in excess of 3 800 000 people. Between 1991 and 2001, the population of the city diminished by around 350 000 inhabitants, primarily due to the implementation of eviction procedures and a dramatic increase in the price of real estate.

According to data supplied by the Ministry of Interior between 1983 and the 2003, 212 473 evictions were requested in Rome during this period, of which 66 112 were executed with the assistance of the police. Given the assessment that 1 400 000 families live in Rome, 15% have therefore suffered from this experience, while 5% of families have been evicted by public order. Thus approximately 500 000 people have had to defend their security of housing tenure before a tribunal, and about 150 000 have suffered eviction.

¹⁰ These are the latest official data (March 2004) <http://pers.mininterno.it/dcds/>

Rome: Actions for eviction from residential real estate property: 1983 - 2004¹¹

Actions issued	1983-2003	2003	2004	Total
Evictions carried out	208 386	4 087	Not available	212 473
Evictions carried out via court officer	61 353	2 648	2 111 (data from Prefecture)	66 112
Applications to evict	393 972	11 171	Not available	405 143

In order to address the growing housing needs of lower income to poor people in Rome, the Rome Municipal Administration has provided approximately 26 900 dwellings, of which 3 000 are on agreement with private owners. Since this is insufficient in terms of the housing needs, the Municipal Administration has estimated that 26 000 more dwellings are necessary, most of which should be publicly owned.

Relevant data as provided by the Rome Municipal Administration:

- Families on waiting list for low income housing: 26,500;
- Families on waiting list for rent assistance from the Municipal administration: 17,000 (27% elderly people and disabled, 16% migrants);
- around 10,000 migrants, political refugees seekers, homeless or badly housed (squatters, occupants, residing under bridges, etc.) people;
- Housing belonging to the Municipal administration illegally occupied: 2,600.

The AGFE field mission to Rome

Motivation

The AGFE decision to undertake a field mission to Rome was based on analysis of the following documents and an invitation from the Municipal Administration of the City of Rome and the Unione Inquilini (Tenants Union) to visit the city and meet stakeholders to discuss the high volume of urban evictions in the capital city and related tenure rights issues. (Copy of invitation attached as Annex 10).

- Dossier on Eviction Emergency in Italy (involving over 200 000 families) presented by the IAI to AGFE (August 2004);
- The dossier on the violations of housing rights presented by the Unione Inquilini, IAI and COHRE (October 2004) at the 33rd Session of the UN Committee on Economic,

¹¹ These are the latest official data (March 2004) <http://pers.mininterno.it/dcds/>

Social and Cultural Rights;

- The recommendations to the Italian government issued by the same Committee (November 2004) ;
- The informal meeting of the AGFE members during the World Social Forum 2005 (Porto Alegre, 26/1/05); and
- An invitation by the Municipal Administration of the City of Rome and the Unione Inquilini to visit the city and attend a series of meetings (1 February 2005).

Composition of Mission team

Name	Representing	Function
Cesare Ottolini	AGFE (IAI)	Co-ordinator of mission
Bernard Birsinger	Mayor (Bobigny, France)	Exchanges of experiences with particular focus on free eviction zones, Housing public services
Olivier Valentin	Expert on housing policies (Bobigny, France)	Exchanges of experiences with particular focus on free eviction zones, housing public services
Jacqueline Leavitt	Huairou Commission (USA)	Exchanges of experiences with particular focus on security of tenure for women

Objectives of the AGFE mission

- To assess the situation in relation to violations of housing rights, with particular reference to security of tenure.
- To foster the international exchange of good practices for security of tenure.
- To promote the draft of local, national and European Plans of Action for security of tenure.
- To establish an agenda for the monitoring of the Plan of Action.
- To prepare the ground for a mission on the security of tenure at a national level in Italy (2005).

Activities developed by the mission

Three types of activities were undertaken during the mission, namely:

- Meetings with organisations and institutions;
- Visits to communities;
- Press conferences, including one to present the mission at the outset and another to publicise the results.

Meetings with institutions and organizations

Members of the mission held meetings with the following stakeholders:

- The Municipal Administration of the City of Rome;
- The Prefecture of Rome;
- The Districts (*municipi*) of Rome;
- The associations supporting the evicted and the homeless (for example S. Egidio, Caritas, Emmaus);
- The civil community (trade and tenants' unions, inhabitants' associations threatened with eviction);
- The Housing offices of Italian Municipalities in areas where housing emergencies occur (co-ordinated by the ANCI).

Summary of meeting with key Institutions

The main meeting was with the Municipal Administration of Rome. In discussions, the Municipal representative considered that the situation in Rome had worsened in 2004, primarily due to the following reasons:

- *Law number 209/04* which has deferred until 31 March 2005 the dates of the enforcement of evictions for only 13% of the evictions. The law has also removed around 105 million Euro from the National Fund meant to assist in rents, including approximately 5 000 cheques in Rome specifically.
- The manner in which housing of suppliers' agencies are mapped and the privatisation of property of other agencies (such as insurance institutions and banks).
- The effects of decentralisation of authority over housing to the regions without the necessary state financial support.
- The increase in the price of rentals and sales of real estate property which has been influenced by low banking rates and residential insecurity.
- The flow of migration to Rome as a capital city (influenced by globalisation), without the State or the European Union assuming any responsibility for attending to the impact of this influx of people.

As a result of this meeting, Municipal administrators committed themselves to an important joint declaration with the AGFE Mission¹² and requested members of the AGFE to support the proposal to create a European Fund for Housing Assistance for migrants.

