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International assemblage of the security of tenure and the interaction of city politics with the international normative discourse

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ABSTRACT

The article approaches the development of security of tenure as a core component of the international human right to adequate housing through the assemblage theory. The concept of security of tenure has been assembled through institutional processes led by UN-Habitat, UN Special Rapporteur for the Right to Adequate Housing, the World Bank and others. These international institutions have developed a plurality of approaches to the tenure security. In addition, through international regime interaction these different approaches eventually became linked and started influencing each other. In such a way, the security of tenure developed from under-developed and separated human rights norm, developmental goal, and attribute of freehold title to a house or land, to a complex and pluralistic concept. Furthermore, the recognition of the complexity and the plurality of forms of tenure security have been related to the semiformal nature of international processes led by UN-Habitat and others, which connected the international level with the local conditions around the world. Through these processes, a pallet of actors with local experiences made international institutions recognize the uniqueness and complexity of the urban/local space as crucial for approaching the tenure security. Acknowledging the specificity and the pluralism of local – urban – socio-political spaces by international institutions shows how interlinked international and urban levels of policy-making have become.

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Introduction

In this article, I argue that the concept of the security of tenure as it is understood on the international level, has been influenced through a network of institutional processes which allowed for the interaction between international human rights, developmental and economic legal regimes. These international processes also brought the pluralism of local/urban social and political dynamics concerning the security of tenure to the international level. Therefore, the concept of security of tenure as understood on the international level has been assembled through the interaction of plurality of international and local normative regimes.

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In other words, international norm of the security of tenure is not simply a product of interaction of states and international institutions. Instead, the security of tenure is an assemblage of interlinked international, national, and local political processes. This means that international law does not just trickle down into localities the world over. Local actors, with their local political struggles, co-create these norms and influence institutional thinking on the international level. This in turn makes local politics much more closely connected to the international normative discourse.

I will begin my article by a description of the global housing crisis as has been perceived by international institutions. After that, I will lay out how international law has approached and tried to protect tenure security. I will argue that the most visible presentation of the tenure security codified within international human rights law, was only one approach employed by international institutions. Assembling of the norm of security of tenure has been taking place through regime interaction of different institutions namely the World Bank, UN-Habitat and the UN Special Rapporteur for the Right to Adequate Housing and some others. Importantly, discourse within these institutions has been influenced by the wide plurality of approaches towards the security of tenure existing within states, and more precisely within cities and localities. After the examination of the security of tenure as practised by international institutions, I will briefly discuss the intertwining of urban politics with the global development of the concept of security of tenure.

Housing issues and public international law

The importance of housing for the dignity of individuals and development of societies across the world has been recognized by international law and international institutions for a long time. Right to housing is part of international human rights law, provision of adequate housing has been one of the goals in the UN sustainable development discourse, and the provision of housing plays an important role in the international economic discourse.

In spite of the interest within international law, almost one billion people worldwide live in informal settlements, where shelters often lack basic requirements for habitability, there are few municipal public services, and protection against evictions or displacement is often non-existent. A majority of such settlements form parts of cities in Asia, Africa and Latin America. Even more, in some metropolises more than half of the population lives in slums and informal settlements. And predictions show that the number of people living in inadequate housing will only rise in the future (UN-Habitat 2016, 47–68). Indeed, according to UN-Habitat, the global problems of inadequate housing and growth of informal settlements are not abating. Additional 600 million people will lack adequate housing by 2030 (UN-Habitat 2016, 48).

In addition, homelessness has been rising in the global north. As the UN Special Rapporteur for the right to adequate housing has argued, the commodification of housing and focus on profit made through housing have been harming the poorer segments of the population. Evictions of the poor and the vulnerable due to rent increases, or exclusion from housing markets due to limited supply and high prices

are a too common occurrence in a large part of the world (UN Human Rights Council 2017; Sassen 2014, 121–146).

Moreover, UN Special Rapporteur for the right to adequate housing elsewhere argued that international and state elites have often exacerbated the housing crisis. Too often they have followed the belief that private economic initiatives are the key to economic development and thus raising prosperity. The provision of housing has been left to the invisible hand of the market and therefore to the private sector looking for profit (Rolnik 2013, 1059–61). This has in turn led to the dismantling of numerous welfare-state programmes across the world. Thus, the safety net that used to protect the poor and the vulnerable from becoming homeless has been diminished and the provision of public housing has become a lesser concern for states (UN General Assembly 2012, para 1–15). As a report to the UN Human Rights Council emphasized, worldwide financialization and understanding of homes as mere commodities are the most widespread approaches to housing (UN Human Rights Council 2017).

Another important development affecting the provision of housing and housing rights in general, has been the steady decentralization of state functions in the majority of states in the world, which has changed how housing rights have been approached within states and on the international level. Municipal and local authorities have been steadily given more and more authority and legal powers to regulate cities and localities and steer their development (Porras 2009, 545–567, Oomen and Baumgärtel 2014). Because of that, the potential upgrading of informal settlements and elimination of homelessness, have often fallen under the authority of municipal and local public authorities (UN-Habitat 2003b, 38). They have been the ones in control of housing policies, ranging from city planning, possible evictions of slum dwellers from valuable land, provision of all kinds of public services needed for housing to be adequate, and construction of public housing. Therefore, the respect and protection of housing rights and the ways of achieving them have become grounded in the political processes taking place within cities (Lajoie 2010, 231; Audefroy 1994, 20–22; Graute 2016, 1937).

