



Issue Paper on Secure Tenure for Urban Slums

FROM SLUMS TO SUSTAINABLE COMMUNITIES: THE TRANSFORMATIVE POWER OF SECURE TENURE

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Summary

Asia-Pacific's population of 4.3 billion is rapidly urbanizing and countries are struggling to keep pace with the demand for housing. Urbanization represents not a threat but an opportunity for economic development and for the uplifting of communities. Addressing security of tenure presents an excellent entry point to tackle the problem of urban slum housing.

Security of tenure is often mistakenly understood as the legal right of ownership of land, but there is a continuum of land rights, from the least secure to the most secure with many examples of successful implementation of methods for slum improvement in the region.

Forcible slum clearance and involuntary relocation have been repeatedly demonstrated to fail and have far-reaching negative impacts. Successful projects prioritize upgrading slums *in situ*. They have put the community in the lead and brought them together with municipalities, professionals, the private sector and nongovernment organizations to solve urban housing problems together.

People-public-private partnerships are important and necessary alliances for addressing the development needs of the most vulnerable and poor in complex urban contexts, especially in the context of limited capacity and resources.

Increasing security of tenure creates incentives for progressive improvements in slums and housing which leads to sustainable communities and aids urban resiliency by fostering communities that are better prepared to cope with disasters. However, a holistic, multi-sectoral approach is required for true transformation.



A resettlement colony in Bawana, Northern India. Photo: Ezra Millstein.

Introduction

The world's population is already more urban than rural, but the social, economic and institutional capacity and infrastructure of urban areas and cities cannot keep up with the rapid rate of urbanization. The planning and management of urbanization and all its consequences is a key component of the new development agenda, as is creating resilient and livable cities.

In the Asia-Pacific region, an estimated 120,000 more people flock into its cities every day, creating a demand for more than 20,000 new dwellings a day. Business-as-usual approaches – ignoring the problem or evicting inhabitants with or without relocation – are rapidly becoming untenable. Addressing security of tenure is critical to addressing urban slum housing, and offers a path toward more prosperous, safer and more equitable cities.

In the Asia-Pacific region, home to 4.3 billion people, urbanization is an unstoppable force. The region is already home to half of the world's urban population, and by 2020, it is estimated that 2.2 billion of the projected 4.2 billion urban dwellers will be living there. With another 411 million people being added to the region's cities from 2010 to 2020, they will account for 60 percent of global urban population growth. ¹

Urbanization is increasing demand for affordable housing and basic services in cities, but that demand is largely left for people to meet by themselves, without the infrastructure or policies in place to ensure decent housing. This in turn fuels the growth of slums; housing while affordable is not safe, healthy or stable. An estimated 500 million people in the region live in slums. In fact, slums are the predominant housing typology in many of its cities, and are home to more than half of the city's population in e.g., Karachi, Manila and Mumbai. ^{2,3}

Slums are characterized by housing that fails to meet people's basic needs for space, privacy, access to safe water and sanitation and secure tenure. Access to basic utilities and water and sanitation is often illegal, unsafe and sold at extorted prices. ⁴ Most slum dwellings also lack security of tenure, meaning inhabitants lack effective protection against evictions (see definitions, p. 6). Together with the material conditions of poverty housing, the lack of security of tenure has a profound impact on the lives of slum inhabitants. When tenure is not secure and the constant threat of eviction is lurking in the background, livelihoods are at risk; residents, governments, nongovernmental agencies and market actors are unable to participate or invest in upgrading homes, contribute to the cost and maintenance of communal facilities or supply products and services. ⁵

Definitions

Slum

The United Nations characterizes slums, or informal settlements, by one or more of the following:

- Poor structural quality and durability of housing
- Insufficient living areas (more than three people sharing a room)
- Lack of secure tenure
- Poor access to water
- Lack of sanitation facilities ⁶

Security of tenure

“Security of tenure is the right of all individuals and groups to effective protection by the state against evictions, i.e. the permanent or temporary removal against their will of individuals, families and communities from the home and the land they occupy, without the provision of, and access to, appropriate form of legal or other protection. Security of tenure can be defined as an agreement or understanding between an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework.” - UN-Habitat ⁷

Informality

“The relationship of individuals and communities not in compliance with recognized law. Informality is frequently the result of inadequate, inappropriate, ineffective policies or legal frameworks that regulate activities based on assumptions regarding the social-economic environment that do not reflect realities on the ground.” - UN-Habitat ⁸

Land governance

UN-Habitat’s working definition of land governance is: “the process by which decisions are made regarding the access to, and use of, land, the manner in which those decisions are implemented and the way conflicting interests are reconciled.” ⁹

What is secure tenure?

