

# Housing, land and sustainable development

One of the pillars of sustainable development is the right to adequate housing and land. However some 1.6 billion people are currently living in sub-standard housing, 100 million are homeless and around a quarter of the world's population is estimated to be landless. In developing countries the number of people living in slums is 828 million; all of them lack access to improved water sources and adequate sanitation and live in distressed housing conditions without sufficient space or secure tenure. More than 60 million new slum dwellers have been added to the global urban population since 2000.

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Civil society organizations and social movements worldwide are articulating the “right to the city,” promoting land as a human right and stressing the need to recapture the social function of property. These movements and campaigns provide the beginnings of the radical rethinking necessary to challenge the neo-liberal economic policies that have been institutionalized around the world.

The adoption and implementation of the human rights approach is essential if sustainable development is to become a reality for all, especially the world's marginalized. Failure to embrace this approach will lead to more hunger, dispossession, homelessness, landlessness and environmental degradation across the globe. The impact of rights violations will be particularly severe for women, children, indigenous peoples, coastal communities, forest dwellers, small farmers, landless workers, and the urban poor.

## Sustainable development and the indivisibility of human rights

The UN Conference on Environment and Development (UNCED) in 1992 marked a significant moment in the history of international law and policy. It affirmed the progress made at the Stockholm Conference on the Human Environment in 1972 and further established, through legal and moral commitments, the inextricable link between human beings and their environment and between nations and peoples. Using the framework of key principles such as sustainability, inter-generational equity, common but differentiated responsibility, polluter pays, and the precautionary principle, UNCED helped launch an international campaign to meet our responsibilities towards protecting not just the rights of the less fortunate and marginalized but also of future generations and the planet.

A significant outcome from Rio 1992 was the affirmation of the indivisibility of human rights and the inseparability of human rights and environmental rights. While stressing the inter-connectedness and inter-dependence of nations and peoples, Agenda 21

also helped establish the different responsibilities and duties of more advanced nations including the principle of international cooperation.<sup>2</sup>

Sustainable development is often invoked as a means of reconciling important objectives that include respect for human rights, promotion of socially and environmentally sustainable economic growth and protection and wise use of the natural environment. All mainstream definitions of sustainable development share three characteristics: first, achieving sustainable development requires integrating policies related to social justice, environmental protection and economic development; second, the interests of future generations must be taken into account; and third, transparency and public participation at all levels of decision-making from local to global are essential.<sup>3</sup>

The concept of *environmental justice* is useful for integrating equity, social justice and environmental principles within the framework of sustainable development. Environmental justice has been defined as the right to a safe, healthy, productive and sustainable environment for all, where “environment” is considered in its totality including ecological (biological), physical (natural and created by human labour), social, political, aesthetic and economic conditions.<sup>4</sup>

Environmental degradation and the denial of human rights exacerbate poverty and unleash a cycle of human rights violations. Poverty and marginalization further impede equitable access to resources and the realization of the right to an adequate standard of living and to a healthy environment. Implementation of the indivisibility of the human rights approach is therefore the only way to ensure that the health and well-being of the planet and its people are maintained and that sustainable development becomes a reality for all.

## Where are we? 20 years after Rio 1992

Significant advances have been made globally since Rio 1992 in the articulation and deepening of commitments towards protecting the environment and

achieving sustainable development. International standards that have been adopted include the UN Framework Convention on Climate Change, the Kyoto Protocol, the UN Convention on Biological Diversity, the UN Convention to Combat Desertification, the UN Declaration on the Rights of Indigenous Peoples, the World Summit on Sustainable Development Plan of Action and a host of guidelines, declarations and principles.

UN Habitat has reported that the population of slum dwellers around the world continues to grow at around 10% every year. In a worst-case scenario the number of slum dwellers will rise from 1 billion in 2005 to 1.6 billion by 2020. According to the World Health Organization, 884 million people worldwide do not have access to an improved water source while an estimated 2.6 billion people lack access to improved sanitation (more than 35% of the world's population). In 2006, 7 out of 10 people without access to improved sanitation were rural inhabitants.<sup>5</sup> Up to one quarter of the world's population is estimated to be landless, including 200 million people living in rural areas, and approximately 5% of the world's population lives in extreme poverty.<sup>6</sup>

This grave situation poses significant risks to the lives and health of a large majority. It also impacts a range of human rights, including the right to an adequate standard of living and the right to a healthy environment. Globalization policies, including trade and investment agreements, have adversely impacted the urban and rural poor, especially women and indigenous peoples.

