

## **LESSONS LEARNED FROM CARDIZ STREET: STRENGTHENING THE RIGHT TO HOUSING THROUGH METALEGAL STRATEGIES**

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The benefits of a property rights system founded on what Peruvian economist Hernando De Soto identifies as a “strong, well-integrated social contract” can hardly be argued against when transplanted in the Philippine setting. In Metro Manila, the urban poor have been steadily carving out a sizable niche for themselves within the margins of the formal economy, straddling the line between legal and extralegal notions of property, and generally going about the business of living under the ambivalently watchful eye of the government. While property ownership, as it is generally defined by statutes and special laws, conveys a tenor of predictability and regularity, the rise in the informal acquisition of urban housing – be it a cardboard box or a sturdier structure made of wood and cement – is redefining traditional, even feudal, concepts of property by the introduction of the right to housing as a collective human right. This paper begins with the question “what is housing?” to better locate the concept of “squatting” – specifically, spontaneous urban settlement – within the context of informal economies. By examining (a) an actual scenario of slum dwelling in the Philippines; (b) applicable laws; and (c) related jurisprudence, this paper attempts to provide new insights on how to better improve the conditions of the country’s urban poor, such as the creative use of metalegal strategies to “fill in the gaps” where the law and the government agencies tasked with the promotion of development policies fall disappointingly short.

*Resolving the needs of low-income groups for shelter will not be an easy task. The problems, essentially institutional, are rooted in long-entrenched traditions, prejudices and practices, and to overcome them will require a sustained effort. Reform will be hastened, however, by the changes that are taking place rapidly in the cities themselves, producing both stresses and strains in the social fabric and a growing willingness to experiment with new solutions.*

### **Anthony Churchill and Margarette Lycette (1980)**

*There are millions upon millions of Filipinos who have individually or exclusively held residential lands on which they have lived and raised their families. Many more have tilled and made productive idle lands of the State with their hands. They have been regarded for generation by their families and their communities as common law owners.*

### **(Heirs of Malabanan v. Republic of the Philippines [2009] G.R. No. 179987)**

## **1. Introduction**

A closer scrutiny of the space between the law *as it should be* and the law *as it really is* reveals unfortunate matters of fact about the role informal settlers play in the nation's bigger concerns. Much of the rising number of informal settlements remain *invisible* – unrecorded in censuses, out of reach from NGOs, and ignored by the local government when it comes to the delivery of basic services, yet coddled and wooed by *politicos* during the election season to garner more votes. Despite their legal or formal invisibility, the presence of informal settlers is impossible to overlook. Against the backdrop of regulations and development policies which subliminally represent informal settlers as either petty nuisances that should be hidden away from visiting foreign dignitaries to a national problem that must be controlled no matter what the cost, the bleak picture of life in slum settlements is both familiar and unfamiliar.

These stories are familiar to Filipinos because we have no doubt passed by these settlements on the way to school and work, viewed depictions of informal dwellings in literature and films, or have dealt with informal settlers in our everyday lives – our co-workers, family members or close friends. Yet these stories are also unfamiliar when informal settlers are “Othered” – that is, when they are subjected to impersonal scrutiny from a decidedly safe distance or when there is an instinctive focus on their “difference” as if in assurance of our proper place in society, our status and social standing. Consequently, these commonplace considerations invariably find their way into the Philippine legal system. Indeed, the concept of the right to housing as a basic human right poses practical difficulties for policymakers. After all, to what extent should informal settlers be accommodated so that the gap between the “*processes that allow the freedom of actions and decisions*” and the “*opportunities... given their personal and social circumstances*” may be minimized, if not eliminated entirely? (Sen, 2000: 17) Even the most cursory look at the numbers is daunting.

The Philippine population is 51 percent urban with one of the highest rates of urban growth in the developing world at 5.1 percent over the past four decades. (Constantino-David, 2001: 234) In Metro Manila, the state capital and the most highly urbanized city in the Philippines, immense poverty has become a distinguishing characteristic with most of the city's urban poor residing in environments not fit for human habitation by international standards. The urban poor who, by some estimates, account for 40 percent (Santos, 2010) of the total population in Metro Manila, live in blighted informal communities – along railroad tracks, riverbanks and other waterways, under bridges, beside hazardous gas wells, on public and privately-owned lands – and are faced with the constant threat of punitive actions such as evictions and distant relocations.

