Promoting Legal Empowerment in Informal Settlements: Recommendations & Lessons Learned

IDRC Africa-Latin America Partners Workshop
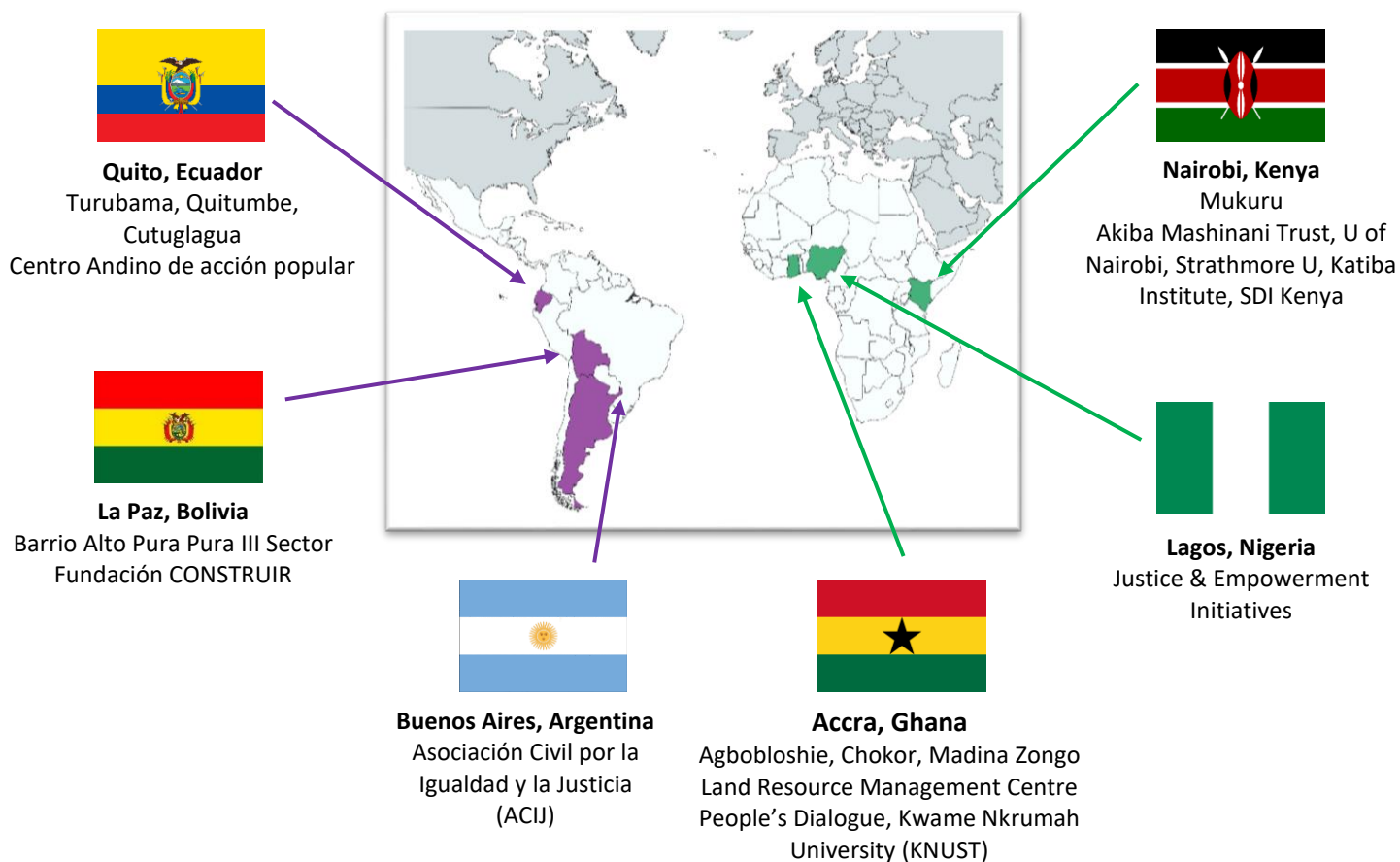*Quito, Ecuador, March 26-7, 2018*

The following recommendations and lessons learned were identified during two days of discussions between partners from Latin America and Africa of the International Development Research Centre (IDRC), Canada. Participants represented civil society organizations and universities from Argentina, Bolivia, Ecuador, Ghana, Kenya and Nigeria. In each country, they are at different stages of conducting participatory action research in informal settlements aimed at improving legal empowerment, respect for basic rights and living conditions of residents.