Given the fact that sustainable development still eludes the majority of people despite the existence of strong international legal provisions and a progressive body of soft law, it is imperative to review the situation and propose a radical alternative to the way these issues are being addressed. While the challenges to the realization of human and environmental rights continue to rise, there is hope in holistic, integrated and durable solutions that use the human rights approach.

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2 See: <[www.unep.org/Documents/Multilingual/Default.asp?documentID=52&ArticleID=87](http://www.unep.org/Documents/Multilingual/Default.asp?documentID=52&ArticleID=87)>.

3 “One Species, One Planet: Environmental Justice and Sustainable Development,” Center for International Environmental Law, (Washington, DC: 2002), <[www.ciel.org/Publications/OneSpecies\\_OnePlanet.pdf](http://www.ciel.org/Publications/OneSpecies_OnePlanet.pdf)>.

4 *Ibid.*

5 A. Prüss-Ustün et al., *Safer Water, Better Health: Costs, benefits and sustainability of intervention to protect and promote health*, WHO, (Geneva: 2008).

6 UN-Habitat and Global Land Tools Network, “Secure Land Rights for All,” (2008), <[www.unhabitat.org/content.asp?cid=5698&catid=503&ypeid=24&subMenuId=0](http://www.unhabitat.org/content.asp?cid=5698&catid=503&ypeid=24&subMenuId=0)>.

## Human right to adequate housing and land

The UN Special Rapporteur on adequate housing has defined the human right to adequate housing as: "The right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity."<sup>7</sup> The realization of this right is crucial to achieving sustainable development including environmental security and the right to a healthy environment. Unless all citizens of the world are able to live in safe and secure housing that is affordable, ecological and enables them to live in dignity, and unless they have legally recognized rights to own, control and manage the natural resources on which they depend for their lives and livelihoods, the principles of sustainable development cannot be realized. It is therefore essential not just to realize the important link between the rights to adequate housing and land and environmental sustainability but also to ensure that laws and policies protecting these rights are drafted and implemented using the indivisibility of rights approach.

## Linkages between human rights

The rights to adequate housing and land are integrally linked to the human rights to health, food, water, work/livelihood, development and the environment. Access to adequate and nutritious food, clean and potable water, a secure livelihood and the highest attainable standard of health are critical to promoting sustainable development and maintaining the health and well-being of people and the planet.

General Comment 14 (2000) of the UN Committee on Economic, Social and Cultural Rights (CESCR) provides a holistic interpretation of *the right to health*.<sup>8</sup> It has been recognized that housing conditions have direct consequences for enjoyment of this right.<sup>9</sup> In environmental terms the right to health implies the absence of pollution and protection against natural hazards.

*The right to a healthy environment* is an expansion of the legal interpretation of the right to life and is therefore binding on all States. The environment must be understood as the broad physical environment on which human well-being depends. The right to a healthy environment implicitly emphasizes adequate access to "vital needs," which are those that provide the necessary conditions for reaching and maintaining a decent standard of living.<sup>10</sup> This right also includes the right to chemical- and toxic-free food, soil, air and water. The link between the environment and development is also evident in article 24 of the African Charter on Human and Peoples'

Rights, which states: "All people shall have the right to a general satisfactory environment favourable to their development." Over the years, the *right to development* has been established as meaning the *right to environmentally sound, sustainable development*. Under the concept of sustainable development, both the right to development and the right to a healthy environment must be viewed as interdependent.

Integral to human survival and the right to life with dignity is the *right to work*. Violations of human rights to housing, land and natural resources often violate the right to work and result in loss of livelihoods and development opportunities.

