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EVICCTIONS *and the* RIGHT *to* HOUSING

EXPERIENCE *from* CANADA, CHILE,
the DOMINICAN REPUBLIC,
SOUTH AFRICA, *and* SOUTH KOREA



EDITED BY
ANTONIO AZUELA, EMILIO DUHAU, AND ENRIQUE ORTIZ

INTERNATIONAL DEVELOPMENT RESEARCH CENTRE

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CONTENTS

Foreword — <i>Habitat International Coalition</i>	v
Acknowledgments	ix
Chapter 1	
Canada: Hallmark Events, Evictions, and Housing Rights	1
— <i>Kris Olds</i>	
Chapter 2	
Chile: The Eviction of Low-income Residents from Central Santiago de Chile	47
— <i>Alfredo Rodriguez and Ana Maria Icaza</i>	
Chapter 3	
The Dominican Republic: Urban Renewal and Evictions in Santo Domingo	83
— <i>Edmundo Morel and Manuel Mejia</i>	
Chapter 4	
South Africa: The Struggle for Access to the City in the Witwatersrand Region . .	145
— <i>Lauren Royston</i>	
Chapter 5	
South Korea: Experiences of Eviction in Seoul	199
— <i>Hyung-Hook Kim</i>	
Chapter 6	
Overview: The Evolution of Housing Rights and Their Social Context	233
— <i>Antonio Azuela and Emilio Duhau</i>	
Appendix 1	
Acronyms and Abbreviations	253
Bibliography	255

Chapter 6

OVERVIEW THE EVOLUTION OF HOUSING RIGHTS AND THEIR SOCIAL CONTEXT

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Introduction

The compilation of case studies of evictions in this volume should not be perceived as an overview of the situation and eviction trends worldwide. Nevertheless, the diversity of the national sociopolitical contexts represented in the studies allows us to extract important information regarding the social logic of the evictions, as well as to formulate guidelines and recommended courses of action for those faced with this situation.

Despite the enormous diversity of circumstances, events, and reasons surrounding the phenomenon of evictions, the outcome is invariably the same: the forced abandonment of housing. As can be seen throughout the studies, evictions can be the result of quite diverse causes, affecting anywhere from a few dozen families to entire populations; they basically result from the dynamics and interests of the real-estate market or from government programs and policies with little or no direct relation to the market forces; and they may result in situations of extreme physical violence or a specific and limited exercise in legal coercion.

Nevertheless, despite the wide range of possibilities, such evictions invariably imply the denial of people's right to remain in their houses. For that reason, one of the fundamental objectives of these studies was to understand and clarify

- The social assumptions, relationships, and interests behind this denial;

- The practices and strategies developed by the affected populations;
- The processes and mechanisms by which evictions are carried out; and, especially,
- The legalization of policies and mechanisms that recognize citizens' right to housing and, in a broader sense, their right to the city.

Recent trends in eviction processes

Despite the fact that these case studies document evictions in five economically, politically, socially, and culturally diverse countries, it is nevertheless possible to discern a basic set of elements that define the context within which evictions occur:

- The general political context (government regime);
- The degree to which the rule of law prevails;
- The forms of access to housing for vulnerable populations;
- The legal status of those forms of access;
- The predominant (political or economic) motivations for evictions or threats of evictions; and
- The forms of resistance by affected populations.

The general political context

Struggles over the right to housing play a fundamental role in determining whether or not evictions occur; such struggles can also play a role in the development of mechanisms and institutionalized rights that impose conditions on evictions. Nevertheless, an obvious conclusion from the studies is that the prevailing political regime is also a determining factor in the characteristics and scope of eviction procedures. In dictatorial or authoritarian regimes, such as Pinochet's Chile or the apartheid government of South Africa before the reforms of this decade, eviction involved many thousands of families in a short time (65 000 families in 1979–85 in Santiago, Chile) or displaced entire populations (as when apartheid was established in South Africa in the 1920s and 1950s). In authoritarian regimes with at least partial rule by formal-democratic governments (the Dominican Republic

and South Korea), evictions can reach similar proportions. In these regimes, the evictions typically result from social exclusion caused by economic development and the discretionary way that decisions are made and laws are applied.