Simultaneously, on the international level the attention of institutions has long ago moved from the mere codification of international human rights norms and norms concerning sustainable and economic development, to their application within states (UN General Assembly 1993; Oomen and Baumgärtel 2014). This change of focus has led to the state not being linked to the international discourses, processes and institutions merely as a unitary actor. Indeed, international institutional processes have for a long time involved and focused on other actors from within states, whose actions have an influence on human rights and development of citizens (UN Human Rights Council 2015). In my example, everyone, from local governments, courts, private corporations, NGOs, the civil society and international institutions can be considered to be actors in the processes of application of housing rights. International human rights regime, and regimes concerning sustainable and economic development have therefore evolved into a complex network of multilevel governance, where the authority and obligations are shared between a myriad of actors (Nickel 2002, 369; Milbert 2006, 306, 309).

This article focuses on how the international community decades ago recognized this discrepancy between international legal obligations and aspirations and the

ever-increasing housing problems across the world. International institutions created different international processes aimed at enhancing the respect and awareness of housing rights, core among them being the security of tenure. Through these processes that were not aimed only at central-state authorities the content and international approach to the security of tenure have been enriched and reshaped.

As argued in the next section, the international activities further defining the security of tenure have partially moved from the realm of interstate normative processes to the much richer realm of politics of the international community where a plurality of international institutions and other non-state actors have interacted among each other.

Security of tenure, assemblage theory, and the interaction between legal regimes

The security of tenure, as any other international legal concept has not evolved as a monolithic idea with a single undisputed meaning and a single authoritative interpretation. As international norms in general, it is a norm that has been developed and enacted through political processes, reflecting preferences and often competing views of various actors that had an interest in it. To use Martti Koskenniemi's words, the meaning and force of the security of tenure "depend [...] on the presence of institutions, histories and cultures, of people thinking in broadly similar ways about matters social and political." (Koskenniemi 2011, 160)

I believe it is valuable to use the theory of assemblages to approach this tension between having a plurality of interpretations and approaches to the tenure security, and at the same time having one single name for the concept. The simplest definition of an assemblage (which is used in various ways by different authors) is that it "is a mode of ordering heterogeneous entities so that they work together for a certain time" (Müller 2015, 28).¹ Assemblage theory is an ontological approach towards events, institutions, concepts etc., which reveals their contingent and unstable nature and highlights the possibility of their change. In addition, assemblage theory turns our gaze to the processes and institutions that have had a role to play in their assembly (Müller and Schurr 2016; Latour 2005; Baker and McGuirk 2017; Acuto and Curtis 2014).

Assemblage thinking comes from the philosophy of Gilles Deleuze and Felix Guattari (1987) and has had an influence on numerous thinkers, who have seen and used assemblage theory as "a political ontology that provides tools to describe transformative, creative or deterritorializing forces and movements" (Patton in Müller 2015, 29).

The security of tenure, thus becomes an evolving concept assembled through the plurality of practices of institutions and other actors, which have had the interest and ability to participate in its formation and use (Mol 1999, 75, 76). When viewed as an assemblage, the concept of tenure security "incorporate[s] heterogeneous components within a functional whole, [...] that is never finished, never closed" (Curtis 2016, 182). This approach also avoids traditional top-down accounts of norm development.

It instead makes possible to describe the dialectical process connecting local and global levels (Oomen 2018, 230–231).

On the international level, security of tenure has been assembled through ideas, dominant discourses and ideological positions of international institutions and other actors that have opposed the treatment of housing as a mere commodity. As I will argue, there has been a plurality of international regimes that have worked with the concept of security of tenure. The assembling of the concept happened when these different international regimes started interacting with each other and developing shared projects. To conceptualize this international legal regime interaction, I use ideas developed by Jeffrey L. Dunoff, who argues that international level of governance is marked by a plurality of legal regimes that often interact with one another when trying to govern over specific issues. What he calls *relational regime interactions* involve a plurality of legal regimes that dynamically, through various international fora, and involving a plurality of international institutions, states and other non-state actors try to conceptualize or operationalize how selected shared issues should be governed in the future (Dunoff 2012). Paul Schiff Berman in his book on Global Legal Pluralism sees such regime interaction as a creation of hybrid spaces and concepts, which are a continuous way of managing legal pluralism on the global level. According to him, different legal regimes attempt to influence each other and develop shared-hybrid concepts concerning issues of mutual interest and operationalize them (Berman 2012).

In addition, the international norm of the security of tenure has also been assembled through trials and errors learned in processes led by international institutions, states and other actors as they have tried applying various housing policies in places around the globe. As argued in this article, insights from a vast plurality of housing policies and approaches from states, cities and localities around the world have influenced the understanding of the security of tenure on the international level. Institutional processes led by UN-Habitat, World Bank and UN Special Rapporteur for the right to adequate housing have allowed researchers, activists and public officials to present the plurality of ways that security of tenure exists and can be promoted around the world.

