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# F L O O R

FINANCIAL ASSISTANCE, LAND POLICY, AND GLOBAL SOCIAL RIGHTS

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## **Land policy and the social floor to housing** The Case of Latin America and Africa

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## Abstract

In this paper, I analyze the human right to adequate housing (Article 11, para. 1, ICESCR) in Latin America and Africa. Based on a discourse analysis of the Latin American and African States Parties reports under the International Covenant on Economic, Social and Cultural Rights (ICESCR), I examine different forms of inadequate housing. I am using the term SPIH (SPaces of Inadequate Housing) to capture slums, informal settlements and other spaces of inadequate housing. My second sub code of inadequate housing is homelessness. In ways interesting to land policy, the key difference between SPIH and homelessness is that SPIH are closely connected to urban space—the land—and not to people. Homelessness is much more connected to homeless people, not the land. Regarding the States Parties reports, homelessness and SPIH have many faces and require plural responses from policymakers. Homelessness is, in Latin America and in Africa, often not regarded as problem directly linked to the right to housing, but rather to the right to protection of the family (Article 10, para. 1, ICESCR)—particularly when talking about street children. In the Latin American reports, land titling approaches play an important role for countries responding to SPIH. Almost all Latin American and African ICESCR member states recognize informal housing (and working) structures in their country. From my point of view, the recognition of informal housing structures begs an enormous potential which goes beyond the land tilting philosophy of Hernando de Soto.

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## 1 Many questions

Housing is a fundamental human right (Article 25, para. 1, UDHR). Nevertheless, more than one billion people throughout the world do not reside in adequate housing (Leckie 2001: 149). FLOOR Working Paper No. 15 examines the right to adequate housing as one step in the preparation of my doctoral thesis on »Land policy and the global social floor to housing« (supervisor: Professor Benjamin Davy, TU Dortmund University).

My doctoral research is rooted in the FLOOR project (principal investigators: Benjamin Davy, Ulrike Davy, Lutz Leisering; [www.floorgroup.de](http://www.floorgroup.de)), partly funded by the DFG (*Deutsche Forschungsgemeinschaft*). The acronym FLOOR stands for **f**inancial assistance, **l**and policy, and **g**lobal **s**ocial **r**ights. In fact, FLOOR has different connotations and begs many questions. From an analytical point of view, the question arises: What is the social floor that an individual benefits from? Here, FLOOR stands for the social (or civic) minimum. Describing the living situation of persons would mean describing working conditions, social security, access to health care, education and many other aspects. The Human Development Index (HDI), for instance, is one attempt to summarize different aspects for comparing the development status of the countries of the world. Another question arises from a more normative perspective: What is the social floor any individual *should* benefit from? Here, FLOOR signifies the *right* to a social (or civic) minimum. The Universal Declaration on Human Rights is, to some extent, a list of political, civil, economic, social and cultural rights that people all over the world should have. Both connotations—one descriptive, the other normative—lead to the »how-questions«: How is the social floor guaranteed? And: How *should* the social floor be guaranteed? The FLOOR project comprises three subprojects, and, obviously, the research interests as well as the answers to the »how questions« vary. Lutz Leisering and his research team (FLOOR B) analyze how social cash transfers (financial assistance) guarantee the social floor to social security and social protection (Leisering et al. 2006). Ulrike Davy and her research team (FLOOR A) examine the function of human rights, especially social rights. FLOOR A focuses on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the constitutions of the world. My doctoral research is rooted in the third subproject: FLOOR C (principal investigator: Benjamin Davy) deals with *socio-ecological land policy* and the »spatiality of poverty and wealth« (B. Davy 2009). FLOOR C analyzes »the myths and comforts of property and planning« (B. Davy 2012) in the face of global social rights. The FLOOR project emphasizes the human right to an adequate standard of living:

The States Parties to the present Covenant recognize 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent. (Article 11, para. 1, ICESCR)

The human right to an adequate standard of living is important to land policy (B. Davy 2012: 172). In ways interesting to socio-ecological land policy, particularly housing, questions arise—for example about the relationship between private and common property, or the role of informality and land titling approaches. Although inadequate housing is a global challenge, in this paper, I examine Latin America and Africa. About 20 per cent of the world's slum dwellers live in Africa and almost 14 per cent live in Latin America (UN Habitat 2003: 3). In Sub-Saharan Africa more than 70 per cent of the urban population live in slums (UN Habitat 2003: 15). Particularly the Latin American countries are

well known for many experiments with land titling approaches and tenure regulation (UN Habitat 2003: 15; Fernandes 2011).

My paper presents a discourse analytical approach based on and inspired by the ideas of Reiner Keller's »sociology of knowledge approach to discourse« (*wissenssoziologische Diskursanalyse*) (Keller 2005, 2011a, 2011b). My research questions are:

- What is the content of the social floor to housing from the perspective of the Latin American and African ICESCR member states?
- Which role do informality and land titling approaches play in the face of the social floor to housing?

I shall answer the research questions by analyzing the States Parties reports to the ICESCR. In the following, I give a short overview of the ICESCR, its implication to housing and the significance of the States Parties reports for my discourse analysis.

## *The human right to housing*

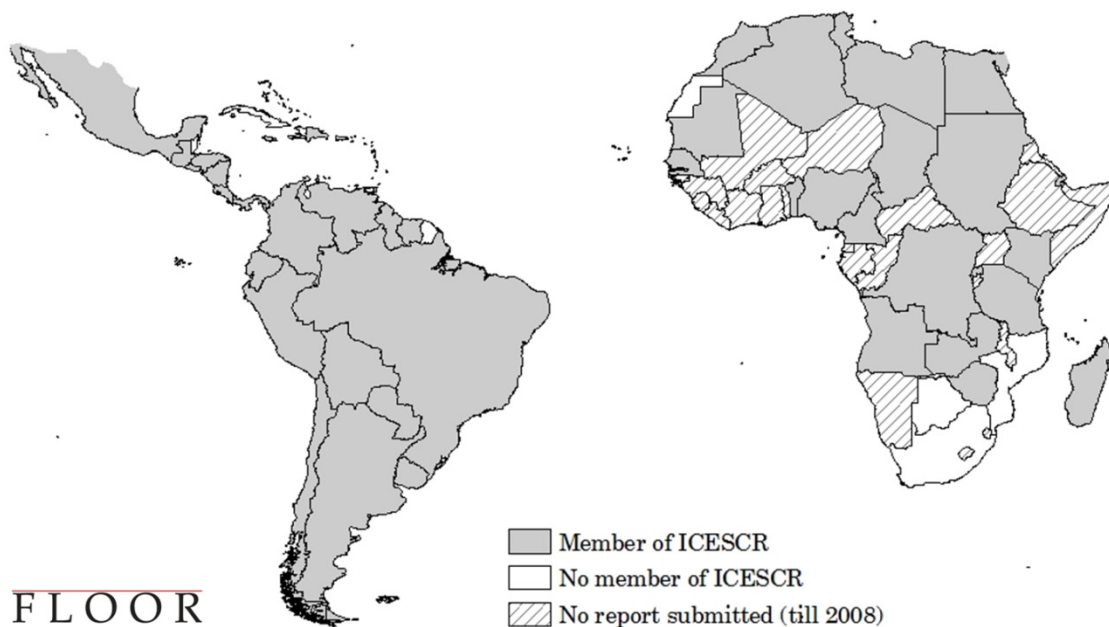
Housing is one central aspect of the right to an adequate standard of living rooted in the Universal Declaration on Human Rights from 1948.

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Article 25, para. 1, UDHR).

In 1966, after a long debate between many countries of the world (Buschmann 2010), two international covenants were implemented: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both covenants have their roots in the UDHR and »create a legal claim against the state for failure to provide what was promised or for not ensuring it against interruption« (Henkin 1979: 437). Thus, the rights defined in these covenants do not really have the status as individual rights (Henkin 1979); the covenants are often regarded as an obligation of a state to respect, protect and fulfil—better known as the Limburg Principles (E/CN.4/1984/4)—human rights (UN Habitat 2009a: 33-34, Neumann 2004: 25). In the legal discourse, the focus often is on the ICCPR (Fritzsche 2009: 96). Frequently, researchers discuss the formal weakness of economic, social and cultural rights (Neumann 2004). The question, whether the rights defined in the ICESCR really have the status of real rights—or should merely be regarded as duties—was intensively debated during the foundation process (Buschmann 2010: 5-15). There is no international court, that an individual could ask, to protect her from a violation of her economic, social and cultural rights directly. This does not mean that there are not any possibilities for individuals on national (e.g. constitutional) or international (e.g. the European Court of Justice) levels. Nevertheless, the realization control of the ICESCR works in the form of a reporting system. Each member state has to submit a report every five years to the Committee on Economic, Social and Cultural Rights (CESCR). The CESCR responds to the States Parties reports in form of Concluding Observations and addresses every year a single right in the form of General Comments. In the States Parties reports, the countries refer about their politics to respect, protect, and fulfil economic, social, and cultural rights. The countries answer to guidelines (CESCR 1986, 1991b, 2009) which are based on the covenant. These guidelines can be regarded as the only existing questionnaire which more than 160 countries of the

world answer to. Thus, the States Parties reports can be regarded as a self descriptions of the countries' policies – and for this reason, they are a very valuable source in ways interesting to discourse analysis.

Some of the rights from Article 25 UDHR have been transferred to single articles, for instance the right to physical and mental health (Article 12 ICESCR). The right to property (Article 17 UDHR) has neither been implemented directly into the ICCPR nor into the ICESCR. Housing, food and clothing are often regarded as social rights, but, indeed, housing as well as food and clothing have economic and cultural aspects, too. The right to housing plays an important role in many other international covenants and treaties, for example the Convention Relating to the Status of Refugees (Article 21 UNHCR), the Convention on the Elimination of All Forms of Discrimination against Women (Article 14, para. 2, and Article 15, para. 2, CEDAW), the Convention on the Rights of the Child (Article 16, para. 1 and Article 27, para. 3, CRC) and many more. (Nevins 2010: 84-87; see also the list in UN Habitat 2009a: 11).