Security of tenure is often mistakenly understood as solely the legal right of ownership of land, in the form of full title deeds held by individuals. In fact there is a continuum of land rights, from the least secure (informal) to the most secure (formal) (see figure 1, p. 9). Along this continuum there are numerous forms of tenure security that reflect not only the reality in most cities in Asia-Pacific, but also present a range of opportunities to incrementally transform urban slums and the lives of the people who live there.

There are three main types of security of tenure. First, perceived tenure security relates to a community's own subjective perception that individuals within it will not lose their land rights through forced eviction. Secondly, *de facto* tenure security refers to the actual control of land and property, regardless of the legal status. Thirdly, legal tenure security refers to tenure protection backed up by state authority.¹⁰

Why secure tenure matters

Safe, adequate and decent housing is not only a basic human right, it is also the bedrock of human development especially for marginalized groups. Housing has a profound multiplier effect on people's health, livelihoods, employment and education opportunities, and people's quality of life.

Land tenure issues are inextricably linked with a diversity of other issues, including climate change, disaster risk, gender inequalities, livelihoods, urban growth and land governance (see definitions, p. 6).¹¹ It is land governance that determines to what extent the competition between a city's social, economic and environmental goals will be reconciled in the face of limited land supply. Sound land governance is key to ensuring clean and transparent management of land use, and determines the extent to which land policies are pro-poor, meaning policies that stimulate economic growth for poor populations.

However, land tenure and land governance are often insufficiently linked in urban government land policy and planning.¹² The existing legal structure is also an important factor. If the legal and institutional framework in place does not support the pursuit of full tenure, then housing reform policies contingent on this option are bound to fail.

Secure tenure and economic development

With employers in the formal sector often unwilling to hire those living in informal settlements, there is a risk they can become tethered to the informal economy. Slum dwellers may be seen as outsiders without rights to the benefits of city life. Their contribution to the economic prosperity of the city may go unrecognized. The informal economy makes a significant contribution to the economic development of cities. It also has the capacity to play a key role in the transformation and improvements of informal communities and slums, e.g., in construction services, transportation options, water, building materials, and local food supply, as families feel secure to invest more in their homes. How to realize this economic capacity is the challenge.

When informal settlements are progressively improved into sustainable communities and integrated into the urban fabric, their contributions can be leveraged to advance the development and economic growth of cities. With this shift to formal recognition, communities can also take their place in the political life of the city. Residents become citizens: registered taxpayers and voters who are able to fully participate in the city's political processes, creating more politically inclusive and cohesive cities. With investments from the public and private sectors and the community, the creation of sustainable communities presents myriad opportunities for the business sector too, by creating demand for goods and services.

Looking at how to resolve the issue of insecure tenure is a critical step to address the growing housing needs in cities. However, security of tenure is not enough. Secure tenure must be part of a broader land and housing policy vision for the future of a city. In parallel with increasing security of tenure, the transformation of slums also relies on the creation of livelihood opportunities and the provision of social and economic services, either by the government, private sector, or through the efforts of communities themselves. Land tenure is key to improving quality of life, but cannot end poverty in isolation.



A Nepali family in Pokhara. Photo: Ezra Millstein.

