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OUT OF THE GARDEN OF EDEN:
MOVING BEYOND THE RIGHTS-BASED AGENDA IN THE URBAN SECTOR

by Benjamin Bradlow*

INTRODUCTION

The cities of the global South are the harbingers of a new age. For the first time in history, more than half of humanity lives in cities. One billion people live in slums. The vast majority of this billion is living in “informal” arrangements. This means living without legally recognized land tenure, housing, social relationships, and economic livelihoods.

Evictions and demolitions spring from this informality. Recourse to legal protection is difficult for slum dwellers, since formal actors such as the State can, and often do, exploit this divide. As land in urban settings becomes scarcer, the temptation for both public and private landowners to evict ordinary poor people increases. Watchdogs and legal assistance organizations have sprung up in multitudes to support slum dwellers to fight evictions. They fight for the rights of slum dwellers to have adequate shelter, basic services, and other socio-economic benefits. In countries such as South Africa, where the Constitution contains extensive socio-economic rights, a series of court cases in the past decade has developed a method of defending the rights of slum dwellers by focusing on the role of the State. The emerging jurisprudence has been geared primarily towards compelling the State to deliver entitlements.

But there are real limitations to the uses of socio-economic rights as a language and framework for development. Does enshrining the right to housing, water, health, electricity, and other necessities, assume that the governments bound by these obligations will suddenly be able to fulfill them? Few would make such a self-evidently naïve case. Still, especially in the urban sector, the rights-based framework predominates.

This paper will make three related arguments. First, legal and advocacy methods that hold governments accountable with respect to their socio-economic rights obligations have continuing relevance. But such an approach has limited value in structuring mechanisms by which to actually deliver entitlements. Secondly, organizations such as Shack / Slum Dwellers International (“SDI”) are developing methodologies that move beyond a rights-based agenda that reacts to the denial of entitlements, to implement proactive, sustainable alternative solutions to evictions, and to thereby build the foundations for participatory, inclusive cities. In fact, the basic legal and institutional framework produced by the rights-based approach has been a prerequisite for opening the space for the alternatives that groups like SDI work on. Finally, there is common ground among these approaches that can serve as a basis for increased coherence of purpose and effort among civil society actors. In practice, this means supporting people-centered processes to address the large problems of urban human settlements worldwide in increasingly more sustainable and scalable ways.

THE LIMITATIONS OF A RIGHTS-BASED MODEL

The primary limitation of a rights-based agenda is that its methodology enforces professional control, with special emphasis on that accruing to lawyers and judges. If the struggles against forced eviction, and for basic services and shelter—the primary sites of socio-economic contestation in the urban setting—are to take place in the courts, then lawyers inevitably become the interlocutors of the poor. This is true regardless of whether the rights-based agenda is articulated by NGOs, community-based social movements, or lawyers themselves.

Often lawyers’ involvement is necessary. The work that the Center for Housing Rights and Evictions (“COHRE”), various UN agencies, other watchdogs, and legal aid organizations do is indispensable for keeping governments accountable to their citizens. It is a humanitarian necessity to defend the poor against State and private sector attempts to deny rights to housing and basic services in urban areas. Many of these groups perform key practical functions such as strategic litigation, advocacy, and documentation of the ways in which governments throughout the world exclude the urban poor and perpetrate acts of physical, social, and economic violence. Housing and land evictions are all too common in an age where urban human settlements are clearly the way of the future. Because of the pioneering work that these groups have done there is space to explore alternatives to evictions and demolitions.

SHACK/SLUM DWELLERS INTERNATIONAL: AN ALTERNATIVE APPROACH

SDI is an alliance of community-based organizations of the urban poor in thirty-three countries in Africa, Asia, and Latin America. These groups use methodologies that spring from the most fundamental aspects of informal life. Accordingly, all SDI-affiliated federations share a few bedrock practices. The first is women-led daily savings schemes organized at the street level, which build financial and social capacity within communities. Such a savings method allows these communities to engage with formal financial actors such as the State and banks to leverage further resources for development. Whereas

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the savings component of traditional microfinance is geared generally towards livelihood activities, the social and financial implications of SDI daily savings are much more political.11 Another activity, known as “enumeration,” is the practice of community-led information gathering, which builds the capacity within poor communities to engage with formal actors, often the State, around planning and policy implementation in slum areas. This activity is, similarly, about bringing communities together around information in their own community to achieve political leverage.12

Social movements cover a wide range of forms and purposes. More traditional social movements, including those involved in liberation struggles, are fundamentally opposed to the State. They contest the State in the courts and in the streets. A liberation or revolution-oriented social movement, aims to overthrow the State. Other social movements are focused on resisting dispossession, and therefore mainly pursue challenges in the courts. These cases tend to demand that the State be the sole provider of solutions to socio-economic problems. Under such a framework, people’s movements may be effective tools for advocacy, but the poor remain passive constituencies waiting for services to be delivered from above.