This paper focuses on the experiences of a particular informal settlement, that of the Cardiz Neighborhood Association (CNA) in Tatalon Estate, Quezon City, to better shed light on the issue of “squatting” against the existing framework of regulatory housing laws. The term “squatters” – often used alternately with “slum dwellers”, “unlawful tenants”, “illegal residents”, or the politically correct and less condemnatory, “informal settlers” – refer to persons or households that neither own nor rent the land on which they live. (Jimenez, 1994: 556) Squatting, therefore, signifies the act of inhabiting an abandoned or unoccupied parcel of land (Stone, 1984) without any legal authority to do so or without first acquiring a legal title, by landless and homeless persons (Buenavente v. Melchor [1979] 89 SCRA 222). It is of note that squatting is no longer considered a crime in the Philippines with the passage of Republic Act 8368, the law which has repealed the Marcos-era Presidential Decree 772 that punishes squatting and other similar acts. Nevertheless, the penalties for “professional squatting” and “squatting syndicates” have been retained.

For purposes of this paper, “informal settlers” shall be used to refer to individuals or groups of people who settle on public or private land without the express consent of the landowner and who have insufficient income for legitimate housing. (1) This also distances itself from whatever pejorative social and psychological connotations associated with the signifier “squatter.” Furthermore, as previously mentioned, squatting has been decriminalized in the Philippines; hence, to summarily categorize all the activities of informal settlers, specifically those relating to spontaneous urban settling illegal would be grossly inaccurate. As such, the term “extralegal,” in the spirit of De Soto’s concept of dual economies, shall be employed to better describe those activities, which are neither formal nor illegal, made in connection with urban settling.

### 1.1 Property Rights vis-à-vis Housing Rights

Once viewed only as an input in the production of food and fiber (Johnston and Swallow, 2003: vi), land is now considered a key element in combating poverty in developing countries, an economic idea popularized by the Peruvian economist Hernando de Soto in *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000).

It was more than a decade ago when De Soto emphatically called attention to the fact that an estimated 4 billion people around the world lack the legal instruments necessary to participate in modern market economies.

He proposed that legal reform should provide the poor with the proper title to the assets that they hold to enable them to enter the formal economy and unleash a vast store of “*dead capital*.” The theory is that assets that are merely held but not owned are useful only in its physical form but are impotent as a means of legally accessing the market economy. Hence, pulling the extralegal practices of the poor into the legal system will unleash this capital which is worth much more than what poor countries have been lent or given by developed nations or multilateral agencies. While the numbers of people who live in informal settlements have undoubtedly increased significantly since De Soto conducted his study, his analysis still maintains its relevance. In a 2009 case decided *en banc*, the Philippine Supreme Court quoted passages from De Soto’s work to emphasize “*the disconnect between a legal system and the reality on the ground*” when it comes to the plight of informal settlers. (Heirs of Malabanan v. Republic of the Philippines [2009] G.R. No. 179987)

While property ownership, as it is generally defined by special laws and statutes, conveys a tenor of predictability and regularity, the rise in the informal acquisition of urban housing, be it a cardboard box or a sturdier structure made of wood and cement, is redefining traditional, even feudal, concepts of housing rights. Hence, the concept of human rights enters the picture by serving as a foundation of a life of dignity.

They are a set of guarantees that are universal, inalienable and indivisible. The significance of human rights in crafting development policies is rooted in the interrelated and interdependent nature of rights which has the capacity to enhance, supplement and reinforce one another. (Sen, 2000: 40) Hence, it is said that the enjoyment or fulfillment of human development is often dependent on the linkages between other rights – thus, when the right to housing is violated, more often than not other related rights are violated.

## **2. A Historical Backdrop of Property Rights in the Philippines**

The Philippine story of property rights, defined as “the juridical tie by virtue of which a person has the exclusive power to obtain all the benefits from a thing, except those prohibited or restricted by law or by the rights of others” (Tolentino, 1991: 1) is intimately linked with the story of the Filipino’s bloody struggle for freedom that was withheld for centuries. (Agoncillo, 1977; Murphy, 2000) From the enforced tenancy regimes in Spanish-owned *haciendas*, to the granting of homestead free patents under American rule that resulted in the displacement of indigenous communities from their ancestral lands in Mindanao, the State was vested with powers that greatly overshadowed individual rights and freedoms. With socioeconomic structures characterized by unpredictability and the systematic asset-stripping common to all colonial projects, the fusion of government

bureaucracy and the landed elites further cemented the social disparities pervasive in a property system that is largely borrowed.

Landownership patterns suffered from the legacy of a Spanish legal system. Hardoy and Satterwhaite (1981) have even suggested that the “*worst features of capitalism*” were appended to then existing laws upon the legalization of feuding landholding patterns of the country’s more powerful families by the Americans. Thus, according to Casanova (1974: 361; cited in Hardoy and Satterwhaite, 1981: 85-86):

Land based wealth became the chief source of economic power which, in turn, became a source of political power... for obvious reasons, political power has held private property rights so sacrosanct that *jus abutendi* has come to mean in this country the right of the owner to exercise absolute and unlimited power over the thing owed, even to the extent of destroying it by any means, however inconvenient and prejudicial to the public interest or to the rights of others it may be.