In all of the cases, changes in the modalities and scope of the evictions, as well as the recognition of the rights entailed in the various forms of ownership of housing, were usually closely related to democratization processes: the eviction programs in Santiago, Chile, were limited to the time of military dictatorship; and the displacement of the black population in South Africa, based on apartheid, ceased with the demise of that regime. Nevertheless, the studies demonstrate that, even without qualitative changes in political regime, progress can still occur in housing rights and the rights to low-income housing and access to the city. Santo Domingo clearly illustrated this point. Dictatorships, authoritarian regimes, and the like provide favourable circumstances for large-scale evictions and the denial of the most basic rights to housing, but neither political democratization nor even a widely consolidated democratic regime, such as in Canada, guarantees exemption from the problem of evictions. To this effect, the Chilean and South African studies demonstrated how economic forces tend to substitute for direct intervention by the authorities and government eviction policies; substantial economic inequality becomes persistent; and the rights of possession go unrecognized. In other words, evictions tend to become privatized. In a democratic context, such as in Canada, although the problem of evictions is far from massive, one can note the continuing existence of sectors vulnerable to eviction processes deriving directly from economic interests. This demonstrates that notable loopholes can exist in legislation designed to protect certain forms of ownership of housing.

The degree to which the rule of law prevails

Undoubtedly, the degree to which the rule of law prevails is closely associated with the nature of a political regime. The studies demonstrated that the degree to which the formal standing legislation is actually applied affects the residents' ability to defend themselves against eviction. Among other factors, the following are relevant to this context:

- The possibility of resorting to a judiciary independent of the executive power (a central determinant of the effective prevalence of the rule of law);
- The degree to which legal precedents influence legal decisions; and

- The existence and application of clearly defined formal limits to the actions of the authorities in matters of evictions, such as limits applied through legal petition.

During the 1980s in South Africa, the threat of a legal battle by civil organizations (combined with other forms of struggle) was a very useful instrument for getting eviction intentions neutralized or suspended. Conversely, in the Dominican Republic and South Korea, better conditions could be produced within the administrative framework itself, improving the manner in which the evictions were carried out, reducing their arbitrariness, and establishing programs and guidelines for monetary compensation. This occurred, however, without being translated into institutionalization of rights to housing and to collective basic goods and services. Therefore, although these cases represented significant progress, that progress should still be considered insufficient. The progress was in good measure reversible, depending on the discretion of the executive authorities.

The forms of access to housing for vulnerable populations

Generally, two kinds of housing tenure confer vulnerability to evictions: possession that is not legitimized by a legal process of transmission of property; and possession through the status of tenant or "guest."

The first kind of tenure is in many cases the result of direct appropriation of housing by a new occupant (invasion). In other cases it is the result of a population's settling in a designated location or of government authorities granting questionable title to land. In the Dominican Republic, South Africa, and South Korea, some settlements that resulted from such government decisions later became subject to eviction processes because of the governments' relocation policies. In South Korea, as well as in South Africa and to a lesser degree in Chile, direct occupation, rather than being the advantageous appropriation of others' property, was induced by extreme scarcity and the impossibility of having access to housing by any other means. The absence of public policies and programs designed to alleviate the scarcity of housing and the nonexistence of the right to housing are the true driving forces behind such invasions.

Tenants and guests are invariably more vulnerable to eviction than people with a legitimized form of property ownership or possession are. Even during the transition from dictatorial to democratic regimes (as in Chile and South Africa) or in a consolidated democracy where the threat of massive evictions has been neutralized (as in Canada), the status of the tenant is to some extent still precarious. The case study of Canada illustrated how a liberal democratic regime primarily committed to the unhindered performance of market forces can, under

certain conditions, be indifferent to the rights of the most unprotected sectors of the population.

In Vancouver, Expo '86 had effects on the rental housing market — more specifically, on the system of housing known as lodging houses. The most significant aspect of these evictions was the government's perception that long-time settlers and their sense of belonging to the community in a consolidated central zone were obstacles to legitimate interests. The only tenants rights that seemed to be operating was their implied right to assistance to obtain new housing. The Expo '86 evictions, involving the progressive replacement of rented rooms by other forms of housing and by commercial and service enterprises, expressed a virtually universal phenomenon, also illustrated by the cases in Chile, Johannesburg, and Santiago: renovation (whether gradual, planned, or wide scale) of the long-established central zone induces the disappearance of rental housing (in all forms) and, with the eviction of its residents, the disappearance of lower-income sectors.

Only in exceptional circumstances, such as when housing-reconstruction programs were implemented in Mexico City after the earthquakes of 1985, is the conservation of low-income housing a consideration in urban renovation. This tendency results precisely from the fact that, outside of a system of public housing, low-income housing invariably has a precarious status — the status of tenant housing or, as in Vancouver, the even more precarious status of guest accommodation. Undoubtedly, as demonstrated in practically all the cases included in this volume, the situation of tenants and guests is always the weakest. Their rights are the most easily omitted from or disregarded by the mechanisms and programs related to eviction processes. Their status, unlike that of occupants recognized as owners (even when ownership could be defined as irregular), tends to grant them fewer rights and possibilities for defence against eviction.