As I will argue in the final section, the concept of tenure security has therefore been assembled from a plurality of international and local approaches. This local – international interaction is an additional indication of the relevance of the city and the locality for public international law, as has in other contexts been observed by Barbara Oomen, Janne Nijman, Yishai Blank and other scholars (Blank 2006a, 2006b; Nijman 2009, 2011, 2016; Oomen and Baumgärtel 2014).

In the following parts of the article I will describe the conceptual frameworks, practices and processes of international institutions that I posit have had the most influence on the development of the security of tenure on the international level. I will focus on UN institutions, the World Bank, and the processes through which they have interacted. These have been instrumental in arguing for, practicing and thus assembling the concept of tenure security within international developmental and human rights contexts. This article focuses on a longer period spanning almost two decades. The arguments made here should be understood as preliminary since

they are based on publicly accessible documents presenting officially created narratives. I have also conducted several semi structured interviews with officials that have been active in the development of security of tenure. It is, however, difficult to conduct interviews concerning the development of a concept that has been ongoing for several decades. The reason is that people involved are simply no longer around. In addition, reflections on past events can be difficult to remember, or are too easily interpreted through the present context as one interviewee emphasised.

Nevertheless, a much more substantive historical and ethnographic analysis of all the mentioned international processes would be necessary to give a more conclusive depiction of the process of assembling of the security of tenure on the international level.

Different approaches to the concept of security of tenure

The concept of security of tenure has been developed and used in a plurality of international legal regimes. Its most visible codification happened through international human rights law. Separately, it has also been used in the context of the sustainable development as well as the economic development.

Codification in international human rights law

The concept of the security of tenure has been codified as the core part of the international human right to adequate housing. This human right has been enshrined in the Universal Declaration of Human Rights and codified in the Covenant for Social and Cultural Rights article 11 as part of “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (UN General Assembly 1966). It is closely connected to human dignity, based on the principle of non-discrimination (OHCHR 2009, 10) and “is of central importance for the enjoyment of all economic, social and cultural rights” (CESCR 1991).

The right to adequate housing has been further developed by the Committee on Economic, Social and Cultural Rights of the Office of the High Commissioner for Human Rights in Comments 4 (on the Right to Adequate Housing) and Comment 7 (on forced Evictions). These documents explain that for the housing to be adequate, it must have facilities essential for health, security, comfort and nutrition, be affordable, habitable, accessible, culturally adequate and allow access to employment options, health-care services, schools, childcare centres and other social facilities. In addition, the tenure of people living in it must be secure (CESCR 1991).

Furthermore, the international human right to adequate housing imposes on states an obligation to respect, an obligation to protect and an obligation to fulfil (CESCR 1991) and thus to progressively realize the right to the maximum of their abilities (UN General Assembly 1966, article 2(1)).

Thus, the human right to housing can only be enjoyed if persons do not live in fear of their home being taken away from them and therefore enjoy tenure security.

The concept of tenure connects housing with the land on which it stands. As such, tenure can be defined as

the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land. (Durand-Lasserve and Payne 2012, 8)

The insecurity of tenure is directly connected to forced evictions, which are the most brutal breach of the right to adequate housing and are a common occurrence in cities and localities around the world. Forced evictions can displace and destroy whole communities. They can arise as economic evictions, such as those caused by the (recent) global financial crisis. In addition, they can take place through general urban development, large-scale development projects, natural disasters and climate change, and mega-events (UN-Habitat 2004).

In the above-mentioned General Comment no.4 on forced evictions, the most comprehensive international elaboration of the security of tenure until the turn of the millennium, it has been acknowledged that the tenure security deserves to be protected in all its variety of forms. However, the primary emphasis within international human rights law was put on the demand aimed at state parties to immediately legalize the protection of tenure.

Therefore, the initial approach towards the security of tenure was directed at states and was concerned with legal protection that should to be achieved ideally and equally through legalization. In such a way, the state was understood as one unitary space. Moreover, the legalisation of tenure security was thought of as top-down and linear state-wide process.

World Bank and security of tenure through freehold titling process

World Bank might be the actor whose attitude towards security of tenure has had the biggest international influence in the cities around the world, due to the sheer scale of urban development projects it has funded through the decades (Durand-Lasserve and Payne 2012, 28). For a long time, this institution focused on economic development around the world had a simple and dogmatic view equating security of tenure with formalized and individualized ownership of land (Obeng-Odoom and Stilwell 2013, 318). The logic of the World Bank was based on the same principles as developed by Hernando de Soto, who argued that providing poor people with individualized titles over land and housing would help them become self-sustainable, wealthier and more entrepreneurial. This would then lead into a positive cycle of economic growth that would eventually eradicate poverty around the world (Davis 2006, 75–82).