Nevertheless, there were key reforms made under the American administration to strengthen property rights through land redistribution, improved titling and registration. While it was not as successful in practice as it was originally conceived, such attempts at land reform managed to provide substantial flesh to the bare bones of the previous Spanish system. Land titling under the Torrens system, (2) as provided for by the Land Registration Act of 1903, as well as other special laws, has led to substantial welfare-enhancing effects by *inter alia* substituting insecurity with security, reducing the costs of conveyances, affording greater protection against fraud and basically simplifying the everyday transactions of the ordinary property owner. (Grey Alba v. de la Cruz [1910] 17 SCRA 49)

### 3. The Social and Economic Character of Housing in Urban Areas

Many of those who are forced by poverty to live in urban informal settlements continue to do so, despite possible legal, social and physical health hazards, to grasp at opportunities otherwise not available to them in rural areas. This has led to the democratization of the city streets, where both rich and poor live side by side – albeit, not always by personal choice. The issue of the right to adequate housing involves more than an analysis of a population’s access to structures of a permanent nature, to be used as a dwelling space, place of residence, or shelter. At its most basic, yet undeniably significant level, housing provides a source of refuge for the basic family unit and has become a symbol of security, safety and wealth. Beyer (1965) has described housing as a “*highly complex product*” because of the role it plays in efficient urban planning and its capability of becoming the cornerstone of social order. In this manner, housing becomes both an “*economic and social process*” and, thus, its importance in a country’s overall development cannot be stressed enough. (Beyer, 1965: 3)

Over the past decades, many advances have been made with regards to the promotion and development of housing rights. It has been introduced as a collective human right since it forms part of the standards comprising what is considered an adequate standard of living. Access to proper housing provides increased access to livelihoods, public utilities and basic services. A house, by virtue of its accompanying address, becomes a means of identification in both public and private documents. It creates a reasonable expectation of privacy, at least insofar as in the eyes of the law. (3) A house, then, becomes representative of one's sense of self and status since a person may be defined by the type of dwelling he lives in.

The emergence of housing as a compelling field of inquiry demands that the economic factors affecting the urban housing situation should be given serious attention. The World Bank (1975) has identified these factors as: *income levels*, *city characteristics*, *rate of city growth* and *housing policy*. First, at the household level, the aggregate amount of money received, either as payment for work or as profit on capital, becomes an indicator of what a household can generally afford. In macroeconomic terms, *income* at the national level reflects a country's capacity for housing its population at standards that will not distort other investment allocations. (World Bank, 1975: 12) In the Philippines, like most developing countries, income in urban areas is much higher than in rural areas, drawing a constant influx of migrants. According to Wegelin (1983: 107), migrant workers make up the majority of the urban poor and while an overwhelming majority may have houses to come home to after a day of labor (except, arguably, for vagrants and street dwellers), it is often at unreasonably low standards and on land owned by someone else.

Second, the biggest and most urbanized cities confront the gravest problems because it is here where spatial imbalances between people and jobs are at its most evident. The scarcity of land coupled with the need for better access to employment opportunities in metropolitan centers remains a dominant feature of the housing problem and, as such, *city characteristics* must be taken into consideration when forming housing policies specifically tailored for a particular urban area.

The availability of adequate and suitable land becomes of paramount importance to the success of housing policies since many settlers, after being relocated to far-flung areas, return to their former homes to squat due to employment reasons. As suggested by Wegelin (1983: 107), it seems that where there is a choice between cheap land and high commuting costs, on one hand, and expensive land but low commuting costs, the first alternative may be seen as the less viable option. Thus, the problem with relocation sites placed on the fringes of the city is that while people can build houses on these lands, the environment may remain substandard without access to basic infrastructure, social services, medical services, education and community development. (Tordecilla, 2005: 25)

Third, *population* or city growth rate is another factor to consider in light of the rapid rates of household formation and increases in housing demands. (World Bank, 1975:

14) In the Philippines, approximately ten million of the country's urban population live in Metro Manila, which has an annual growth rate of 3.3 percent. (Constantino-David, 2001: 234) This has been largely due to factors such as a high birth rate of approximately 2.3 per cent per annum, rural-to-urban migration, and the reclassification of rural areas as urban due to their increasing population densities. (Constantino-David, 2001: 234) Migration is an obvious testimony to the continuing poverty in the countryside that forces the poor to seek their survival in the cities.