¹² A copy of the declaration is given in Chapter 4.

Visits to communities

Roma camp at Vicolo Savini

The focus of the mission covered diverse forms of squatting and living conditions. The most obvious example of unsafe and unsound housing was that of the Roma camp at Vicolo Savini. The principle that housing should be safe; equipped with sanitary facilities; and provide a sense of security does not apply to this camp which residents compared to a concentration camp. Another problem experienced by the residents was the lack of documentation - especially critical for the youth who on turning 13, have no recourse to further schooling or finding jobs due to their lack of documents.

The camp was divided into three sections. In addition to two temporary toilets inside the entrance, the two collective bathroom structures were not working (it was reported that at least one had not been working for a year). The unpaved paths into the camp were strewn with garbage and standing water.

The amazing fortitude of the people living in the camp was reflected in the care of their clothes and personal hygiene although the effort to maintain this would have been a tremendous challenge, and one in which the women particularly bear a heavy share. There are no areas available for small children to play other than outside the caravans. The chilly winters mean that people build wood-burning stoves inside their caravans which has resulted in numerous fires over the years. People interviewed reported that over 30 deaths and many more injuries had occurred as a result of these fires.



Photo: © Foto Eidon/Claudio Melissari - Roma

Conditions in the Roma camp at Vicolo Savini, Rome, as observed by the AGFE delegation on 18 February 2005

Many of the windows in the caravans were plastered with paper as a poor replacement for glass windows. Two collective water troughs were seen to be constantly running in the rear part of the camp where the poorest people live. The ongoing noise in the camp interrupts sleep

and increases stress levels. Mission members were also told about some of the residents have body sores which are probably traceable to the poor sanitary facilities and conditions under which people live. Garbage is collected in shopping carts which are brought to the dumpsters immediately outside the camps.

Squats: via Collatina, 385

A number of problems exist in the squats where more than 500 political refugees live. Unfortunately the mission was unable to enter any of the individual apartments in the buildings, and it was therefore difficult to draw conclusions about the adequacy of the space available. However it was clear that due to the nature of squatting, women's work is an uphill battle. Squats are, at best an inadequate, temporary solution. Certain members of the Eritrean community with whom the mission met even said that they might be better off living on the streets. Squatting carries with it increased dangers in terms of personal security and health. Buildings are often damp (especially in winter) and frequently do not have adequate heating or lighting. The lack of lighting in the neighbourhood is given as a major reason for women reporting that they feel unsafe. In the buildings visited during the mission, entrances and hallways were not well lit - although this may have been intentional in order to save money, as residents are inevitably very poor. Another problem is the palpable stress which residents exhibited in cases where rents have been frequently increased; and in situations where people have lost ownership because of bank and insurance irregularities. Elderly women on fixed pensions find such increases particularly unsettling, having thought that they would be able to sustain themselves on a husband's pension.

The role of women

Taking into consideration the cultural norms of the residents, in some instances during mission interviews with affected communities, few or no women spoke. It is hard to draw specific conclusions from this as separate meetings were not specifically arranged with women. However, there were a number of signs of initiative and leadership amongst the women in the communities. The Eritrean women, for example, were able to access medical services during pregnancy. In the case of the Roma camp, one woman in particular was involved in the design of buildings that were taken over and rehabilitated. Additionally, it should be noted that women in the voluntary sector were vocal and articulate about the issues being faced.

Outcomes of the Rome Mission

Signature of a common final statement: Municipality of Rome and AGFE mission

Participants:

- AGFE delegation
- Nicola Galloro, delegate of the Mayor
- Claudio Minnelli, responsible for municipal housing policies
- Associations and social movements support the right to housing

Around 50 people attended this meeting, during which the results of the mission were consolidated and further activities identified. All participants agreed on the importance of the

mission to raise the awareness of the City on the problem of evictions. It was also agreed that evictions should be considered as a problem capable of being solved through a localised action plan, co-ordinated at national and European levels, based on respect for the provisions of Article 11 of the *International Covenant on Economic, Social and Cultural Rights*.

The following issues were highlighted and proposals made during the meeting's discussions.

Claudio Minnelli emphasised the role of the Municipal Administration and confirmed its commitment to make "Rome free from evictions" with a "Zero Evictions" action plan which would allow for the following:

- With immediate effect: properties to be freely obtained from owners - between 10% and 20% of those constructed in exchange for development permits (between 8,000 and 10,000).
- With immediate effect: public properties to be self-rehabilitated through public funding (between 100 and 200).
- By the end of 2005: properties to be obtained from providing agencies (between 400 and 1 000).
- By the end of 2007: properties to be obtained from a change in designation of land use: approximately 8 000 out of which 1 000 with social rents; around 3 000 with an agreed minimum rent; around 4 000 with monthly pay-outs of about 300 Euro.
- By the end of 2008: properties from an extraordinary public residential building plan by the Municipal Administration (around 6 000).

Massimo Pasquini, the secretary of *Unione Inquilini*, noted that the mission was the first occasion where associations and movements, otherwise not in contact with each other, were able to start communicating. He stated that this would have a ripple affect in the future. Hence, he proposed, in agreement with the associations present, the drafting of a common and independent position to guarantee respect towards housing rights through the establishment of a 'Coordination Committee for a Rome free from evictions' to monitor the commitments and to initiate campaigns.