The objectives of the workshop were to:

(1) exchange lessons learned and experiences to inform one another's ongoing research and advocacy, especially in terms of what has worked, what did not, and how to scale successes
(2) identify gaps, recommendations and possible areas of collaboration, looking to the future
(3) set the foundation for a possible sub-field on legal empowerment in informal settlements, beginning by informing an upcoming international report on related themes

Topics of discussions were organized around the sections below, with a set of remaining challenges and knowledge gaps identified over the course of discussions (final section).

Setting the Stage: Where are we working?

Quito, Ecuador
Turubama, Quitumbe, Cutuglagua
Centro Andino de acción popular

La Paz, Bolivia
Barrio Alto Pura Pura III Sector
Fundación CONSTRUIR

Buenos Aires, Argentina
Asociación Civil por la Igualdad y la Justicia (ACIJ)

Accra, Ghana
Agbobloshie, Chokor, Madina Zongo
Land Resource Management Centre
People's Dialogue, Kwame Nkrumah University (KNUST)

Nairobi, Kenya
Mukuru
Akiba Mashinani Trust, U of Nairobi, Strathmore U, Katiba Institute, SDI Kenya

Lagos, Nigeria
Justice & Empowerment Initiatives

Improving Participation & Voice of Settlement Residents: Challenges & Strategies

The discussion around this topic focused on the sharing of lessons on what strategies have worked (and challenges faced) in supporting improved participation and voice of informal settlement residents. How to sustain those efforts was also a key question discussed, as well as ensuring proper representation within communities, across different groups. The recommendations and lessons learned relate to: (i) how informal settlement communities can ensure participation and voice of their residents, (ii) how civil society organizations (CSOs) – in many cases external actors to the informal settlements – can play an effective role in supporting residents to those ends, and (iii) roles and responsibilities of government actors.

- *Participation as a Right.* While participation has diverse meanings, it should not be seen in abstract terms but linked to struggles of informal settlement residents. Crucially, participation is a fundamental right, in itself and imbedded in many rights of residents (e.g. related to housing, sanitation, expression, non-discrimination and political citizenship). As a right, participation entails state responsibilities to informal settlement residents. It should be seen as an opportunity to improve, and not contrary to state-driven efforts (e.g. by reducing conflict with residents and improving design and ownership of public-led strategies).

- *Rights-based Awareness-Raising.* Working with informal residents to understand participation as a right, through various awareness-raising and training efforts, has proved an effective strategy for channeling demands of residents and mobilizing them in constructive ways. The idea that participation is a fundamental right, has provided a vocabulary – a rallying cry – to help residents recognize that their poor living conditions and exclusion are not inevitabilities. Rather, the language of rights has helped residents to see that they have an equal footing as citizens to assert their voice and demands for dignity and equal access to the city.

- *Understanding Context.* At a minimum, to respond effectively to community concerns, external actors (e.g. civil society advocates and experts) need to follow the axiom of understanding context. In particular, attention needs to be paid to the social and political dynamics that shape participation and representation in informal settlement communities. A failure to understand such power dynamics could risk weakening or further entrenching poor participation, as well as undermining the legitimacy of advocacy in acting on behalf of residents. How to engage residents to document their own community participation, legal empowerment and other processes was identified as a key area of opportunity for generating new learning.

- *Clear Communication of Goals.* More generally, external actors need to communicate clearly the goals and results which they are striving for when engaging with community members and structures, and have a clear sense of their own capacity to meet the needs and emergencies that communities face. Otherwise, those actors risk creating false expectations among residents as to what support the external actors can provide. Ensuring proper feedback mechanisms from community members is essential to avoid that risk.

- *Build on Existing Community Structures.* Efforts to promote improved participation and voice, to ensure their sustainability, should build on existing community structures and organizations (e.g. community mobilization groups, savings cooperatives or traditional leaders), whether formal or informal. This approach will also help reinforce the legitimacy of external actors' own engagement. Linking existing informal mechanisms to formal ones has generated promising results.

