

Holding Their Ground: Secure Land Tenure for the Urban Poor in Developing Countries

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Chapter 1: International Trends and Country Contexts – From Tenure Regularization to Tenure Security Alain Durand-Lasserve and Lauren Royston

IRREGULAR SETTLEMENTS AND SECURITY OF TENURE

The spatial growth of irregular settlements in cities in developing countries reflects increasing disparities in the distribution of wealth and resources. All empirical studies carried out during the last ten years have emphasized the magnitude of the problem. In most developing cities in Asia, Latin America, sub-Saharan Africa and the Arab States, between 25 and 70 per cent of the urban population is living in irregular settlements, including squatter settlements, unauthorized land developments, and rooms and flats in dilapidated buildings in city centre areas (Durand-Lasserve, 1996 and 1998). Although the situation varies widely from one country to another, the majority of households living in irregular settlements have no formal security of tenure and poor access – if any – to basic urban services.

Despite the multiplicity of poverty alleviation initiatives and safety-net programmes, the total number of people living in informal settlements is still tending to increase at a faster rate than the urban population. As a result, informal settlements frequently account for more than 50 per cent of the spatial growth of developing cities. In most developing cities, the expansion of informal settlements over the last two decades took place in a context of accelerated globalization and structural adjustment policies, combining deregulation measures, privatization of urban services, massive state disengagement in the urban and housing sector, and attempts to integrate informal markets – including the land and housing markets – into the sphere of the formal market economy (World Bank, 1991, 1993; Harris, 1992). These policy measures, along with the lack of, or inefficiency of, corrective measures or safety-net programmes have tended to further increase inequalities in wealth and resource distribution at all levels (Pugh, 1995, pp34–92; Durand-Lasserve, 1994).

The need for secure tenure

Populations living in irregular urban settlements are all confronted with the same set of interrelated problems: they have no access – or limited access only – to basic services, and they have no security of tenure. Their situation is precarious as they usually belong to the poorest segment of the urban population (Cobbett, 1999). However, it must be stressed that informality does not necessarily mean insecurity of tenure.

Unauthorized land development on private land offers various levels of protection, depending on the public authorities' perception of the degree of illegality of the settlement. Even if the area is not suitable for residential development, occupants can generally produce a deed of sale or a property title for the land they occupy. It is worth noting that, in such settlements, middle and upper-middle income groups are well protected against forced eviction, because of their political influence and their cultural and economic capacity to regularize their situation (International Federation of Surveyors and UNCHS, 1997).

Squatter settlements are more exposed to forced evictions, especially those located on private land in prime urban areas that are therefore subject to high market pressures, and those which occupy hazardous or dangerous sites. The poorest communities are especially vulnerable to external pressures. Frequently there is a lack of any internal cohesion in these settlements, making it difficult for the populations to group together to defend themselves (UNCHS, 1999a).

What do we mean by 'security of tenure'?

Thus security of tenure does not necessarily require the provision of leasehold or freehold titles. It can be achieved through other procedures and arrangements. Protection against forced evictions is a prerequisite for the integration of irregular settlements into the city. For households living in irregular settlements, security of tenure offers a response to their immediate problem of forced removal or eviction. It means they cannot be evicted by an

administrative or court decision simply because they are not the owner of the land or house they occupy, or because they have not entered into a formal agreement with the owner, or do not comply with planning and building laws and regulations. It also means recognizing and legitimizing the existing forms of tenure that prevail among poor communities, and creating space for the poorest populations to improve their quality of life.

Conventional responses to irregularity

Conventional responses regarding access to land and housing for the urban poor have been well documented. They are based mainly on the regularization of irregular settlements, emphasizing tenure legalization and the provision of individual freehold (Dowall and Giles, 1991). Approaches combining tenure legalization and titling programmes with programmes to provide serviced land, upgrading and improvements at settlement level have had limited success (Urban Management Programme, 1993 and 1995b). It is now more and more frequently acknowledged that such programmes must be drastically redefined and reassessed (Ward, 1998).

Despite recent shifts towards more flexible tenure regularization procedures, emphasis is still placed on access to individual ownership based on the allocation of individual property titles. The underlying model remains based on the formal/informal dichotomy and underestimates – or does not even take into account – the diversity and legitimacy of other tenure arrangements and the existing continuum between tenure systems.