SDI-affiliated groups move beyond such passivity. They seek out partnership with the State; however, this partnership is not to create pliant constituencies for government programs. Instead, these poor people’s movements serve to open up the institutions and resources of the State to participation and control by people themselves. It is a quintessentially bottom-up, reformist agenda. These people’s movements seek to “co-produce” delivery of services and implementation of socio-economic guarantees with the State.

Such a battle is not just in the streets, but also in the home, which is of course where it begins. Firstly, SDI federations organize with women at the center. They do this because they find that women are equipped to manage money, livelihoods, and family—in short, the home. As Rose Molokoane, a leader of South Africa’s Federation of the Urban Poor and an SDI coordinator, often says, “WOMEN stands for Well-Organized Men.”13 Secondly, in the communities in which SDI federations operate, the home’s informality itself is the fundamental challenge to the status quo. A poor person lives on a piece of land in a city and needs to find a solution for shelter. The upgrading of informal settlements and the livelihoods of slum dwellers begins with people taking action to erect an illegal shack. As SDI federations increasingly demonstrate, the capacities and methodologies for upgrading lie in the hands of those who have already begun creating their own solutions.

**ALTERNATIVE METHODS IN ACTION:**
**EXAMPLES FROM CAPE TOWN AND NAIROBI**

Against the threat of eviction and demolitions, communities have organized around their own knowledge capacity to first face down the threat, and then to create the space for dialogue with government that leads to the upgrading of informal settlements in their current location (in situ) or else a truly negotiated relocation. The case of the Joe Slovo community in the flats of Cape Town, South Africa, is a prime example. A legal battle that lasted several years succeeded in 2009 in staving off imminent eviction.14 Subsequently, sustained engagement with the State has only come about through the kind of community organizing measures used by SDI federations.15 For instance, early in 2010, the community completed an enumeration process, which surveyed every household on a wide range of social indicators.16 This process of information gathering has assisted significantly in organizing the community to be strong advocates for their own priorities as they negotiate with the Cape Town metropolitan municipal government on how to upgrade the settlement in situ.17 As a result of this engagement, a communal toilet block plan is now in the construction phase and many more residents are set to be accommodated in formal housing than the municipal government had initially planned.18 Elsewhere in Cape Town, a citywide Informal Settlement Network (“ISN”) is partnering with the metropolitan municipal government to pilot similar people-led informal settlement upgrades in at least ten settlements.19

A similar success story is unfolding in Nairobi, Kenya, where the parastatal Kenya Railways Corporation has long desired to evict many residents of the famous railway slums of Kibera and Mukuru.20 The SDI-affiliated federation, Muungano wa Wanavijiji (the Kenyan Homeless People’s Federation), organized residents to count themselves in a massive household enumeration conducted around 2005.21 This enumeration convinced the railway company to delay the eviction.22 Then, SDI facilitated a learning exchange with an affiliate federation in Bombay, India, known as the National Slum Dwellers Federation.23

The learning exchange illustrated the Indian federation’s successful approach to facing down a similar threat a decade earlier. In the 1990s, the Indian federation had enumerated tens of thousands of railway line slum dwellers.24 This enumeration served as a community-driven tool for negotiating with government about both the pace and scale of relocation, as well as in planning for developments to accommodate those who would be displaced.25 In Bombay, the community enumeration maps show the astounding history in vivid detail: who remained, who are waiting to enter permanent housing, and who are now living in housing developments that were designed and partly built by community members themselves.