Fourth, the *housing policy* of a particular State, comprised of laws, statutes and the administrative strategies, affects the housing situation by, ideally, providing some standard of security of tenure. While such security might manifest itself via a combination of different legal forms, the minimum sufficient security must at least contain safeguards against unjust expropriation and summary demolitions. (World Bank, 1975: 15) Furthermore, an effective policy should not look at the housing problem merely in terms of “*household deficits*” since this may lead to conceptual difficulties usually associated with what it means to have “*appropriate housing*,” and estimates based on these misconceptions may lead to a cycle of demolishing makeshift, informal houses to make use of the land in other ways. (World Bank, 1975: 15) Likewise, prohibitive building codes, costly land acquisition procedures and similar barriers, while put in place with the intention of regulating housing, may instead marginalize its beneficiaries and result in policy failure. (World Bank, 1975: 15) The shifting nature of housing policies – punitive during one administration and then restorative the next – has led them to reinforce their dwelling with hollow cement blocks and mortar. The reason is not difficult to surmise: a house built with strong materials is harder to dismantle during eviction and it would take a lot more resources to demolish. For many informal settlers who resort to such tactic, they do this in the hope that it dissuades the property owner from ordering a demolition and, instead, facilitate an amicable settlement with the end goal that the property is sold to the informal residents.

## 4. A Legal Overview of Informal Settling

The Philippines is a State Party to a number of human rights instruments, many of which recognize and affirm the right to housing, and its Constitution contains provisions on “Urban Land Reform and Housing”. Below is a legal overview of the laws, instruments and standards which shape development policy, as well as the problems besetting state compliance with such.

### 4.1 International Standards, Rules and Guidelines

The Universal Declaration of Human Rights (UDHR) which was adopted on December 10, 1948 emphasizes in its Preamble that the “*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*” It is this concept of the promotion of human dignity and the equal



and inalienable rights of every person that has become an aspirational goal of a world community in which a “*democratic distribution of values*” is sought. (Shaw, 2008: 265) Hence, the weighing of the legitimate rights of the state, groups and individuals has been subject of intense debate. Specifically, while there is a prevalent acceptance of the importance of human rights, the precise definition and manner of implementation of these rights may vary, depending on who is doing the analysis and why.

Furthermore, the question of what is meant by a “*right*” may be a subject of controversy since some “*rights*”, for example, are intended as immediately enforceable binding commitments, others merely as specifying a possible future pattern of behavior. (Shaw, 2008: 265) As such, is the right to housing one of these enforceable rights? The answer is an unqualified yes as evidenced by the wealth of human rights instruments affirming such.

However, the right to housing may be ignored, looked at with “*disdain*” (Gutierrez, 2008: 448) or treated like the “*poorer relation*” (Oloka-Onyango, 2010) to its more commonly known civil and political counterparts – rights to free expression, political and civic association, and freedom from torture, cruel, inhuman and degrading treatment. By contrast, economic, social and cultural rights are much less well known, and only rarely do they form the subject of concerted political action, media campaigns or critical reportage. Nevertheless, according to Ibarra Gutierrez in *Housing Rights in the Philippines: Recognition, Protection and Promotion* (2008), there has been an increased strengthening of the position of housing rights in international law and within domestic legal systems because there is the growing recognition of economic, social and cultural rights or “*second generation*” rights.

In the UDHR and in subsequent international instruments, the two abovementioned categories of rights are placed on equal footing, with an emphasis on their indivisibility, interconnection and interrelationship. (Oloka-Onyango, 2010) It was first recognized by the UN GA in 1948 through Art. 25(1) of UDHR as part of the recognition of the right to an adequate standard of living. This provision, and consequently, the right to housing itself, was enshrined in the ICESCR when it was drafted in 1966 as part of the right to an adequate standard of living. (Gutierrez, 2008: 449) In fact, the ICESCR has identified seven facets that required for the full enjoyment of the right to housing.

Thus, shelter security has come to mean: *legal security of tenure, availability of services and infrastructure, affordability, habitability, access and location and cultural adequacy*. (Social Protection In Asia, 2009: 1) The first factor, security of tenure, is said to be particularly significant because it relates to another important aspect of State obligations with respect to the right to housing – protection from forcible eviction. (Gutierrez, 2008: 449)



## 4.2 Philippine Laws and Policies

In the Philippines, apart from its commitment to the right to housing as a state party to the ICESCR, there are organic laws in place, foremost is the Philippine Constitution. Two constitutional provisions highlight the commitment of the state to undertake a continuing program of urban land reform and housing reform for the underprivileged and to protect poor from forcible evictions. It is provided, however, that while evictions and demolitions is allowed as long as it is done within the confines of the law, law enforcement agents should treat urban or rural poor dwellers, regardless of the validity of their property claims, in a just and humane manner. It is of note that while the related provisos do not expressly recognize a right to housing, it still represents a broader commitment to recognize such a right. (Gutierrez, 2008: 449) To wit:

