

# In-Between Legal And Illegal

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Poverty and illegality are shaking hands. *Illegal* immigrants, slum dwellers, and the poverty-stricken – who make their living in the informal sector – live and work under utmost insufficient protection of the law. More than a billion people are living in slums today, most of them without legal claims to the land they occupy. According to the estimations of UN-Habitat, more apartments are built worldwide in the informal than in the formal sector.<sup>1</sup> In expectation of a better income, the poor settle in barren areas near the urban centers without any legal rights to occupation. With small jobs, such as street vendors or shoeshiners, in the so-called informal sector, they generate a modest income. These conditions also yield to organized crime, drug abuse, and prostitution, however, the majority of the poorest urban population survives far-off from this world of crime, albeit, under extremely difficult conditions.

## The Informal Sector

After some thirty years of on-the-ground experience in self-help projects, development organizations – spearheaded by UN-Habitat – have actually come to the conclusion that not the problem but the solution to urban poverty lies within the informal social organization of these settlements.<sup>2</sup> The microeconomic activities of the poor combined with the informal constructed settlements in which they live form a complex urban system. This system functions much more efficiently based on networked activities and informal relations, which make use of social capital and low-investment risks, than the solutions provided by governmental policies on poverty distorted by bureaucratic and uniformed standards. While the illegal economy of the poor indeed creates an opportunity to produce a very modest living with minimal capital expenditure, it nonetheless brings the risk of prosecution and eviction. The permanent danger of criminal prosecution and eviction deprives the poor of the security necessary in order to set up a sustainable economy, tailored to their needs and possibilities.

## Forced Eviction – the Criminalization of Poverty

Also the *International Covenant on Economic, Social and Cultural Rights*, signed by a predominant majority of the international community, “considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in exceptional circumstances, and in accordance with the relevantly principles of international law.”<sup>3</sup> In spite of this international recognition of the rights of slum dwellers, millions of people are still forcefully evicted worldwide today. According to the Geneva Center on Housing Rights and Eviction (COHRE), violent evictions are characterized by the circumstances, that is, these evictions are performed against the will of the inhabitants. The institute estimates that during 2003 and 2006 approximately 4.3 million people were forcefully evicted from their homes.<sup>4</sup> Thereby, a high dark figure can be added to include all those cases where evictions are not performed with direct force, but rather with structural force, which is difficult to measure. There are, of course, exceptions to this rule where the evictions are aimed directly against a certain section of the population (as in Dafur, for example). As a rule, the reasons reside in economic interests, and evictions are performed where, in the course of dynamic growth and modernization, the prices for property have become interesting to investors. Officially, however, it is the illegal status of the inhabitants in particular that is most oft cited, in addition to the stigmatization that the settlements are strongholds of crime. In the course of extensive modernization, it is not only countries like Zimbabwe, China or India that are resettling vast areas of settled populations. Even in the well-to-do Parisian suburb Cachan, a disused residence hall on a campus, indeed the largest squat in France, was cleared out in 2006. It was not a handful of punks who were evicted but rather several thousand homeless, who had provided themselves with urgently-needed living space. A violation is all that is needed for the governments to enforce the law upon request of the owner. But can a constitutional state tolerate illegal actions or even support them? From an ethical point of view, this question hardly raises a problem. The basic rights of the people are inalienable. On the other hand, from a perspective of the philosophy of law, it becomes a dilemma. Can the constitutional state tolerate an illegal action if its basic premise is based upon the validity of the legal system? And how can criminal offences against the law be restricted by justifiable ones? In order to draw these boundaries more sharply, looking to the political-philosophical debates surrounding civil disobedience can be helpful as it operates in a similar field of action outside the legal boundaries.

## Formal vs. Informal Actions

Civil disobedience is a form of middle-class resistance that deliberately breaks the law in order to call attention to a concern or to protest an injustice. Since the 18th century, this form of resistance was widely adopted by the peace and environmental movements in

<sup>1</sup> Habitat/United Nations, “The Challenge of the Slums, Report on human settlements,” *Today's Slums: Myths versus Reality* (London: Earthscan Publications 2003).

<sup>2</sup> Habitat/United Nations, *Responding to the challenges of an urbanizing world*, UN-Habitat annual report 2005.

<sup>3</sup> *International Covenant on Economic, Social and Cultural Rights*. General Comment 4, 13. December 1991.

<sup>4</sup> Center on Housing Rights and Eviction. (COHRE) *Global Survey on Forced Evictions. Violations of Human Rights*, Geneva, December 2006, p. 5.