Meaningful participation in decisions that affect one's life is a human right as well as a means to ensure enjoyment of other human rights including the right to adequate housing. Denial of the right to participation has adverse effects on the right to adequate housing. Where participation in housing design, plans and policies is ensured, the housing provided is more likely to meet the criteria of adequacy<sup>11</sup> and sustainability. Most violations of human rights occur because people are not consulted in decisions that directly affect their lives and livelihoods. Meaningful participation mandates that the process of consultation be ongoing. It must also guarantee the right to adequate information.<sup>12</sup>

Environmental and human rights principles need to be integrated and implemented with a gender perspective to ensure that women are equal beneficiaries and enjoy equal protection of their rights. While there are many social, economic and political situations that render people insecure, homeless and without a sustainable source of livelihood, women are particularly vulnerable given the low socio-economic status accorded to them in most societies. Rising poverty resulting from unjust and unbalanced "development" policies and projects has had a devastating impact on women and their right to adequate housing. Poverty and environmental degradation particularly affect women as they face greater risks of homelessness, landlessness, loss of livelihoods, violence and adverse health impacts.

## Human right to adequate housing: using the lens of sustainability

When the elements of adequate housing are provided in consonance with environmental principles, the simultaneous realization of the human rights to adequate housing, land, a healthy environment, and sustainable development is warranted. This includes ensuring access to natural resources necessary for communities' survival and livelihoods; the use of 'green' technologies and adherence to ecological building codes; construction of disaster-resistant

housing; location of housing on environmentally safe sites in proximity to places of work, education and healthcare; use of culturally appropriate and indigenous materials and designs for housing; provision of tenure security and protection against violence and eviction; and guaranteeing the prior informed consent of affected populations.

It is also important to link the Millennium Development Goals (MDGs) with the ongoing effort to realise sustainable development and human rights. For instance, target 11 of MDG 7 calls for a significant improvement in the lives of 100 million slum dwellers by 2020. A global initiative has sought to achieve this by creating "slum-free cities." However the ironic result has been an increase in the number of slum dwellers evicted in cities across the world. Efforts to improve the living conditions of some must not encroach on human rights of others, such as through forced evictions or the rampant phenomenon of land-grabbing.

Guaranteeing access to drinking water is another key focus of the MDGs and cannot be isolated from other goals. A human rights approach must inform the normative discussion and also guide the MDG process in order to prevent the collateral erosion of other human rights. Such a strategy, coupled with existing international human rights and environmental treaties, declarations and guidelines, provides a framework by which the rights to adequate housing and land – as key components of sustainable development – can be realized.

## Obstacles to the realization of the human rights to adequate housing and land

Given the mutual inextricability of all human rights, the current failure to secure the rights to adequate housing and land has resulted in a cycle of deprivation that has impeded the enjoyment of several related human rights, including the rights to food, water and health, which are fundamentally linked. A number of structural and related global phenomena continue to serve as obstacles to the full realization of the rights to adequate housing and land in the context of sustainable development. It is difficult to conceive of implementation of these rights for the majority of the world's people without tackling these issues.

## Economic globalization

While rapid global economic integration continues to create new and unprecedented sources of wealth, offering the promise of reducing poverty and alleviating want, the fact remains that deepening inequalities of income and opportunity between and within nations have led to an increase in the number of people living in inadequate and insecure conditions without access to potable water and sanitation. Policies of economic globalization tend to impair the ability of States to provide adequate resources, services and other provisions critical to the fulfillment of economic, social and cultural rights. There is thus a crucial need to ensure the consistency of trade and investment agreements with human rights obligations, keeping in mind the primacy of States' responsibilities to protect and promote human rights

7 M. Kothari, "Report of the Special Rapporteur on adequate housing," E/CN.4/2006/41, (21 March 2006).

8 General Comment 14, "The right to the highest attainable standard of health," UN Committee on Economic, Social and Cultural Rights, (2000). See, in particular, paragraph 11.

9 World Health Organization, *Health Principles of Housing*, WHO, (Geneva: 1989). See also the work of WHO on the Social Determinants of Health.

10 "One Species, One Planet: Environmental Justice and Sustainable Development," Center for International Environmental Law, (Washington, DC: 2002), <[www.ciel.org/Publications/OneSpecies\\_OnePlanet.pdf](http://www.ciel.org/Publications/OneSpecies_OnePlanet.pdf)>.

11 As expounded in CESCR, "General Comment 4, 'The right to adequate housing' (Art. 11.1 of the Covenant)," (1991); see also section below on "Human right to adequate housing."