**Map 1: Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their reporting status**  
Data source: ESRI ArcGis, FLOOR A, author's analysis

**Map 1** and particularly the following maps are visualizations of my research findings of 141 States Parties reports of the Latin American (73 reports) and African (48 reports) ICESCR member states. I am working with a data base collected and prepared by Professor Ulrike Davy and her team from the Chair of Constitutional and Administrative Law, Social Law, and Comparative Law, University of Bielefeld (FLOOR A)<sup>1</sup>. Benjamin Davy, the principal investigator of FLOOR C and Professor of Land Policy, Land Management, and Municipal Geoinformation at the School of Spatial Planning, TU Dortmund University, developed the idea to visualize the research findings of the FLOOR research through »diffusion maps«.

<sup>1</sup> Thank you for sharing! Special thanks go to Luise Buschmann.

**Map 1** illustrates the African and Latin American member states of ICESCR, the non members and the member states of ICESCR which are members of the Covenant, but have not yet submitted their first report. In the global context, there is no direct correlation between the wealth of a country and its member status. From the group of the 25 countries with the highest Human Development Index (HDI), only the United States is not a member of the ICESCR. From the group of the 25 countries with the lowest HDI, the only non member state of ICESCR is Mozambique. Nevertheless, there seems to be a correlation between the HDI and the reporting status. While 24 of the 25 wealthiest countries (including the non member USA) have submitted at least one report, 15 of the poorest countries (including the non member Mozambique) have not yet submitted a report. Incidentally, all 15 countries are from Africa.

## *Inadequate housing*

Although this paper focuses on Latin America and Africa, my research challenge is to generate a code structure which is suitable to analyze inadequate housing in all of the ICESCR States Parties reports – and, probably, other data. The countries submit reports on improving the housing situation in many articles of the covenant. Housing has an open end potential for improving. Imagine an owner of a residence with five hectares of land. She improves her housing situation, when, for instance, she constructs a second pool in her garden. Indeed, the »five hectares residence« is not connected to the social floor to housing and I did not find any country referring to such examples. Hence, what does adequate mean in the context of housing? The CESCR elaborates in its General Comment No.4 that housing adequacy depends on social, economic, cultural, climatic, ecological, and other factors (CESCR 1991a: para. 8). The Committee identifies seven basic aspects which have to be taken into account:

- Legal security of tenure
- Affordability
- Location
- Habitability
- Cultural Adequacy
- Accessibility
- Availability of recourses (CESCR 1991a: para. 9)

Most of the aspects are difficult to value objectively. Transferring these aspects to the situation of literal figures shows an astonishing result. One example: The island that Robinson Crusoe lived on – was its location a paradise or a torture because of being excluded from social life? From the perspective of discourse analysis, inadequate housing is a code, a main category. For working out this code I need some coding rules. According to the following rules I worked out the main code for inadequate housing:

### **First rule**

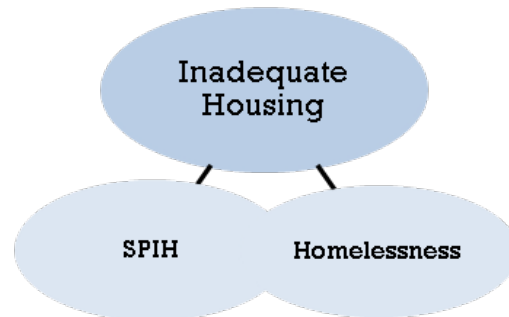
A housing situation is inadequate when the player – in this case: a State Party – calls or describes the situation as inadequate. The author can disagree with the player.

### **Second rule**

A housing situation is inadequate when the author of the text – in this case: me; or in other cases: the researcher – regards the situation as inadequate. In difference to the first rule the author should argue why she values the situation as inadequate. Everybody is welcome to disagree with the author.



Even though inadequate housing has many aspects and dimensions, I distinguish between two types of inadequate housing: Homelessness and SPaces of Inadequate Housing (SPIH). In the following, I present and explain the similarities and the differences of these codes.



**Figure 1:** Inadequate Housing (main code) and the two sub codes SPIH and Homelessness

## HOMELESSNESS

Arguing with the seven aspects of the CESC, homelessness is a form of inadequate housing. But are the seven aspects really a suitable check list for identifying forms of inadequate housing? Obviously, homelessness lacks the aspects legal security of tenure, habitability, accessibility. Surprisingly, though homelessness is often regarded as »at the bottom of housing«, some of these aspects appear not to be violated. Someone who decides to live on the street has probably many (indeed, not very gorgeous) possibilities to choose between different places. She can decide on her own where she is going to sleep the next night. Thus, the aspect of affordability does not obtain a problem. A research group of students found out by analyzing the situation of homeless people in Hamburg, Germany, that lots of homeless people would not value their housing – better: living – situation as inadequate. The homeless often emphasized the liberty of not having a roof over their head (Ajayi et al. 2011). Homelessness is often regarded as having no belongings, as a property problem (Baron 2004). From a romantic perspective, the property problem has some aspects of liberty: »F@#k off with your sofa units and strine green stripe patterns, I say never be complete, I say stop being perfect, I say let... lets evolve, let the chips fall where they may. [...] Reject the basic assumptions of civilization, especially the importance of material possessions« (Durdan 1999). On the other hand, Waldron (1991) argues that the homeless are the most unfree people – particularly, because they have no property. Although rural homelessness is a problem which should not be underestimated (Milborne and Cloke 2006), it is obvious that many homeless people live and sleep in urban areas which are often near or at places of high economic values. Thus, urban homelessness often stands for the (spatial) proximity of extreme poverty and wealth.

Even though many people have a (stereotypical) perception of homelessness (Penner and Penner 1989; Meert et al 2004), lots of definitions exist in scholarly literature (Aldrich 1995 18-20; Baron 2004: 275-278; Daly 1996: 20-26; O'Flaherty 1998: 9-20; Springer 2000; Meert 2004; Waldron 2004). Frequently, researchers criticise the countless definition approaches: »Different people use the word in substantially different ways, often without realizing that their audience is misunderstanding them« (O'Flaherty 1998: 9). In ways interesting to planning, this begs the questions: Do the different definition approaches de-

pend on spatial diversity, and, if yes, what are the consequences? »Different definitions of the minimum housing standard, varying by region, make it difficult to find a global agreement on which housing situations should be included in the definition of homelessness« (Springer 2000: 477). As O’Flaherty argues, the numbers of homeless people can vary on a big scale when different definitions are taken into account (O’Flaherty 1998: 18-19). This leads to a simple question with remarkable consequences: Do we talk about the same subject? »If policy cannot define homelessness, how can it hope to respond to it« (Neale 1997: 55)? On the one hand, society often seems to have a stereotypical perception, and on the other hand, many researchers have it in common that homelessness goes beyond this stereotypical perception: »In the minds of many people, homelessness is identified with the condition of tramps and vagrants. Research results are often received with scepticism.« Where are those hundreds of thousands of homeless people? If they are not in the street, they are not homeless’, is a typical reaction« (Avramov 1995: 71). As Daly says, »the relationship between language und action is particularly important to a study of homelessness« (Daly 1996: 247). Daly compares the homelessness policies of Great Britain, Canada and the United States and emphasizes the connection between a nation’s definition and its politics (Daly 1996: 247). Daly differs between a narrow and a broad definition: The United States have a narrow definition, Great Britain has a broad definition, and Canada is located between these two definitions (Daly 1996: 25). Nowadays, there is a consensus that the homeless are a heterogeneous group. Hence, a broad definition seems more suitable, particularly from a global perspective.

<b>Roofless</b>	People living rough (operational category 1) People living in emergency accommodation (operational category 2)
<b>Houseless</b>	People in emergency accommodation for the homeless (operational category 3) People (women) living in women’s shelter (operational category 4) People in accommodation for immigrants (operational category 5) People due to be release from institutions (operational category 6) People receiving longer-term support (operational category 7)
<b>Insecure</b>	People living in insecure accommodation (operational category 8) People living under the threat of eviction (operational category 9) People living under the threat of violence (operational category 10)
<b>Inadequate</b>	People living in temporary non-conventional structures (operational category 11) People living in unfit housing (operational category 12) People living in extreme overcrowding (operational category 13)

**Table 1: European Typology of Homelessness and housing exclusion**  
Source: adopted from FEANTSA 2005

FEANTSA, the European Federation of National Organisations Working with the Homeless, is a cooperation of different European and non European states, researchers and national organizations which work with and for homeless people. Its basic aims are providing information and analyzing homelessness, monitoring national policies and giving recommendations (Avramov 1995: 1). In 2005, the FEANTSA presented a European typol-



ogy of homelessness and housing exclusion (see table 1). In this typology, people are separated in the four conceptual categories roofless, houseless, insecure and inadequate and 13 different operational categories (oc) from people living rough (operational category 1) to people living in extreme overcrowding (oc 13). I would consider roofless and houseless people as homeless people and places with insecure or inadequate housing conditions as SPIH.

The operational categories illustrate that the boundaries between homelessness and SPIH are not clear. This is not only a challenge for scholarly literature but a phenomenon of everyday life. Imagine a homeless woman sleeping in a park in summer time and visiting an overcrowded (oc 13) women's shelter (oc 4) in winter time, in which she is under the threat of violence (oc 10). The relationship between SPIH and homelessness is even more complex. The eviction from a slum can cause homelessness; an inadequate night shelter can be an answer to combat homelessness and so forth. Frequently, the causes of homelessness are separated in two groups: individual and structural causes. Individual causes are for example mental illness, alcoholism, substance abuse (Main 1998: 42) or a traumatic event in the individual's life (Avramov 1995: 80). Structural causes emphasize aspects like the situation on the job or housing market, natural disasters, social politics, or – more generally speaking: poverty. Thomas Main (1998) criticises that researchers often focus on one of these groups and neglect the other one. Similarly arguing is Neale (1997). She tries out other more theoretical explanations (feminism, post-structuralism, postmodernism, structuration and critical theory) for understanding homelessness and its causes (Neale 1997). The focusing on special factors which caused homelessness often leads to the idea of a special solution to respond to it. Regarding the problems of the housing market (a structural aspect) as the main cause of homelessness will, in fact, lead to searching the solutions in the housing market. As I said, in contrary to SPIH, homelessness is closely connected to individual homeless persons. Hence, the question on individual causes of homelessness often leads to the debate about responsibility. For many people a homeless person caused by a flood or earthquake is less responsible for her situation than a homeless person caused by drug abuse or similar problems. Tipple and Speak (2009) distinguish homeless people living in industrialized countries from homeless people living in developing countries. Regarding the structural causes, they have an interesting assumption: »In many industrialized countries, homelessness has little directly to do with housing shortages. [...] In developing countries, however, housing supply shortfalls in absolute terms are undoubtedly a structural cause of homelessness« (Tipple and Speak 2009: 33).