In his reflection on the community visits and the meeting, Bernard Birsinger, the Mayor of Bobigny in France, expressed a concern that divisions and inequalities were growing in society, and that while previously limited to the poor, the problem of evictions were now also impacting on the middle class as a result of shifts in the property markets and access to capital. He urged public authorities to intervene with an action plan for zero evictions at local, national and European levels. He encouraged civil society and union structures to lobby for new legal instruments aimed at ensuring that there would be no more evictions without adequate relocation. In particular, as this was an across-frontiers matter, he confirmed the availability of his local council for an exchange of experiences and twinning with other local councils and municipalities.

Cesare Ottolini, in thanking the Rome Municipal Administration for the opportunity to meet and share strategies for dealing with the issue of eviction, confirmed that the housing crisis seen in Rome was not very different from that found in other large Italian and European cities. He reminded those present of the proposal for a common initiative between the social stakeholders

and institutions to obtain a social European directive which would ban evictions without adequate relocation, while at the same time, block the Bolkenstein directive on the liberalisation of public services of general interest.

At the conclusion of the meeting, in confirmation that all the participants were committed to reaching the objective, the representatives of the Rome Municipal Administration and the participants to the AGFE mission agreed that conditions were conducive to working for a Rome free from evictions. As a demonstration of this, a decision was made to sign a joint Final Declaration to this effect.

Key results of the AGFE mission to Rome

The AGFE mission in Rome

- Attended meetings with an estimated 4 000 people and 50 associations, institutions and movements;
- Took part in 20 interviews on radio and television;
- Resulted in the publication of numerous articles in the local, national and international press (see Annex 11 for an example of press coverage of the mission);
- Resulted in extensive coverage on the internet.

Results of the mission

- Raised awareness of the housing crisis in Rome.
- Facilitated the first meeting of social parties and institutions directing their attention to the need to use the right to adequate housing as the basis for new housing policies.
- An unofficial but clear commitment by the Prefecture to observe a 12 month moratorium on evictions and evacuations.
- The commitment of the Prefecture to organise a training course during 2005 on Article 11 of ICESCR for magistrates, workers in the sector and associations with the possible help of the UN-Habitat experts.
- The commitment of the Prefecture and the Rome Municipality to regularise the occupation of real estate or to find alternative accommodation as agreed with the inhabitants, starting with the shelter accommodation for refugees of via Collatina.
- The commitment of the Prefecture and the Rome Municipality to improve the coordination of the exchange of information on the housing crisis.
- The availability of the III, X and XI Municipalities to issue legal ordinances to requisition vacant properties or properties whose occupants had been asked to evacuate the properties.
- The signing of a joint declaration between the AGFE delegation and the Rome Municipality to achieve a zero eviction plan at a local level, as co-ordinated at national and European levels, which would be periodically monitored.
- The commitment of the associations acting in the defence of evictees and the homeless, and social movements to establish a 'Coordination Committee for a Rome free from evictions'.
- A motion of support by political parties has been presented to the Italian Parliament.



Photo: © Foto Eidon/Claudio Melissari – Roma

Housing rights activists, some wearing UN colours, welcome the AGFE mission during their visit to Rome - 16 Feb 2005

Issues and lessons learned

Positive aspects

- The preparation of the mission by the International Alliance of Inhabitants and the Italian Tenants Union (Unione Inquilini) optimised the timing and relationships with the Rome Municipality and the networks of citizens' associations.
- The mission attracted media attention which amplified the effect of each individual visit and event.
- The presence of mission members from France and the United States widened horizons and enabled the identification of interesting policy opportunities.

Some difficulties

- A lack of time to meet all the persons who had requested meetings
- The unavailability of the Italian Central Government, such as the Ministry of Justice, Ministry of Interior Affairs, Ministry of Infrastructure and Ministry of Welfare to meet with the delegation members.

Follow up activities

Compilation of Mission Reports¹³

The participants of the AGFE mission are committed to drafting documents to extend the internal and external debate to AGFE as follows:

- Cesare Ottolini, a report on the AGFE mission in Rome;
- Bernard Birsinger, a report on the proposal for international twinning/exchange of experiences between local authorities and associations on best practices in favour of security of housing tenure;
- Olivier Valentin, a report on the role of the associations and networks of inhabitants in the fight against evictions, and to favour exchanges on international experiences; and
- Jacqueline Leavitt, a report in support of the role played by women in initiatives against evictions in rich countries, and to favour exchanges on international experiences.

Follow up on gender aspects of forced evictions in Italy

The AGFE mission to Italy demonstrated the gender aspects of inadequate housing conditions and forced eviction, and the particular burden falling on women. However there was insufficient time or opportunity during the mission to do justice to these crucial issues.

Upon returning to the United States, Jacqueline Leavitt did some research and identified a list of Women's Organizations in Italy that could be collaborated with in order to interact more thoroughly with the issue. A number of these organisations are in Rome, including the Italian Women's Center, Migrant Women's Network in Italy, and the Italian Association for Women in Development (AIDOS).

The Italian Women's Center is identified as "contributing to the development of civic mindedness of individuals and to community development" and includes stimulating "local communities to increase their own development, and promotes cultural and social services in general". AIDOS is a non-governmental non-profit organisation that was started in 1981 for the express purpose of carrying out the goals of the UN Decade for Women. Its emphasis is on NGOs in developing countries in areas of reproductive health, micro and small enterprises, and capacity building of women's organizations and institutions. Other groups may with an interest in housing and community development or particular aspects thereof may also exist.