The legal status of forms of access to housing

Different forms of access to housing imply differences in the incidence, magnitude, and characteristics of the evictions. This is because occupants of various forms of housing may or may not be accorded specific legal rights. The precariousness of settlements resulting from direct appropriation or state grants depends basically on three levels of legal circumstances.

The first is the global status of citizenship, or the degree to which a legal-political regime establishes and guarantees the equality of its citizens and protects them from arbitrary actions of the state or other parties. In South Africa, until very recently, inequality and the segregation of a large part of the population were formally established, and the application of specific housing rights was

subordinate to a legal-political regime that promoted inequality. The black inhabitants of the 1950s who were forced by racial legislation to relocate could have been monetarily compensated, but they lacked any possibility of defence against the regime and its law, which denied them the right to live in the same areas as the white minority.

The second is effective legal disposition of formal norms and rights. For example, in the Dominican Republic, an effectively independent legal power does not exist, and such decision-making powers are concentrated in the government, particularly in the president. As a result, development of civil consciousness is limited. To a great degree, the characteristics and logic of the eviction process are explained by the possible forms of state intervention, which, in the absence of legal procedures, is determined by the need of the government to maintain a minimum consensus and legitimacy and by the capacity of the population, through direct action and negotiation, to block the discretionary intervention of public authorities.

The third is the specific legal framework regulating property rights and forms of access to housing and to basic public goods and services. In accordance with the norms and conditions defined at this and the two other levels, a society recognizes or fails to recognize the right to housing. The recognition of housing rights — whether possession of housing derives from a state decision or from people's occupation of the site, whether it implies the recognition of specific rights, or whether tenant or guest status provides any protection from the decisions or interests of the landlord — depends on a legal framework.

In the case studies, these three levels of legal circumstances concurred jointly in the context of evictions. At the dictatorial pole (as in Chile during Pinochet and in South Africa during apartheid), the basic premise is that state coercion functions in a global order that ignores the affected population, despite significant variation in the motives behind the evictions and the degree to which the needs of the population in question are contemplated. In authoritarian contexts (as in the Dominican Republic and South Korea), the formal existence of representative institutions and the necessity to neutralize conflicts and maintain a minimum consensus create space for the affected populations to negotiate conditions and compensations. Within such contexts, evictions tend to evolve toward the *de facto* recognition of the necessities and demands of the affected population. But this occurs without being translated into any increased operation of the rule of law or into formal rights to housing or access to collective goods and services. Lastly, in a democratic context (as in Canada) and in the context of democratization (as in Chile and South Africa), the question of evictions and, more generally, of the economically induced expulsion of the poorest sectors from certain areas is closely

related to access to property, the existence of public-housing programs, and the legal status of tenants.

The predominant motivations for evictions

Evictions can have very diverse causes, from the dynamics of the real-estate market to the application of government policies that have little or nothing to do with the market. In cases related to rental housing or lodging (as in Canada and Johannesburg), evictions or the possibility of evictions may be directly related to the alternative opportunities for profit that the owners of rented buildings perceive. But evictions are not always directly related to real-estate interests. If, in fact, large-scale evictions have opened up the way for huge real-estate transactions (as in Santiago, Santo Domingo, and Seoul), it is because governments' eviction policies have provided important opportunities for developers and construction companies.

However, in all the cases studied, the systematic application of eviction procedures for political reasons appeared to be the result of installing or restoring a desirable social and urban order as conceived by public decision-makers. This was true of South African apartheid, the evictions program applied in Santiago during Pinochet's regime, and those in Santo Domingo and Seoul. In the Chilean case, it was clear that the goal was to restore a model of urban segregation that was marred by the low-income settlements existing in Santiago. In South Korea, the idea was to beautify the city and open the way for more profitable uses for well-situated land. This is a common element throughout the history of evictions policies. Santo Domingo added an element: the arbitrary application of a monumental concept of urban improvement, preceded by populist actions and improvised through the granting of lots to low-income sectors.

The forms of resistance by affected populations

Along with changes in political regime, resistance by the populations threatened with evictions is a most important condition for the recognition and extension of the right to housing.

In reading the case studies, one is particularly impressed by the progress made by the community organizations of squatters. Except in Chile, where evictions occurred over a relatively short time (and in a political context that was exceptional in the country's history), the organizations demonstrated a growing capacity for action, although they were not always successful in achieving their goals. They not only managed to stop evictions, but also developed the capacity to formulate alternative urban-policy proposals and to get their issues into the public domain. Thus, progress was made protecting the right to housing, and

thanks to the media, people's demands were legitimized in the eyes of society as a whole.