The complexity of causes and the heterogeneity of the group of homeless people lead to a huge amount of different answers to respond to homelessness. There exist countless policies, programmes, campaigns and strategies on different levels to combat or prevent homelessness starting with the International Year of Shelter for the Homeless 1987 and, indeed, not ending with single soup kitchen in a suburb of Hamburg. On the website of the FEANTSA ([www.feantsa.org](http://www.feantsa.org)), for instance, you find the links to different national strategy papers of European countries like Ireland, Finland or the Netherlands as well as papers from Australia and the United States. Every of these policies, programmes, campaigns and strategies again is separated in countless different measures on different levels. In ways interesting to discourse analysis, I suggest to focus on the lowest level, the single measures. I am not interested in valuing every policy, programme, campaign or strategy and, incidentally, the ICESR data is not the most suitable resource for this type of research. The measures are different with lots of criteria. One problem is that many poli-

cies on the housing market (O’Flaherty 1998) can cause or the other way round prevent homelessness, but are only indirectly connected to homelessness. Because of the interdependence of homelessness, even developments in other sectors—for example the job market or the health sector—can influence homelessness. The measures to respond to homelessness presenting in the following are sorted in four groups: building measures, money, prevention, and social support.

Building measures answer to mostly structural causes. A country, for instance, builds new flats or any forms of emergency shelters as reaction to the fast population growth and the housing shortage. When the housing sector is dominated by private market providers, the responsibility to build new flats gets out of the government’s hand, or other governmental institutions. Social cash transfers in form of subventions, donations, or credits help to prevent people—sometimes, special disadvantaged groups like women, unhealthy, unemployed, or children—from falling down into homelessness. These measures are often closely connected to the prevention measures. Prevention is a single code for the reason that countries often refer *that* they try to prevent homelessness but not specify *how*. The most complex code is social support. Social support measures mostly focus on individual causes of homelessness. Social support measures, reacting to individual causes, are different forms of integration measures, health care, or rehabilitation programmes. Many of these measures also react to structural causes; to some extent, every measure has its individual and structural aspects.

Homelessness is a special form of inadequate housing. Thinking about homelessness is closely connected with thinking about roofless and houseless people—in other words: the individual. Thinking about other forms of inadequate housing, for example imagining a slum is much more connected with the location in which the slum dweller lives. A simple test helps to understand the key difference. Try to see in your mind’s eye a picture of the phenomenon homelessness without a homeless person. You will have some difficulties. Now try to imagine a picture of a slum without a slum dweller, and, probably, it works (better). Nevertheless, as I said, the boundaries are blurred. Imagine a woman sleeping in a shack in a public place, for example in a park. You actually would call the woman homeless. Imagine another woman building a shack beside the shack. Now, you see two homeless women sleeping in two shacks. Now, imagine 10.000 shacks and you have a slum, or an informal settlement or however you want to call it. My term for these types of spaces is SPIH: **S**Paces of **I**nadequate **H**ousing.

## SPACES OF INADEQUATE HOUSING (SPIH)

In opposition to homelessness, my code SPIH means a place, not a person. The word SPIH does not exist in scholarly literature but is my own suggestion to summarize many different spaces of inadequate housing, for example slums, informal settlements, shanty settlements, irregular settlements, pirate settlements, unauthorized communities, emergency shelters, refugee camps, night shelters, and many more. Many countries and regions have their own special terms, for example *barrio* (Spanish), *bidonville* (French), *favela* (Portuguese), *gecekondu* (Turkish), *Elendsviertel* (German), *trushchobi* (Russian) or hood and ghetto (American English) (UN Habitat 2003: 9–10). The most well known SPIH in the academic discourse are slums and different forms of informal (squatter, illegal, irregular, precarious) settlements. Indeed, these settlements are very close to each other, and again, the boundaries are blurred. Similar to homelessness, many approaches to define slums and other settlements exist:

Slums and squatter settlements are difficult to separate. However, slums generally refer to housing, regardless of tenure, which has fallen into such disrepair that it constitutes a general condition for a neighbourhood or community. A squatter area could also be a slum. (Aldrich and Sandhu 1995: 19)

Slums, as a relative concept with many local variations and different sizes, are too complex to be put in one global definition (UN Habitat 2003:11). In 2002, the UN Habitat worked out at an Expert Group Meeting quite a simple and broad definition of a slum: A slum is »a settlement in an urban area in which more than half of the inhabitants live in inadequate housing or lack basic services« (UN Habitat 2006: 21). The UN Habitat suggests focusing on the household as the basic unit of analysis: »A slum household is a group of individuals living under the same roof in an urban area who lack one or more of the following conditions« (UN Habitat 2006: 21). These conditions are durable housing, sufficient living area, access to improved water, access to sanitation, and secure tenure (UN Habitat 2003: 12; UN Habitat 2006). Furthermore, the UN Habitat distinguishes between slums of hope which are progressing settlements, often in a process of improvement, and slums of despair which mean declining neighborhoods (UN Habitat 2003: 9; 80-85). Other possible categories of differentiating slums are origins and age, location and boundaries, size and scale, legality and vulnerability, and different development stages (UN Habitat 2003: 85-95). The UN Habitat understanding of slums corresponds to my code system: The broad concept of slums allows consideration of many Spaces of Inadequate Housing as slums.

Many people have third world countries in mind when they consider slums (and informal settlements). This perception seems to change, albeit slowly. In 2009, the United Nations Economic Commission for Europe presented its first publication concerning informal settlements for the Europe Region (ECE 2009). This was the first time that on the European level the challenge of informal settlements came onto the agenda. The study points out that in over 20 countries of the UNECE region more than 50 million people live in informal settlements (ECE 2009: xv). The study reviews different policy interventions which we also know from developing countries, for example legalization, regularization and upgrading, resettlement and relocation (ECE 2009: xvii).

The problem with measuring slums is the same one as with measuring homelessness for two reasons: The huge amount of contradicting definition approaches on the one hand and the emotional connotations on the other hand. Statistics concerning SPIH are often more than simple undemonstrative information about emotionless numbers. Inadequate housing is closely connected to questions of rights—legal rights as well as everybody's own implication of social justice. While the public view on homeless people can vary between »These people need help« and »It is their own fault« (see above), the argument »It is the people's own fault to live in a SPIH« does not come up very often. The media as well as academics often use statistical information to emphasize the significance of the problem, like Kofi A- Annan did in the foreword of the well known UN Habitat report »The Challenge of Slums« (UN Habitat 2003)—or like I did in the first sentences of this paper. I do not want to discuss the countless statistical information in detail. Nevertheless, bringing all the many statistics together, I summarize: More than one billion people throughout the world fall under my main code of inadequate housing; and, is in fact, ever on the increase.

What are the causes for SPIH? In one sentence: »[S]lums [and other SPIH] develop because of a combination of rapid rural-to urban migration, increasing urban poverty and inequality, marginalization of poor neighborhoods, inability of the urban poor to access

affordable land for housing, insufficient investment in new low-income housing and poor maintenance of the existing housing stock» (UN Habitat 2003: xxxviii). There is no concrete distinction between individual and structural causes for the spread of SPIH, like I found in the academic homelessness discourse (see above). Slums spread because ongoing slum dwellers (individuals) build millions of huts and shacks. Nevertheless, by regarding slums as a problem, the focus lies on structural (planning) failures. The most well known cause for SPIH is urbanization, or, other said: rural-urban migration (Davis 2006: 1-19). This does not mean that SPIH are closely located to inner cities but on the periphery of Third World Cities (Davis 2006: 37). Though, urbanization has its own causes and explanation models. Aldrich and Sandhu (1995) differ between four different models of the process of urbanization: A basic demographic model which emphasizes the push and pull factors of the migration to the cities; a hegemony model which evaluates trade relations between industrialized and Third World countries; a dependency model which focuses on the national economy and the dynamics of an international market; and an econometric model which looks at internal and external factors like the gas and oil prices and regards the informal sector as part of the economy (Aldrich and Sandhu 1995: 23-26). Another reason for the spread of SPIH, also closely connected to the mentioned causes, is the failure of governance based on the lack of political will (UN Habitat 2003, 5-6). Poverty is both a cause and an effect of SPIH (UN Habitat 2003: 28-31).

As we now know now, there exist many definition approaches, lots of statistical information, and many interdependent causes for SPIH. Thus, the field of measures is again really confusing. Measures to respond to SPIH are to some extent similar to the homelessness measures. Different players try to improve the housing situation of SPIH dwellers with different constructional measures: They, for example, improve infrastructural aspects (including access to water, sanitation, and energy), or they build new or better houses. These measures are often rooted in upgrading, slum improvements or urbanization programmes. Other ways of helping SPIH dwellers are resettlement or relocation measures. Nowadays, resettlement and relocation measures are often valued critically because of the destruction of social networks (UN Habitat 2003: 150) and: they are not far away from eviction. Thus, another very important measure is the protection of eviction. As well as homeless people, SPIH dwellers sometimes get the chance to profit from different social support measures, for example nutrition, health care or education measures. Housing credits, loans or subsidies are the most well known monetary measures. Another attempt to help people living in SPIH is the land titling (de Soto 2000) / regularization approach (Fernandes 2011).

## *Informality and land titling approaches*

Nowadays, it is the consensus that there is no »one-size-fits-all solution« (ECE 2009) to guarantee adequate housing. Researchers and politicians agree that challenging inadequate housing needs a lot of different measures and instruments answering to the many different local circumstances. But nevertheless, for a long time, two approaches seemed to contradict each other: The land titling approach by Hernando de Soto (2000) and the concepts of informality by Anaya Roy (2005).