12 See also the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) of 1998, which guarantees rights of access to information and to participation in decision-making and includes strong provisions for access to justice in environmental matters, including the enforceability of rights conferred by the Convention.

as recognized at the Vienna World Conference on Human Rights.<sup>13</sup>

Processes of increased economic integration have lent further momentum towards privatization of basic services.<sup>14</sup> This phenomenon, coupled with the inability of governments to provide their citizens with affordable access to human rights such as water and housing, tends to disproportionately impact the poorest and most vulnerable sections of society. The continuing deterioration of living conditions that confront the majority of the urban and rural poor around the world calls for a re-examination of the presumptive arguments of “trickle-down benefits” and poverty reduction that continue to be used to justify neoliberal economic policies.

### *Land grabbing and land speculation*

Spiralling land and property speculation across the world is contributing to the displacement of the urban and rural poor. In addition, increased competition among cities to attract capital and business has led to widening inequalities between cities, with consequent discrepancies in the quality of essential services provided to citizens. In large cities the growing takeover of central spaces has witnessed increased gentrification and residential segregation, further polarizing society and resulting in a new form of “apartheid.” Coupled with soaring property values, processes of gentrification continue to push low-income families into increasingly precarious situations including homelessness. In rural areas the growing thirst for minerals and energy has led to unprecedented grabbing of land for mega development and mineral extraction projects, severely threatening livelihoods and food security.

The trend among governments to invoke powers of “eminent domain” to justify seizure of public and private property is also cause for alarm and has grave implications on the rights to adequate housing and land. This doctrine imparts sweeping and ill-defined powers to the State to seize land under the pretext of the “public good.”

### *Loss of common property*

The failure of States to recognize the importance of common property resources in urban and rural areas as well as their failure to legally recognize collective and community-based property rights<sup>15</sup> leads to the demise of institutions and cultural patterns that pro-

13 For an articulation of what the primacy of human rights means for international cooperation obligations of States see ‘Maastricht Principles on Extra Territorial Obligations, adopted at Maastricht in September 2011, <[www.maastrichtuniversity.nl/web/show/id=596286/langid=42](http://www.maastrichtuniversity.nl/web/show/id=596286/langid=42)>.

14 For a longer discussion on privatization and human rights, see M. Kothari, “Privatizing human rights: The impact of globalization on adequate housing, water and sanitation,” *Social Watch Report 2003: The Poor and the Market*, <[www.socialwatch.org/sites/default/files/pdf/en/privatisinghumanrights2003\\_eng.pdf](http://www.socialwatch.org/sites/default/files/pdf/en/privatisinghumanrights2003_eng.pdf)>.

15 For more information, see, O. Lynch and S. Chaudhry, “Community-based Property Rights: A Concept Note,” Center for International Environmental Law, (2002), <[www.ciel.org](http://www.ciel.org)>.

## RECOMMENDATIONS FOR URGENT ACTION

Some global policies must be urgently implemented in order to immediately improve habitat conditions for the most disadvantaged members of the human population. The most important of these measures for States are:

- Implementing human rights and environmental principles and legal commitments;
- Stopping land grabbing, forced evictions and property and land speculation;
- Putting measures in place to check against rampant growth of the market and privatization of housing and basic services;
- Reviewing the operation and regulation of the housing and tenancy markets and, where necessary, intervening to ensure that market forces do not increase the vulnerability to forced eviction of low-income and other marginalized groups;
- Harmonizing local and national laws with international human rights and environmental standards;
- Introducing human rights-based urban and agrarian reforms;
- Developing consolidated plans to ensure the simultaneous and collective development of all groups, with a special focus on the immediate realization of rights for the most marginalized;
- Ensuring strong gender equality provisions in laws, policies and practice;
- Providing communities and individuals with equal access to legal and other remedies, including judicial redress, for violation of human rights and environmental harm (effective grievance redress mechanisms could help to promote environmental justice and sustainable development);
- Taking seriously commitments, as articulated in international environmental and human rights instruments, to extra-territorial obligations.

tect and sustain these resources. This also results in the destruction of the natural resource base on which indigenous and other local communities depend through changes in land tenure and agricultural systems, and by undermining local economies, skills and identities. Such an assault on local resources severely impacts the ability of rural communities to sustain their housing and living conditions including as an expression of cultural identity.