Culturally and ideologically oriented development models

The emphasis that most countries still place on options favouring private land and housing ownership, to the detriment of other options, is due largely to conventional responses to the expansion of informal settlements which always reflect culturally and ideologically oriented development models (Rolnick, 1996; Feder and Nisho, 1998). Diagnoses of the current situation regarding access to land and housing, perception of needs and rights and responses are mainly guided by forms of technical rationality and financial logic that have been designed by international finance institutions and aid agencies (Torstensson, 1994). As part of the measures aimed at improving the management of urban institutions, improving local resource mobilization and establishing enabling regulatory frameworks, the World Bank's strategy regarding urban development in the 1990s (World Bank, 1991; Cohen and Sheema, 1992) advocates the improvement of land information and registration systems and the introduction of regulatory reforms in order to improve the functioning of urban land markets. The strategic role of market-oriented urban land and housing policies was repeatedly emphasized by the World Bank during the 1990s (World Bank, 1991 and 1993). In this context, priority is given to tenure regularization of irregular settlements and to the upgrading of land tenure systems. The longterm objective is to promote private ownership through the allocation of individual freehold/property titles. This may have a negative impact on the urban poor.

One of the basic hypotheses behind urban land policies in general, and tenure reforms in particular, is still that home ownership and the provision of property titles is the only sustainable solution for providing security of tenure to the urban poor while facilitating the integration of informal land markets within the framework of the formal economy. The convergence of diagnoses and responses has as its starting point a similarly converging analysis of the role of the city in economic development (World Bank, 1991), and the certainty that an increase in urban productivity would result from the unfettered development of the market economy through privatization, deregulation, decentralization and improvements in the financial systems. So-called corrective measures and safety-nets are supposed to lessen the social and environmental effects of these policies. Such a convergence is illustrated, at a global level, by the adoption of a standardized vocabulary for and reference to the same notions and concepts (such as productivity, efficiency, deregulation and privatization).

This vocabulary is by no means neutral. Relations between urban stakeholders – including tenure relations – are seen mainly as being organized around the supply and demand relationship, a relationship that the World Bank has gradually formalized since the beginning of the 1980s. As a political scientist stated recently (Hibou, 1998), one of the main principles underlying this discourse is the 'will to curb politics, while reinforcing the choice of liberal economy standards and the search for simplicity'. In order to get round the problem of politics, international institutions 'have called on political economy theories which tend to depoliticize perceptions and interpretations'. Political actors are analysed as economic actors. This predominant discourse

'reflects a political and moral position which uses watered down scientific theses to legitimize itself'. Aid agencies are increasingly questioning urban land policies based exclusively on access to individual ownership. The World Bank itself is now tending to focus less on freehold and instead pay more attention to security of tenure issues.

Providing security of tenure

There are two main approaches, which differ but are not contradictory. The first emphasizes formal tenure regularization at settlement level. Regularization policies are generally based on the delivery of individual freehold and, more rarely, leasehold titles. However, the difficulty of finding legal forms of regularization compatible with constitutional rules and the legal framework acceptable to the actors concerned, and in compliance with existing standards and procedures, constitutes a major obstacle for many operations.

The second approach emphasizes one of the components of formal tenure regularization policies, security of tenure. It does not require the provision of freehold individual titles, although this is not excluded. Rather it combines protective administrative or legal measures against forced evictions – including the provision of titles that can be upgraded, if required – with the provision of basic services. One of the objectives here is to preserve the cohesion of beneficiary communities and protect them against market pressures during and, more importantly, after the tenure upgrading process (Tribillon, 1995). This approach must be understood as a first, but essential, step in an incremental process of tenure upgrading that can lead, at a later stage, to formal tenure regularization and the provision of real rights. Unlike complicated, expensive and time-consuming tenure regularization programmes, security of tenure can be provided through simple regulatory and normative measures (Adler, 1999).

The rapid integration of informal settlements through conventional tenure regularization and the provision of freehold titles may hinder community cohesion, dissolve social links and induce or accelerate segregation processes through market eviction. However, measures aiming primarily to guarantee security of tenure give communities time to consolidate their settlements, with a view to further improving their tenure status. Improvements to the economic condition of households, the emergence of a legitimate leadership at community level, the identification of right-holders, and the resolution of conflicts within the community and between the community and other actors involved (such as land owners, local authorities, planning authorities, central administrations in charge of land management and registration, etc), all form part of this consolidation process. In addition, the time between the decision to guarantee security and further formal tenure regularization and the delivery of property titles can be used to improve the quality of services in the settlement. It also gives households time to define a strategy and to save or raise funds to pay for the next step in the tenure upgrading and regularization process. In addition, being given security of tenure without transferable or negotiable property titles lessens market pressures on the settlement and limits market evictions. This is an essential advantage of options emphasizing incremental regularization procedures, where occupants are granted occupancy rights that can, at a later stage, be incrementally upgraded to real rights, such as freehold or long-term leases, if so desired. Such an approach can be used both on vacant land and for regularizing irregular settlements (Christensen and Hoejgaard, 1995; Fourie, 1999).