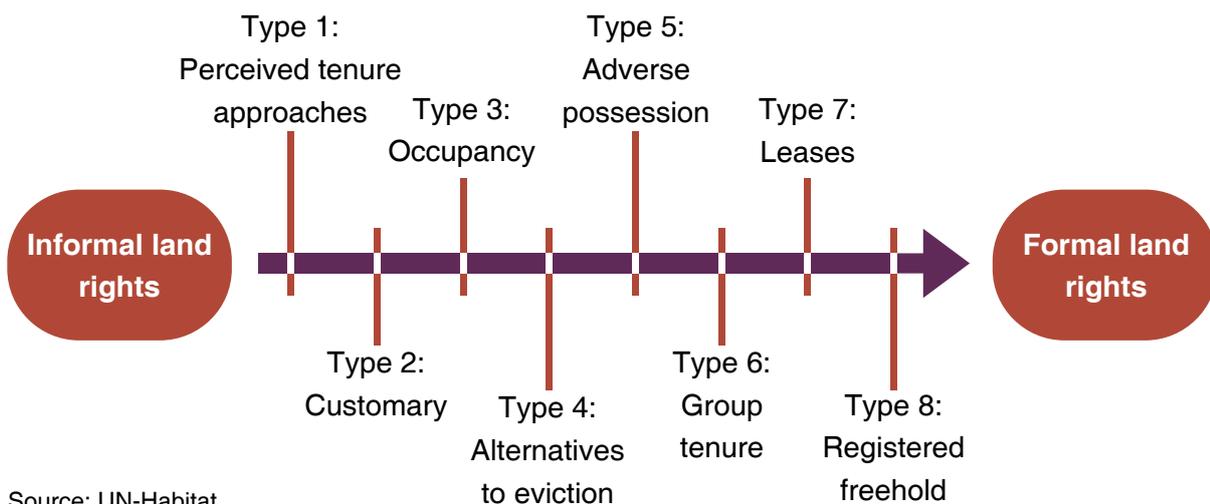
The continuum of land rights in Asia-Pacific

The continuum of land rights is a helpful model to understand the different types of tenure (see figure 1). Although registered freehold rights may be considered the ‘gold standard’ for tenure security, land titling may be a complex and contentious issue, especially when there are competing claims, even among slum dwellers. Other biases based on race, religion, gender or political affiliation may also come into play. Moreover, there are in fact many other stages of tenure that also serve an important purpose in the efforts of the urban poor to create housing security and improve their lives over time.

Indeed formal land rights – at the far end of the continuum – may not be an appropriate ultimate goal. For example, there are countries that recognize customary land rights as having the same legal ramifications as leasehold or registered freehold, and there are even jurisdictions where freehold land holding has been abolished. An incremental approach whereby tenure rights are gradually upgraded and formalized may be more effective.¹³

Under this model, there are eight stages along the continuum of land rights, although land rights need not move through these stages in order. For clarity, they will be addressed in this order below. Examples of all eight stages of this continuum can be found across the Asia-Pacific region, although to varying degrees in urban settings.

Figure 1. The continuum of land rights



Type 1: Perceived tenure

When communities settle on land with the perception that they have the right to occupy it, that is known as perceived tenure. This perception is reinforced when services such as water and electricity supplies are provided by the local authorities. However, the risk of eviction remains because settlement on public or private land is only tolerated, and is not legal.

Type 2: Customary land tenure

Customary land tenure typically relates to tribes, castes, and smaller social groups (not necessarily an elite) and is the process under which land ownership rights are conferred on individuals, families and communities. In many male-dominated societies customary practices have a negative impact on many women who are not recognized as equals in titles and property. Customary land tenure is still practiced in many Asian countries, although it is unusual to find such arrangements recognized by governments in urban areas.

Type 3: Occupancy

Occupancy is the term land rights experts use when the conditions are met for a form of *de facto* secure tenure, whereby occupants consider the risk of eviction low enough to make it worthwhile to invest in incremental housing improvements. This sense of security comes with extended occupation of land and, like perceived tenure, is reinforced when local authorities provide basic services.¹⁴

Type 4: Alternatives to eviction

Forced evictions are a major issue across the Asia-Pacific region, as urban growth increases the size of urban settlements and more land is eyed by the municipal authorities as an asset being encroached upon.¹⁵ This pressure to leave one's home may be direct, in the form of an eviction order backed up by law enforcement and bulldozers, but it can also be more indirect, in the form of harassment or otherwise making daily life untenable, for example through prohibitively expensive basic services.¹⁶

Eviction from urban slums and relocation to outer areas creates islands of poverty, which in time become absorbed by the growing urban area and become slums within the city once more. Mass relocation destroys community networks of support and puts people at a distance from economic opportunities, such that people who are evicted often move back into informal settlements closer to where they can find work.

There are three strong alternatives to forced eviction – *in situ* development, land sharing and participatory resettlement.