### *Unplanned and forced migration*

The lack of adequate investment in rural development, housing and livelihoods – coupled with growing displacement and an acute agrarian crisis – poses serious threats to the viability of rural livelihoods, forcing people to migrate for survival on an unprecedented scale. Owing to a lack of affordable housing, rental alternatives or investment in social housing, many of these migrants end up living in precarious or inadequate housing conditions, often with little or no access to basic amenities such as water and sanitation. Countless others are rendered homeless with limited access to social and civic services. This has an adverse impact on the health and economic security of affected populations. The need for human rights-based agrarian reform and land reform and wealth redistribution in urban and rural areas is acute and warrants immediate attention.

### *Forced evictions*

The practice of forced evictions has assumed alarming proportions around the world. A large number of these take place in the name of “development” and include evictions due to urban renewal, city

beautification, large infrastructure projects (including mining, roads, ports and dams) and acquisition of agricultural land for industry. Many instances of forced eviction arise out of situations of violence such as those resulting from armed conflict, civil or political dislocation and communal or ethnic strife. Globally, resettlement policies for those who have been evicted are either non-existent or not based on human rights standards. The continued lack of recognition of customary rights to tenure in rural areas<sup>16</sup> as well as rights to a place to live in cities has led to insecure living conditions for millions.<sup>17</sup>

### *Climate change*

The impacts of global climate change and measures taken to mitigate or adapt to these impacts are already affecting individuals and communities around the world, and “will potentially have implications for the full range of human rights.”<sup>18</sup> Most affected are poor people living in the ‘least developed’ States, arid and semi-arid regions, arctic regions, and small-island States, where climate change will

16 In this context the work of the FAO on *Voluntary Guidelines for Good Governance in Land and Natural Resource Tenure* is promising, <[ftp.fao.org/docrep/fao/011/ak280e/ak280e00.pdf](http://ftp.fao.org/docrep/fao/011/ak280e/ak280e00.pdf)>.

17 For an operational instrument to safeguard people’s rights prior to, during and after displacement, see “UN Basic Principles and Guidelines on Development-based Displacement,” Annex 1 of the report of the Special Rapporteur on adequate housing, A/HRC/4/18, <[www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx)>.

18 Report of the Office of the UN High Commissioner on Human Rights, A/HRC/10/61, (January 2009).

have its most negative impacts and where adaptive capacity is low.<sup>19</sup> Climate change is likely to result in widespread displacement and forced relocation of vulnerable communities. States must take adequate measures to protect human rights when working to mitigate climate change or adapt to its impacts. It is also important to link climate change negotiations and structures with existing human rights law and norms.<sup>20</sup>

### A practical way forward

Given the continued failure of State and non-State actors to respect, promote and fulfil the human rights to adequate housing and land, there is an urgent need to rethink “business as usual” and chart a new way forward. We propose the further development and practice of two approaches – the right to the city and the right to land and natural resources – as conceptual bases for the articulation of the indivisibility of human rights and the promotion of the human rights to adequate housing, land and sustainable development.

Underlying both approaches must be environmental and human rights principles. Critical among these is the principle of non-discrimination, which calls for special protection of and priority to the rights of the most marginalized groups. These include the homeless, landless, persons belonging to historically discriminated groups, single women, victims of violence, domestic workers, migrants, persons with disabilities, mental illness or HIV and AIDS, religious and sexual minorities, workers in the informal sector, internally displaced persons, refugees, coastal communities, forest dwellers, small farmers and those living in precarious conditions. Within each of these groups, special attention must be given to children, women and older persons.

### Right to the city

The development and renewed articulation of the “right to the city” presents an opportunity for a durable solution, one that uses a holistic and sustainable approach to realizing both human and environmental rights.

The movement for the right to the city has been launched by social groups and civil society organizations in an attempt to ensure better access to and opportunities for everyone living in cities, especially the most marginalized and deprived sections.