The shift from tenure regularization to tenure security policies

During the last decade in most developing cities the common perception has been that property titles are the best if not the only way to ensure security of tenure. Such approaches have achieved limited results. When large-scale allocation of property titles to households living in informal settlements has been made possible, it has often resulted in increased pressure from the formal property market within the settlement, and/or an increase in the cost of services, both of which have tended to exclude the poorest sections of the population.

Policies based on large-scale provision of land and housing by the public sector have proved to be ineffective in terms of reaching the poor.

- Market-oriented responses tend to increase social urban segregation as the formal private sector usually responds to the needs of households in the upper income bracket.
- Public-private partnerships in land and housing development cannot easily reach the poor unless heavy and well targeted subsidies can be provided (Payne, 1999a).

- Centralized land registration and management systems and procedures, and existing legal and regulatory frameworks cannot respond to the requirement of large-scale tenure regularization programmes in cities where up to 50 per cent of the urban population is living in irregular settlements.
- Governments rarely have sufficient human and financial resources to operate on a large scale.
- Shifting from projects to programmes and then to policies remains a major problem.

However, security of tenure is considered by many observers to be an inadequate response to the needs of households in irregular settlements when compared with tenure regularization (Urban Management Programme, 1989; USAID, 1991; World Bank, 1993; Ansari and von Einsiedel, 1998)...For the communities concerned, to be provided with security of tenure may be seen as a necessary, though inadequate, measure that may postpone indefinitely their access to ownership. Security of tenure is not seen as a first step in an incremental tenure upgrading process, but rather as a 'temporary' solution, which can last forever if administrations do not have the capacity or the will to pursue the process. This is especially true in contexts where people do not have confidence in the promises and commitments of governments regarding tenure regularization. In this case, freehold is considered the only reliable and sustainable guarantee that they will not be evicted (Durand-Lasserve, 2000).

Diversity of situations and objectives requires diversity of responses

Although there has been a considerable shift towards implementing more flexible forms of security of tenure, which tend to stress user rights rather than ownership (this is the case in India in particular), it has not produced, or has not yet produced, programmes and policies that can be applied at a national level.

Responses also depend on the tenure status of the land occupied by irregular settlements. Land may be publicly owned: it may form part of the public domain of the state, in which case it cannot be alienated, or it may fall within the private domain of the state. Land may also belong to the central government or to a local entity (such as a state, province or municipality). In a large number of sub-Saharan African countries, for example, the land is owned and managed by the state, which supposedly, though this is not always the case, controls and regulates access to land through the discretionary allocation of occupancy permits, which can later be upgraded to leasehold and sometimes to freehold, and through tenure regularization projects (UNCHS, 1999c). However, achievements are limited, due mainly to the limited management and processing capacity of the central administrations involved, and to widespread corruption and illicit practices in the allocation process.

Land may also be privately owned, either collectively or individually. In this case, securing tenure will depend on negotiation with owners, the capacity of judicial power to make and enforce decisions, political will and the resources available for paying compensation through subsidies or cost recovery mechanisms.

The communal or customary system is, in many sub-Saharan African countries, the main provider of land for unauthorized developments. The success of tenure regularization policies depends on how the customary system in general is formally recognized, or whether it is simply tolerated or not even officially recognized at all.

Land belonging to religious organizations, in particular in Islamic countries or areas, covers a wide range of situations, but these lands are usually under rental tenure. In principle, religious land is protected against illegal occupations and from legislative encroachments, but it is not protected from market pressures, especially when located in prime urban areas. Conflicts between religious organizations or foundations that own or manage the land, and occupants, may turn the settlement into an irregular settlement. Then specific responses will have to be found in order to provide the populations concerned with some form of secure tenure.

Whatever the tenure status of the land, one factor plays an important role in the success or failure of security of tenure policies: actual or potential land-related conflicts. Whereas settling on disputed private land is often considered by poor communities as easier and less risky than settling on undisputed land, it may render the tenure regularization process extremely long and difficult.