### **INFORMALITY**

Informality is the next key term of my paper which is—as a consequence of its many dimensions and variations—difficult to define (Fernandes 2011: 10-12). In simple terms in-



formality means the absence of planning and regulation (Roy 2005: 149) and comes up when planning fails, gets overtaxed or is ineffective (UN Habitat 2009b: 134). Nonetheless, »[i]n practice, informal activities like formal activities, comply with rules, although the sources of rules and the means through which they are specified and enforced are different from laws governing formal activities« (UN Habitat 2009b: 133-134). Sometimes, informality is regarded as »second-class rights for second-class citizens« (Fernandes 2011: 5). De Soto (2000) points out that requirements to start a legal business are often one basic reason for informal – or how he calls it »extralegal« – structures:

[M]ost people in developing and former communist nations cannot get into the legal property system, such as it is, no matter how hard they try. Because they cannot insert their assets into the legal property system, they end up holding them extralegally. (de Soto 2000: 52)

Nevertheless, informal sectors are not separated but characterized as »a series of transactions that connect different economies and spaces to another« (Roy 2005: 148). The most well known informal sectors are the informal housing sector and the informal working sector. Many, but indeed not all, spaces of inadequate housing (SPIH) are informal and it is the same with homelessness. Typical examples for informal working are street vending, prostitution, windscreen washing at the traffic lights, collecting waste or returnable bottles and shoe shining. Adriaenssens and Hendrickx (2011) argue that begging also should be regarded as a form of informal working. Informal housing and working sectors are often interdependent and difficult to separate. When a country, for instance, refers about street children, we do not exactly recognize whether the country talks about children working or housing on the street – or both.



**Figure 2 and Figure 3: Informal labor (Berlin, Brandenburger Tor, Germany) and formal construction site (Potsdam, Germany) © Michael Kolocek 2012**

Roy (2005), de Soto (2000) and other researches discussing informality mostly have informal structures in developing countries in mind. On a closer look, however, there exist many informal housing and working structures in Western countries, too. Begging and squatting are only the major examples. The family is a nice example for a strong, or maybe the strongest, informal structure. When grandpa and grandma take care of their grandchildren to relieve the parents, there is no law that, this form of family help is rooted in. It is the same with the neighbour, who helps you carrying the washing machine into your flat. Children building a shack in the Teutoburger forests are creating informal structures, similar to homeowners, who do not register a new garage on the grounds of their property. The term »helping«, as well as the quite romantic ideology of children's freedom to play in a forest, demonstrates in an impressive way that the (supposed) »absence of planning and regulation« in many cases is not at all bad. Thus, I propose to supplement the previous explanation of informality: Informality arises when planning fails, gets overtaxed, is ineffective or, when planning and regulation are simply unnecessary. After the communicative turn (Healey 1992) many new forms of communication and participation planning ideas spread out. In many western countries, to a certain extent, informal aspects of planning became formalized. Nevertheless, informal planning still sounds like a contradiction in terms, but summarizes different approaches on national, regional and local planning levels. The German planning system, for instance, has a huge amount of different informal instruments (the German term is *informelle Planung*) like national competitions, regional cooperation models, city networks, information, moderation, round tables and other participation models on the local level (Gorsler 2002). Informal planning at this point, however, does not fit informal housing or working structures, we keep in mind by considering countries of the global south. Informality is not far away from illegality. Whereas informality means the *absence* of planning and regulation, I regard illegality as the *violation* of planning and regulation.

Informal housing is often caused by formal – or, better said: legal – decisions. After the Implementation of the new German container deposit legislation in 2002 (VerpackV), saw a new informal economy, whereby people collect, and refund deposits on plastic bottles and cans, spread through many German cities. Many homeless people in Germany earn money by selling street magazines without paying taxes. Indeed, neither people going through German inner cities collecting plastic bottles and cans (Figure 2), nor street magazine vendors fall under what German researchers think about, when they talk about *informelle Planung*, I mentioned above.

## LAND TITLING

Land titling means »the allocation of real property rights on land, i.g. rights that are opposable to a third party, and that can be transferred, inherited and mortgaged« (Payne et. a. 2009: 444). Land titling became very famous by Hernando de Soto and the World Bank (Deininger 2003; Deininger and Binswanger 2001) in the 1990s. In *The Mystery of Capital*, de Soto (2000) explains, based on different global experiences, why capitalism triumphs in western countries and fails everywhere else: »Entrepreneurship triumphed in the West because the Law integrated everyone under one system of property, giving them the means to cooperate and produce large amounts of surplus value in an expanded market« (de Soto 2000: 71). De Soto had both informal working and informal housing in mind. He emphasized the significance of property rights by answering questions about wealth and poverty. Probably, the property-wealth causality sounds trivial, but de Soto does not simply regard »property [as] physical thing that can be photographed or mapped. Proper-



ty is not a primary quality of assets but the legal expression of an economically meaningful consensus about assets» (de Soto 2000: 157). Property can include various rights like, for instance, the right to enjoy and use, the right to transfer, develop and improve, or the right to benefit from increased property values or rental income (UN Habitat 2008: 6): The UN Habitat defines property rights as »[r]ecognised interests in land or property vested in an individual or group« (UN Habitat 2008: 5). Ostrom points out that you need at least two individuals for a working property rights relationship:

Property rights define actions that individuals can take in relation to other individuals regarding some ›thing‹. If one individual has a right, someone else has a commensurate duty to observe that right. Squatters do not possess property rights even though they may be the users. (Ostrom 2001: 134)

From the perspective of de Soto's land titling approach, SPIH dwellers are often people without having real property rights, but they have the economic potentials (dead capital). In *The Mystery of Capital*, de Soto (2000) does not speak about homeless people.

How does the land titling approach work? Although the key message »I give you a property right to the place where you live informally, and your housing and living situation will improve« sounds simple, the procedure is not. De Soto calls the procedure »capitalization process« and lists four successive strategies which are separated in many smaller successive steps. In the following, I can only present some of the countless steps and aspects to get the reader an impression of the complexity of the formalization process:

- The **discovery strategy** is separated in five parts, starting with identifying, locating and classifying the extralegal assets (dead capital). The next steps are quantifying the actual and potential value of extralegal assets, analyzing the interaction of the extralegal sector with the rest of society, identifying the extralegal norms that govern extralegal property and determining the costs of extralegality to the country. All the listed steps again are separated in smaller steps.
- The **political and legal strategy** is divided in six basic steps. The first two steps are ensuring that the highest political level assumes responsibility of the poor and putting into operation agencies. After this, a remove of administrative and legal bottlenecks is needed, and there has to be build a consensus between legal and extralegal sectors. Now, the costs of holding assets legally have to be reduced comparing to the costs of holding assets extralegally. The last step is to create mechanisms that will reduce risks associated with private investment.
- The **operational strategy** has only three basic steps, but is the most complex one because of many smaller steps. Field operation strategies, personal equipment and offices have to be designed and implemented, communication and participation is needed as well as computer knowledge for the registration process.
- The last strategy is the **commercial strategy**. This strategy deals with the implementation and enforcement of, for instance, credit systems, insurance products, or infrastructure measures (de Soto 2000: 160-161).

Actually, regarding de Soto's capitalization process in ways interesting to planning, we recognize many overlaps to other planning processes: Identifying potentials, bordering the examination area, information, participation of different players, mapping, and monitoring. The question which is debated in scholarly literature is one other thing, and, indeed, not easier to answer: Does the land titling approach work?

Many researchers criticize de Soto's approach, for example Davis (2006), Gilbert (2002), Roy (2005, 2010), Payne (2001), Payne et al. (2009). One critical argument is that land ti-

titling is a western and a neo-liberal approach. The rise of neo-liberalism is often associated with negative impacts on the poor (UN Habitat 2003: 3), in particular with rising inequality (Pogge 2007). Another similar critical point deals with the question »Who does really profit?«:

As such, many argue that massive titling programmes are being conducted for reasons that have nothing to do with helping the poor. Such programmes are popular because they are cheap; it is much less expensive to issue property titles than to provide settlements with services. In addition, the authorities and international agencies can actually make money from titling programmes. The World Bank has long recognised that the profits made by a government agency may be used to finance upgrading programmes elsewhere [...]. Indeed, many people in Washington argue that issuing legal titles on a large scale can only be justified if the beneficiaries are prepared to pay the full cost of the process. (Gilbert 2002: 7)

Similarly arguing is Davis:

Ironically, de Soto, the Messiah of people's capitalism, proposes little more in practice than what the Latin American Left or the Communist Party of India (Marxist) in Kolkata had fought long for: security of tenure for informal settlers. But titling [...] is a double edged sword. Titling [...] accelerates social differentiation in the slum and does nothing to aid renters, the actual majority of the poor in many cities. [...] However, de Sotoan approach panaceas remain immensely popular for obvious reasons: the titling strategy promises big social gains with a mere act of the pen and, thus, pumps life back into World Bank's tired self-help paradigms; it accords perfectly with dominant neoliberal, anti-state ideology, including the Bank's current emphasis on governmental facilitation of private housing markets and the promotion of broad home ownership; and it is equally attractive to governments because it promises them something – stability, votes, and taxes--for virtually nothing. (Davis 2006: 80–81)

Property rights are associated with tenure security but, in fact, it is not the same. Land tenure security, depends on different aspects like confidence that land users will not be deprived arbitrarily of the rights they enjoy, the certainty of recognition by others or the protection of eviction (UN Habitat 2008: 6). UN Habitat lists 11 tenure systems with different characteristics, advantages and disadvantages (UN Habitat 2008: 9-10). Having a property right in land does not mean being protected of arbitrary eviction anyway. Even if many countries prohibit expropriation without compensation, even in Western countries losing property without compensation occurs sometimes (B. Davy 2004: 60-61; Jahn et al. vs. Germany). Payne et al. (2009: 447) mention that titling can even cause the reduction of tenure security. One strategy to criticize the land titling approach is to weaken its supposed advantages. Payne (2001) works out six supposed advantages which he all, more or less, neglects:

- Encouraging investment in Housing
- Improving access to formal credit
- Improving the property tax base
- Increasing public sector influence over land and housing markets
- Improving the efficiency of land and housing markets
- Increasing the equity of land and housing markets (Payne 2001: 421-425).

Nowadays, the view on titling approaches has changed. The proponents of land titling

currently acknowledge that a simple big scale land titling approach often does not succeed. The land reform experiences in Latin America (de Janvry et al 2001) and many other experiences of small scale projects all over the world demonstrate the importance of flexibility in answering to the special circumstances of the location. Today, even the World Bank recognizes that more nuanced approaches are desirable (Deininger 2003; Payne et. al. 2009: 445).

## *Global players*

There are many different global players whose basic aim is to ensure the social floor to housing. »One of the most exiting aspects [is] that there is, in fact, a global community of organizations and individual concerned with the issue of housing poverty« (Aldrich and Sandhu 1995: 31). In this paper, I present in a few words only, some of them.