This economic view on security of tenure has been built on the economic theory that privatization and formalization of land titles brings efficiency, transparency and predictability to land markets, thus making forced evictions less likely. In addition, it brings economic growth and eventually reduces poverty, since people (owners) can access credit more easily and are given an encouragement to invest in land and houses (Obeng-Odoom and Stilwell 2013, 317–319). This increases their wealth and

also transforms it into capital since they can sell their property on the market (Kiddle 2010, 886). Thus, formalized and privatized ownership of houses and land is the only sustainable solution for the development of cities (Durand-Lasserve and Royston 2002, 13), allowing for the cost recovery of urban services through collection of taxes (Durand-Lasserve 2006, 5). It leads to better public governance and greater security of tenure since new owners get a political voice through their economic empowerment. Following this logic, other forms of tenure, such as customary ones, must be formalized and privatized in order to achieve the proper security of tenure (Obeng-Odoom and Stilwell 2013, 318).

UN-Habitat and the development regime

UN-Habitat, the UN agency focusing on urban issues, has been created with the aim to govern over accelerated global urbanisation and the problems connected to it. Right from the start, it was decided that it is inadequate housing that is the crucial issue with which UN-Habitat would be occupied. The right to shelter, the eradication of slums as well as preventing of homelessness have been the cornerstones of the work of UN Habitat (UN-Habitat, “History, mandate and role in the UN system”). The institution was primarily not interested in the norm development but rather at developing concrete projects that would alleviate the misery and suffering of the underprivileged. From the nineties on, housing policies of UN-Habitat have been developed in the frame of sustainable development, with the human right to adequate housing as the foundation on which the institution has built its approach (UN General Assembly 2016, para 13(a), 31, 105). The institution has paid attention to prevention of forced evictions and achieving the security of tenure in a pragmatic way as part of its numerous housing projects. The reason being that it has recognized that the augmentation of the security of tenure “is also one of the most effective tools for alleviating poverty in slums” (Durand-Lasserve 2006, 3).

Regime interaction and the process of assembling the concept of security of tenure

It was at the turn of the millennium that a significant institutional development focusing on housing rights and especially on the security of tenure happened on the international level. In 1999, UN-Habitat established its Global Campaign for Secure Tenure (together with the Global Campaign on Urban Governance) The Global Campaign was designed to bring together state representatives, representatives of municipal authorities, activists and academics to develop inclusive housing policies and apply them around the world (UN-Habitat, World Urban Campaign).

At that same time, UN Habitat also partnered up with the World Bank and numerous other actors in an organisation called Cities Alliance. Their main goal has been to develop and finance projects focused on urban sustainability and eradication of slums (Cities Alliance).

Furthermore, the institution of the UN Special Rapporteur for the Right to Adequate housing, working within the Office of the High Commissioner for

Human Rights (OHCHR), was created in 2000. The role of this international guardian of housing rights has been to develop and clarify the international human right to adequate housing further, to stimulate the debate on the global housing crisis and monitor and encourage states and other actors to pro-actively develop housing policies (UN Special Rapporteur for the Right to Adequate Housing).

Simultaneously, UN-Habitat together with the OHCHR created the United Nations Housing Rights Programme (UNHRP). This joint initiative has had an aim “to mobilize the potential and capacity of the stakeholders within the housing rights field at regional, national, and local levels” and help them enhance the respect for the right to adequate housing (UN-Habitat and OHCHR 2004, 1). Its main fields of operation were:

advocacy, outreach and learning from partners; support for United Nations human rights mechanisms on housing rights; monitoring and evaluation of progress towards the realization of housing rights (including development of housing rights indicators); research and analysis on housing rights (promotion and development of relevant norms, standards and guidelines, as well as thematic research on housing rights); and capacity building and technical cooperation (assistance to states and other stakeholders in building capacities for implementing and monitoring housing rights). (UN-Habitat 2003c, 138)

Through this network of international institutions different international normative regimes, namely, human rights, economic development and sustainable development started interacting with each other. At least formally, they functioned as an inter-linked inclusive network bringing together international officials, state and local public representatives, NGOs, local activists and academics.

The Global Campaign for Secure Tenure that UN Habitat led from 1999 until 2009 focused on enhancing the security of tenure for the most vulnerable populations within states by concentrating on the welfare and rights discourse and not on the economic development. The aim of the campaign was also to develop better understanding of how to approach the security of tenure and come up with relevant global norms (Cobbett 1999). As stated in the documents:

The Campaign (for security of tenure) aims at promoting global guidelines, norms and standard rules for the accomplishment of secure tenure, establishing a framework to provide a voice and support to the urban poor and the organisations that support them; provide affordable and implementable policy options to national and city governments. (UN-Habitat 2004, 26)

In addition, Global Campaign for Secure Tenure was supported by the Office of the High Commissioner for Human Rights and the Special Rapporteur for the Right to Adequate Housing through the above-mentioned United Nations Human Rights Programme (UNHRP). UNHRP was also envisioned as a program that would allow more informal development of norms:

Civil society and non-governmental organizations, women’s organizations, national human rights institutions, research and academic institutions and associations of relevant professions and local authorities are expected to play important roles as partners in the implementation of UNHRP. (UN-Habitat and OHCHR 2004, 1)

The main aim of UNHRP was the elucidation of legal obligations of states concerning housing, as codified in international law, and a compilation of national legislative approaches to the right to housing as well as existing case law from around the globe (UN-Habitat and OHCHR 2004, 8).