Lastly, responses to the tenure regularization question also depend on the type of irregular settlement involved. Experience has shown that successfully securing tenure in squatter settlements will depend to a great

extent on the legal status of the land (public or private land) and on the resources available for paying compensation if required, for providing basic services to occupants and for covering the costs of relocation of displaced populations whenever necessary (Durand-Lasserve and Clerc, 1996; Jones, 1998). Providing security of tenure in unauthorized land developments raises another series of problems, mainly relating to cost recovery for items such as formal land registration, titling and servicing. Informal rental, whether in squatter settlements or in unauthorized land developments, is the form of irregular occupation that raises by far the most difficult problems, as the populations concerned are poor and unorganized and are not necessarily seeking upgradable tenure arrangements.

A wide range of options are available to respond to the need for security of tenure (Fourie, 1999). These must be considered in the light of local circumstances and contexts:

- de facto recognition, but without legal status (this guarantees against displacement or ensures incorporation of the area into a special zone protected against evictions);
- recognition of security of tenure, but without any form of tenure regularization (the authorities certify that the settlement will not be removed);
- provision of temporary (renewable) occupancy permits;
- temporary non-transferable leases (India);
- long-term leases (may or may not be transferable);
- provision of legal tenure (leasehold or freehold).

These rights may be allocated on an individual or a collective basis, depending on local circumstances, and record systems and the allocation process may be centralized or decentralized. The population may or may not be involved in the process.

Chapter 2: Security of Tenure in Indian Cities **Banashree Banerjee**

Tenure regularization has found its way into policy via two different routes. The first is the functional approach, in which secure tenure is seen as a means of achieving definite objectives. These could be poverty alleviation, credit worthiness for housing loans, incentives for poor families to invest in shelter improvement or compensation for relocation of squatters and pavement dwellers. In contrast to this is the 'rights' approach, emphasizing that every citizen has the right to a secure place to live. The courts, activist groups and political manifestos have tended to follow this path. Whichever route is taken, the results are security of tenure in the form of legally valid tenure documents; or implied security of tenure brought about through public investment, notifications, court stay orders, political patronage or group solidarity.

SECURITY OF TENURE IN NATIONAL POLICY

In the case of India, there is no explicit national policy on tenure regularization. However, it is included in most urban and housing policy documents, sometimes being directly mentioned and at other times by implication. Up to the 1970s, policy was based on the notion that slums and settlements with irregular tenure were a transient phenomenon. Slum improvement was considered as a temporary measure for ensuring healthy living conditions until residents were re-housed. The model Slum Areas (Improvement and Clearance) Act of 1956 provided the statutory basis and guidelines and was adopted by most states. Tenure regularization is not part of the Act but notification of an area as a slum under the Act, in itself, implies secure tenure, as residents cannot be evicted without the approval of the competent authority.

In the 1970s it was realized that affordable public housing was a distant dream and slum improvement was recognized as a long-term option. In 1972 a scheme for the 'environmental improvement of urban slums' (EIUS) was launched with joint central and state government funding to provide basic services in slums notified under the Slum Act. One of the criteria for the sanctioning of funds was a certificate from the municipality declaring that the slum would not be cleared for at least ten years after infrastructure improvements were undertaken. The purpose of this condition was to justify public expenditure, but it also led to some security of tenure for the residents. By 1996 about 40 million people had been covered under the scheme (GOI, 1997b).

IRREGULAR SETTLEMENTS IN INDIAN CITIES

...By far the most prevalent types of irregular settlements in Indian cities fall into the two broad categories of squatter settlements and illegal subdivisions. They occur on public and private land and also on village common lands and tribal customary lands in urban fringes. Squatter settlements are included under the general term 'slum' but are also known under different names in different parts of the country: *jhuggi jhompri*, *jhoadpatti*, *hutment*, *basti*, etc. Land (public or private) is illegally occupied and control regulations. Occupants have absolutely no legal rights over land or its development. In most cities such settlements are characterized by very poor shelter and infrastructure conditions and location on precarious sites. Illegal tenure excludes such settlements from getting building permission or access to regular city services. The poorest people live in these settlements (Banerjee, 1994).

Illegal subdivisions are known under names such as unauthorized colonies, unauthorized layouts, refugee colonies (West Bengal), slums, village extensions, etc. Land is subdivided illegally, usually by illegal developers, and sold as plots. The subdivision is illegal either because it violates zoning and/or subdivision regulations, or because the required permission for land subdivision has not been obtained. Land may be privately owned, under notification for expropriation, urban fringe agricultural land or common land of a village engulfed by city growth. The sale or transfer of land and hence ownership of the plot may have a legal or quasi-legal status, but because of the illegality of the subdivision, plot holders cannot get permission to build. In addition the area is not eligible for an extension of infrastructure services. The inhabitants are not as poor as those residing in squatter settlements and they have some means to make an initial investment on the plot (Banerjee, 1994).