The **Cities Alliance** (Cities without Slums), founded in 1999, is a coalition of global and non-global players like local authorities of mega cities, governments of welfare states and developing countries, the European Union, UN Habitat or the World Bank. Their basic tasks are city development strategies (CDS), slum upgrading and sustainable financing strategies for cities. The European Federation of National Organisations Working with the Homeless (**FEANTSA**) is, as I said above, a cooperation of different European and non European states, researchers and national organizations which work with and for homeless people. Both the Cities Alliance and FEANTSA are influential players in the global discourse on inadequate housing. The website of the FEANTSA ([www.feantsa.org](http://www.feantsa.org)) seems to be an endless resource for statistics, strategy papers, recommendations, research data, campaigns and policy statements. In its annual reports the City Alliance refers to lots of different slum upgrading programs and other programs to improve the housing conditions of the poor. The **UN Habitat** is the United Nations agency for human settlement. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter ([www.unhabitat.org/categories.asp?catid=1](http://www.unhabitat.org/categories.asp?catid=1)). Since 1986, UN Habitat has produced eight Global Reports on Human Settlements. In these reports, both phenomena slums and homelessness are discussed very intensively. After a first quick overview, it seems that the focus is strengthening on slums and reducing on homelessness during the recent years. The **Centre on Housing Rights and Evictions (COHRE)** is an independent, international, non-governmental, not-for-profit human rights organisation whose mission is to ensure the full enjoyment of the human right to adequate housing for everyone, everywhere« ([www.cohre.org/about-us](http://www.cohre.org/about-us)). The COHRE also presents annual reports. Obviously, there exist countless small NGOs which directly or indirectly have right to adequate housing on their agenda.

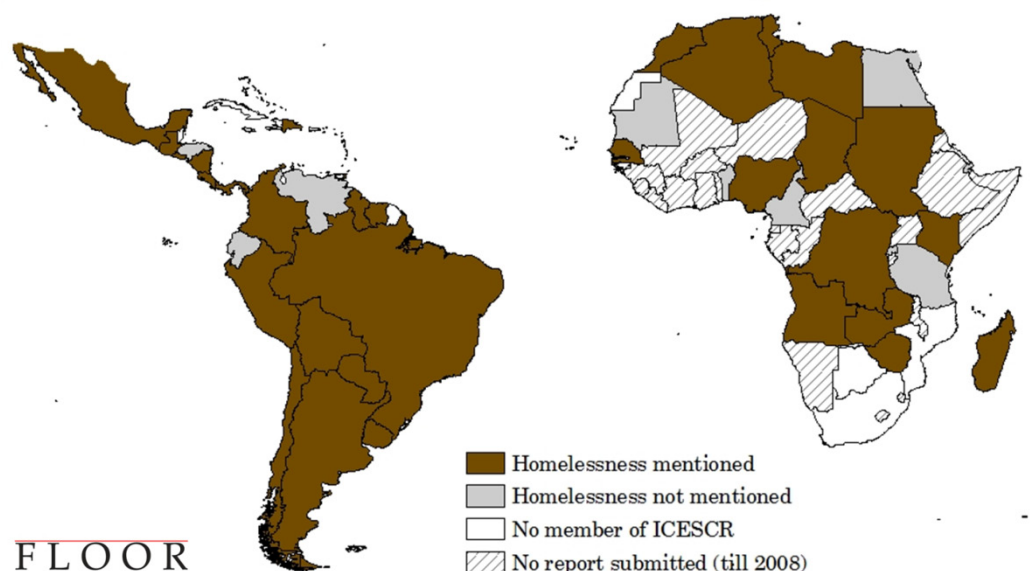
## 2 Housing in Latin America and Africa

In this chapter, I am going to find out how the countries respond to the social floor to housing in the ICESCR reports. My first research question »What is the content of the social floor to housing from the perspective of the Latin American and African ICESCR members states« can be translated in a more simple discourse analytical question: What do the States Parties talk about, when they refer about the right to housing? I discuss the sub codes homelessness and SPIH separately and show the differences und overlaps. I am also interested in differences and overlaps to the theoretical viewpoint which I worked out by presenting different positions of the academic discourse in the former chapters.

The focus here is again on definitions, causes and measures, and, indeed, the observation of informality and the land titling approach.

## Homelessness

Some States Parties refer to homelessness; other States Parties do not even mention this form of inadequate housing.



**Map 2:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which report about homelessness in their States Parties reports.

Data source: ESRI ArcGis, FLOOR A, author's analysis

**Map 2** illustrates that in the Latin American countries Venezuela, Ecuador, and Honduras and the African countries Mauretania, Cameroon, and Tanzania do not mention homelessness. **Map 2** does not give any information how intensively the States Parties refer to the subject. Some States Parties refer very intensively, other just point out in a few words that homelessness exists in their country. Guatemala, for instance, just points out homelessness one time in connection with statistical information:

With regard to groups within society that are vulnerable and disadvantaged with regard to housing, and to the number of homeless individuals and families, it is estimated that 45 per cent of households in the metropolitan area of Guatemala City and about 60 per cent of households in other urban centres live in accommodation which is lacking in the basic living amenities (illegal settlements, precarious accommodation (slums), huts and old, run-down housing). In rural areas, 80 per cent of households live in inadequate conditions, in housing built with flimsy materials, which is too small and lacking in access to basic services and social amenities (Guatemala 1995: para. 59).

The quotation is remarkable for the reason that Guatemala takes homelessness as an opportunity to give statistical information about some different forms of inadequate housing—but not homelessness. Other countries paying little attention to homelessness are the

African ICESCR member states. Algeria (1994: para. 145), for example, only spends one paragraph and gives a lot less information. The Democratic Republic of the Congo as well as other countries consider homeless people as a very heterogeneous group:

People who are vulnerable or disadvantaged in terms of housing are more likely to be found in the cities: these are typically unemployed youth, commonly known as »street children«, very poor couples, beggars, handicapped or paralytic persons, persons displaced by war living outdoors in the courtyards of big buildings, in the marketplace, and building corridors, under bridges, in the tombs of cemeteries, in train stations and in the ports. With no statistics available, however, their actual number is not known (Democratic Republic of the Congo 2007: para. 225).

The causes for homelessness referred in the States Parties reports are often displacement by war, for example in Angola (2008: para. 79, 108, 235) or the Democratic Republic of the Congo (2007: para. 183), or urbanisation, for example in Brazil (2007: para. 354) and in Mexico (1997: para. 293–295). Natural catastrophes like earthquakes seem to play a more important role in Latin American states. Colombia, for example, refers very detailed about the consequences of an earthquake in 1999 in the region Eje Cafatero (Colombia 2000: para. 320–325). In a similar vein, El Salvador refers about the effects of hurricanes and earthquakes (El Salvador 2004: para. 503–505, 620–624, 677–691). In Africa, however, natural catastrophes can cause homelessness, too:

No temporary housing scheme exists as such; however, homeless cyclone refugees numbering some 60 families have been housed in temporary shelters after the passage of cyclone Hollanda in February 1994 (Mauritius 1994: para. 243).

Other causes of homelessness, from the perspective of the member states, are family problems (Paraguay 1994: para. 240) or more explicit violence against women and children (Mexico 2005: para. 149–153). At least, in one point the States Parties reports seem to be different from scholarly literature. Individual causes—for example »the failure of the individual«—as well as structural causes in form of »the failure of the government« play a limited role. Neither the homeless nor the government seem to be responsible when the problem of homelessness comes up. Homelessness is caused by family problems or by natural catastrophes. Regarding the States Parties reports, occasionally, the impression arises that homelessness is something that, sometimes, simply happens.

Brazil is by far the largest Latin American country with the highest population rate. The country mentions homelessness four times in altogether two reports. Homelessness comes up in different contexts. The country connects homelessness with food conditions of Indian populations and rural workers (Brazil 2001: para. 388). The next two quotations of the same report demonstrate that the definition problems are not only problems of scholarly literature:

For an assessment of substandard housing in Brazil, the main source is the study entitled »Dimensions of Social Needs – Municipal Data, 1996« conducted by IBGE and IPEA. This is the statistical survey most utilized by housing sector specialists to determine the number of substandard homes. The study is based on the definition of precarious homes as those inhabited by illiterate children aged 11–14 and/or headed by women with a monthly income of up to one minimum salary and which lack any waste disposal facilities. If we consider those individuals who live in precarious homes as homeless, this would apply to 43 per cent of the population, or 11.1 million homes (one third of existing homes) (Brazil 2001: para. 503).

In the following, the country refers to eviction and highlights the importance of property



titles for housing. The country does not keep on the consideration of homelessness presented in paragraph 503. Brazil distinguishes between people without a legal title and homeless people:

In general, people who are evicted from their homes and are without legal protection are those who live in illegal settlements consisting especially of slums, clandestine subdivisions, or isolated dwellings. People without legal protection usually are those who are in an illegal situation. For the most part, authorities do not repress the poor when their illegal situation is limited to lack of a property title, allowing them to remain in place while expropriating the property or resorting to concessions for the use of urban land, among other urbanistic instruments. Eviction occurs more often in the case of invasion of urban areas and housing staged by homeless people or by popular pro-housing movements. Eviction occurs more often in critical situations to restore property ownership. There are no recorded data with national coverage to answer this question. (Brazil 2001: para. 509).