Furthermore, the first World Urban Forum in 2002, a UN-Habitat event focused on sustainable urban development, brought together municipal representatives, academics, NGOs, community-based organisations, the Special Rapporteur for the Right to Adequate Housing, and also the World Bank. It was envisioned as a “non-legislative technical forum in which experts can exchange views...” There these actors debated in what ways security of tenure could be enhanced and forced evictions eliminated (UN-Habitat 2002a, 21–22).

UN-Habitat also created an Advisory Group on Forced Evictions (in the frame of the Global Campaign for Secure Tenure), which was directly advising the executive director. This was a group of

individuals from civil society organisations, local authorities, central government and professionals in developing and developed countries, [and] was supported by a network of representatives from organisations in the fields of human settlement development, law, tenure policy and human rights. (Un-Habitat, ‘Advisory Group on Forced Evictions (AGFE)’)

Moreover, as mentioned above, the World Bank and UN-Habitat created Cities Alliance, an organisation dedicated to elimination of slums in cities that also focused on tenure security. Through this organisation, which was at the time aligned with the Global Campaign for Security of Tenure, actors from within cities, such as organisations of the poor and municipal organisations managed to add their voice to specific developmental projects aimed at cities (Cities Alliance, ‘Governance’).

In addition, with the cooperation of officials from Cities Alliance, UN-Habitat held Expert Group Meetings where academic experts, municipal officials, The UN Special Rapporteur for the Right to Adequate Housing and practitioners from the civil society gathered and debated the content and meaning of tenure security (UN-Habitat 2002b).

Furthermore, from its creation in the year 2000, the UN Special Rapporteur for the Right to Adequate Housing has also been a part of the discourse on the security of tenure. Through its state visits and monitoring and involvement in processes led by UN-Habitat it pushed for a wider recognition of the legal dimension of security of tenure. This long-term involvement of the rapporteur within the tenure security processes culminated in a set of guiding principles created “to assist States and other relevant actors in addressing the current tenure insecurity crisis faced by the urban poor in an increasingly urbanized world” (UN Special Rapporteur for the Right to Adequate housing, ‘Guiding Principles on Security of Tenure’ 2014).

Through these processes, which brought a plurality of voices to the international level institutions wanted both to observe how the security of tenure was perceived and practiced around the world in all its multiple forms and come up with relevant international norms. By distilling recurring problems and identifying good practices they hoped to come up with general standards, guidelines and norms that would then be applicable around the world as well as across different international normative

regimes. The semi-formal nature of these processes allowed academics, NGO representatives, activists from cities and representatives of state and local governments to contribute their views on security of tenure (From an interview with a UN-Habitat official who has been involved in the Global Campaigns as well as in Cities Alliance organisation).

Through the Global Campaign for Security of Tenure and other institutional work, the state became more than as a fictional unitary legal space. Instead, empirical evidence from within cities and other localities indicated that tenure security is a very dynamic and location-specific issue. More than that, it became increasingly visible that the simple solution of formalization of land markets and provision of individual property titles promoted by the World Bank might not be the best option for achieving the security of tenure. Even more, it has been recognized that titling might have an adverse effect on the security of tenure of the poor (UN Human Rights Council 2012, 7; UN-Habitat 2007, 142).

As argued by academics who contributed their views to these international processes dealing with the tenure security, the rapid provision of freehold individual titles and the formalization of informal settlements in cities has often led to hindering of community cohesion, dissolution of social links and accelerated segregation processes (Durand-Lasserve and Royston 2002, 15). New slums were created because many city dwellers could not afford the costs involved with regularization and services upgrading. Moreover, there have been examples of “raiding” of higher income classes of the newly formalized land (Durand-Lasserve 2006, 7; Lewis 2008, 5). Furthermore, local authorities often lacked the funds and man-power to conduct the titling. This was aggravated by the fact that the growth of city dwellers is often faster than the legalization process (Lewis 2008, 5). In addition, in the process of titling, conflicts have commonly arisen about who has the primary claim to the title-land. At the end, even the empirical soundness of the economic theory underpinning the need for individual titling has been questioned since in many case studies, investment, house improvements and property tax revenues have not increased. (UN-Habitat 2007, 142)

Therefore, the global discussions led by UN-Habitat, Office of the High Commissioner for Human Rights, the Special Rapporteur for the Right to Adequate Housing and Cities Alliance revealed numerous problems associated with achieving security of tenure through individual titling as espoused by the World Bank. How then was security of tenure to be understood and promoted across the world? In the following part I will briefly present the findings of UN-Habitat, UN Special Rapporteur for the right to adequate housing and several academics who have participated in the Global Campaign for Secure Tenure and other related processes.

Flexibility, plurality, continuum of rights and incremental approaches to tenure security

The first crucial consensus that has arisen through international processes led by UN-Habitat and other institutions has been that there exists a great variety of tenure systems across the world. Some are based on private and others on public, or collective ownership. Some are customary or religious and not formalized through state institutions, others again are recognized and legalized (statutory). Even more, different

tenure systems can coexist within cities and localities and even overlap and change over time (Durand-Lasserve and Payne 2012, 11–15).