EXAMPLES OF STRATEGIES, TOOLS AND TECHNIQUES FOR PROVIDING SECURITY OF TENURE TO SQUATTER SETTLEMENTS

Legal tenure

The extension of land tenure rights over government land, locally known as *patta*, to squatters is undertaken as a welfare measure. Tenure rights can be given in situ or in alternative locations on freehold, lease or licence basis. Even though there are cases of group tenure, granting of individual tenure is the general practice. Current approaches give preference to regularization in situ but relocation has been resorted to under specific circumstances. Often a combination of approaches has been followed (Bhatnagar, 1996). A number of states such as Andhra Pradesh, Madhya Pradesh, Orissa, Rajasthan and Maharashtra have opted for tenure regularization as a statewide policy across all urban areas. States such as West Bengal and Tamil Nadu have adopted a city-specific or programme-specific approach.

Guarantee of continued occupation

There are some forms of official intervention that lead to security of tenure even without tenure regularization. An example is the undertaking from the municipality stating that a settlement will not be removed for ten years. Notification of an area as a 'slum' under the Slum Act amounts to some sort of security of tenure as it leads either to improvement or to relocation to an alternative site. In the case of Maharashtra, the Slum Act provides for protection against eviction from declared slums (Banerjee, 1996). States like Tamil Nadu and Karnataka do not, as a general policy, confer legal tenure to squatters but security of tenure is assured once public investment is made. In the case of Delhi, the latest policy is to encourage permanent buildings without granting tenure in squatter settlements – if the land is not earmarked for other projects. At times court rulings guarantee continued occupation. In the Bombay pavement dwellers case (Supreme Court, 1986) and in the recent case in Delhi pertaining to 400,000 squatters, the ruling of no displacement without alternative accommodation leads to security because it is not easy to implement. Court stay orders also have a similar effect, though for a shorter time.

Other conditions leading to secure tenure

Settlements that have neither legal status nor government investment rely on other means to obtain security, or at least the perception of security. Settlements on land that is under litigation are known to remain undisturbed as long as the court case is not settled, sometimes for decades. Similarly, land that is not required for any other purpose is safe. However, very often such land is unsuitable for habitation or improvement. Examples are marshy or flood-prone lands, steep slopes and railway margins. Political patronage from a local leader may lead to informal assurance against eviction and also provision of basic services. There is a growing political lobby against

eviction and media and judiciary support for the rights of squatters as citizens. Mumbai, Calcutta and Bangalore have strong CBOs, NGOs and grass-roots movements that have repeatedly confronted the government on evictions and tenure. This has forced the government to take positive policy measures, or at least to ensure immunity from displacement. Out of these confrontations has emerged a new trend of dialogue and negotiation where there is a willingness of all parties to work towards solving problems.

On a lower key, squatters have built up their own systems of security. Information through contacts with lower levels of bureaucracy gives early warning of impending demolitions. This prepares leaders to get stay orders from court, to mobilize demonstrations or to contact their political mentors. Politicians are invited for cultural or sports events; press reporters are invariably present and any statement on regularization is publicized. Of course, a price has to be paid for such protection and information. Another common practice is to build religious structures in prominent places, knowing that the authorities are reluctant to demolish these for fear of communal problems, and hoping that surrounding areas will acquire immunity. Any evidence of recognition by the authorities and proof of residence are considered important to establish a claim. Examples are ration cards of the public distribution system, identity cards, letters addressed to the family, tax receipts and electricity bills. Examples follow of strategies, tools and techniques for providing security of tenure in illegal subdivisions.

Regularization

The official response to regularization of illegal subdivisions has tended to be city specific, unlike squatter settlements where state governments are invariably involved. Perhaps this difference exists because, in the case of squatters, regularization involves alienation of state government land. Except in Andhra Pradesh, where the state government has issued regularization guidelines for all the municipal corporations, it is the urban development authority or the municipal corporation that is responsible.