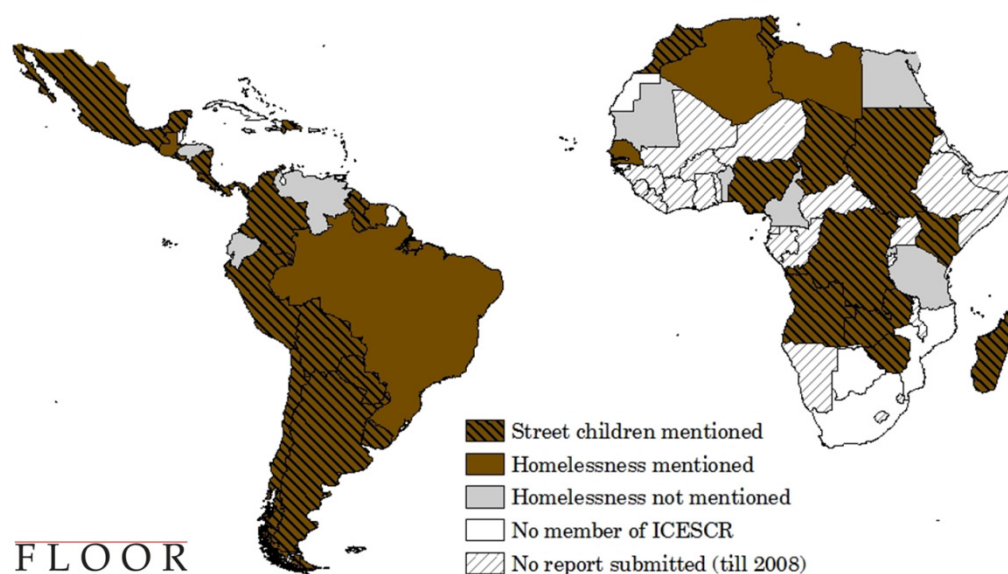
In its second periodic report, Brazil refers to homelessness only in one paragraph. The country points out that 25,000 homeless people as one of some other groups (16,400 slums, 33,400 tenement houses, 22,800 irregular subdivisions, and 16,800 clandestine subdivisions) are affected by the housing deficit (Brazil 2007: para. 354). The quotation is remarkable for the reason that it underlines the differences between the views on homelessness on the one hand and other forms of inadequate housing on the other hand. The country focuses on the number of people—individuals!—by referring to homelessness and the number of spaces—not people!—by referring to the other spaces. Maybe the difficulty with defining and separating homelessness from other forms of inadequate housing is one explanation that not many member states try to define homelessness. After Brazil (see above), no more than three other countries attempt a definition: Nicaragua (2007: para. 750), Chile (2003: para. 543), and Zimbabwe. Zimbabwe does not work out its own definition—the country quotes a World Bank Report:

The World Bank Report defines homelessness as the number of people per thousand of urban area population who sleep outside dwelling units (e.g. on streets, in parks, railroad stations and under bridges). A study undertaken in Harare, the capital city of Zimbabwe, indicates that of its total population of 1,474,500, 1,145 or 0.08 per cent are homeless. (Zimbabwe 1995: para. 105).

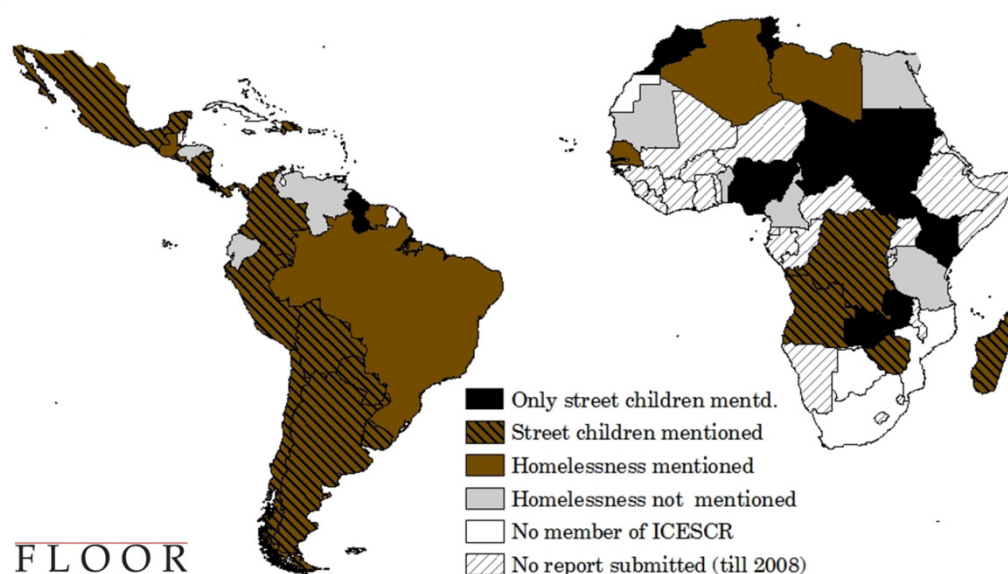
Comparing the statistical information of Zimbabwe and Brazil confirms O'Flaherty's (1998) thesis about the relationship between definitions and statistics (see above): In Brazil (2001: para. 503; see above), 43% of the population could be regarded as homeless; whereas, in Zimbabwe (1995: para. 105; see above), it is only 0.08%! Such data could lead to the assumption: There are not very many homeless people living in Africa.

From my point of view, street children are one important subgroup, when regarding homeless people. **Map 3** illustrates countries which mention street children when they talk about homelessness. Some countries—like Brazil and Guatemala in Latin America, or Libya, Senegal and Algeria in Africa—do not talk about street children when they refer to homelessness. On the other hand (see **Map 4**), some countries only mention street children when they talk about homelessness—in Latin America it is Guyana and Costa Rica; seven African member states do so equally, namely Morocco, Tunisia, Nigeria, Chad, Sudan, Kenya, and Zambia. Homelessness, in these countries, is often not considered as a problem of housing—as part of the right to an adequate standard of living—rather as a problem close to other rights, mainly the right to protection of the family (Article 10 ICESCR).





**Map 3:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which report about homelessness and street children in their States Parties reports.  
Data source: ESRI ArcGis, FLOOR A, author's analysis



**Map 4:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which mention street children only in the context of homelessness.  
Data source: ESRI ArcGis, FLOOR A, author's analysis

Are street children a subgroup of the homeless? Or are they a subgroup of disadvantaged children? Consider, for example, the Guyana report:

Disadvantaged children or children without any parents are either placed in the custody of relatives or in special homes. This is a matter for the Adoption Board, which is under the purview of the Ministry of Labour, Human Services and Social

Security. There is, however, a need for the Government to establish appropriate mechanisms to address the needs of children who are abandoned, abused, disabled or live in the streets. The Ministry of Labour, Human Services and Social Security is currently in the process of developing new laws which would augment existing legislation and more adequately protect the rights of these children. This work is now in progress under the auspices of the Children Service Unit of the Ministry (Guyana 1995: para. 64).

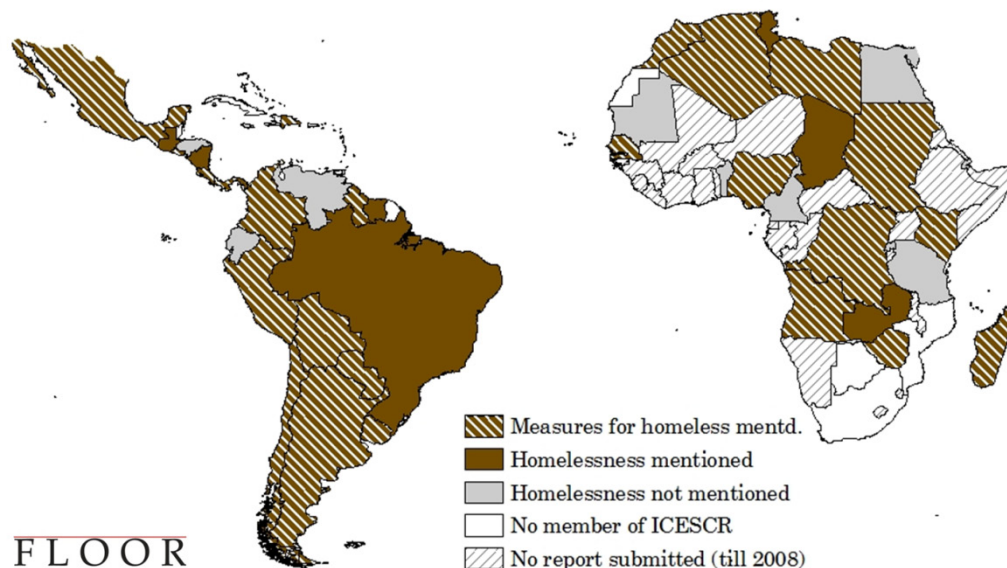
Guyana regards street children as disadvantaged children, not as a subgroup of the homeless. In Zambia, street children are viewed as a subgroup of other groups, also mentioned in the section referring to the right to protection of the family (Article 10 ICESCR):

Groups of children and young persons who do not enjoy measures of protection include children of chronically ill parents; refugee children; orphans; street children; and disabled children. (Zambia 2003: para. 183).

Not every street child lives on the street. Some street children only work on the street during the day:

There are nevertheless groups of children and juveniles who certainly do not enjoy measures of protection and care, and in respect of whom palliatives are devised to ensure their rehabilitation and to integrate them into society. They come from the slum districts and are known as »street children«; their ages range from 5 to 14 years and they beg or do odd jobs for a living. The reason for their existence is basically socio-economic (Paraguay 1994: para. 222).

It has to be said, however, that Paraguay is the only country whose explanation leads to the assumption that street children are not a sub code of homelessness.



**Map 5:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which refer about measures to respond to homelessness in their States Parties reports.

Data source: ESRI ArcGis, FLOOR A, author's analysis

**Map 4** and the text examples illustrate an interesting interim result: Homelessness is frequently not considered as a housing problem based on the right to an adequate standard

of living. Especially African member states do not consider homelessness as a housing problem when they at all refer to this topic. Thus, one answer to the first research question is: Homelessness (in the form of street children), particularly in Africa, is often not part of the content of the social floor to housing. This result can be confirmed by analyzing the different measures with which the countries respond to homelessness.

Not every country is so honest like Zambia (see above) to say directly that homeless people (street children) do not enjoy any measures of protection. **Map 5** illustrates the member states referring that homeless people enjoy measures of protection and help in their country. The brown / white hatched countries talk about measures for homeless people. The other members only mention homelessness in form of a definition or some statistical information, but do not speak about any solutions or measures. Brazil, Chad and Zambia speak about homelessness, but not about any measures to respond to it.

**Map 5** does not illustrate the type of measures homeless people enjoy. I separated the measures in the four groups building, money, prevention, and social support (see above). The second research question was about the role of informality and land titling approaches in the face of the social floor to housing. Let me anticipate a first outcome: The land titling approach does not play any role by referring to homelessness. The most mentioned measures dealing with homelessness are different forms of social support like nutrition, health care, or education measures:

Under the leadership of the armed forces, the programme of shelters and residences for early citizenship education of children and adolescents who roam the streets has been intensified. These children are now receiving education, health, nutrition and discipline, permitting them to integrate into society productively, helping to break the cycle of poverty in their homes. Also in this regard, the Ministry of Labour in conjunction with IPEC-OIY and NGOs (*Acción Callejera*, in Santiago, and *Canillitas con Don Bosco*, in Santo Domingo) has implemented a series of projects designed to get children off the streets, i.e. away from urban child labour, aiming to reintegrate them into their families and give them access to education (Dominican Republic 2008: para. 175).