Special Rapporteur has listed some types of tenure in her report on tenure security:

Tenure can be based on simple possession, on individual and collective adverse possession, on use, on rental, on freehold ownership, on collective tenure, on housing cooperatives, on community land trusts and on hybrid tenure models. Each type of tenure system has advantages and limitations. (Durand-Lasserve and Payne 2012, 10)

Building on this recognition, the Special rapporteur, UN Habitat, and other institutions have realized that there is more than one route to achieving tenure security (Durand-Lasserve and Payne 2012, 19; Lewis 2008, 6) and that it is a mistake to think that only individual property ownership can lead to it. Furthermore, they have realized that it is best to use a pragmatic approach and strengthen the tenure systems that already exist and have social legitimacy (Durand-Lasserve and Payne 2012, 31, 38). In other words, “UN-Habitat [has] focuse[d] primarily on the strength of the security, rather on the precise nature and form in which the tenure is applied” (UN-Habitat 2002, 17).

Consequently, these international institutions have developed a model of a continuum of rights corresponding with different tenure types that would not necessarily have a freehold title as the final and best solution. The continuum starts with tenure insecurity and stretches to tenure security. Different tenure types can offer different levels of security of tenure. But essentially, adequate security of tenure can be based on all kinds of tenure types (UN-Habitat 2013, 9; UN-Habitat 2007, 116).

Furthermore, the simple binarity of legal-illegal tenure does not exist in many states and not even in a single city (UN-Habitat 2003b, 7; Durand-Lasserve and Payne 2012, 38). Sometimes, customary tenure is informal and illegal but has great social legitimacy and stability, thus offering adequate security of tenure (UN-Habitat 2007, 142; Kiddle 2010, 886). According to some estimates, 30 to 50 percent of urban residents in the developing world lack any kind of legal document that would give them legal security of tenure (Durand-Lasserve and Payne 2012, 6; Kiddle 2010, 882), but that does not mean that they are not protected against evictions.

The realization has been that simple illegal-legal binary understanding is not enough since there also exists the de facto or so-called perceived security of tenure (Lewis 2008, 6; Kiddle 2010, 882–889). Important is “the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it.” (Durand-Lasserve and Payne 2012, 9) Therefore,

[s]ecurity is not necessarily only available through the formalization of tenure rights. As many analysts have asserted, security of tenure often has as much to do with one’s perception of security as the actual legal status one may enjoy. A variety of tenure arrangements can provide tenure security. People can have de facto security of tenure, coupled with varying degrees of legal tenure. (UN-Habitat 2007, 118)

What is crucial is that the [r]ecognition by the community itself and by the neighbourhood is often considered more important for ensuring secure tenure than recognition by public authorities (Durand-Lasserve and Royston 2002, 6).

However, a predictable formalized protection against evictions has remained a goal, in spite of recognition of different types of tenure and different perceptions of the security of tenure (UN-Habitat 2007, 140). Through the Global Campaign for Secure Tenure, UN-Habitat came to a recognition that legal security of tenure can only be achieved in incremental steps (UN-Habitat 2007, 142). This means that the change towards greater security must focus on what is achievable first and then progressively develop it further through time (UN-Habitat 2003b, 10; Durand-Lasserve 2006, 14; Habitat for Humanity 2015, 9). Because of that, standards for public authorities should be gradual and flexible (UN-Habitat 2003b, 8; UN-Habitat 2007, 135; Larson 2005). For example, local authorities can first give political protection against evictions, then issue interim occupancy permits or temporary non-transferable leases (UN-Habitat 2007, 118) and later provide legal tenure (UN-Habitat 2007, 142; Durand-Lasserve and Royston 2002, 36). The reasoning for such incremental approaches, which are also geographically specific, lies in the protection of communities against adverse effects of formalization of land markets, and the acknowledgement of limited resources of local governments (Durand-Lasserve and Royston 2002, 14,15).

When security of tenure is taken as a frame of its own it reveals to be a multifaced phenomenon. It has a legal, social and psychological dimension, which are all relevant to its existence. In addition, it also exists in a wide plurality of legal and factual forms that can overlap and co-exist in the same locality.

Therefore, on the international level a plurality of institutions has engaged with the concept of security of tenure each with a specific lens on it. Through the interaction of UN-Habitat, UN Special Rapporteur, World Bank and others, security of tenure has been assembled from the discourses of international human rights law, sustainable development, and free-market economic development. In the process of assembling these different takes on the concept were influencing each other.

However, these international institutions were also connected to, and influenced by the development within states and especially cities and localities. It was from these local spaces, that a plurality of legal sources of security of tenure (conventional, customary, etc), plurality of its interpretations (legal, factual, psychological) and plurality of approaches on how to provide it have been brought to the international level.

Urban processes – global processes and the assemblage of security of tenure

Security of tenure has been evolving through a network of processes, which were firmly embedded in the institutional framework of public international law. This interrelated international process of assembling of the concept of security of tenure has showed how relative the primacy of states can be when it comes to the development of human rights and sustainable development standards and norms. The institutional processes led by UN-Habitat and UN Special Rapporteur for the Right to Adequate housing, through which the security of tenure has been assembled, were initiated and managed in a semiformal manner. Academics and NGOs and

international officials with local experience who have worked with the concept were the ones who brought the complexity of tenure security to these international processes.