After visiting the Bombay railway line through the SDI-facilitated learning exchange, the Kenya Railways Corporation agreed that a new enumeration should take place in the affected Nairobi communities and that it would serve as the basis for similar plans for relocation and in situ upgrading.26 The new enumeration was completed earlier in 2010.27 Now development plans are in negotiation with community members firmly seated at the negotiating table.28 This is an excellent example of the “co-production” ethos. SDI federations are demonstrating variations on a theme: in the cities of the global South, there will be “nothing for us, without us.”
These methodologies are by no means exhaustive. SDI has a specific set of tools to facilitate processes that mitigate evictions and upscale inclusive processes for city planning and basic service delivery. Other organizations are also involved in supporting organized communities of the poor towards similar ends. Community-led programs have fundamentally altered government policy and practice on human settlements in places like Pakistan (Orangi Pilot Project)\(^2\) and Thailand (Community Organizations Development Institute).\(^3\) These initiatives focus on the co-management of finances and planning between organized communities and government institutions.

### Conclusion

The challenge for civil society actors today is to support urban poor communities not just in their struggles to fight evictions; support must also be forthcoming for poor communities’ efforts to build and redefine relationships with governments so as to change the very institutions that have long made forced evictions possible. This is a difficult task, fraught with potential contradictions, unavoidable setbacks, and certain disappointments. But through these processes, the people who populate the slums of cities like Nairobi and Bombay, Cape Town and Lagos, Rio de Janeiro and Cairo will escape their all-too-frequent status as victims. Governments and other formal actors make the poor into victims when they forcibly eject them from their homes and destroy their livelihoods. We all run the risk of victimizing the poor if we forget that their solutions, their local expertise, and their capacity for survival and ingenuity will form the foundation of inclusive processes that realize human rights. It is their own potential that civil society professionals must work to amplify in order to change the troubling global picture for housing and human settlements in our cities.

The time has come to consider how the rights-based agenda has revealed its own limitations. It is time to consider how we can continue to articulate the rights framework in a way that maintains relevance to people’s struggles. As the “co-production” methodology gains increasing acceptability and scale, we can think about socio-economic rights under a new rubric. There is now scope for conceiving and protecting overarching guarantees, such as the rights to dignity and participation, which are at the heart of “co-production.”

Organized communities of the poor are demonstrating that socio-economic rights cannot be delivered without new understandings of the governance structures intended to guarantee these rights. State and non-State professional actors are therefore tasked with opening up the space for poor people to influence and alter these institutions. This means translating informal practice into formal language and bridging the gaps between informal and formal technical expertise. As we come to terms with our new urban age, we must grapple with the implications of the routes we take to make change in the world. In order to move beyond the limitations of socio-economic rights in theory, we are now tasked with supporting the developmental methodologies of the poor that turn these into practice.

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**Endnotes:** Out of the Garden of Eden: Moving Beyond the Rights-Based Agenda in the Urban Sector


11. *Id.*


16. *Id.*

17. *Id.*

18. *Id.*


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**Endnotes:** Out of the Garden of Eden continued on page 71

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waters to rise quickly); Id. (noting that Shakil Quadir, the provincial head of the National Disaster Management Authority (“NDMA”), estimates that if Pakistan had preserved twenty to twenty-five percent of its original tree cover, the flooding would have been greatly mitigated).

9 See Bisht, supra note 5 (noting that timber stored away for transportation was washed away in the flood, destroying bridges and dams); see also Khan, supra note 6.

10 See A Land Left to Drown, supra note 3 (noting that the “timber mafia” has representatives in Pakistan’s government and connections with the military); Giezewski, supra note 6 (providing a brief history of the development of “timber mafia” entrenchment in the government).

11 See Peter Giezewski & Thomas Homer-Dixon, Environmental Scarcity and Violent Conflict: The Case of Pakistan, pt. 1 (Apr. 1996), http://www.library.utoronto.ca/pcs/eps/pakistan/pak1.htm (discussing the construction of large dams and other “mega projects” without consideration for the social impacts); Shabeen Rafi Khan, The Kalabagh Controversy, at 8-10, http://www.sanal- ist.org/Acrobat/A-14.pdf (last visited Oct. 20, 2010) (highlighting the adverse environmental affects of large dams built in Pakistan); Shingavi, supra note 2 (asserting the general claim that Pakistan’s waterway infrastructure benefits only wealthy landowners); Bosshard & Lawrence, supra note 3 (noting the ways in which Pakistan’s waterway infrastructure has supported wealthy elites and landowners).


13 See Khan, supra note 11, at 8 (asserting that large dams provide little as a flood prevention mechanism).

14 See id. at 1 (discussing the controversy of the Kalabagh dam as a replacement for the Tarbela dam).

15 Khan’s study of the Kalabagh dam project indicates that supporters of the dam are largely in favor of the project for its increase in agricultural and hydro-electrical output. Yet, as Khan shows, there is sufficient evidence to prove that the environmental impacts of the dam will mirror the negative impacts of past large dams on the Indus river valley ecosystem. See id. at 8-10.