**Section 9.** The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

**Section 10.** Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

In the Philippines, squatting is no longer considered a crime upon the passage of Republic Act 8368, or the “Anti-Squatting Law Repeal Act of 1997”, which repealed the Marcos-era Presidential Decree 772 that penalizes squatting and other similar acts. R.A. 8368, which took effect on 27 December 1997, was enacted solely for the purpose of *expressly* repealing the old governing law on squatting and, moreover, Section 3 thereof specifically provides that “*all pending cases under the provisions of Presidential Decree No. 772 shall be dismissed upon the effectivity of this Act.*” (De Castro Homesite Inc. v. Leachon [2005] G.R. No. 124856) Necessarily, the legal effect of this declaration by a co-equal branch of government renders superfluous further disquisition of the cases at hand. However, the repeal of PD 772 did not nullify, eliminate or diminish in any way Article VII, Section 27 of Republic Act No. 7279, otherwise known as the “*Urban Development and Housing Act of 1992*”, or any of its provisions relative to sanctions against “*professional squatters*” and “*squatting syndicates*”. According to Article I (Definition of Terms) of RA 7279:

m. “Professional Squatters” refers to individuals or groups who occupy lands without the express consent of the landowner and who has a sufficient income for legitimate housing. The term shall also apply to individuals who have been previously awarded housing units or home lots award by the government but who

sold, leased or transferred the same to settle illegally in the same area or in another urban areas, and non-bonafide occupants and intruders of land for socialized housing. The term shall not apply to individuals or groups who simply rent lands and housing from professional squatters and squatting syndicates.

n. “Squatting Syndicates” refers to groups of persons engaged in the business of squatter housing for profit or gain.

After the repeal of Presidential Decree No. 772, RA 7279 became the governing law with respect to the subject matter of “*squatting*”. In effect, RA 7279 became the enabling law of the Constitutional mandate towards urban development and the State’s treatment of its urban poor. According to the Housing and Development Council of the Philippines (2010), the goal of such law is to enable the equitable utilization of residential lands in urbanizable areas with particular attention to the needs of the underprivileged and homeless and not merely on the basis of market forces. Furthermore, punitive action against professional squatters and syndicates has been emphasized under Article VII, Section 27 of RA 7279:

**Section 27.** Action Against Professional Squatters and Squatting Syndicates.

Any person or group identified as [professional squatters] such shall be summarily evicted and their dwellings or structures demolished, and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

Informal settlements may still be abated as *nuisance per se* through demolition and eviction. The logic behind the eradication policy is that physical removal of informal settlements would reduce their numbers in urban areas. (Lim, 1995: 521) The pertinent portion of Section 28 provides:

**Section 28. Eviction and Demolition.** — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds.

RA 7279 likewise provides for resettlement. Thus, granting for the sake of argument that the local government may effect summary eviction, it has a positive duty under the law to provide relocation or resettlement with livelihood opportunities for these informal settlers. LGUs should not just evict these informal settlers without observing its corresponding obligation under the law. This is found on Section 29:

**Section 29. Resettlement.** — Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places as sidewalks, roads, parks, and playgrounds. The local government unit, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.

In addition, the policy and intent of RA 7279 is to render justice and equity to informal settlers may be gleaned from Section 28 (c) (8):

**Section 28. Eviction and Demolition.** — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(c) When there is a court order for eviction and demolition.

(8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

Section 28 (c) applies to cases where there is a court order for eviction and demolition while Section 29 applies to summary eviction. In either case, the humane policy of the law is clear: provide resettlement or relocation options that allow displaced individuals sufficient access to livelihood, basic services and facilities.

A recently enacted law, the Magna Carta of Women (Republic Act 9710), which took effect on 15 September 2009, also has a specific provision on the right to housing. RA 9710 is a comprehensive women's human rights law that seeks to eliminate discrimination against women by recognizing, protecting, fulfilling and promoting the rights of Filipino women, especially those in the marginalized sectors. This law affirms that women in marginalized sectors are hereby guaranteed all civil, political, social, and economic rights recognized, promoted, and protected under existing laws.

Section 21 specifically makes mention of the right to housing, showing how the law has come so far in addressing this collective right; to wit:

**Section 21. Right to Housing.** — The State shall develop housing programs for women that are localized, simple, accessible, with potable water, and electricity, secure, with viable employment opportunities and affordable amortization. In this regard, the State shall consult women and involve them in community planning and development, especially in matters pertaining to land use, zoning, and relocation.

### 4.3 Problems Besetting State Compliance

According to the United Nations Centre for Human Settlements (1981), there are three broad groups of government policies with respect to informal settlements: *laissez-faire* policies; restrictive or preventive policies; and supportive policies. “*Laissez-faire*” is simply the descriptive term applied to the practice of some governments of officially ignoring the existence of slum areas and allocating public resources to other development sectors. This built-in resistance is compounded by the fact that effective policies in housing invariably affect many government departments, often with overlapping areas of jurisdiction and conflicting objectives. This involves the reduction of power of certain individuals enjoyed under previous policy especially where the government situation is unstable. (Wegelin, 1983: 112)

Restrictive policies, on the other hand, seek to eliminate or reduce the size of low-income areas, stemming from predominant perceptions of policy-makers who underestimate the capability of the urban poor to help themselves.