Spanning all these processes has been the focus on the city and the locality as the crucial socio-political space through which the tenure security needs to be approached. Indeed, the focus of these processes was not necessarily the socio-political space of the abstract state (country), which is usually the attention of international law. The international development of security of tenure has been tightly linked to the urban social and political space(s) where housing problems have been created and addressed.

In recent years, international legal scholars have given increasing recognition to the rise of cities in international law. The ground-breaking articles by Yishai Blank (Blank 2006a, 2006b) and later by Janne Nijman (Nijman 2009, 2011, 2016) have illuminated the roles municipal governments play in international law. They appear as objects of international regulation, are recognized as duty bearers of international obligations, and as promoters and localizers of international norms (Nijman 2016). In the field of international human rights law, Oomen and Baumgärtel (Oomen & Baumgärtel 2014) have written how local governments might well become “one of the most prominent actors in human rights implementation in the future” by autonomously accepting and localizing international human rights obligations.

This article aims to contribute to these observations by exploring the international processes through which the norms of tenure security have been assembled. A vast number of studies brought to the international level by local actors, international NGOs and academics, as well as experience of international institutions gained through their own projects showed that it is usually local socio-political processes that are the key to successful protection of tenure security in its plurality of forms. This means that the city has emerged on the international level in a more complex form than just through the actions of municipal governments, as is usually presented by scholars interested in the connection of the city with international law.

Therefore, processes through which security of tenure has been developed on the international level were all connected to the “turn to the urban” within some parts of the international institutional world. UN-Habitat, the main initiator and coordinator of processes focused on the security of tenure has been established specifically for governance over urbanisation and problems related to cities. Its Global Campaign for Secure Tenure was closely aligned with the Global Campaign on Urban Governance and they were both part of the larger Habitat Agenda, a UN process focusing on sustainable urbanisation (UN-Habitat, ‘Global Campaign for Secure Tenure: Background’).

Furthermore, the institution of the UN Special Rapporteur for the Right to Adequate Housing was not only created to remind states of their international human rights obligations. When it was established, Rapporteur had a task to bring a human rights dimension to international (urban) housing processes conducted by UN-Habitat.

It was often repeated in all of the above described processes that housing crisis and within it the global crisis of the tenure security can and must be addressed through local political dynamic (UN-Habitat 2003b, 39). Officials at the Cities Alliance were explicit that

[s]uccessful projects have put the community in the lead, rather than imposing solutions from outside. In doing so they [have been] able to capitalize on the social force inherent in slum communities, and bring them together with municipalities, professionals, the private sector and nongovernment organizations to jointly solve urban housing problems. (Habitat for Humanity and Cities Alliance 2015, 16)

Within the above described international institutional processes, urban, local political developments were recognized to possess a distinct quality to them, which needs to be considered in any secure tenure policies (UN-Habitat 2003b, 39). Indeed, institutions recognized that social, political and legal processes taking place within cities and localities have been crucial for advancement of the security of tenure and not necessarily the larger process on the level of the state with general, top-down legal solutions (UN Human Rights Council 2012, 4; UN-Habitat 2003b, 8). Security of tenure has thus developed into a concept that in all of its plurality and complexity demands precise city-specific solutions.

The co-existence of [...] different tenure systems and sub-markets within most cities creates a complex series of relationships in which policy related to any one has major, and often unintended, repercussions on the others. Before any attempt to intervene in land markets is made, it is therefore vital to assess the full range of existing tenure systems and sub-markets. (UN-Habitat 2004)

Indeed, the city and the locality have been recognized as crucial socio-political spaces in the debate on security of tenure. Acknowledgement and protection of its plurality of forms depends on processes of political collaboration and contestation between municipal public authorities and various actors from below (Bradlow 2015, 91). The possible increased respect for the security of tenure often relates to power relations within cities (Durand-Lasserve 2006, 12). Moreover, the possibility for participation of the most vulnerable city dwellers in political decision-making, is achievable on the level of localities and at the same time rarely possible on the level of the state (Durand-Lasserve 2006, 9, 13; UN-Habitat 2003b, 35; Lewis 2008, 6). Indeed, policies and norms developed solely by the state elites without a meaningful input of the marginalized local voices tend to be rigid and neglect the wishes and needs of the addressees (UN-Habitat 2007, 139; Habitat for Humanity 2015, 17).

That does not mean that the activities and processes of central state authorities do not remain an important pillar on which global discussions on the tenure security stand. Documents and reports produced by international organisations still more often than not address states as unitary actors even when they are talking about the city as a socio-political space and municipal and local governments as the relevant authorities. This is logical in a sense that the principal addressees (and also creators) of international institutions are states. In addition, the ambition of international institutions is for their policy recommendations to eventually have a more abstract, state-wide dimension. Moreover, policy changes concerning the tenure security can clash with the legal and constitutional protection of other values such as private property. Such protection often hinders more flexible policies concerning occupancy or similar rights developed within the context of individual cities and it is therefore crucial to pay attention to all levels of governance (Durand-Lasserve and Payne 2012, 36, 51).

These international developments concerning security of tenure have also revealed the reach and form of international human rights law in this context. What has been created as an abstract human rights norm developed through one institution and aimed at the state as an abstract unitary entity, has become a complex normative concept with a plurality of faces.