The process of regularization consists of either exempting the layout from subdivision and/or zoning regulations, or modifying the layout to conform to subdivision regulations, levying a regularization fee, payment for the extension of services and regularizing buildings on the basis of building regulations. Where applicable, the registration of titles is also required. There are local variations within this broad framework and some examples are discussed below. Illegal subdivisions or unauthorized layouts exist, to some extent, in all the towns of Andhra Pradesh. The procedure to be followed in dealing with unauthorized layouts in Hyderabad, Visakhapatnam and Vijayawada is specified in a state government order issued in 1987. The urban development authority is first expected to take penal action against illegal developers or plot holders. If this is not possible, the layout is to be regularized by suitably modifying the layout and serving notices to plot holders to pay their share of regularization charges. These charges include the cost of services and roads along with external connections, the cost of community open space and layout approval charges.

The procedure is only partially followed through because plot owners are willing to pay for services but not for layout regularization or property registration.

The multiplicity of agencies and their overlapping jurisdictions in and around the city have created a laissez-faire situation in which it is easy for illegal developers to operate. The Bangalore Development Authority (BDA) has a policy for regularizing layouts on payment of fees, land use conversion charges (agricultural to non-agricultural) and development costs, particularly where plots have been purchased by cooperative societies as these can be exempted from the provisions of the ULCRA. However, the provision of services for scattered sites is hardly feasible. Starting with 1962, there have been repeated official announcements about regularization of unauthorized colonies in Delhi, with advancing cut-off dates. At the same time the authorities have strongly condemned the practice and even carried out demolitions of offending structures. As Delhi is the national capital, the central government is also involved in these decisions. In fact the city institutions have repeatedly asked for central government resources for part of the cost of infrastructure improvement. The main problem facing the regularization process has been the unwillingness of plot holders to pay the entire regularization charges, as well as to follow the regularization plan. Despite almost four decades of regularization operations, only five colonies, out of about 800, have been fully regularized in terms of layout, lease deeds, services and facilities and payment of regularization and development charges.

Regularization of buildings

Cities in a number of states such as Andhra Pradesh, Tamil Nadu and Karnataka are conducting massive drives to regularize violations of building regulations on payment of regularization charges, as a way to build up municipal funds. In this process buildings in unauthorized layouts in a number of cities have also been regularized. Examples are Visakhapatnam and Hyderabad. Plot owners feel that with appropriate political lobbying, municipal services can now be obtained, even without paying for regularization or layout approval.

Declaration as slum

Sometimes illegal subdivisions are notified as slums under the Slum Act. They then become eligible for subsidized services and tenure becomes safe. Delhi, Vijayawada, Nagpur and Bhubaneswar are cities in which this practice has been followed for a number of layouts. These areas become similar to site-and services if plots are owned.

Announcement of regularization

The mere announcement of official policy or local government resolution to regularize settlements leads to immunity and lobbying for infrastructure provision. This has repeatedly been the case in Delhi and Nagpur. Irrespective of whether a settlement is regularized or not, inclusion of the settlement in the 'list' is projected as a guarantee for regularization. However, this need not be the case. Any kind of official survey or reconnaissance also leads to the assumption that regularization will follow.

Other conditions leading to secure tenure

The danger of demolitions disappears once layouts are built up. But in the initial stages the methods used to get a perception of secure tenure are similar to those used for squatter settlements. Religious structures are built, political patronage is sought and contacts with police and lower bureaucracy are maintained at a cost. All possible claims to legitimate residence are collected: ration cards, house tax receipts and electricity bills. Court stay orders against demolition are often obtained to buy time. In towns where the scale of illegal subdivisions is small, or in small towns where most urban development takes place without permission, illegal subdivisions are not an issue at all and may not even be officially identified. Over time, houses are built, taxes collected and services provided.

Chapter 3: Policies for Tenure Security in Delhi **Neelima Risbud**

Informal land supply in Delhi has evolved and expanded more rapidly over the past three decades than the public supply systems. Private initiatives, which did not find a place in the official policy of land development, have arisen in informal settlements. Four major informal land delivery subsystems can be identified in Delhi: squatter settlements, resettlement colonies, unauthorized colonies and urban villages. These differ from each other in terms of process of development, tenure, the nature of illegality, the groups served and the resultant settlement characteristics.

Squatter settlements

Squatter settlements in Delhi are basically encroachments on public land by the poor. Land ownership and tenure is illegal but the extent of perceived security is varied. More recently, entrepreneurs have started promoting organized squatting. In January 1990 a comprehensive survey was conducted by the food and civil supplies department via the issue of ration cards; about 929 settlements and 260,000 families were found squatting. Families squatting prior to the cutoff date of 31 January 1990 became 'eligible' for alternative leasehold plots. At present more than 600,000 families are squatting, out of which 70,000 families are located on land where priority public projects are to be implemented, 30,000 families are located on vulnerable/dangerous areas and 50,000 families are located on commercial sites. Therefore 450,000 families cannot be allowed to continue to stay at their present location. Squatter settlements are in a very bad environmental condition, despite various government programmes over the past three decades to combat the problems. Acute deficiencies of basic services (for example, sanitation, waste collection and drainage) have made them susceptible to frequent epidemics of cholera, gastroenteritis, jaundice, typhoid, high infant mortality, and so on. Only regularization entitles the squatters to request a higher level of services.