- *Community Selection of Representatives, with Caveats.* In that light, the selection of representatives in various participatory organizations and mechanisms is best left to community members. At the same time, existing community structures might not be fully representative or democratic. They could be prone to

cooptation or capture by powerful, entrenched interests and internal accountability of leaders could be weak. Community structures might also be male dominated. By contrast, in instances where women have played a stronger leadership role in those structures, they were found to be more inclusive and responsive to the common good of residents. In some cases, poor accountability of settlement leaders can arise due to capture by or clientelist relations with local authorities.

- *Healthy Dialogue with Community Leaders to Ensure All Voices Represented.* Groups acting to support residents might as a result decide to engage in healthy dialogue – frank discussions – with community leaders, about the need for accountable and inclusive representation and voice of different groups of residents in community structures. Such discussions would link to questions of building legitimacy and trust of external actors, in the sense of ensuring balanced expectations about the nature of participation and voice they are seeking to promote and, in turn, what support they can offer to settlement residents and leaders.

- *Working with Local Government for Positive Change.* A key element to ensuring positive change for residents is to work with local government (municipal, city, county) which, in many contexts, have growing authority over living conditions in cities. While there is no clear roadmap, an important strategy is often to identify key champions at different policy and technical levels who can help drive positive change within public bodies. In this context, civil society organizations have provided an important bridge and feedback mechanism between communities and local government officials. Alternatively, in cases where no clear openings for engagement exist, more confrontational strategies have been required, including legal action (see below under Legal Empowerment Strategies). Finding the right balance in a given context between constructive collaboration and more adversarial strategies remains an ongoing, crucial question.

- *Larger Coalitions of Groups to Advocate for Change.* Achieving a larger and effective voice by and on behalf of informal settlement residents often requires forming coalitions of groups that stretch beyond any one settlement or organization. A 'strength in numbers' approach is also amplified by harnessing the respective strengths of different organizations, for instance, in terms of community representation and mobilization, technical expertise or political engagement. Collaboration among a larger set of actors can also diminish the demands (e.g. cost, time) that various consultative and participatory processes can place on communities. External actors need themselves to be regularly attuned to such burdens when engaging with communities.

Legal Tools & Strategies: legal empowerment, litigation, rights awareness & mobilization

Conditions in informal settlements represent a drastic violation of human rights and failure in ensuring justice and dignity for millions of citizens across cities and countries. Against that backdrop, questions discussed around this topic relate to how the law has acted as an obstacle in the informal settlements where groups are operating, and some of the main legal challenges that arise. Participants also shared experiences – their successes and limits – of various strategies and tools to assist communities members to 'know, use and shape' the law, including formal and informal rights and legal processes. Discussions also touched on larger questions of how effectively to combine legal strategies with other strategies for engagement, participation and advocacy, and on how international human rights norms and mechanisms can support legal advocacy efforts.

- *Mapping & Sharing Legal Empowerment Steps & Methodologies.* The knowledge-base is only just beginning to emerge as to how legal empowerment can support efforts to overcome severe social, economic and political exclusion in urban centres and informal settlements. While legal systems and legislation differ across countries, there would be great value in *mapping steps that groups follow in the legal empowerment process* (e.g. mix, sequence and duration of interventions deployed), to capture best practices, and identify

possible strategies to replicate across cities. Ongoing exchanges of lessons between rights advocates across countries could provide a promising way to scale existing knowledge-base and successes.

- *A Range of Legal Empowerment Tools and Strategies.* The importance of mapping legal empowerment steps comes from a recognition of the diversity of possible strategies and tools that could be deployed to address challenges across contexts. A few examples of strategies and tools include supporting: community lawyering and paralegals to assist residents with legal disputes (private and public); community participation in publicly mandated consultation processes; alternative dispute resolution mechanisms including under customary law; public interest litigation; community mobilization and advocacy to change laws, policies and public practices; and training different actors on legal rights and protections. A more systematic, deepening of the evidence-base is needed to capture how different mixes of interventions have proven successful over time.