The origins of the organizations varied exceedingly. In many cases, they arose in reaction to an eviction process. In others, the organizations already existed, as was the case with those that had formed earlier in response to rent increases.

It is necessary to mention that people affected by evictions face a large number of obstacles in trying to organize. Contrary to what might be thought, their greatest obstacle is not poverty; in countries with authoritarian regimes, it's usually state repression. In Chile, the authoritarian military government completely prevented the formation of independent organizations of squatters. In other countries, in addition to thousands of arrests and the loss of housing, many deaths occurred during confrontations with police, and people committed suicide in the face of the severity of their situation (as in Canada and South Korea). In Santo Domingo, legal obstacles prevented the recognition of the organizations by the authorities.

Another important obstacle is cultural: such organizations have to overcome unpopularity in various ways. For example, in South Korea, they had to overcome the predominant idea of past decades that the evicted people were responsible for their poverty. In Canadian cities that were hosting or putting together a bid to host a landmark event, the organizations were looked on as selfish enemies of an urban project that would benefit the city as a whole. Although, as demonstrated by the studies, the legitimacy of their demands gained ground in public opinion, these organizations arose in an initial context of hostility toward their demands.

The division of the population into owners and tenants causes another problem. These sectors are unequally affected by evictions, and in some cases this structural differentiation within the population impedes the formation of organizations to represent the interests of an entire area or urban sector.

In the case studies, organizations varied greatly, although in every case they were territorially based, being diverse metropolitan-level groups or confederations of organizations. Also, important variations occurred within countries. In Canada, for example, Vancouver's DERA, created in 1973, grew to 4 000 members, whereas in Calgary, associations were barely incipient. Perhaps the most notable case, as far as the number of organizations and the variety of their activities are concerned, was that of South Africa, where in Johannesburg alone the CAJ grouped together 11 different organizations. In South Korea, the names of the organizations suggest the role played by religious communities: the Catholic Poor People's Association and the Presbyterian Poor People's Missionary Committee.

We cannot fail to emphasize the important role of churches in the organization of poor squatters. In South Korea, the Christian groups created the organizations and acted as shields against the government's accusation that the squatters' organizations were communist groups. A group of evicted persons being allowed to quarter in the atrium of the Myong Dong Catholic Church was an important event in the legitimization of their struggle in the eyes of the public. In Santo Domingo, without legal recognition, some organizations had to resort to forming neighbourhood councils, which had seriously inadequate results, government considered them to be organs of collaboration with the municipal authorities. This case study narrated the history of COPADEBA, formed in 1979, which had the support of priests, intellectuals, and diverse civilian organizations.

It is interesting to observe the wide variety of collective actions of the squatters through their organizations: from the classic forms of political mobilization (demonstrations, sit-ins, and the use of mass media) to those whose goal was to reduce the effectiveness of the authorities' procedures (boycotts of rent and service charges, hunger strikes, letter-writing campaigns, and invasions of land for negotiation purposes). Obviously, some forms of struggle were not observed in every case. For example, DERA, in Vancouver, undertook research to document the situation of the affected population; created proposals to create public programs of low-income housing and legislation projects to protect tenants; organized rock concerts and boycotts of the bars in the buildings where the evictions took place; and lobbied all levels of government. In Santo Domingo, in addition to the classic forms of struggle, people rang church bells to alert neighbours of evictions, formed human blockades around threatened housing, took over offices and churches, and performed religious acts, including *Via Crucis* and prayer vigils. The research on that country highlighted the participation of women in the struggles of the squatters, as well as noting the cultural implications of their participation.

In most cases, no important link existed between squatters' organizations and political organizations. Except in South Africa, where social organizations concentrated on extending political rights to the black population, community organizations were generally separate from political parties, in some cases because of the distrust they inspired (Santo Domingo), in others because of the lack of interest of the political parties (Canada), and in still others because of their prohibition at the time (Chile).

The demands of the organizations evolved from the simple defence of the possession of housing to the elaboration of urban- and housing-policy proposals. Of the cases studies, South Africa seemed to be where the organizations had the most success in influencing the modification of state structures. In addition to

making the social demand for the right to housing, organizations in South Africa made proposals to reduce the effects of urban segregation and to create institutional conditions to outlaw segregation. The South African civics demanded that they be consulted about legislation and the design of multiracial municipalities. All this was within a wider demand that went beyond rights to housing to include the right to the city. Also worth mentioning is the case of COPADEBA, in Santo Domingo, which presented the People's Proposal in 1987, after conducting field research to document the situation of the settlers in the north of the city.