In addition, there are reports available which address women's issues in Italy, for example

¹³ As indicated, the present report is a translated extract of the full mission report, which is on file with AGFE. The full report includes the following addenda, which are unfortunately too large to reproduce here: 1. Common final statement between Municipality of Rome – AGFE mission; 2. Motion of the III Municipality; 3. Motion of the X Municipality; 4. Motion of the XI Municipality; 5. Motion presented to the Italian Parliament; 6. Request for a AGFE "Fact Finding Mission" in Milan (Italy); 7. Press release; 8. Photographs of the mission and of the situations observed; 9. File with proposals and claims made by associations; 10. File with political proposals for housing CGIL-CISL-UIL-SUNIA-SICET-UNIAT; 11. Observations and proposals on the housing crisis by ANCI-AGCI-Federlazio-Lega delle Cooperative; 12. List of persons met and contact details.

Antonio Tosi has written on women as part of the new homeless poor. There are also other reports available through the United Nations.

The Huairou Commission has helped facilitate horizontal exchanges where women inform other women of strategies regarding community development. Examples exist of best practices where women leaders are in the forefront. These include examples of rebuilding and development after natural and manmade disasters, local governance, and campaigning for secure tenure. One project has been the Grassroots International Women's Academy (GWIA) in which women are both students and teachers in an international exchange of models and ideas for community development.

While a network of stakeholders was clearly evident in the Rome mission and women were part of it, focus on housing as a human right does not in and of itself explicitly make visible women's voices. Without further consultation with women, it is plausible to explain their needs but this is only a first step in identifying the issues and acting on a strategy. Housing as a human right is a powerful organizing tool; it is essential that women's contribution to this call is identified. Women bring a particular understanding of community and the (re)-integration into the collective nature of social life.

Exchange Programme

The AGFE mission offered the possibility to promote exchange programmes with other Italian local councils and international networks to develop good practices. The Municipality of Bobigny in France proposed an exchange on 'territories free from evictions' and on setting up a national housing public service. The member from the Huairou Commission proposed exchanges on security of housing tenure, with particular emphasis on women and children. Special attention should be given to North-North exchanges, given their specificities of experiences, dynamics and challenges.

Recommendations

The mission delegates presented the following recommendations for consideration to the Convenor and to UN-Habitat:

Global level

- To organise a session of AGFE to discuss the reports from the missions done (Rome, Dominican Republic and Curitiba) in order to understand better the potentials and difficulties in these types of initiatives.
- To inform all the levels of UN-Habitat on the results achieved.
- To provide members in a mission with the necessary tools to be able to provide continuity (monitoring, implementation, enlargement).
- To provide the members of the AGFE with a status that can allow them to intervene properly, to be able to verify and propose reconciliation meetings between parties, even outside the official parameters of the mission, in situations of grave threats to security of housing tenure.

4. The case of Sri Lanka: Eviction threats during the reconstruction phase following the 2004 Indian Ocean Tsunami

The tremendous loss of life and property as a result of the 2004 Indian Ocean Tsunami has been widely addressed, but only now are the human rights and eviction threats emerging from the reconstruction process becoming more widely known. While such threats are affecting all Tsunami-affected countries, albeit to widely varying degrees, this case study, written by Scott Leckie, briefly outlines some of the key areas of concern in Sri Lanka.

This section on evictions in Sri Lanka in the wake of the Tsunami is the result of a regional meeting held from 11 to 13 March 2005 in Sri Lanka. The objective of the meeting was to enable Tsunami survivors to explain their needs and priorities in the recovery process and to voice their concerns and dialogue with representatives of governments, especially in relation to the announced relocation decisions and related norms of reconstruction. The meeting was organized by the Asian Coalition for Housing Rights (ACHR) in collaboration with several NGOs and community organizations, including Women Bank and Women Development Bank micro credit networks in Sri Lanka; Sevanatha Urban Resource Center; Slum Dwellers International (SDI); and the Centre on Housing Rights and Evictions (COHRE). These organizations include several members of AGFE, three of whom were present at the meeting: Somsook Boonyabancha of ACHR (also director of CODI), Jockin Arputham (SDI) and Scott Leckie (COHRE). Farouk Tebbal, coordinator of the Global Campaign for Secure Tenure of UN-HABITAT, who has been actively involved with AGFE from its inception, also attended the meeting. The presence of AGFE members at the meeting emphasised a deep concern about potential eviction threats during post-Tsunami reconstruction. While the meeting was not an AGFE conciliatory mission, it takes up similar concerns and is, accordingly, reported on in this chapter.



Photo: COHRE

Farouk Tebbal addresses the post-Tsunami reconstruction meeting held in Sri Lanka on 11-13 March 2005

The 100/200 metre exclusion zone

In what appears to be the latest announcement by the Government concerning the proposed 100/200 metre buffer zone, the Presidential Secretariat's *Notice on Reconstruction for Housing, Businesses & Fishing Industry Affected by the Tsunami* on 3 February asserts that **no new construction** will be permitted within 100 metres of the mean sea level. It continues making the bold promise that the Government will identify lands closest to each affected village and build a house for every affected house owner who lived within the said 100 metres.¹⁴ The Government will provide these houses free of charge. Privately owned land within the 100 metre zone will remain the property of the original owners, and the Government states that it will not 'in any way claim ownership to such property'.