Education measures mostly focus on street children. It is the same with Prevention measures:

In view of the critical situation of street children, a »Support programme for young people and children living in the street in Colombia«, sponsored by the European Union, was formulated and set in motion. Under this programme ICBF has been executing seven local pilot projects in Bogota, Bucamaranga, Cali, Cartagena, Medellin, Pasto and Pereira with a view to determining specific models for measures to prevent and deal with the problem in each city and using the resulting projects to care for existing and potential street children and their families (Colombia 2008: para. 599).

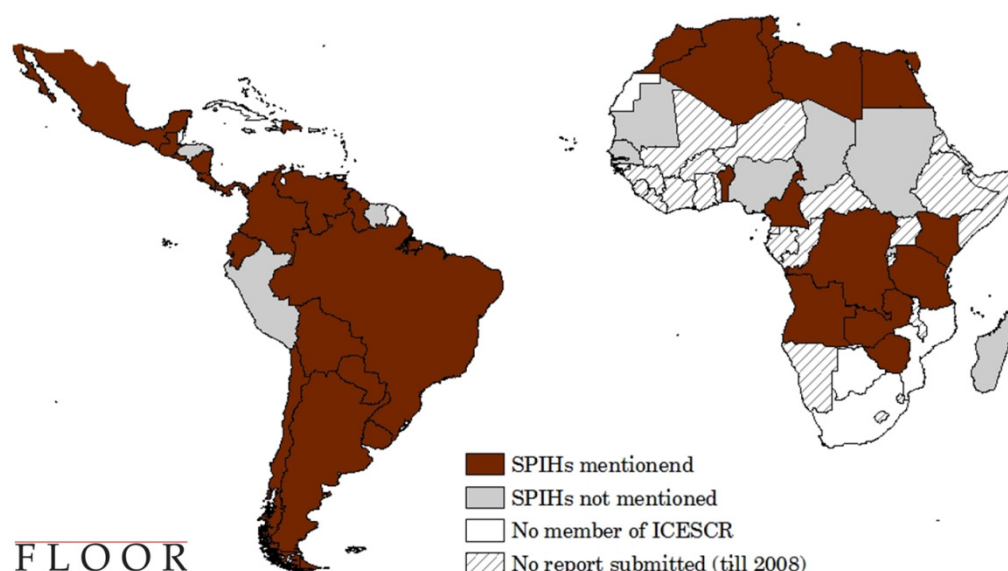
Many paragraphs combine many different measures. A welfare centre is also a building and a prevention measures and insofar a social measure, too:

There are regulations governing the different types of social welfare and conditions of eligibility as well as regulations governing welfare centres and the services they provide. It should be noted, however, that welfare centres for the homeless, social welfare centres and health, training and rehabilitation centres are run on an integrated basis (Lybia 1995: para. 82)

Apparently, many States Parties consider homelessness as a social, not a spatial problem.

## Spaces of inadequate housing (SPIH)

**Map 6** illustrates the member states talking about spaces of inadequate housing (SPIH) in their country. The Latin America countries Honduras, Peru und Suriname do not talk about SPIH, not either do the African countries Mali, Nigeria, Chad, Sudan, Madagascar mention the topic.



**Map 6:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which report about SPIH in their States Parties reports

Data source: ESRI ArcGis, FLOOR A, author's analysis

The States Parties mention the special forms of inadequate housing directly, often in connection with statistical information:

At present Panama has 18,000 families living in illegal settlements (Panama 1999: para. 265).

Many States Parties distinguish between urban and rural areas when they refer about statistics:

In urban areas, there was a slight drop in the number of houses or shacks (from 98 per cent in 1962 to 94 per cent in 1992), while the number of slum dwellings increased (from 1.6 per cent in 1962 to 4.7 per cent in 1992). In rural areas, virtually all dwellings were classified as houses or shacks (99.1 per cent), with only a very small proportion of other types of dwelling (Paraguay 1994: para. 303–304).

Slums and illegal settlements are mostly regarded as an urban problem. Paraguay is the only country which mentions rural slums (Paraguay 1994: para. 380) and rural illegal settlements (Paraguay 2006: para. 400). The countries distinguish between urban and rural areas when they refer to other topics, for instance the health situation (Peru 1995: para. 395) or about education (Peru: para. 428). Some countries describe a housing situation without giving the places a name but mentioning many aspects of inadequate housing:

The vast majority of the population of Bolivia live in housing that does not meet minimum standards of habitability. Poor-quality construction, high rates of over-



crowding and a lack of basic amenities are the main problems affecting the majority of homes (Bolivia 1999: para. 339).

More often than not the States Parties explain the situation next in great detail. Bolivia, just to present one case, describes in the following paragraphs (Bolivia 1999: para. 140–145) the housing problems with more statistical details, for example about more than three people sharing the same bedroom in 65 % of homes (para. 342), legal uncertainty as to tenure (para. 343). I did not find a concrete definition of the most used SPIH slum and illegal settlement, even though a few countries try to define different spaces of inadequate housing (Uruguay 1996: para. 167; Kenya 2006: para. 131, Colombia 2008: para. 753–758, Guatemala 1995: para. 64).

The reports mention as the causes for the spread of SPIH

- urbanisation (Brazil 2007: para. 534),
- migration (Colombia 1994: para. 525, Ecuador 1989: para. 77; 2002: para. 50, Zambia 2003: para. 198),
- high building costs (Democratic Republic of the Congo 2007: para. 218),
- high housing costs (El Salvador 1994: para. 173),
- population growth (Paraguay 1994: para. 303),
- absence of suitable land supply (Benin 2006: without para.; Mexico 2005: para. 462),
- and housing shortage (Guyana 1995: para. 75).

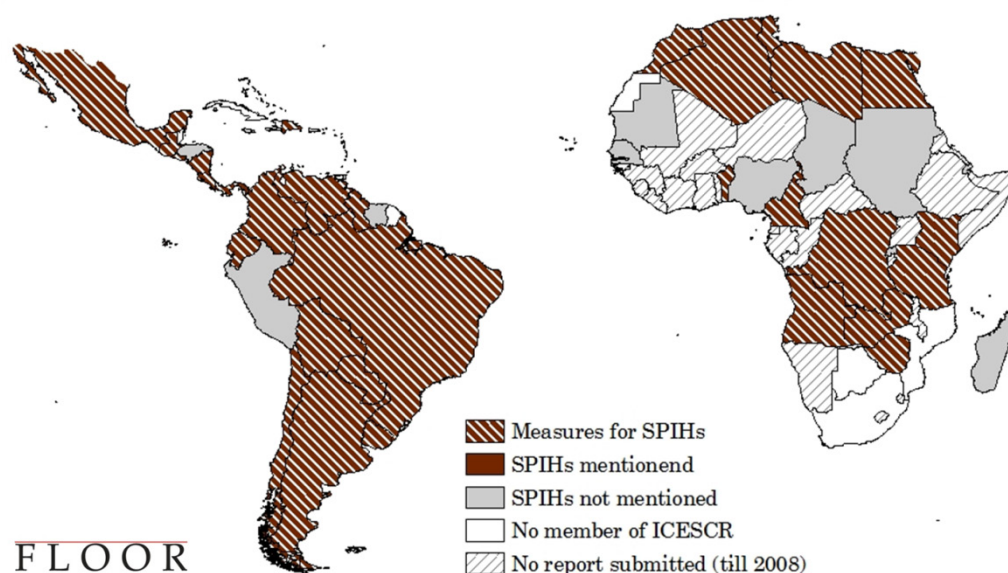
The causes often are interrelated. A housing shortage, for example, can result from a natural catastrophe (Dominican Republic 2008: para. 194) or other factors:

The many events that have occurred in Nicaragua in the last two decades, including natural disasters, armed conflicts and structural adjustment policies, have seriously affected the national economy. The greatest impact of that consequence has been on the families of the poorest sectors, mostly in the rural areas. As a result, a large part of the rural population has swelled the numbers of the already crowded marginal urban sectors, creating new shantytowns in the city outskirts, mainly on the periphery of department capitals and Managua. Others remained in the countryside, facing the above effects in conditions of poverty and with few or no opportunities (Nicaragua 2007: para. 523)

States Parties discussing the causes of SPIH often pursue a story line similar to academic discourse: The population growth leads to urbanisation, a housing shortage is the consequence. People do not find a flat on the housing market and have to build huts and shacks by their own, SPIH emerge. SPIH dwellers often also work in informality. The next stage is normally eviction on the one hand or formalization / regularization (land titling approach) on the other hand. The difference between the States Parties reports and other – for example NGO – documents is often that the States Parties obviously are unlikely to talk about eviction as a consequence of planning failures as causation. Poverty has different faces in this story line. Sometimes it is the cause, and sometimes the effect.

The rapid growth in the urban population has increased the demand for housing, which far outstrips supply. At the same time, the scarcity of land in urban areas is contributing to the increasing costs. This has adversely affected the initiative on the part of individuals and private developers to invest more in housing. The obvious result is inadequate housing for the middle- and low-income groups as well as the poor people. This has also contributed to the creation of slums (Kenya 1993: para. 23).

SPIH are often discussed in connection with the right to housing (Article 11 ICESCR), but from time to time they come up in other paragraphs, for example when States Parties talk about improving the education and health situation in a SPIH (Kenya 1993: para. 160 and 163) or when they refer about a nutrition Programme (El Salvador 1994: para. 235 and 237).



**Map 7:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) referring about measures to respond to SPIH in their States Parties' reports.  
Data source: ESRI ArcGis, FLOOR A, author's analysis

**Map 7** shows countries which try to respond to SPIH in form of different measures. The most mentioned measures to improve the housing situation of SPIH dwellers are different forms of building measures, for example slum improvement (Chile 2003, para. 603–607), or urban renewal programs (Kenya 2006: para. 132). In contrast to homelessness, once a country mentions SPIH, the country also talks about measures to respond to them. The measure which I am interested in most, is the land titling approach.