- *Understanding Context Again Key.* Several factors can have a direct bearing on the enabling environment for promoting the rights of settlement residents and, thus, are important to understand when shaping legal empowerments strategies. For instance, the history of urbanization and how it was driven by past and current legal frameworks could mean that there are larger structural obstacles to confront, such as weak or discriminatory laws and institutional practices, including criminalization of core elements of settlement life (e.g. housing, livelihoods). More generally, a deeper understanding of the institutional and administrative contexts, including the judiciary, as well as political and policy leaders, will be key to targeting legal strategies – over and above content of legal provisions 'on the books.'

- *Legal Empowerment as Part of Larger Collective Mobilization Efforts.* In that light, legal empowerment strategies should not be viewed in isolation and are best understood as one element in larger social and political advocacy by and on behalf of communities. How various legal, social and political strategies are pursued and can best reinforce one another is a larger question that should be given careful consideration, as part of efforts to understand and engage in a given context.

- *Building Rights-Awareness of Informal Settlement Residents.* Another contextual factor is understanding and supporting the awareness of settlement residents about their rights and various legal recourses available to them. In many cases, residents might actually view 'the law' and legal processes with suspicion. In this sense, a clear explanation of different legal protections, and how they relate to larger efforts to improve lives in communities is crucial, as well as sustained efforts to support residents when undertaking legal interventions and strategies. Such support, to be clear, is best provided when embedded in larger community engagement efforts and grassroots support. Training activities need also to be conscious of managing expectations of residents of what is possible, and how improving capacity could affect power dynamics between residents. Any such efforts, in other words, should ensure that they reach the very poor and that no one is left out.

- *Building Awareness and Capacity of Other Actors on Residents' Rights.* The need to build better understanding and capacity to ensure the rights of settlement residents also extends to a broader set of professionals – such as urban specialists and planners, public officials and administrators, and also lawyers and judicial officers – who might not be aware of existing or emerging legal protections recognized for residents (e.g. in relation to basic services, upgrading or against forced evictions).

- *Confronting Contexts of Closed Political and Legal Space.* In some contexts, legal empowerment strategies and efforts to engage with public officials might bump up against intractable obstacles, that is, where the laws, institutional practices and political actors actively drive violations of settlement residents' rights. In

those instances, difficult choices could arise as to whether and how to deploy strategies outside of, or in defiance of, existing laws and officials. The basic rights of residents for instance to freedom of association and expression, including political and public protest, are important guiding values that can help to provide a unifying and legitimating force in mobilizing community residents in such instances. Ensuring full voice and participation of residents in all decisions about which strategies to pursue is essential. Building larger coalitions across communities and organizations is again an important consideration here.

- *International Norms.* International norms, especially related to international human rights protections, have proven valuable in some contexts, when pursuing legal empowerment strategies. For instance, international jurisprudence related to human dignity, as an underlying human rights principle, has helped to create openings in otherwise closed legal systems. International norms have proven most valuable where they can connect national legal and rights frameworks with grassroots supports and redevelopment needs of settlements communities (though in many contexts national laws continue to hold primacy over countries' international convention obligations). In general, the content of international norms could be strengthened, along with a greater body jurisprudence to clarify the scope and content of such rights.

Strategies for Public Advocacy: engaging policy and political actors + mobilizing collective action of residents for positive change

Building on the legal empowerment reflections, discussions turned to a broader set of strategies for mobilizing community members, to interrogate what has worked to spur community action, to bring about reforms or action by government, what challenges remain and how to sustain successes over time. Questions also arise here related to participation and voice, namely, who leads mobilization efforts and who risks being left out?

- *Analysis of Stakeholders and Powers Dynamics.* As with other strategies, public advocacy should be grounded in an analysis of power dynamics within state institutions. Important elements to consider, in this connection, would relate to which stakeholders within or outside of government shape action and policy. Political capture or corruption can present key obstacles in that light. The role of the private sector in influencing policy and political directions in urban centres is also an important factor to consider as part of a larger analysis of context.

- *Fine Balance When Engaging Public Authorities.* There are several potential opportunities and obstacles when engaging with the state, as part of legal empowerment or other advocacy strategies. A first consideration, as noted, is that public officials might lack full capacity and awareness of the rights and legal obligations accorded to informal settlement residents. Legal empowerment groups can provide a vital capacity-building bridge, in this sense, between communities and public authorities. Solid evidence of settlement conditions and applicable legal provisions can provide powerful tools for spurring action in those instances. Yet, a more confrontational approach, such as deploying court-based strategies to prompt government to uphold its obligations to informal settlement residents, when other efforts to engage fail to gain traction. Here again, how and when to adopt a collaborative or adversarial stance can be a delicate though critical balance to strike.