Detailed planning maps at the Urban Development Authority (UDA) clearly demarcate both the 100m and 200m zones along roughly 1 000 km of Sri Lanka's coastline. As the principle Governmental body responsible for enforcing the buffer zone, and the only State agency that can give approval for construction within the Coastal Zone, the UDA intends to place markers at 30m intervals along the affected coastal area indicating the boundary of the buffer zone.¹⁵ The area between these markers and the shoreline will, therefore, constitute an exclusionary zone where people displaced by the Tsunami **will not be allowed** to rebuild their damaged or destroyed homes, or to return to reside upon the land on which they lived at the time of the disaster, notwithstanding whatever legal rights they may have to do so. All told, tens of thousands of people (if not more) will be forced to relocate if the new policy is seriously enforced.

Some Government officials indicate that temporary housing rebuilt by the displaced within the 100/200m zone will be tolerated in the short-term and until such time that new housing is constructed for those made homeless. Some officials have also indicated that existing structures

¹⁴ More than a month earlier, the UDA issued Public Notice 31 December 2004 which asserted that "Ministry of Urban Development & Water Supply has decided to guide development activities in the areas affected due to the recent Tsunami along the Coastal Zone of the country in compliance with the Urban Development Authority Planning and Building Requirements formulated as per the UDA Law No. 41 of 1978. This Zone falls within the limits of 1 km from Mean High Water Line of the sea landwards already declared as an Urban Development Area by the Gazette (Extraordinary) No. 223/16 dated 17th December 1982. Accordingly, any Government Agency or any person is required to obtain prior approval of the UDA for any development activity undertaken within the said Special Control Zone. Note that the powers delegated to Local Authorities by UDA in approving development activities within those areas have been temporarily suspended until further notice".

¹⁵ The UDA, therefore, will have powers to act from Colombo to determine all major housing, land and property decisions affecting the *entire* 100/200 metre zone along more than 1000km of coastline. In *Rehabilitation and Reconstruction of Tsunami Affected Areas* (Urban Development Authority, Ministry of Urban Development and Water Supply), the major tasks are identified as the enforcement of planning and building regulations for the Conservation Zone (including the framing of a regulation for 100m and 200m Conservation Zone); Surveying and pegging of the 100m and 200m Zone and the enforcement of these by the local authority and the Ministry of Public Security, Law and Order. Over and above the powers of the Coastal Conservation Department, the UDA has powers that are not related to the 1981 Coastal Conservation Act. Rather, UDA's authority lies with the gazetted notice No 223/16 of 1982 in which the entire coast was declared an Urban Development Area. This area includes the 300 metre area under the Coastal Conservation Act, but is actually much wider (up to one kilometre inland). To complicate matters, both the UDA and the Coastal Conservation Department technically have the right to issue permits.

within the 100/200m zone will be allowed to remain and be inhabited, although other officials have indicated that the entire affected area will be a non-residential zone. Officials seem to be unanimous in their support for allowing hotels and other businesses to remain within the buffer zone, although some new building restrictions will apply.

Clearly, this decision to create a buffer zone, which is still not yet law, will have a marked impact upon the possibilities of return by those displaced by the Tsunami. Indeed, the World Bank (et al) recognised as much within its extensive post-Tsunami *Needs Assessment* report where it asserted in reference to the 100/200m rule that: “Left pending, this issue poses the single most critical threat to the entire recovery and reconstruction process”.¹⁶

In seeking to justify the controversial 100/200m rule, the Government has reiterated the need to protect the public from future Tsunamis or major storms and its requisite duties to uphold existing law. One Government official indicated that “the 100 metre rule is for the benefit of the poor themselves”. When asked about why parts of the coast will have 100m no-build zones, while others will have a 200m zone, one UDA official mentioned that the East is more prone to cyclones and thus a 200m zone was necessary there. He also noted that the Southern and Eastern Zones are geographically, physically and environmentally different from one another, and that at any rate, there are already different building codes in each area due to these differing characteristics.

Voluntary Return or Relocation?

Of all the questions concerning the 100/200m zone, it is the issue of ‘voluntary return or relocation’ that is perhaps the most worrying. The imposition of the 100/200m rule removes the principle of voluntary return from the reconstruction equation. It effectively prevents large numbers of people – including those with recognised legal rights of ownership to housing, land and property and those with related prescription rights – from returning to their homes or places of habitual residence. Those affected by the rule have not been sufficiently consulted in the development of the proposed policy. Notwithstanding the rationale given by the Government to justify the rule, the fact remains that large numbers of those forced from their homes by the Tsunami will be displaced again if the new rule is subject to strict enforcement.

Relocation/Forced Evictions

If the 100/200m rule is implemented as planned, this will raise concerns about possible relocations/forced evictions, which are clearly and strictly regulated under international human rights law and the domestic legal order of Sri Lanka. In terms of the Sri Lankan Constitution, for instance, the 100/200m rule may be inconsistent with the terms of Article 14(1)(h), which recognises both freedom of movement and the right to choose one’s residence. Both of these rights will be functionally impossible for the displaced to exercise, should they wish to voluntarily return to their former homes and/or lands and are prevented from doing so without legally sound justification.

¹⁶ ADB, JBIC and World Bank (January 2005) *Sri Lanka 2005 Post-Tsunami Recovery Program – Preliminary Damage and Needs Assessment*.