Here we can observe a common element in the studies: eviction was not just about the deprivation of housing — in fact, in many cases, people's housing situation improved. What was evident in every case was that people lost the benefits of an urban location, which included not only the collective goods found in the already consolidated sectors (services, infrastructure, accessibility) but also the social networks that provided so many elements of cultural identity, including various mechanisms of mutual assistance.

Similarly, organizations with international influence became of prime importance. The most notable cases were those of South Korea and Santo Domingo. The pre-Olympics evictions in South Korea were given a high profile on UK television, and this publicity was fundamental in consolidating the squatters' organization. In Santo Domingo, the campaigns formulated by community groups through international organizations (including HIC and MISEREOR) led to a resolution by the United Nations Committee on Economic, Social and Cultural Rights in 1991, urging the Dominican government not to carry out any action that was not in conformity with the Covenant on Economic, Social and Cultural Rights. This undoubtedly softened the government's attitude toward the squatters.

In short, these case studies demonstrate that organization and resistance are essential to progress in the fight for the right to housing. Changes in political regimes are also fundamental to that progress, and these changes should be viewed as providing a favourable context, but the context does not, in and of itself, produce the changes. When communities take action to defend their rights, progress is possible. But both factors must be present to mitigate the effects of evictions.

Lastly, we must note that the organization of squatters in the case studies was more than a formal process of listing demands and undertaking collective action. Throughout the process, a cultural change was produced that allowed people to modify the ways they represented themselves and their positions in society. In this sense, the consolidation of the right to housing is not only a legal phenomenon but also a cultural one: the construction of a set of representations

and shared perceptions related to demands that are considered legitimate. This cultural change occurred not only in the squatters' perceptions of themselves but also in society's perceptions of them. Overcoming the social stigma and legitimizing demands for the right to housing (that is, the presence of these organizations in public life) were perhaps their most important achievements.

The evolution of policies and legal frameworks

Based on the results of the case studies, the general tendencies among state policies and legal frameworks in evictions may be summarized as follows. Although evictions continued, they were carried out in ways less harmful to the affected populations. Governments and legislation began to recognize rights that a few decades earlier were considered mere concessions by the state. Progress was still quite limited, but some countries began to legally recognize their citizens' right to housing in cases of evictions, offering improved conditions to the most unprotected sectors of urban societies.

The actions of government have always been closely related to a corresponding legal framework. This refers not only to its influence in the enactment of laws and regulations and in the organization of the public administration, but also to its influence in bringing about the institutional changes — changes that result precisely from the concrete social conditions under which the state policies are implemented. Social mobilization is also an important factor in institutional change and directly influences governments' actions related to evictions. Thus, we may refer to a dynamic triangle formed by social resistance (discussed in the previous section), state policies, and legal frameworks.

State policies

It is important to note that when we use the phrase "state policies" in reference to evictions it is to distinguish them from "public policies." Evictions are actions by state agencies, but they rarely reflect a clearly expressed public interest. In none of the case studies did governments invoke the interests of society as a whole to legitimize evictions, and they almost always acted on their own initiative. In addition, in none of the cases was there evidence of a social consensus approving the evictions; in other words, a true public interest for their legitimization was never expressed. Two elements in the eviction process support this idea. First is the importance of using mass communication to focus on evictions: as the public becomes more informed, this increases the probability that the evictees will be more favourably treated. Second is the fact that governments usually do not carry out evictions during the period leading up to an election, precisely because of their unpopularity.

In the case studies, the evolution of governments' actions was extremely variable. To present a clearer idea of this evolution, we will review the main variations, or modalities, of governments' eviction practices according to two criteria. The first is whether evictions had taken place regularly for a long time (Santo Domingo, South Africa, and South Korea up until the reforms) or were undertaken because of specific circumstances (Canada and Chile).

Of the case studies, that of South Africa undoubtedly focused on the most systematic and prolonged violation of the right to housing, in addition to violations of other human rights. In fact, millions of black South Africans were evicted from their housing during the nine decades of apartheid rule.

In Santo Domingo, the long-standing practice of evictions, common since the beginning of the 1950s, related closely to the way in which new urban areas had been created, especially in the case of those created exclusively as a result of the evictions. In the case study, some of the evicted groups were relocated to the outskirts of the city, where they were granted possession of a lot but without clearly recognized rights. Inhabitants who had originally settled in the new urban areas in an "irregular" manner were relocated to an equivalent situation. When, in time, the land they were granted became valuable for another type of urban project, the squatters again faced the threat of eviction, and they found themselves in the same legally defenceless position as at the beginning. In these cases (and Santo Domingo is not exceptional in this regard),¹ we might refer to a structural irregularity in the ownership of land. This is a fundamental element in the political subordination of low-income sectors. The fact that evictions are permanent is derived from the way governments intervene in the formation of new urban areas.