- *Public Authorities as Diverse and Shifting.* Relatedly, governments should not be seen as monolithic or one-dimensional, but as diverse, in terms of the range of individuals and perspectives in any given body, the variety of public institutions, and the levels of government that exercise authority in a given urban space. The various actors and policy orientations of different public authorities can also change over time, presenting new opportunities and obstacles for engagement. As political dynamics and actors shift, so too

can the balance in the types of strategies pursued, between more collaborative or adversarial. The key then is to monitor and seize windows for positive engagement as they open. In that vein, ongoing engagement with policymakers can help to build trust over time.

- *Tailoring Message to the Audience.* Gaining traction with public authorities often requires adapting basic messages to reflect their perspectives and priorities. In some cases, bringing out the human dimension of urban exclusion and poverty has been effective in swaying public action. In others, by contrast, emphasizing budgetary and financial implications of acting or failing to act has proved key. More generally, demonstrating an understanding of the possibilities and limits of a public body or official to act can play an important role in building trust.

- *Limits of Purely Community-Driven Advocacy.* Despite its significance and potential role in driving change, community-driven advocacy and activism should not be seen as a sole recourse for ensuring state action, notably in upholding its obligations to settlement residents. Community-based organizations such as neighbourhood associations and self-help groups are often under-resourced and stretched, even when drawing on larger coalitions and platforms across communities. In this connection, a human-rights based approach to advocacy and public engagement can also help to shift attention to the states' responsibility to uphold its obligations.

- *Women as Change Leaders & Mobilisers.* In some communities, women and women's groups have been driving forces in mobilizing community members on a large-scale (e.g. building on small savings-schemes and social support organizations). Whereas in other contexts, this role has been largely restricted to men, building on traditional, cultural gender divisions. Greater efforts are needed to understand how and when women can play a stronger leadership role, and sustain it over time.

- *International Policy Commitments.* Various international policy commitments, like the Sustainable Development Goals and the New Urban Agenda, have shown some promise as levers to generate more constructive dialogue on questions of urban exclusion. Such commitments can help diffuse existing political or policy divisions, by providing a common ground to focus discussion on how best to contextualize the commitments.

The Economic Dimension: livelihoods, preferences and the economics of provision of basic services in informal settlements

A final topic of reflection focused on the economic opportunities and pitfalls of settlement upgrading and redevelopment. Important questions arise about how to meet the costs of delivering basic access to services in informal settlements, while integrating the vibrant economic systems found in these settlements. These factors are essential for the economic well-being of households and ensuring that they gain access to the wider formalized economy. In other words, once the struggle for improved conditions and political action is achieved, how to ensure that gains are sustained, and that community members are not pulled back into informality?

- *Informal Settlements as Sites of Economic Opportunity and Vibrancy.* Contrary to possible popular conceptions of informal settlements, they are often host to dynamic levels of economic activity, especially for small-sized businesses and traders. At the same time, larger cartels that can capture sectors like basic service provision and exploit residents' poverty and poor economic power (e.g. by charging extortionate rates for access to basic services).

- *Unlocking the Poverty Penalty.* Often, capture of parts of settlement economies can result in a 'poverty penalty' whereby residents are forced to pay far higher prices to access inferior services than residents of formalized neighbourhoods. Residents' spending power is greatly diminished in turn. Providing regularised services at standard rates, in this sense, can be a key strategy to alleviate the financial strains residents face.

- *Economic Empowerment by Integrating Informal Settlements into the City Economy.* Strategies to promote economic empowerment and livelihoods in informal settlements should identify ways to integrate positive economic activities into the formal sector. In other words, such strategies should seek to build on, and not displace informal sector activities. Policies and regulations in place in many cases stand as crucial obstacles for small, informal enterprises and entrepreneurs to enter the formal market and economy of the city.