Under international law, preventing a person or family from returning to their original home may in some circumstances also violate the right to freedom of movement and the freedom to choose one's residence within the territory of a State.¹⁷ Therefore, before the Government of Sri Lanka imposes measures that prevent residents from returning to the 100/200m zone, there must be justification that such a system is *reasonable* under the circumstances concerned. Additional international human rights laws binding on Sri Lanka, most notably the International Covenant on Economic, Social and Cultural Rights (ICESCR), stipulate that evictions can only be carried out in *exceptional circumstances* and with all necessary judicial and other legal safeguards fully met. In circumstances where the Government prevents the return of residents to the affected areas, it is arguable that what is called a *constructive* eviction has taken place. In order for such an eviction not to be 'forced' under international law, the government would need to provide adequate resettlement and comply with all relevant standards addressing this issue.¹⁸

The right to adequate housing under the ICESCR must also be taken into account when examining the possible human rights implications of the 100/200m rule. Article 11 of the Covenant recognises housing rights and has been interpreted by the monitoring Committee to ground an immediate and corresponding right to secure tenure and concomitant protections against forced eviction.¹⁹ Security of tenure has been interpreted by the Committee to include all forms of tenure, including informal settlements and tenancies.²⁰

¹⁷ Sri Lanka has also ratified the International Covenant on Civil and Political Rights (ICCPR), which protects this right in Article 12. The Human Rights Committee has commented on the right to freely choose one's residence as follows: "Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory". (Human Rights Committee, *General Comment No. 27: Freedom of movement, (Article 12)* (1999) at para. 7). Therefore, any restriction on right of person to choose a place to reside is a *prima facie* violation of the ICCPR. A State must turn to paragraph 3 of the article and prove that the restriction is contained in law and is justified, for example to protect public order or public health. (The full text of Article 12(3) reads 'The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.'). This second test of proportionality or reasonableness means that the State would have to take into account the right and the need for housing before imposing restrictions on the right to return to an affected area.

¹⁸ As another standard, *General Comment No. 4 on the right to adequate housing (1991)* concludes: "In this regard, the Committee considers that instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

¹⁸ In this regard, the Committee considers that: "instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

¹⁹ *General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant)* (1991); United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7 on the Right to Housing* (1997).

²⁰ In countries where the right to housing has been addressed by the judiciary, this interpretation has been confirmed in case law. The South African Constitutional Court has stated: "The indignity suffered as a result of evictions from homes, forced removals and the relocation to land often wholly inadequate for housing needs has to be replaced with a system in which the state must strive to provide access to adequate housing for all and, where that exists, refrain from permitting people to be removed unless it can be justified". (*Jafitha v Schoeman and others; Van Rooyen v Stoltz and others Case CCT 74/03, judgment delivered 8 October*

Arbitrariness

Another concern about the proposed buffer zone relates to what appears to be the arbitrary nature of the proposals concerned, and the inconsistent and potentially differential treatment that may occur during implementation. While some environmental and related justifications have been given as to why in some areas the zone extends 100m from the sea, while in others it covers a 200m area, the difference between these two zones creates the impression of differential treatment. If reasons backed by scientific evidence were shown to be of consistent application, without exception, along the entire coastline where the buffer zones will be created, then there may be reasonable and non-arbitrary grounds for developing such a policy. If, on the other hand, local environmental and physical factors and differences (such as the existence of mangroves or coral reefs) were a key determinant as to the scale of damage exerted by the Tsunami, then a very different picture arises, and one that calls for a much more creative and practical approach, implemented on a case by case basis, and taking into account all local factors. To simply assert that a 100m or 200m buffer zone is an adequate response in terms of disaster prevention/reduction, thus, may be creating more problems than it purports to wish to solve.

Possible Discrimination

In terms of the 100/200m proposals, discrimination may potentially arise in several ways. Firstly, it is clear that these rules will *disproportionately* impact upon fisher folk communities, which comprised some 60-80% of Sri Lanka's Tsunami victims, and who now constitute a large majority of the displaced and homeless. Most of the affected fisher folk communities lie within the 100/200m buffer zone and thus the impact of the rule will be considerable. Being dependent upon direct access to the sea for their livelihoods, many fisher folk communities have been particularly vocal in their opposition to the proposals to resettle them in new (as of yet unbuilt) housing estates, many of which are located far from the sea (in some instances up to 14km from the coastline).

On the other hand, there are those fishermen who may wish to change their occupation and domicile following the Tsunami. These differing wishes need to be taken into account by whatever eventual law is adopted concerning residential rights within the 100/200m zone, and every effort should be made to ensure that the doctrine of *voluntariness*, rather than coercion, guides the process. If the 100/200m rule is determined to disproportionately, unreasonably or inequitably impact upon the rights of fisher folk communities, discrimination will have occurred and will need to be rectified.

2004). Therefore, any removal of residents from informal settlements that is occupied – even if disturbed temporarily for other reasons – must be fully justified. Moreover, there is a State obligation to protect residents from other actors interfering with security of tenure as *SERAC v Nigeria* makes clear (African Commission on Human and Peoples' Rights, Decision 155/96). The Commission stated: “[Nigeria's] obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.”



Photo: COHRE

**Trying to rebuild their lives
Tsunami survivors, Sri Lanka, March 2005**

Secondly, and similar to the case of fisher folk communities, coastal Muslims (many of whom are also fisher folk) suffered by far the largest number of casualties as a result of the Tsunami. One analyst noted that although Muslims constitute some 7-8% of Sri Lanka's population, 53% of the Tsunami deaths were Muslim. Once again, the same principles should be applied to this group as to fisher folk communities more broadly. In other words, does the 100/200m plan disproportionately impact upon the Muslim community?