Similarly, in South Korea, evictions had also been regular occurrences since the 1950s. In this case study, it was perhaps even more obvious that the origin of the evictions was the housing policies of previous governments. For example, families threatened with eviction from Sang Kye Dong had invaded the land because they had been evicted from another location. This had happened because the government had built a housing project to which they had no access, as its price was too high; 91% of the population in this neighbourhood had been forced to sell their "tickets," the documents certifying their right to buy one of the apartments, because they lacked the necessary economic resources.

The case study of Chile portrays a completely different situation. The evictions studied in Chile were part of a special program of the military government.

¹ In Mexico City, it is common to find social organizations dedicated to regularizing the ownership of land when the neighbourhoods they are in originated precisely from evictions for a public project. In this country, urbanists often say that the government is the most important source of urban irregularity.

The purpose was to reverse the situation created by the 1969–73 invasions of land, which were out of keeping with the pattern of social segregation of the city — for this regime, the presence of low-income sectors in the downtown area was unacceptable. Before this program (more than 150 000 people were mobilized in less than 2 years), Chile had no history of massive evictions, nor has a similar event occurred since then. Nevertheless, this does not mean that in Chile there has been ample tolerance for the occupation of land outside of the established order; in fact, the contrary is true. In other words, although evictions only took place during a specific period, that was because, except in the one instance, the irregular occupation of the land had always been prohibited. The relation between eviction policies and institutions here was quite clear: the point of the actions was to reestablish the traditional order.

This brings us to the second criterion of differentiation among state policies regarding evictions, which is the diversity of the political regimes. The case studies clearly demonstrated that the type of political regime was the fundamental factor in the range and the modalities of the evictions. The political subordination of the low-income sectors in Santo Domingo, the exclusion of the black population of South Africa, and the expulsion of the poor from downtown Santiago were nothing more than manifestations of the different characteristics of each of the regimes prevailing in the urban arena.

Therefore, in the Chilean case, it was “difficult to imagine” (Rodriguez and Icaza, this volume, p. 51) a similar program of evictions outside of the context of the authoritarian regime in which it took place. In Santo Domingo, however, the subordination of the squatters, resulting from the lack of any legal guarantees concerning their land ownership, was part of a political regime in which permission to live in a given place was considered as being due to government generosity.

The relation between evictions and type of political regime is so evident that we might say the most notable change in the incidence of evictions is a direct consequence of changes in a political regime. In South Africa, the evictions were one of the clearest manifestations of the apartheid regime; the most significant change occurred precisely when the government announced, in 1986, the end of the urban-influx controls that had regulated the movement and settling of the black population, especially in white urban areas. The end of these controls was one of the first stages in the lifting of apartheid.

Having made these distinctions, we can note the following elements in the evolution of state policies related to evictions. The case study of South Africa reflected a more important change in a situation that had prevailed for decades. According to the study, in the last few years, courts ordered no evictions unless

alternative accommodation or land was available. In many cases of settlements created through invasion, authorities were ordered not to carry out evictions.

In South Korea, the most notable change observed in government action was the recognition of the legitimacy of the demands of the evicted populations. The case study clearly showed how, a few decades earlier, resistance to evictions was strongly condemned by the government. Social organization, as well as international pressure, contributed to a change in the government's attitude, which had tended to be that the poor were to blame for their own situation. Therefore, in addition to certain progress in the legislative area (which we discuss later), in 1986 the government began to offer options to tenants, who were in the weakest position to defend themselves from eviction. The Minister of the Economic Board offered a payment equivalent to 2 months' average housing costs for an urban worker. In 1987, the offer was increased to include the opportunity to acquire an apartment.

Santo Domingo, however, was a case in which progress occurred despite the political regime's having undergone no fundamental changes. On one hand, condemnation of the government halted some evictions. On the other, the government had to enter into agreements with social organizations regarding the conditions under which evictions were carried out. Thus, according to the study, the regime's approach changed from that of "the massive, forceable evictions of 1987 and 1988 to greater and more successful use of negotiations" (Morel and Mejia, this volume, p. 152). The progressive recognition by the government of the credibility of neighbourhood organizations was another factor.

In Chile and Canada, governmental actions regarding evictions underwent no general evolution to speak of, as these occurred under specific circumstances and not over extended periods.