Resettlement colonies

Programmes for resettling squatters, with varying tenure conditions and standards of development, have been implemented over the past four decades. The scale of this development has been massive. The first public policy towards squatter settlements was proclaimed in 1960 by the central

government. A programme known as the 'jhuggi jhompri removal scheme' involved the removal of squatters from public land and their resettlement in planned areas. Those squatting prior to 1960 were considered 'eligible' for alternative accommodation but those squatting after 1960 were to be evicted. The scheme was revised in 1962 and 1967 because of the unabated increase of squatters and unauthorized sale of resettlement plots and it was decided to take up resettlement in a phased manner. In 1970 camping sites with minimum facilities were provided on a monthly rental (licence) basis for 'ineligible' squatters on the periphery of Delhi. Massive clearance and relocation was undertaken by the DDA between 1975 and 1977. The scheme did not conform to the land use stipulation of the master plan with regard to zoning regulation, plot sizes, building by-laws or municipal regulation of water supply and sewerage. The rental tenure of the plots enabled this deviation (Risbud, 1989). There was hardly any recovery of the licence fee for the plots. The government recognized that although these plots were envisaged as camping sites, the colonies could not be treated as temporary. It therefore granted leasehold rights to residents and provided higher levels of amenities. During the next phase, after 1977, plot sizes for resettlement were increased. In 1983 builtup tenements were also rented as transit camps to families. So far, 1850 hectares of land have been developed for the resettling of squatters in Delhi. The emphasis shifted to the improvement of settlements on the same site.

After 1990 resettlement was taken up as a part of a 'three pronged' strategy for settlements in which land was required by a landowning agency for implementing a project. Resettlement was to be organized by setting up multipurpose cooperative societies of about 200 families each. The allotment of plots was on a licence basis through the cooperative society. So far 13,390 families have been resettled. Just before the state elections in 1998, the state government decided to offer leasehold rights to all the plot holders with licensed tenure in all 44 resettlement colonies. Plot holders were asked to apply and deposit a one-off payment towards ownership rights. This was in an effort to upgrade tenure and also to regularize illegal sales. However, the response was poor, as people did not see much benefit for themselves. At present the resettlement issue is under the consideration of the courts. In order to provide land for resettlement, the government decided that the DDA would allocate 20 per cent of the land in all its urban development projects. For the first time resettlement was done in small pockets and integrated with the planned projects of the city. So far about 11,000 plots have been developed under this scheme. However, there is resistance from residents of adjoining areas to resettlements near their colonies.

Unauthorized colonies

The illegal subdivision of land in Delhi began in 1947. In 1962 there were 110 unauthorized colonies that housed a population of 221,000. Formal land supply continues to be inadequate owing to delays in the process of land acquisition, development and disposal. The high standards of development adopted by the master plan have effectively made the developments unaffordable to lower income groups. The difference in land price between the regularized and unauthorized developments is much higher than the associated costs borne by the residents. A list of 1071 unauthorized colonies which developed prior to 1993 has been prepared. However, these have yet to be identified and verified from the aerial survey conducted in 1993. Many of these colonies are on private land, some are on government land and a few are on land notified for acquisition where compensation has already been announced and deposited by the DDA. Over a period of time the problem of unauthorized colonies has assumed large proportions and the residents have now become an important pressure group.

Urban villages

Urban villages in Delhi are those rural settlements that were engulfed by urban development. These settlements are organic and therefore not illegal. However, with the influence of market forces, these settlements expand and are informally transformed. The agricultural land belonging to these villages has been acquired for planned development by public agencies.