The right to the city is “the equitable usufruct of cities within the principles of sustainability, democ-

racy, equity, and social justice. It is the collective right of inhabitants of cities, in particular of vulnerable and marginalized groups, that confers upon them legitimacy of action and organization, based on their uses and customs, with the objective to achieve full exercise of the right to free self-determination and an adequate standard of living.”<sup>21</sup>

The right to the city is not to be viewed as a new legalistic right but merely a demand for multiple human rights to be realized within cities, towns and villages. It is a means to combat the rampant paradigm of exclusionary development, selective benefit sharing, marginalization and discrimination.

While implementing the right to the city, the principle of mutual responsibility and sustainability is critical – especially with regard to the environment and use of land, water, electricity and other resources. There need to be enforceable checks and penalties on excess use. This could include taxation of consumption of certain critical resources such as water and other energy resources beyond a certain amount to enable minimal levels of consumption for all and to ensure environmental security.

This principle also calls for the sustainable and responsible management of natural resources, including energy. Urban areas must not grow at the cost of rural areas or other cities. The right to the city should be expanded to include the right to the village/town. It should also imply the right to live in a sustainable and healthy environment. Given the threat of climate change and the rise in natural disasters, disaster mitigation, preparedness and response must be components of city planning and development. When people have to be relocated in order to protect their life and health, their right to adequate resettlement must be respected and guaranteed.<sup>22</sup>

The right to the city must be defined as the right to an inclusive and gender-sensitive political, social, cultural and spiritual space and must include a strong commitment to poverty reduction. This includes removing discriminatory provisions in laws and policies that negatively affect the poor and economically weak. Financial incentives, subsidies, credit, land and priority housing must be provided to the homeless, landless, and those living in inadequate conditions.

States must recognize diversity in all its forms and promote a culture of tolerance and mutual respect that enables all individuals and groups to realize their full potential.

### Right to land and other natural resources

Legal recognition and protection of the human right to land and other natural resources are critical for promoting sustainable development and environmental justice. The right to land needs to be upheld to ensure equality in land ownership and use of land and public spaces. This includes the right to collectively own and manage land, property and other natural resources such as forests and water bodies. Legal recognition of community-based property rights is important to help ensure sustainable use and management of natural resources as well as protect the right to an adequate standard of living.

The right to land is also integrally linked to the provision of legal security of tenure over housing and land. Recognition of the human right to land would ensure protection against forced evictions and dispossession; check against land aggrandizement; enable sustainable development of settlements; promote agrarian reform, environmental protection, collective agriculture and community-based natural resource management; and prioritize social uses of land such as public housing and playgrounds.

Land laws and policies should define “public good/interest” to prevent the takeover of land for undemocratic purposes and should revoke the principle of eminent domain since it is largely misused by States.

### The social function of property

In both urban and rural areas the principle of “social function of property” should guide land use planning to ensure that land is not diverted to meet the interests of the rich at the expense of the poor. The social function of property should ensure ecological use of land and also implies that there should be limits on the size of landholdings to promote equality in land ownership. Where land is not meeting its social function, provisions should be available to either redistribute it – as in national constitutions such as Brazil’s – or to institute penalization provisions. The promotion of the principle of social function of property is integral to the realization of environmentally sustainable and equitable development.

The human rights principle of non-retrogression must be upheld. States, including local governments, must not regress on their human rights commitments including progress made in improving housing and living conditions. ■

19 See M. Orellana, M. Kothari and S. Chaudhry, “Climate Change in the Work of the Committee on Economic, Social and Cultural Rights.” (2010), <[www.fes-globalization.org/geneva/documents/CESCR%20Climate%20Change\\_May2010.pdf](http://www.fes-globalization.org/geneva/documents/CESCR%20Climate%20Change_May2010.pdf)>.

20 “Climate Change and Human Rights: A Primer,” Center for International Environmental Law, (2011), <[www.ciel.org/Publications/CC\\_HRE\\_23May11.pdf](http://www.ciel.org/Publications/CC_HRE_23May11.pdf)>.

21 “World Charter on the Right to the City.”, <[www.globalgovernancewatch.org/resources/world-charter-on-the-right-to-the-city](http://www.globalgovernancewatch.org/resources/world-charter-on-the-right-to-the-city)>.

22 M. Kothari and S. Chaudhry, “Taking the Right to the City Forward: Obstacles and Promises.” paper for UN Habitat, *State of the World’s Cities 2010/2011*.