16 The Mangla and Tarbela Dams were completed in 1967 and 1974 respectively. Table 4 of Dr. Khan’s study provides figures that show no reduction in the lives lost, villages affected, or area affected by floods since the construction of the dams. If these large dams were built to prevent flood damage (which they were not) then presumably there would be a reduction in lives lost and villages affected. See id. at tbl. 4.

17 See Mushitq Gaadi, Understanding the Flood Disaster at Taunsa Barrage, Int’l: RIVERS (Aug. 20, 2010), http://www.internationalrivers.org/node/5723 (describing the causes that led to flooding at the Taunsa Barrage, a key failure in Pakistan’s waterway system that contributed to the devastation).

18 See id. (expressing a general concern about the use of reasoning by engineers to justify the construction of the Kalabagh dam); see also Khan, supra note 11, at 6-9 (providing evidence as to the ecological harm and concerns of sedimentation that would occur from construction of the Kalabagh dam).

19 See Khan, supra note 11, at 1, 8 (highlighting the selective use of data by the Pakistani government, and a historical system of centralized decision making that ignores the concerns of local communities).

20 See Peter Giezewski & Thomas Homer-Dixon, Environmental Scarcity and Violent Conflict: The Case of Pakistan, pt. 3 (Apr. 1996), http://www.library.utoronto.ca/pcs/eps/pakistan/pak3.htm (noting that planners of large dams have consistently neglected the impacts on groundwater, local water quality, etc.).

21 See Gaadi, supra note 17 (citing the impact of sedimentation, specifically at the Taunsa Barrage, which led to the flooding of higher grounds).

22 See id. (using the Taunsa Barrage as an example of the larger effect that large dam projects had in exacerbating the flooding).

23 House Report, supra note 2, at 87-97 (discussing the role of the U.S. Army Corp of Engineers in failing to design the levees with the ability to withstand a Category 5 hurricane, and the continued operation of the levees with the knowledge that they would not withstand such a hurricane. Also, discussing the failure of federal, state, and local government to appropriately maintain the levees, which led to leaking even prior to Hurricane Katrina).

24 See Will Bunch, Why the Levee Broke, AlterNet (Sept. 1, 2005), http://www.alternet.org/story/24871/?page=entire (discussing several instances where people in charge of maintaining the levees reported a lack of funding from the federal government to complete the maintenance projects).

25 Nothing in the U.S. House Report indicates that class favoritism or government corruption played a role in the government failures to prepare and respond to Katrina. See House Report, supra note 2.

26 See id. at 1 (noting that the U.S. government is the world’s largest purchaser of intelligence and information, and it could still not respond quickly enough to Hurricane Katrina).

27 See id. at 103-04, 108-23 (discussing the failure of local officials to evacuate a larger portion of the population in a timely manner from New Orleans and Jefferson Parish despite the successful evacuations in Mississippi, Alabama, and other affected parts of Louisiana).

28 See Giezewski, pt. 1, supra note 11 (highlighting the economic, geographic, and demographic diversity of Pakistan); CIA World Fact Book: Pakistan, supra note 4 (noting that Pakistan only has about 125,000 miles of paved roads and about 5,300 miles of railways ranking 20th and 28th respectively in the world).


30 See CIA World Fact Book: Pakistan, supra note 4 (providing data about Pakistan’s size).


33 See State and County Quickfacts: New Orleans (city), supra note 31.

34 See Giezewski, pt. 1, supra note 11 (discussing the consistent battle over resources between provinces).

35 See id. (describing geographic distribution of the population, and noting that most of the population is rural and lives along riverbanks).

36 See CIA World Facts Book: Pakistan, supra note 4 (providing statistical data regarding urban population growth between 2005-2010); Giezewski, pt. 3, supra note 20 (highlighting the effects of population growth on urban decay).

37 See Giezewski, pt. 3, supra note 20 (noting the adverse effects of the urban population boom on the structure of Pakistani cities).

38 See Bisht, supra note 5 (noting the fragile relationship between the general population and the government, and recognizing that a lack of response by the government could elevate the anger of the people).

39 Giezewski and Homer-Dixon note that Pakistan’s are already swarming to the cities where there is comparatively more prosperity than in rural areas. The flooding destroyed much of Pakistan’s ability to produce crops. It is likely that more people will flood to the cities, where shelter, food, services, and opportunity are more likely than in the isolated rural areas. See Giezewski, pt. 3, supra note 20.