The third point concerns the emotive issue of why hotels, tourist-oriented establishments and undamaged buildings (many of which are owned by wealthy Sri Lankans or foreigners) will be exempted from the 100/200m rule, while former residents – many of whom are as location-dependent for their livelihoods as tourist businesses – will have to be resettled at new housing compounds located *outside the 100/200m zone*? Such an arrangement clearly has discriminatory elements and will need to be examined closely by Sri Lankan courts to determine whether such clearly skewed rules are consistent with non-discrimination protections. Arguably, if exemptions can be arranged for hotels which are dependent upon their coastal location, then similar exemptions may also be possible for people or communities who are equally dependent on their coastal location to achieve an adequate standard of living and livelihood, most notably fisher folk communities.

The Unnecessary Prolonging of Displacement

A further concern with the 100/200m proposals is the impact such a measure will have on unnecessarily prolonging the period of displacement of those who will be prevented from returning home. Although the Government has issued many public commitments to re-housing the displaced, in particular those who lived within the 100/200m zone at the time of the

Tsunami,²¹ it is clear that even in the best possible scenarios (which would presume that all anticipated funds are available and that all promised housing will actually be built), it will be *years rather than months* before all of the displaced find permanent housing solutions. The proposed 100/200m plan has effectively excluded all former residents of the buffer zone area from rebuilding their homes (and livelihoods) on or near to the land on which they lived on 26 December 2004. The displaced are not able to access housing loans or credits at the moment. In addition, they are not given planning permission to rebuild their homes and are essentially forced to wait until new housing is provided to them.

Officials have said that temporary structures may be tolerated in the short-term within the 100/200 zone as an emergency measure. However, reports of evictions and demolitions of such structures have also emerged in recent weeks. In this regard, an additional human rights principle – the right to respect for the home – is relevant.²² The term ‘home’ has been defined on the basis of occupancy and not proprietary interest. A home is the place a person lives on a settled basis, which implies a degree of stability and continuity.²³ Any interruption of occupancy – even for a long period – will not necessarily affect this right.²⁴ Moreover, the right extends beyond the principal resident but to all occupiers, including partners, children, relatives and lodgers, which may be important if the principal resident died in the disaster or refuses to return.²⁵

Access to New Housing for the Displaced

The 100/200m buffer zone proposals cannot be viewed in isolation from the ambitious and inter-related promises issued by the Government to provide new homes for all of those displaced by the Tsunami or whose houses were otherwise destroyed or damaged.²⁶ The Presidential Secretariat’s *Notice on Reconstruction for Housing, Businesses & Fishing Industry Affected by the Tsunami* on 3 February noted that “All families in the 100m and 200m Coastal Zone whose houses have been completely damaged will be provided with safe houses outside the Conservation Zone by the Government. Those who are willing to construct their own houses outside the 100m and 200m zone on their lands will be paid Rs 250,000 [+/- US\$ 2500-] in financial assistance and, if necessary, concessionary loans by state banks.” With specific regard to fishing communities, which constitute by far the largest group of displaced persons and thus,

²¹ In one instance several days following the disaster, the President asserted that new housing would be provided to all displaced within three months, eg. by 26 March 2005.

²² This right is found in numerous treaties, including Article 17(1) of the ICCPR which reads “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, *home* or correspondence, nor to unlawful attacks on his honour and reputation.” [Emphasis added].

²³ See: *Wiggins v U.K.* (1978) 13 DR 40. A structure constructed informally, but for residential purposes, would therefore fall within the reach of this right. The Court has ruled that informal structures do constitute homes – for example, caravans on land without planning permission - and that any interference with such a home must be proportional and pursue a legitimate aim in accordance with the European Convention on Human Rights.

²⁴ *Gillow v United Kingdom* (1986) Series A No. 109;11 EHRR 335.

²⁵ (1998) 26 EHRR CD 212.

²⁶ This objective would be consistent with Article 27(2)(c) of the 1977 Sri Lanka Constitution which provides: “The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which includes: the realisation 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

those in greatest need, the Government has indicated that it will provide housing for “every fisher family who lost houses in the disaster”. The minimum size of a house will be 500sq. ft., and will be provided with all the basic infrastructure facilities such as access roads, water, electricity and sewerage. Four housing types have been recommended: single-storey detached houses on individual land plots; single-storey attached houses with individual gardens; two-storey attached terraced houses with individual gardens; and multi-storey walk-up apartments.

The need for new housing stock as a result of the Tsunami is nothing short of dramatic. In January 2005 the World Bank estimated that over 130 000 houses were damaged or destroyed²⁷, and that financial losses were in the range of US\$ 306-341 million, with financing needs for new housing construction ranging from US\$ 437-487 million.²⁸ Although the Government has made repeated public pronouncements committing itself to the provision of new housing for the homeless and displaced, the process leading from these clearly positive statements of intent to actual housing provision is likely to be far more challenging than may be imagined at present. A number of likely problems and concerns can be anticipated:

Insufficient Community Participation and Consultation

Of all the concerns that have arisen so far in the re-housing process, the prevailing lack of community participation and consultation has been one of the most pressing. The Government’s Task Force on Reconstruction (Tafren), which is responsible for re-housing the displaced, is comprised entirely of prominent members of the business community, with no formal representation from the community, NGO or academic sectors. In addition, it appears that community-driven solutions to housing challenges are rarely seriously considered by the authorities. This is despite the fact that experiences in a range of post-disaster situations throughout the world, clearly show that consultative and participatory approaches to housing reconstruction are invariably the most effective and productive ways of securing access to new housing resources by displaced and homeless communities.²⁹

Within the context of the re-building process in Sri Lanka, the vast majority of housing decisions continue to be made in the capital, with virtually no direct inputs by the affected communities themselves or their representatives. Essentially top-down policy decisions, driven by the Government and the private sector, without regard to those who will actually be residing in those new housing units that are constructed, dominate the reconstruction decision-making processes. This is not to say that communities are the only ones with a role to play in this respect, but rather that a locally-driven, integral approach to re-building, with the direct involvement by affected communities is essential. This approach will not only result in healthier, economically viable

²⁷ See, World Bank (et al), *Needs Assessment* (Jan. 2005).