At best they feel that the poor have to be guided, at worst, the poor have to be prevented from “*carrying out innately mischievous acts.*” (United Nations Centre for Human Settlements, 1981) Government policies that enforce the rule of law too strictly, however, have led to mass evictions – including measures such as barricading of dwellings, demolitions by bulldozing, arson and violence against persons – which continues to spark public outrage from civil society and international organizations alike. As exhorted by the Supreme Court in the *Heirs of Malabanan* case (*supra.*), that while there is much to be said about the virtues of legitimizing informal settlers, it is beyond the powers of the Court to translate this into positive law. It is incumbent on Congress to “*set forth a new phase of land reform to sensibly regularize and formalize the settlement of such lands which in legal theory are lands of the public domain before the problem becomes insoluble.*” Two examples were given as means of mitigating the strain of restrictive land policies: (a) *liberalize* the standards for judicial confirmation of imperfect title; or (b) amend the Civil Code itself to *ease* the requisites for the conversion of public dominion property into patrimonial.

In contrast with the abovementioned policies are the so-called “*supportive*” policies, which are founded in the belief that informal settlements have an inherent potential for improvement. These policies seek the inclusion of informal settlers in the national

development process and, ultimately, in the social and economic integration of the residents into the surrounding area. Examples of supportive policies include providing basic amenities, building low-income public housing projects and granting technical and administrative aid for self-help housing. Thus, the policy offers to rehabilitate and upgrade informal settlements.

## 5. Metalegal Housing Strategies

The planning and execution stages of any government-sponsored land titling initiative tends to be a very slow process because of the manpower constraints associated with organizational planning. One has to take into consideration those government regulations that involve plan approval, tendering procedures, construction supervision and disbursement of funds. (Wegelin, 1983: 114) This is especially true in the Philippines where administrative bottlenecks and deadlocks may often lead to frustration and, possibly, disregard of the legal modes of acquiring housing. De Soto provides an eye-opening heuristic device in *The Mystery of Capital* by mapping at least 168 cumbersome steps that is required so that persons may legally purchase a dwelling built on either state or privately owned property in Metro Manila. De Soto concludes that this tedious and costly progression involving a lot of maneuvering through bureaucratic red tape has led many migrants to opt out of the system – “*it is nearly as difficult to stay legal as it is to become legal.*” (De Soto, 2000: 20-21) Such barriers to access are intimately linked with poverty since “*opting out of the system*” may negatively affect those marginalized indigents who are unable to attain any legally recognized evidence of ownership over the land on which they reside in the long run.

De Soto’s proposal that formal legal titling as a solution to the housing problem has been criticized as too idealistic, taking too much time. A squatter on a piece of land without legal title and in violation of building codes may pay for the legal title and improve the structure but this is unlikely among the poor. (Lim, 1995: 526) It is immensely difficult for the poor to move from informal to formal housing market since it is a long-term and multistep transition (Lim, 1995: 256) where laws applying De Soto’s principles have not yet been put in place. In the meantime, policy beneficiaries, in this case the urban settlers, may resort to “*metalegal strategies*” instead of relying too heavily on a heavy-handed top-down approach from a government that may be too resistant to change.

Asido and Talaue-Macmanus describe metalegal strategies as those “*creative actions employed by the basic sectors to further their particular interests in cases where the relief or remedy provided by law is too slow or non-existent.*” (2000: 101-109) While not prescribed by law nor prohibited by it, these strategies, or tactics, originate from basic human rights such as the freedom of free expression and assembly, the freedom to form associations, and to petition the government for redress of grievances. The self-help approach is based on democratic principles of self-determination (Asido & Talaue-Macmanus, 2000: 101-109) and the *a priori* presumption that “*people can be meaningful participants in the developmental process and*

*have significant control*” over such. (Lyon, 1987: 115) These may include tactics such as, but not limited to: mediation, negotiations, rallies and mobilizations, community and public conscientization, law and policy reforms, the use of media, among others.

Metalegal strategies, when employed in relation to housing rights, inherently rely on the capacity of informal settlers to help themselves. It involves demarcating of issues and enumeration of clear demandable rights to further collective aims in participatory decision making.

This participatory approach may help combat administrative bottlenecks and soften the built-in resistance to changing existing (ineffective) housing practices. This paper, thus, enumerates four possible strategies, or tactics, based on the experiences of the informal settlers of Cardiz Street, specifically: *lobbying and institutionalized resident’s participation*, *mediation and amicable settlement*, and *metalegal training*. The last proposal, the Community Mortgage Program, is not a metalegal strategy *per se* but is a state-sanctioned policy that necessarily involves a combination of the above-mentioned strategies and may provide a solution to the housing problems of informal settlers.