In situ development

In situ development, meaning regularizing existing slums and granting legal tenure to their inhabitants, is an alternative far preferable to evicting residents from slums. This approach is the option that is most likely to ensure that the housing needs of the poor are met in a sustainable manner. It is also arguably best for the city as a whole: it protects the investments in housing already made by people living in the slum, and granting legal tenure opens the door to a wave of new investment from both the occupants themselves, the private sector, and from agencies assisting them. Utilities can be provided efficiently at legal, metered rates from official sources, and access to basic services such as education and health care, as well as other civil rights such as voting and social protection is improved. From an urban planning point of view, *in situ* upgrading offers the possibility of reducing urban sprawl and its environmental impacts through organized densification.

Land sharing

Land sharing is a compromise solution whereby the owners of encroached land and the community collectively agree to split the land between them. The community buys, leases or receives one portion for free, while the more commercially attractive part of the site is returned to the developer. Although this option is not suitable for all cases of land use conflict, it can be a flexible and successful strategy. Land sharing relies on strong community organization and the ability of the community to negotiate effectively with the land owners to create a 'win-win' situation for both parties. The government is often a third-party beneficiary of this arrangement as it gains housing stock without having to finance it.

Participatory resettlement

When resettlement cannot be avoided it should be done with the full participation of the community concerned to ensure members can make informed decisions, discuss the options and make plans for their future housing. To successfully mitigate the effects of resettlement it is essential to understand the effect of resettlement on all stakeholders. These include local communities, project authorities, donor representatives, approving and implementing agencies, affected households, and non-governmental organizations.¹⁷ Information exchange and joint decision-making are key facets of participatory resettlement.



A housing project in the Philippines. Photo: Jason Asteros.

Type 5: Adverse possession

Ownership by 'adverse possession' is further along the continuum than occupancy toward formal land rights because it converts *de facto* secure tenure into legal tenure. Ownership by adverse possession can be claimed in jurisdictions when the law stipulates that occupation of a piece of land for a minimum period of time (e.g., five years) without being evicted, charged rent or challenged over ownership, together with payment of land tax, confers the *de facto* right to ownership. In urban settings, it is extremely difficult for individual households to make use of this legal protection, but has proven possible when taken on by well-organized and well-supported communities.

Type 6: Group tenure

Group tenure, as the name suggests, is a legal arrangement under which multiple individuals share ownership of an area of land. Although governments and local authorities tend to be reluctant to recognize collective ownership, for example, by homeowners' associations and cooperatives, this form of tenure has several advantages for the poor. Benefits include reduction of per-household land and registration costs and promotion of social cohesion. Collective ownership in the case of squatter resettlement can enable families to pool their compensation, form a housing collective and build a new community with communal infrastructure as well as individual housing. It should be noted that collective tenure does not automatically imply equality of tenure and can disguise, for example, unequal rights between men and women, or can put collective decision-making power in the hands of the few.

Type 7: Leases

Leasing is a legal arrangement under which a tenant does not own the property but rather pays the owner (often called a 'landlord') for the right to stay in a property. Rental housing comprises a large component of city accommodation for the poor and in some circumstances there can be problems due to exploitation by landlords. However, leasing has not been sufficiently explored as an option for secure tenure in the Asia-Pacific region, despite the fact that it may have several advantages over ownership and also sits far along the continuum of land rights. Renters have more flexibility to locate where there is work, and greater freedom of movement. Much also depends on the conditions of the lease/tenancy agreement. As such, in some countries, governments have put policies and laws in place to protect tenants from being exploited. For public landowners, renting optimizes the management of public land by setting a fixed period for use in providing rental housing. Rental housing can be an important component of a city's housing stock and in some of the world's most affluent cities is the predominant form of housing. ¹⁸

Type 8: Registered freehold

Individual freehold land tenure confers a high degree of security, encouraging people to incrementally invest in and improve their homes. Individual freehold also enables individuals and communities to secure loans from finance institutions and invest in their property and businesses. It also provides governments with a legal incentive to extend basic services and infrastructure to otherwise vulnerable and underserved populations, and can also bring them into the tax system. ¹⁹

Registered freehold has been the model most aspired to and adopted by governments in the region to formalize tenure. However, there are pitfalls to pushing for registered freehold tenure status. Freehold ownership of land can create its own problems and there is no evidence to support the view that formal land ownership in itself reduces poverty. ²⁰

Formalization of land tenure can put economically weaker occupants at a disadvantage because they lack the documents needed to secure formal tenure, and the success of one portion of the community to secure tenure may be at the expense of another unable to do so, leading to their eviction. Tenants of housing on land that becomes formally owned may be adversely affected by rising rents, and are usually ineligible for resettlement or compensation. Deeds may be sold to cover the cost of financial shocks such as a death or major illness in the family, and this process may encourage gentrification of the land concerned, while the original beneficiaries of compensation return to the pool of slum dwellers. When there are customary land rights in place land titling may cause confusion as to which system of land rights prevails.