²⁸ In addition, a further US\$ 117 million will be required for related water and sanitation financing needs.

²⁹ “Experience from Gujarat and Turkey (rural) as well as Colombia and Mexico in post-disaster reconstruction indicates that, to the extent possible, the most feasible and sustainable option is *in-situ* reconstruction managed by affected households assisted by a combination of cash grants and access to loans. Sri Lanka’s own experience with housing reconstruction after large-scale flooding in the Southern Province (where around 17,000 houses are currently being assisted through cash grants) and lessons learned during the preparation of the World Bank supported North East Housing Reconstruction Project (NEHRP) and its related pilot project, support the rationale and feasibility for adopting such an approach.” (*World Bank Needs Assessment*, p 4 – Annex 6 – Housing).

and more sustainable communities, but it will also expedite the rebuilding process, democratise it and assist in giving the displaced a direct stake in their residential future. The only manner by which those currently living in tents, shacks or IDP camps will be able to rapidly access new housing in locations which best suit their needs and wishes and in forms that are appropriate for their lives and livelihoods, is through the process of participation. A programme of Community Housing Teams could be one means by which these community-driven initiatives could be stimulated. Backing the formation of community-based organisations will also facilitate the reconstruction process and constitute an effective way of linking IDPs, district-level officials and others in the building industry.³⁰

The Accuracy of Housing Destruction and Damage Estimates

Another concern relates to the considerable disparity between the various estimates of housing damage and destruction. While such variations are to be expected in the aftermath of such a disaster, the policy implications of these divergences are considerable. The Government is planning to build or facilitate the construction of some 85,000 new housing units. They have based this figure on damage estimates which range from 110,000 to almost 200,000 houses³¹. The Department for National Planning and Ministry of Finance and Planning, for instance, claims that “around 200,000 houses have been fully or partially destroyed, including 130,000 fisherman homes”. The considerable gap between the Government’s projected housing construction plans and damage assessments, may be explained by projections of self-built housing activities filling the gap. It is not clear, however, that the reconstruction policy as it now stands necessarily matches the current housing deficit. Moreover, if the estimates of housing destruction and damage upon which housing rebuilding calculations are incorrect by anything more than a few percentage points, a large number of displaced will end up both homeless and landless, and will not have access to any of the promised new housing. In addition, all housing reconstruction plans presume that all promised housing and aid will actually arrive and that all promised housing will be built. What happens if the funds that do arrive are substantially less than is required to construct this amount of housing stock? What happens if the promised housing does not materialise? These questions need to be posed quickly, and convincing answers need to be found.

While it is not clear precisely how much funding is currently available for the reconstruction of housing from the international community, the Government Treasury has agreed to allocate US\$ 330 Million for the rehabilitation and reconstruction activities to the UDA. Of this commitment, “US\$ 120 million is earmarked for the rehabilitation and reconstruction of housing”. Though a considerable sum, this falls far short of the more than US\$ 400 million required to finance housing for all displaced persons and communities. Clarification is also needed on this issue.

³⁰ According to the World Bank’s Needs Assessment: “If permanent housing is to be constructed in new areas to improve housing standard and safety, the principle of self-relocation should be followed. The affected population should be given financial and technical support to choose locations and housing based on their own preferences”. (p. 4 annex)

³¹ Department of National Planning, Ministry of Finance and Planning (January 2005) *Rebuilding the Tsunami Affected Area*, p. 4.

Housing Allocation Procedures

While the public commitments issued by the Government to ensure housing for all of the displaced are to be commended, the actual allocation procedures of new housing to the displaced require closer examination. As noted, those whose homes were within the 100/200m zone have been promised new homes outside the zone. Many officials have indicated that land nearest to the coast will be reserved for fisher folk communities, *if such lands are available*. The Government has indicated that those who are willing to construct their own houses outside 100m/200m zone, will be provided with lands, financial assistance and concessionary loans by State banks. For those without access to such lands, local officials will prepare priority lists of who will receive new housing. It will be at this level, therefore, that those who are prevented from returning to their former homes within 100/200m buffer zones will be allocated new places of residence.

At a superficial level this procedure for housing allocation may appear appropriate to the needs at hand. However, it clearly does not apply a rights-based approach to this question, nor does it provide the transparency and accountability that would normally be expected from such procedures. The ambiguous nature of the procedure, the highly politicised nature of it and the absence of any legal process enabling persons and communities in housing need to claim such goods in an official, formal and objective manner, need to be addressed. Moreover, the power vested in local officials in an environment of extreme housing scarcity creates situations ripe for unfair, arbitrary treatment of those in need of new housing; and enticing opportunities for fraudulent enrichment.