The interaction between different international regimes and the interaction between urban and international normative regimes can be best described as a process of assembling. A process of assembling of a norm of security of tenure that has been influenced by numerous actors that have directly or indirectly managed to engage in international processes of elaboration of the security of tenure. The assembled concept, travelling from international to urban and simultaneously back again, has not had a simple top-down or bottom-up evolution. Instead, its development has been relational, and interactive.

Indeed, UN-Habitat and UN Special Rapporteur have been interacting with the plurality of versions of security of tenure and assembling them together. Along the way, these institutions had to choose to either keep a clear and simple, unitary approach to security of tenure, and deny the value of other interpretations, or recognize the plurality of approaches, the plurality of interpretations, and plurality of sources and try to assemble them under the norm of security of tenure.

In this way, the international imperative of security of tenure has remained intact, but the recognition has arisen that it has to be performed in cities and localities each time anew (UN-Habitat 2007, 118). UN-Habitat most visibly recognized this tension between abstract human rights norms and the plurality and unpredictability of local situations.

For if human rights protections are meant to be equitable, non-discriminatory and accessible to all, and often capable of full implementation with a reasonably clear set of legal and policy prescriptions, this is certainly not always the case with regard to security of tenure. It can be done; but failing to realize the complex nature of tenure in any effort designed to spread the benefits of secure tenure more broadly is likely be detrimental both to the intended beneficiary and policy-maker alike. (UN-Habitat 2007, 115)

All of this movement of focus from states to cities and localities and towards an acceptance of plurality represents an evolution of the international human rights and sustainable development discourse, which connects to a larger trend in the development of international law observed by professor of international law Janne Nijman. She asserts that

[t]he international law of the future will be less state-centric, more complex, and it will be created more bottom-up through formal and informal processes in which global public cities [among other actors] are involved (Nijman 2011, 229).

In addition, looking at the international assembling of the security of tenure presents a possibility to think differently about the connection between urban and international. I dare to argue that the security of tenure would be a completely different international concept if the state would have been understood as a unitary actor in these international processes. The plurality of sources, interpretations of and approaches to the security of tenure have been recognized through taking the local and urban socio-political organism seriously.

This tension between the plurality and ‘messiness’ of the urban and the local, and the static ‘statist’ political imaginary that defines international law has been explored by urban political theorists Warren Magnusson. In his book *Politics of Urbanism: Seeing like a city* (Magnusson 2011), Magnusson writes how different our world would be if political scientists and politicians would make a symbolic shift from looking at our societies only through the eyes of the state to instead seeing it through the eyes of the city. The reason is that

[o]nly some of the political authorities are arranged in a neat hierarchy: most are not. The space of the state is only one of many. Other histories are enacted in spaces that are qualitatively different, and cannot be assimilated to the space of the state. [...] The result is a pattern of interaction that defies easy modelling (Magnusson 2011, 4).

The international recognition of how unpredictable and complex the tenure security within cities and localities is, is an embryonic example of how international institutional thinking has moved to “seeing like a city” in order to advance its declared goals and ideals within our urban world. So, to paraphrase Magnusson, international institutions have maybe started to understand that

wherever there is a city, there are pre-existing and newly emerging political authorities, the exact configuration and disposition of which is always changing. This makes urban government particularly challenging. Either the state [and international institutions] adapts [themselves] to the multiple rationalities and political authorities of the city, or [they] attempt to control those rationalities and authorities – or both. Historical experience suggests that the state’s [and international institutional] capacity for control is severely limited (Magnusson 2011, 19).

Conclusion

In this article, I have presented the process of assembling of the concept of security of tenure on the international level. Analysis of a network of international institutions has showed how the assembling of the concept of security of tenure from a plurality of approaches has been taking place through regime interaction on the international level.

International institutions, namely UN-Habitat, Office of the High Commissioner for Human Rights, UN Special Rapporteur for the Right to Adequate Housing, and Cities Alliance organisation have led several processes dedicated to elucidating the meaning and form of security of tenure. They have realised that tenure (and its security) are complex concepts that depend on specific socio-political situations in different cities and localities. This has led them to argue that a simple approach to addressing the problems connected to them is not possible. What is needed instead is a flexible approach that recognizes the plurality of tenure systems and a plurality of approaches towards security of tenure that exist in the world.

In addition, the processes led by these international institutions were marked by their high level of inclusivity since academics, and representatives of NGOs, community-based organisations, international organisations, municipal governments and states all contributed to the development of the concept of security of tenure. The previously dominant approach to housing and land endorsed by the World Bank that

promoted freehold titling processes has been rethought and criticized. Even with human rights focused housing policies it has been recognized that they have to be carefully adapted to local socio-political conditions.

In such a way, it is not only the interaction of a plurality of international regimes that has influenced the assembling of the concept of security of tenure. The urban socio-political space has also had an influence on international norm-making and standard-setting. As I have argued, international norms can therefore develop through intertwining of a plurality of international and local processes.

Notes

1. Assemblage theory has been highlighting the co-contribution of social and material processes to the existence of an event or a phenomenon. However, in the present article I focus only on the plurality of social processes that have influenced the assembling of the right to housing.

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