What is known to work: examples from the region

In situ development in Sri Lanka

Sri Lanka's Urban Housing Sub-programme is an example of the *in situ* development approach in action. Launched in 1985 under the Million Houses Programme across 51 towns and cities, the Urban Housing Sub-programme began with the formation of Community Development Councils in each participating community. The Councils surveyed their respective areas and worked with professionals from the National Housing Development Authority to design the layout of house plots and public areas. The process of negotiation was long and complex as some earlier arrivals in the settlement stood to lose a portion of their land in the redevelopment, but the benefits of secure tenure made the loss acceptable. Furthermore, communities were able to build infrastructure projects that they had designed themselves, financed with small government grants and small loans to individual households. ²¹

Land sharing in Thailand and India

Land sharing is not a new solution. It was officially adopted as an option for land rights in the 1970s and 1980s in Hyderabad and Bangkok.^{22, 23} In the mid-1990s, Mumbai also adopted the land sharing method, whereby a tenants' association may develop a piece of land and dedicate a portion of it to be sold at market rates in order to finance housing development for the community on the rest of the land.²⁴ Land sharing can only work if the underlying value of the land can cover the cost of rehabilitation, which is why this option has not always been successful when attempted in other countries in the region.

Participatory resettlement in Cambodia

In Phnom Penh, Cambodia, a municipal drainage project led to the threat of eviction for 129 households living in a roadside settlement. The community members concerned pooled their savings and were able to identify an alternate site. Infrastructure in the new settlement was provided by UN-Habitat, which contracted community members to construct the roads, sewerage and water systems and plant trees. The municipal government purchased the land and granted land titles to families when they repaid their US\$400 housing loans. Housing design was supported by young architects and the district chief played an instrumental role in shepherding the process through to completion. The community's experience was widely shared with other slum communities around Phnom Penh.²⁵

Group tenure in Nepal

The group tenure approach was successfully applied in Kathmandu, Nepal, when 44 households evicted from a riverside squatter settlement joined together with support from Lumanti, a local nongovernment organization, to form a housing cooperative. Members of the cooperative persuaded the Urban Community Support Fund to compensate them for eviction by purchasing a piece of land for them in the neighboring municipality of Kirtipur. The cooperative also established a savings and loan system, which facilitated the collective development of communal facilities such as water supply, waste treatment and emergency assistance, as well as housing development loans for individual families.²⁶



A resettlement colony in Bawana, Northern India. Photo: Ezra Millstein.

Group tenure in Thailand

Collective tenure is one of the main features of Thailand's national Baan Mankong Community Upgrading Programme. Implemented by the Community Organizations Development Institute, Baan Mankong (or 'secure tenure' in Thai) was launched in 2003, and has been hugely successful in upgrading slums across the country. Under the program, communities negotiate secure tenure, either of the land they occupy or vacant land nearby. Tenure is held collectively, preventing speculation and gentrification of the area. Decisions about the development and maintenance of the settlement are also taken collectively, reinforcing the sense of ownership and promoting social cohesion.

The Baan Mankong program has conducted projects in 1,010 communities in 226 towns and cities, in almost every province, involving 54,000 households. Collective rather than individual land tenure is now the norm in Thailand. Baan Mankong shows what can happen when there is a combination of community-driven slum upgrading, institutional and financial capacity and political commitment and leadership.²⁷ Its model is being replicated in Vietnam and Bangladesh and has also been used in 250 cities under the Asian Coalition for Community Action program implemented by the Asian Coalition for Housing Rights.²⁸



A family plants a sapling outside their new house in Chiang Mai, northern Thailand. Photo: Andy Nelson.

Sound ideas for housing policy

Along the entire continuum of land rights, the successful examples of reforming land policies that transform slums into sustainable communities with decent housing have important factors in common, and hold valuable lessons for housing policy.