40 See Khan, supra note 6 (quoting the NDMA regional director about securing lands that were affected by the floods because of deforestation).

41 See Khan, supra note 11, at 8 (discussing the new approach to large dam projects).

42 See Bosshard & Lawrence, supra note 3 (providing historical data about the World Bank’s investment in Pakistani waterway infrastructure).

Endnotes: Out of the Garden of Eden: Moving Beyond the Rights-Based Agenda in the Urban Sector, continued from page 49

21 Id.

22 Id.


ENDNOTES: MOBILE PHONES: RESHAPING THE FLOW OF URBAN-TO-RURAL continued from page 50


3 See George Lin, Urban China Transformation: Hybrid Economy, Juxtaposed Space, and New Testing Ground for Geographical Enquiries, 8 CHINESE GEOGRAPHICAL SCI. 271, 281 (2010) (proposing that the wealth of nations is driven by cities that are more technologically advanced relative to others).


6 Id.; see also INT’L FUND FOR AGRIC. DEV., SENDING MONEY HOME TO AFRICA: REMITTANCE MARKETS, ENABLING ENVIRONMENT AND PROSPECTS 3 (2009), http://www.ifad.org/remittances/pub/money_africa.pdf.

7 Id.

8 Ratha, supra note 5.


10 Christian Barry & Gerhard Overland, Why Remittances to Poor Countries Should Not Be Taxed, 42 N.Y.U. J. INT’T L. & POL. 1181, 1181 (2010) (positing that remittances are usually made to family members who have not emigrated).

11 Mirabaud, supra note 2, at 111.

12 INT’L FUND FOR AGRIC. DEV., supra note 6, at 13.


14 Mirabaud, supra note 2, at 111.

15 Id. (providing, furthermore, that people in rural areas of developing countries have limited access to banks and that most recipients of remittances do not have bank accounts).

16 See Héctor Ricardo Grau & T. Mitchell Aide, Are Rural-Urban Migration and Sustainable Development Compatible in Mountain Systems?, 27 MOUNTAIN RES. AND DEV. 119, 121 (2007) (hypothesizing that the reduction of rural populations due to urban migration has probably resulted in the expansion of forests in mountain regions of Latin America).

17 Beyond Voice, supra note 4 (discussing a database compiled by locals that accepts text-message questions and provides relevant farming advice).

18 See Grau & Aide, supra note 16, at 122 (explaining how urban migration can lead to decreased agricultural activity reducing erosion and increasing productivity).

19 See id. (stating that increasing populations in mountain regions could not be supported by traditional agriculture and that subsequent urban migration has resulted in benefits to society in general).

20 INT’L FUND FOR AGRIC. DEV., supra note 6, at 2.

21 Id. at 15.

22 Id. at 17.

23 Id. at 6.


26 Id. at 2.

27 Id. at 10.

28 Mirabaud, supra note 2, at 115.

29 INT’L FUND FOR AGRIC. DEV., supra note 6, at 9 (describing five important regulatory issues covered by rules pertaining to cross border payments: authorized paying institutions; non-bank financial institutions; ownership of foreign currency accounts; limits on and requirements for money transfers; and anti-money laundering).

30 Id.

31 See Chris Bold, Mobile Banking 2.0 or 0.5? — Mobile Banking for Those with No Mobile, CGAP (Oct. 13, 2010), http://technology.cgap.org/2010/10/13/mobile-banking-2-0-0-5-mobile-banking-for-those-with-no-mobile/#more-3310 (describing how the governments of Pakistan and the Philippines may use over-the-counter agents to distribute government payments to more impoverished citizens who likely do not have phone access).


33 FIN. ACTION TASK FORCE, FATF 40 RECOMMENDATIONS (2003), http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF.

34 INT’L FUND FOR AGRIC. DEV., supra note 6, at 11.

35 See Ratha, supra note 5 (asserting that between 2003 and 2008, remittances doubled to reach approximately $330 billion).

36 Id. (postulating that increased regulation may drive remittances from official channels, and official data may be underestimating global remittances by ten to fifty percent).


38 See, e.g. Rep. of the Indep. Expert, supra note 9, para. 42 (explaining that cash transfer programs must remove physical, cultural, and geographical barriers to reach certain vulnerable groups, including those living in remote areas).