### **5.1 Lobbying and Institutionalized Resident’s Participation**

As a metalegal strategy used in the process of urban development planning, lobbying includes, but is not limited to consultations, multi-sectoral dialogues, and networking with the local government units. Community meetings with neighboring *barangays* (4) and other neighboring settlements should be regularly conducted to ensure that there will be no inadequate guesses or estimates regarding housing needs. This helps clarify local perceptions about the living urban resources, the legal and social mechanisms that govern access to them, and the problems and possible solutions associated with their utilization.

The active participation of stakeholders in the process deepens their sense of involvement and commitment to achieving prospective solutions to the problems they identified. Lobbying inherently involves premeditated intentions and concerted action to influence decisions made by legislators and officials in the government. The residents of Cardiz Street formed the Cardiz Neighborhood Association in recognition of the common concerns of its residents. They have registered themselves with the Securities Exchange Commission (SEC) and was organized by the residents ultimately to increase collaborations with the city government.

### **5.2 Creative Legal Intervention**

There are other non-governmental agencies that are devoted to the cause of informal settlers, whose findings further highlight and aim to address the ways to manage problems concerning urban housing and the need for an integrated planning process. Aside from providing legal assistance, these NGOs provide studies and the participatory

approaches that may be used to further galvanize community sectors to actively take part in the planning process. What was needed however was the capacity and skills to engage government and stakeholders in the legal aspects of policy formulation and adoption. It was in this context that metalegal strategies and paralegal philosophy advocated by Tanggol Kalikasan (TK) of the Haribon Foundation came into play. Perhaps a factor that is pronounced in the planning and enactment of these strategies is the involvement of legal resource persons in the process. Recognizing that housing rights involves an apprising of property rights through policy review and formulation, the CNA approached various NGOs that conduct seminars addressing the nexus between private property and human rights so as to their rights as informal settlers and how to combat the threat of summary eviction.

### 5.3 Mediation and Amicable Settlement

Another alternative is to propose a friendly mediation conference with the landowner to explore possible alternatives to court litigation, such as the availment of the community mortgage program or negotiated direct purchase. This is in line with the government policy favoring the amicable settlement of disputes. Moreover, resort to mediation may result in mutually beneficial terms for the parties, considering the incentives available under the law.

So as not to delay the settlement of the respective rights and obligations, experience has taught the CNA that proactively drafting a document entitled “Agreement to Mediate” addressed to the landowners or pertinent government agencies allows their voices to be heard while lessening potentially strained relations between the opposing parties. Entering into such an agreement may even be considered as a “best practice” considering that: (1) the policy of the law encouraging amicable settlements; (2) the avoidance of unnecessary expenses of legal counsel and filing fees; (3) the likelihood that mediation will also be required in the event of court litigation; and finally, (4) the appeal towards the principle of social justice and the protection afforded to the urban poor communities. Indeed, it would truly be advantageous to attempt mediation at an earlier stage, before positions harden and before large expenditures of time and money have occurred. Through mediation, the parties will be able to communicate directly and listen to each other’s real concerns.

### 5.4 The Community Mortgage Program

Through RA 7279, the Community Mortgage Program (CMP) can help unlock “*dead capital*” not only on the part of the informal settlers, but also on the part the formal landowners of the land. The CMP is essentially a financing scheme that allows informal settlers the opportunity to own the lots they occupy and to construct houses with the possibility of LGUs as loan originators. Without an unlocking mechanism such as the CMP, the landowner, who is the *de jure* owner of the property, cannot maximize his



property rights. Burdened by the informal settlements on his land, he continues to pay real estate taxes on his property, but cannot develop or exploit his property to create value for him without first evicting the informal settlers on his land. Cases of eviction can take years and cost a lot of money, with no assurance of success on the part of the landowner. Neither can the landowner sell his property at reasonable market rates so long as potential buyers are aware of the existence of informal settlements on his property. Through the CMP, the landowner will be able to sell his property to the settlers on his land, and get reasonable value for his property. This frees “*dead capital*” on the part of the landowner.

By using the abovementioned metalegal strategies, an informal community may organize themselves and enter the formal system through the CMP. By acquiring title to the land where they are settling, they are able to access the urban market or use their property as a source of livelihood, and the property they are holding becomes “*leverageable*” and “*liquid*” as it can now be used as collateral to obtain loans or capital. These, in turn, can be used for entrepreneurial endeavors, freeing “*dead capital*”.

The advantage of the CMP is that it recognizes dual conflicting rights to the property – the legal and *de jure* ownership of the landowner, and the *de facto* possession of the informal settlers.