Generally, social condemnation of evictions intensified in cases in which governments offered no alternative housing for affected populations. However, none of the governments openly defended the legitimacy of evictions without compensation. Although this type of eviction did take place, governments recognized, whether in laws or in programs, the legitimacy of the demand for fair compensation when they engaged in evictions. This meant that the recognition of the right to housing was growing not only in the international community but also at the national level. This did not mean that clearly established guarantees against evictions actually existed. Rather, a restriction on evictions was sometimes due more to humanitarian reasons than to recognition of a legally established right. Without negating the ethical validity of such a restriction, we can say that this was usually used to manipulate the affected parties, as their defence lacked legal

character. The restriction on evictions was then presented as an act of generosity by those in power.

Another general conclusion that can be drawn from the case studies is that aside from the reduction observed in the number of evictions in each country, the most evident progress was in the evolution of legal frameworks for evictions. In fact, the evolution of national legislation and the evolution of international law on the subject appeared to coincide. Gradually, countries have begun to legally recognize and more clearly define the rights of persons threatened with eviction.

The evolution of legal frameworks for evictions

A legal framework for evictions is the combination of laws, regulations, and formally standing legal rules applicable to the various circumstances of evictions. It might seem strange to refer to a legal framework for evictions, but the fact is that in all the cases studied, laws or administrative regulations regarding evictions were mentioned, almost always explicitly. This does not mean that a country's jurists recognized it as an area of regulation; as we shall see, recognition assumed diverse legal forms and, in general, was a provisional solution to an anomalous situation.

Evictions and the law

South Africa undoubtedly had the most overt legal framework for state evictions. The famous GAA — apartheid legislation *par excellence* — was used for decades by the government to prevent the black population from having access to areas reserved for whites. This legislation was derogated in 1991 by the ARBLMA.²

In South Korea, evictions were carried out under the *Interim Housing Improvement Act*, which had been in effect since 1973 but was replaced by the *Urban Redevelopment Act* in 1982. This institutionalized some of the progress made in the struggle against evictions.

Even in Chile, where the evictions were of an exceptional nature and were carried out within the framework of an authoritarian regime, various pieces of legislation pertaining to them were issued. Act 18.138, of June 1982, temporarily granted municipalities the power to plan and develop programs to build low-cost housing and sanitary infrastructure. This law would be the legal justification for the evictions carried out in the following years.

² Other laws restricting poor people's access to land, such as the *Prevention of Illegal Squatting Act*, of 1951, and the *Trespass Act*, of 1959, were still standing at the time of writing, however.

In Santo Domingo, the so-called *Solares Act* (Law No. 39), of 1966, granted the executive power the right to donate the lots (state property) on which low-income people had built their houses. It also recognized the ownership of the housing or improvements (*mejoras*) as belonging to the occupiers, whether or not the land had been transferred to them. As this case study showed, however, this legislation was not respected in practice. In eviction processes, occupants of public land were treated like trespassers.

In the case of the evictions in Canada, the laws that applied were the provincial landlord-tenant Acts. Although the content of these Acts varies from province to province, the common denominator is their lack of guarantees for tenants (who in many cases have the legal status of guests) in the event of eviction.

Only in South Korea was progress in establishing the right to housing expressed by changes in legislation. This case study clearly showed that between the mid-1970s and the mid-1980s, legislation and administrative practices gradually established better conditions for people threatened with eviction. In addition to the aforementioned legislation, a change resulting from the SMG's guidelines is noteworthy — the recognition of land rights for occupants who had previously been considered "illegals."

In South Korea, evictions took place as part of a housing policy that excluded some of its "beneficiaries" because of their inability to pay. Also, during that decade, the conditions became increasingly favourable for social organizations to negotiate with the government. Legislation established that arrangements for new housing had to be in place before people could be evicted. Nevertheless, South Korea's new legislation failed to guarantee adequate protection for the sector most affected by evictions: the tenants. In 1986, compensation programs began, but the country still had no legal recognition of tenants' rights at the time of the study.

South Africa was another country in which the right to housing was expressed in new legislation, although here it was as part of the more extensive process of abolishing apartheid. In 1991, in addition to passing the ARBLMA, the government passed the LFTEA. This Act laid the basis for providing land to low-income families, although without establishing ownership rights as such. Nevertheless, the distinct characteristic of the South African case was that the most important progress in legal protection against evictions took place in the courts, rather than in legislation. Although some laws specifically enacted against squatters were still in force, the decisions of the Supreme Court helped soften the worst effects of that legislation: the eviction of squatters, in most cases, could not occur unless alternative accommodations or land was available. It is interesting to

mote that the court was giving squatters protection against the actions of a government famous for its rampant violations of human rights. Similar protection by the courts in some of the other countries studied seemed to be nullified or extremely reduced because of the courts' lack of independence from the executive power.