- *Measuring Economic Realities and Preferences.* Research methodologies to measure the economic situation and preferences of settlement residents are key in developing sustainable and affordable redevelopment strategies. Greater efforts are needed to gauge, for instance, values of lands, and to look beyond the traditional measures such as availability of infrastructure. Alternative measures could include connectivity such as internet and cell phone coverage, income levels of residents and spending preferences, access to and willingness to pay for services, and preferences for types of housing, among other things. There is also a need to develop suitable methodologies for estimating the cost of urban exclusion. For instance, where the informal resident lacks access to safe affordable drinking water, there could be undue economic pressure on health systems as well as employees productivity.

- *Differentiated Economic and Gendered Needs.* When devising economic strategies, a differentiated understanding of groups and their needs across a settlement is also vital. For instance, in some cases, residents might be more economically mobile, residing in settlements long enough to find opportunity to move to higher income neighbourhoods. Whereas other residents might find themselves restricted to the same settlement out of necessity, with few or no other options as to where to reside. Understanding the gender dimensions and vulnerabilities of the latter populations is key, for instance, in respect to single parent, women-led households, or persons with disabilities.

- *Potential & Risks of Innovative Financing Solutions.* Several innovative solutions offer promise for helping to finance the improvement of living conditions and access to basic services in informal settlements, while respecting residents' preferences. They include capturing the value of lands that settlements are built on, community-led infrastructure finance facilities (with state backed financing) and different mixes of housing stocks to cross-subsidise between mid- and lower-incomes. A critical concern to factor into financing strategies, especially in respect to the latter, is to prevent against indirectly displacing residents – by 'pricing them out of the market' – as settlement conditions improve. Greater evidence is needed on how different strategies can prove effective in guarding against such risks. How and when a State should intervene in a market to avoid expulsion, or to regulate banks and access to credit are key questions in that connection, as is the possible role of international financial institutions (IFIs) in supporting urban development efforts.

- *Right to the City as an Economic Question.* When communities should relocate or stay in a given location is a fundamental question. A related debate is whether housing should be viewed as an open market commodity or whether it should be approached from a social rights perspective (reinforcing calls for greater state intervention to ensure access). A frequent strategy by government to support informal settlement residents is to make available unexploited, lower-cost lands on the periphery of the city. Over time such

policy approaches can lead to the city centre being increasingly inaccessible, physically and economically, to lower income residents, and to an increasingly homogenous social and economic distribution of populations across the city landscape. The resulting picture of concentrated poorer populations, on the outside looking in, poses important questions of who in concrete terms can enjoy a dignified urban life and right to the city.

Outstanding Questions, Challenges and Opportunities.

The issues described above are far from exhaustive and several outstanding questions were identified over the course of the two days of discussion. The research efforts that have feed into these reflections will be examining some of the outstanding questions going forward, while others represent gaps and opportunities for future experimentation and investigation.

- *Women's and Youth Participation.* The potential roles and impacts of both women's and youth participation could be understood more deeply and did not emerge from discussions as clearly as hoped. 'What would a gender transformative city entail?' is a key overarching question that encapsulates many outstanding gaps on this front.

- *The Perpetual Challenge of Land and Property Rights.* Questions of land and property rights filtered throughout the discussions. Fundamental considerations here relate to whether lands underlying informal settlements are publicly or privately owned, and government powers to plan, regulate and acquire such lands for purposes of redeveloping settlement sites. Where lands are privately held, important questions arise as to how to value lands and how to sequence different planning and land acquisition strategies, which remain core live concerns of many advocates and researchers. Any strategy to formalize property rights also needs to guard against the unintended risk of gentrification or pricing residents out of the market.

- *Secondary Cities.* Much attention has been paid to the primary or largest urban centres in countries. How similar questions play out in secondary cities, for instance, vis-à-vis existing informal settlements or in an attempt to stem their growth proactively through inclusive urban policies has received much less attention.

- *Defining Scale & Impact.* How best to define and measure impacts remains an ongoing concern. Capturing the costs of injustice or of failure by government to act stands as a promising area to interrogate more deeply. Increasingly, discussions of impact are intertwined with priorities to scale impact. Yet 'going to scale' can be framed in different ways in informal settlement contexts: for instance, 'horizontally,' to reach a larger number of households across communities, cities and countries, or 'vertically' by deepening improvements in conditions for residents, whether better access to services, livelihoods and respect for rights.

- *Use of Social Media and New Technologies.* How various technological tools and social media can support – or detract – from all of these efforts is also an area that is ripe for potential further exploration.

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