## 6. Conclusion and Recommendations

The benefits of a property rights system founded on what Peruvian economist Hernando De Soto calls a “*strong, well-integrated social contract*” can hardly be argued against when transplanted in the Philippine setting. In Metro Manila, the urban poor have been steadily carving out a sizable niche for themselves within the margins of the formal economy, straddling the line between legal and extralegal notions of property, and generally going about the business of living under the ambivalently watchful eye of the government. In this regard, property rights is truly placed on equal footing to life and liberty, proof of the role it plays in democratization. The goals of optimal economic efficiency, peace and order, and collective security are impossible to maintain in the long run with a disgruntled and oppressed community of people whose human rights are ignored by the government. A citizenry pushed to edge of a proverbial cliff by intractable law enforcers may even trigger violence or, at the very least, an all-encompassing disregard for the rule of law. It is in this way that an inadequate and poorly enforced formal property system that neglects to take into account certain social, political and economic realities tends to be no different from De Soto’s “*imagined country*.”

This is not to say, however, that government regulation and its rules-based system should be entirely dispensed with. Rather, the objective of such regulation should not “*oppress the owner but to impress upon him the social character of [the property] he holds.*” (Bernas, 2004: 112) The experiences shared by Cardiz Street residents should teach the straightforward lesson

that if such overly strict and complex procedures eclipse the legitimate need for control, a loss of welfare will indubitably arise. Hence, while land titling by itself may not be the catch-all solution to poverty, it has that transformative capacity to be that crucial first step towards economic development. However, land titling may prove costly and slow, hence metalegal strategies by the informal settlers themselves and concerned advocates who have actual knowledge of slum life contributes to the formulation of creative and imaginative policies that will have substantial political and economic dividends.

With a strong commitment to a common national project, increased political will, and a sense of social obligation from both public and private sectors, the enfranchisement of informal settlers is possible. Nevertheless, any initiative that aims to streamline the current formal system necessarily becomes a balancing act: first, while certain key changes must be made to simplify registration proceedings and relax excessive government control; conversely, such measures must be applied in a manner that does not unduly weaken the government's ability to resolve the housing shortage.

This can only be achieved through the concerted efforts of the public and private sector, especially when making the costly initial investments that would help improve efficiency and expedite government processing.

It is likewise submitted that increased accommodation of the extralegal sector becomes a national objective in light of the principle of social justice as enshrined in the Philippine Constitution. Thus, the institutions that seek to promote justice must embody creativity that can be gleaned from the use of metalegal strategies. Development policies should take into consideration complex and interdependent expressions of humanity embodied by the informal settlers, instead of clinging to the rigid and static definitions of archaic laws. The law should necessarily incorporate change and should not be so enmeshed in outdated notions of traditional order. While the law was created to provide predictability and regularity, the extralegal, oftentimes irregular, experiences of informal settlers reveal that insisting on these notions of traditional legal order may not promote greater manifestations of justice.

The next step involves the creation of various policies, procedures, programs, management initiatives and legislative efforts. While this paper does not provide specific recommendations along these lines, it was written with the hopes that while a viable framework has not yet been proposed to alleviate the housing problem, the introduction of metalegal strategies may help ease the growing pains and provide solutions while the greater ideal of *"housing for all"* has not yet come to pass. It is self-help justice without being illegal – a means of strengthening economic, social and cultural rights, within the confines of existing laws in the hopes that one day, the proper laws that will solve the problem will be enacted.

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## ENDNOTES

- <sup>1</sup> There is no one particular definition for “*informal settler*” as it may include those living in squatter settlements, slums or socialized housing projects. The underlying commonality between these signifiers, however, is the informality or irregularity in which housing is acquired. At least for purposes of policymaking, further distinctions between popular descriptions are necessary.
- <sup>2</sup> *Grey Alba vs. de la Cruz*, 17 SUPREME COURT REPORTS ANNOTATED 49 (1910): “*The boldest effort to grapple with the problem of simplification of title to land was made by Mr. (afterwards Sir Robert) Torrens, a layman, in South Australia in 1857... In the Torrens system title by registration takes the place of ‘title by deeds’ of the system under the ‘general’ law. A sale of land, for example, is effected by a registered transfer, upon which a certificate of title is issued. The certificate is guaranteed by statute, and, with certain exceptions, constitutes indefeasible title to the land mentioned therein... ‘The object of the Torrens system, then, is to do away with the delay, uncertainty, and expense of the old conveyancing system.’*”
- <sup>3</sup> In Philippine jurisprudence, the guarantee of freedom from unreasonable searches and seizures is construed as recognizing a necessary difference between a search of a “*dwellinghouse*” and other structures for the purposes of obtaining a search warrant. (See *Papa vs. Mago*, 22 SUPREME COURT REPORTS ANNOTATED, 857 [1968]) To further illustrate, special laws may further provide that persons exercising police authority may only enter and search dwelling houses “*only upon warrant issued by a judge or justice of the peace...*” (*Viduya v. Berdiago*, 73 SUPREME COURT REPORTS ANNOTATED 553 [1976]).
- <sup>4</sup> A *barangay* is the smallest local government unit in the Philippines.

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