The situation in Santo Domingo was the exact opposite. Although since the 1970s it had had legislation granting certain rights to squatters, no mechanism was in place for people to claim these rights. This was as much true of the squatters' rights to the land they occupied, as of the status of their organizations, whose recognition was subject to the most ample administrative discretion. Progress in establishing housing rights occurred because of internal pressures (from social organizations) and external pressures (international condemnation of the evictions), and this translated into significant legal changes. Actually, what Santo Domingo seemed to need, in addition to legislative changes, was a profound transformation of the state structure to guarantee access to justice and the independence of judicial power. The conditions of the evictions were negotiated in the juridical context of public ownership of the land. This allowed the government to make ad hoc decisions according to prevailing political conditions.

Respect for the possession of housing and land regularization

It is worthwhile to consider to what degree the legal frameworks in the case studies served to stop evictions. It might be said that the greatest successes were in South Africa and Santo Domingo. In South Africa, progress was made possible by the intervention of the judicial power. In Santo Domingo, it was international law, that is, resolutions of the United Nations Human Rights Commission, that made it possible to end the evictions of 1990. In South Korea, legal progress was limited to changes in the conditions under which evictions could be carried out. In Canada and in Chile, people had no opportunity to block the evictions through legal processes.

Nevertheless, the mere act of impeding or stopping an eviction provides no guarantee for the future. This guarantee can only be achieved if governments grant or recognize people's right to the land in a context in which this right is respected. This brings us to the subject of the regularization of land tenure. Although this was not the subject of this research, we should mention it in light of its increasing relevance to evictions. In a recent international seminar held in Mexico City and sponsored by the World Bank, Habitat, and the Government of France, the participants defined *regularization*, as it applies to squatters, as a way of "defining the contents of the right to housing." In other words, the right to

housing of "irregular" occupants of land should serve as more than merely an impediment to evictions — it should confer the same protection as property rights.

The right to housing and the right to the city

In urban contexts, providing housing per se is not equivalent to providing equal access to the collective elements of urban life. As can be observed in the studies, state eviction policies included provisions to provide housing. Nevertheless, despite the fact that housing was provided (and in some cases, better housing than that originally occupied), it was usually located on the outskirts of the city. Because of this, the populations supposedly benefiting from relocation actually experienced important losses in terms of access to basic urban services and proximity to work. The Chilean case most clearly illustrated this: the surveys showed that the great majority of those given new housing in the outskirts were clearly dissatisfied with their new location.

In addition to the loss of access to urban services, it is important to mention the dissolution of the social ties that through the years give residents a sense of identity and belonging and are necessary conditions for the true growth of any community. Thus, the right to housing should be considered within a wider concept: the right to the city. This subject was not part of our investigation, but it is relevant because in all the case studies, there were problems linked to urban segregation — the exclusion of the low-income sectors of the population. Brazil is perhaps the only country that has included the idea of a right to the city in its constitution. In Brazil, social struggles have greatly strengthened this idea.

Summary

In the case studies, the most widespread progress in the defence against evictions was the granting of compensation. As much in practice as (in some cases) in legislation, the tendency was to recognize that an eviction was illegitimate if an affected population was not properly compensated. The conditions of this compensation varied from one country to another.

Nevertheless, the possibility of preventing evictions by legal means was in almost every case extremely limited and rarely institutionalized. The exceptions to this general rule were Santo Domingo, where change occurred only because of the condemnation of the international community, and South Africa, where compensation came through court resolutions. These examples will be extremely relevant models for future struggles for the right to housing.

On the other hand, in not one single case study was it noted that the evictions were the explicit result of some duly motivated public interest (as might be the case of squatters in a high-risk or ecologically sensitive area). To carry out

evictions, authorities usually cited irregular land occupancy. Therefore, the evictions were not justified in terms of the legitimate rights of others, but in terms of the lack of rights of the evictees.

Finally, despite the enormous diversity of legal contexts in which evictions were carried out, the studies point to a general condition under which a legal defence against evictions becomes feasible: the prevalence of the rule of law. In regimes in which the law is respected only when the authorities so decide, legislation and other legal devices offer little protection to low-income sectors. The people have to resort to political mobilization to defend their legitimate interests every time the threat of eviction appears. Therefore, the effective institutionalization of housing rights will depend on strengthening the rule of law. Where legal institutions are weak (as a result of a lack of access to justice, weakness of the judiciary, or other factors), the word *right* becomes meaningless.