1. Urbanization – an opportunity for transformation at scale

Today 600 urban centers generate approximately 60 percent of global gross domestic product.²⁹ Across different countries and environments, there is an emerging acceptance that rural-to-urban migration and the natural population growth of urban areas is not only an unstoppable force, but is also a potential powerhouse for economic development. Urbanization is an opportunity for the transformation and uplifting of communities, both in cities and for the country as a whole.

2. Informal does not mean illegitimate

Inhabitants of informal settlements make a huge contribution to the success of cities through their labor in the informal and formal economies, and have the right to progress and live in decent secure housing in the cities they help support. With the right policies in place, those inhabitants can make an even greater positive impact.

Inclusion of slum communities through participatory urban planning and design into the larger urban, regional and national context achieves balanced and sustainable development. This includes building connectivity through infrastructure, planning, advocacy and governance.

3. Increasing secure tenure is not all-or-nothing

The most secure form of land tenure – individual freehold – has many advantages, but it also has major pitfalls. Individual freehold does not automatically lead to poverty alleviation and can even exacerbate it. There are different forms of secure tenure more adapted to conditions in Asia-Pacific, such as adverse possession, leases and group tenure that may be more practicable and effective.

4. Community-led development is key

Through the participation and organization of communities, local governments can find negotiated solutions and promote active citizenship. Community-led development is essential for engaging and supporting local communities as the central point for decision-making, in collaboration with key stakeholders.

Community involvement can be the starting point for achieving secure tenure through, for example, community-led negotiations with land owners for land sharing or participatory resettlement. Successful projects have put the community in the lead, rather than imposing solutions from outside. In doing so they are able to capitalize on the social force inherent in slum communities, and bring them together with municipalities, professionals, the private sector and nongovernment organizations to jointly solve urban housing problems.

5. Forced relocations don't work

Attempting to simply clear slums away and relocate their inhabitants to other areas against their will has been repeatedly demonstrated to fail and has far-reaching negative impacts. *In situ* slum redevelopment, as well as other options such as participatory resettlement have been proven to succeed. When properly handled they can be a 'win-win' for both the legal owners of encroached land and the communities that have made their homes there.

6. Multiple partners are necessary

People-public-private partnerships are important and necessary alliances for addressing the development needs of the most vulnerable and poor in complex urban contexts, especially in the context of limited capacity and resources. Successful examples of slum regeneration have embraced the private sector as a development partner, and have been able to achieve impressive results without the state shouldering the entire burden. This approach requires a willingness for the government to be innovative, and work together with the private sector to bridge the gap between commercial entities and slum communities, particularly in the realm of making flexible affordable finance available to communities and individuals.

7. Multi-sector interventions are crucial

Providing secure tenure is one component among various interventions that can progressively help improve slums into sustainable communities. However, a more holistic approach is required for true transformation. A multi-sector approach can bring together security of tenure, social, economic and environmental interventions along with knowledge, resources, institutional and fiscal support to address the needs of communities in a more sustainable manner.

8. Secure tenure aids urban resiliency

In Asia-Pacific disaster risks are compounded in slums by related vulnerabilities, including poverty housing, unplanned urbanization, development within high-risk zones, environmental degradation, climate change, conflict, and economic shocks. Progressively improving slums has to involve the building of resilient communities that are better prepared to respond to, cope with and adapt to disasters, shocks and hazards and are sustainable from a social, economic and environmental perspective.

Conclusion – a new urban agenda

Transforming slums into sustainable communities is a key component of the new urban agenda, and provision of secure tenure is a key catalyst to achieve this. The new urban agenda requires community centered leadership and strategy, place-making through good urban design, innovation, people-public-private partnerships, and multi-sector interventions and resilience building. It calls for new technologies, reliable urban data and integrated, participatory planning approaches and must reject ad-hoc and piecemeal developmental interventions.

Urbanization provides a distinct opportunity for economic, social, political and environmental transformation on a massive scale. It is one of the most significant global trends of the 21st century and communities, cities and secure tenure is at the heart of it.



Eleven-year-old Sanjyal Koorala walks across a downed tree on a hilltop overlooking Kathmandu, Nepal. Photo: Ezra Millstein.

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This report was prepared in conjunction with Solid Ground, a global advocacy campaign of Habitat for Humanity. Solid Ground's mission is to change land policy and systems to ensure that more people around the globe have a decent home.