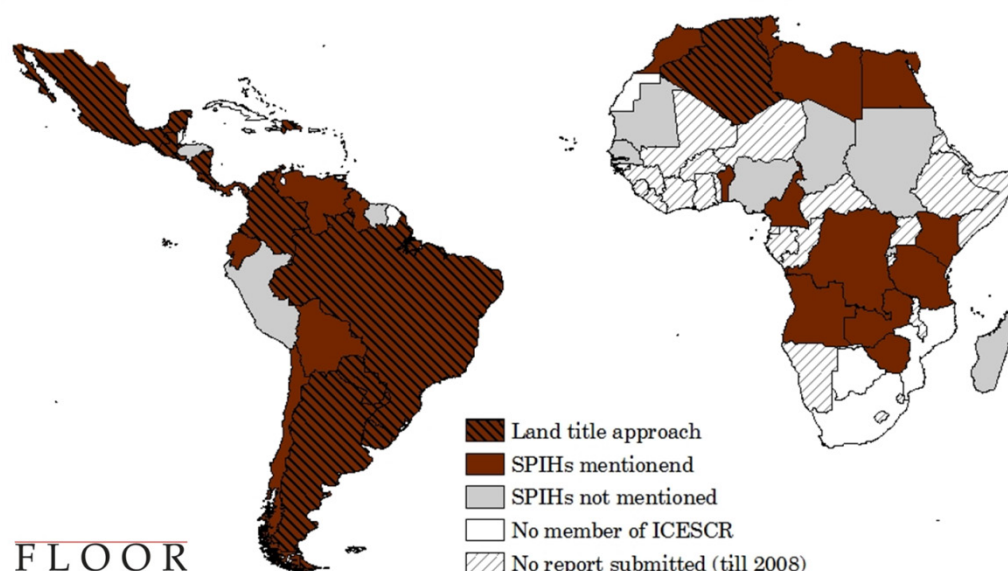
### *Informality and land titling approaches*

This chapter answers to the second research question: Which role do informality and land titling approaches play in the face of the social floor to housing? As I discussed earlier (see above), informal planning is a well known concept in western countries, but does not often respond to informal housing situations in the global south. This begs the questions: Can informality, here understood as the absence of planning and regulation, work as a land policy approach to guarantee adequate housing? We know de Soto's answer: »Yes, by formalizing, by waking up the dead capital« (see above). In this position, informality can work, but only for the price of leaving informality.

**Map 8** illustrates countries mentioning land titling approaches as an answer to informal housing structures. Almost the half of Latin American countries regard in their States Parties reports the land titling approach as a suitable concept for SPIH. In Africa, only Mauritius (1994: para. 265; 2008: para. 362–363) and Algeria mention this approach:



In 1988, 273,851 dwellings were listed as illegal structures, of which 113,148 were legalized with or without improvements. Given the extent of the illegal building problem, regulatory measures have been taken to regularize the situation where possible (Decree No. 85-212 of 13 August 1985 determining the conditions of regularization, with respect to their rights of disposal and occupancy, of the situation of the effective occupiers of public or private land subject to title and/or supporting structures not in compliance with the regulations in force (Algeria 1994: para. 170).



**Map 8:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) mentioning land titling approaches as response to SPIH  
Data source: ESRI ArcGis, FLOOR A, author's analysis

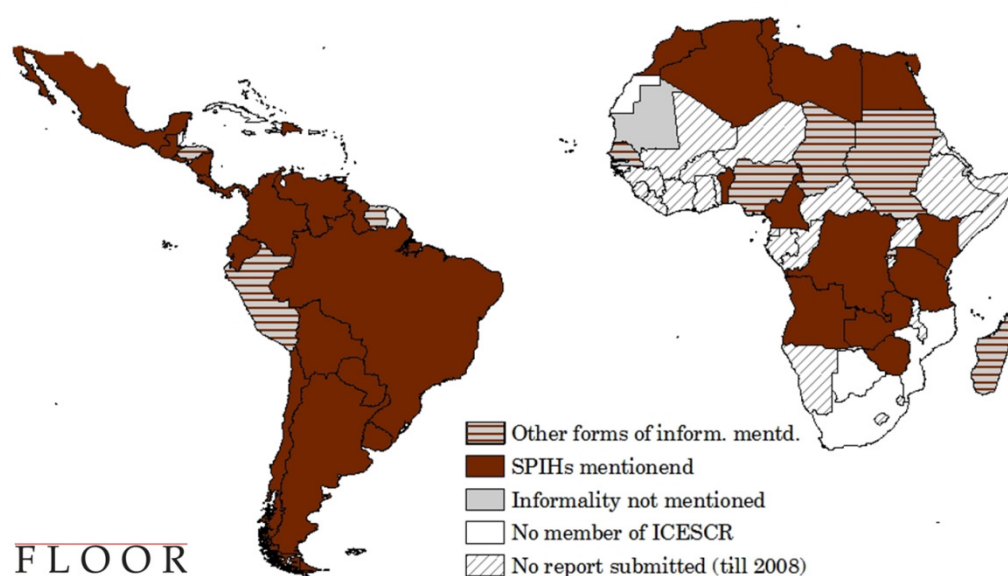
A typical practice in these cases is to combine the legalizing information with statistical information. Some countries refer quite shortly about the land titling approach, for example Mexico (1992: para. 201); but a larger number, Brazil, (2007: para. 381–384) for example, describe the formalization process more intensively. In these cases, formalization is often combined with other measures like monetary or constructional measures. Other countries describe their housing politics in a shorter way, but they combine regularization with other measures, too:

Housing policy gives priority to families living in poverty or extreme poverty and to vulnerable and disadvantaged groups. Gender, multiculturalism, interculturalism, the environment and risk are considered as cross-cutting issues in housing programmes and projects. Steps are also being taken to regularize property rights, to improve the infrastructure in human settlements arising from the illegal occupation of land and to equip housing with basic services, as well as to fund improvements to existing housing (Guatemala 2003: para. 88).

**Map 8** does not indicate that African countries do not mention the land titling approach at all. Some African ICESCR member states talk about land titling, but only in connection with food measures in the agrarian sector – often as land reforms – for example Madagascar (2007: para. 414–420) and the Democratic Republic of the Congo 2007: para. 209).

Once again, I want to focus on the long and complex procedure of the capitalization

process, I discussed above—now, with particular consideration of the discovery strategy. The first listed step is to »identify, locate and classify extralegal assets (dead capital)« (de Soto 2000: 160; see above). This step is, from my opinion, a very important aspect by talking about informality. Identifying—or let me call it: recognizing—informal structures is a stage which should not be underestimated. We can debate endlessly about the question whether informality is truly a problem or not. Furthermore we can debate about the question whether the land titling approach is the right answer to informal housing structure or not. First of all, however, we have to identify—to recognize!—that informality exists.



**Map 9:** Latin American and African member states of the International Covenant on Economic, Social and Cultural Rights (ICESCR) mentioning SPIH and other forms of informality in their States Parties' reports.  
Source: ESRI ArcGis, FLOOR A, author's analysis

Almost all SPIH discussed in the States Parties reports are connected more or less to informal structures. The term »informal settlement« indicates informality automatically. I asked myself whether the States Parties which do not talk about SPIH mention other forms of informality. Other forms of informality are informal working or informal education. **Map 9** illustrates the countries mentioning SPIH and the countries which do not mention SPIH but other forms of informality. This does not indicate that these countries, Brazil or Argentina, for example, do not talk about other forms of informality. As we see, only Mauretania does neither mention SPIH nor does the country refer about other forms of informality. Again, **Map 9** shows in an impressive way that informality is very well known in Latin America and Africa.

### 3 Some answers

Regarding the self descriptions of the countries in the States Parties reports under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the first finding is: Inadequate housing has as well many different forms as there exist many different solutions. But what are the main research findings? Here are some answers to my research questions combined with my first tentative explanations:

1. Homelessness is often not regarded as an aspect of Article 11 ICESCR (the right to an adequate standard of living including the right to adequate housing) rather than as a problem interesting for the protection of the family (Article 10 ICESCR). Why? First of all, homelessness is a complex phenomenon and especially the rise in number of street children is often caused by family problems. Though, remembering the research findings of Tipple and Speak (2009), who emphasized that homelessness in developing countries is mostly caused by structural effects like supply short falls (Tipple and Speak 2009: 33; see above), I have to conclude: The self descriptions of the Latin American and African ICESCR member states do not underline these hypothesis. The chance of homeless people to get the attention of the country in which they live, increases when they are children. Homelessness in the States Parties reports is not very close to housing questions, and I have not found many land policy solution to respond to it. This underlines my differentiation approach between homelessness, which is closely connected to the individual, and SPIH, which emphasize the space. Thinking and talking about homelessness, there is, probably, no land, land policy is interested in. Homeless people, who occupy public spaces, are often located near places of high economy value. Though, this is not their land, it is public space. The economic potential of the space presumably works even without the homeless. Homelessness in the States Parties reports is a phenomenon which the governments try to prevent and not to benefit from.
2. On the other hand, the land titling approach is a synonym for considering the economic potential, the »to be wakened up dead capital«. At this point, once again, economic potential aspects seem to play a decisive role: If you live in a SPIH, your chance to get your government's attention increases when you live in an urban area (of higher economic value). This result should not indicate that especially people living in rural areas do not get any attention of the Latin American and African ICESCR member states. With the exception of Algeria (see **Map 8**) and Mauritius, land titling as a solution for housing problems does not play any role in Africa. Although knowing from the academic discourse that land titling is very well known, especially in Latin America, I still have no satisfactory explanation for its little attention in connection with housing in Africa.
3. The first step of utilizing informality as a functioning (planning) concept is to recognize informal structures. Relating to this point, I propose that the African and Latin American countries have already gone beyond where western countries are nowadays. Once a country recognizes—or let me speak with the Limburg principles: respects—informal housing structures, the door is open for next steps: protection from eviction, for instance. Regarding the statistics about informality in African and Latin American countries (UN Habitat 2009b: 136-140), I am not surprised that almost all countries recognize informal structures. The question about informality and its potentials will be very interesting in my forthcoming research focusing on the States Parties reports of countries from Europe, Asia, Oceania, and Canada.

As the States Parties reports demonstrate, once again: Housing is acknowledged as a human right and has many faces—and different solutions to respond to it.

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### **STATES PARTIES REPORTS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**

The diffusion maps in this Working Paper illustrate the results of my analysis of all Latin American and African States Parties reports under the ICESCR reporting system. These reports have been collected and prepared by Professor Ulrike Davy and her team from FLOOR A (see p. 5). The following list references the reports I am quoting in this paper. Most of the States Parties reports are available at <http://tb.ohchr.org/default.aspx> and [www.bayefsky.com](http://www.bayefsky.com) (in HTML, MS Word, or PDF format).

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