GOVERNMENT POLICIES

The Slum Areas Act

During the 1950s the problem of 'slums' in Delhi referred to dilapidated buildings and blighted areas of the old city. The Slum Improvement and Clearance Act of 1956 was enacted as a first step to deal with these slums, which were 'unfit for human habitation'. This definition only emphasized the physical aspect of a slum. It did not consider issues around informal tenure or the socioeconomic conditions of the occupants. According to official estimates, about 2 million people are living in notified slums. These include

squatter settlements, urban villages, unauthorized colonies and the entire old city. The Act empowered the competent authority to ask the owners to carry out improvements or for the authority to carry out the improvements and recover the cost from the owners. It provided for clearance and redevelopment of structurally dangerous buildings and it provided for the protection of tenants against eviction. Over the past 40 years, the Act has been ineffective in improving the Old City, where extensive illegal conversions and rebuilding continue with total disregard for environmental considerations. The Slum Act was never meant for squatter settlements and it therefore does not recognize the considerable problems that exist because of variations of land tenure.

The improvement of squatter settlements

Under the 'three pronged' strategy adopted in 1990, improvement of squatter settlements was taken up in two ways. First, basic facilities under the environmental improvement scheme could be provided in squatter settlements where the land was not immediately required for a project but would be needed at a later date. Second, settlements where no projects were planned could be upgraded in situ with occupancy rights and civic services. These settlements would be allowed to remain and the dwellers would be helped to upgrade their shelters.

Improvement schemes

The 'environmental improvement of urban slums' (EIUS) was initiated by the central government in 1972 and continues even today. The scheme provides minimum services in notified slum areas through central grants. The facilities provided are street lighting, water hydrants or hand pumps, pay-and-use toilet complexes and dustbins. There is an expenditure ceiling of Rs800 per capita, which is inadequate. The Slum Wing of the municipal corporation implements the scheme.

The urban basic services programme (UBS) was undertaken by the partnership of the Indian government, UNICEF (United Nations Children's Fund) and the state government. The UBS was based on six guiding principles: community participation, child and mother focus, convergence, cost effectiveness, coverage and continuity. It aimed at providing an integrated package to improve health education and awareness using a participatory approach. Implementation of the programme started in Delhi during 1986 and 1987. The programme was revised and renamed urban basic services for the poor (UBSP) during 1990 and 1991. The objective of the scheme was to create community structures in terms of neighbourhood development committees. These would participate in the convergence and provision of physical, social and income-generating facilities. The scheme enabled the formation of registered societies of slum dwellers.

In an evaluation sponsored by the World Health Organization (WHO), Wishwakarma and Rakesh (1994) found that the implementation had been very poor. The UBS scheme was discontinued after the introduction of the UBSP. The budget provisions have remained unspent. The programme had serious management problems of intersectoral convergence and coordination. The objective of community organization and participation was on paper only. Delivery of services is therefore inefficient, piecemeal, duplicated and provisions are inadequate. Slum communities and non-governmental organizations (NGOs) were not represented on the committee, which was communities lose interest and faith in the government's commitment to create community structures.

Upgrading in situ involves the reorganization of slum dwellers on the same site with a planned layout, licensed cooperative tenure and provision of minimum basic services to enable families to construct their own houses. The Slum Wing implemented three projects on an experimental basis under this strategy and work on 4800 plots is in progress. Families were given 12.5-square metre plots on a licence fee basis. The shelter conditions and market value of these properties along with the cooperative/licensed tenure could not prevent unauthorized selling of plots to higher income families. The experience of implementing the pilot projects could not be utilized for wider application because of the reluctance on the part of landowning agencies to issue 'no objection' certificates for undertaking upgrading projects on their land. The high density of squatter settlements limits reorganization in a planned manner. In addition to the above programmes, there have been a few political initiatives and support measures taken at various times by government. The Slum Wing has tried temporary solutions, for example, providing tankers for drinking water during summer and mobile toilets. These interim measures are too meagre to effect improvements and are very costly in the long run. Perceived tenure security in improved slums seems to be short-lived and has been shaken in recent years by the legal intervention of

the high court and the Supreme Court. The courts responded to a series of public interest petitions filed by middle-income flat owners against rapid encroachment of public land by growing slum clusters. It was agreed that only slum clusters officially recognized as of January 1990 were eligible for regularization and improvement.

The courts wanted a clear policy on the relocation of ineligible squatters, as well as a plan of action to prevent new slums from forming. The city government expressed its inability to stop the growth of new slums in the absence of policing powers. It also highlighted the difficulties of land and resources in the relocation of squatters. In an attempt to make the city spotlessly clean, the Supreme Court ordered the removal of 400,000 huts and took the Delhi government to task. They asked city authorities to give serious consideration to the slum problem because if the situation in the city was not immediately addressed there would be no possibility of finding solutions in the future. The authorities were faced with the problems of identifying and acquiring suitable land for relocation and mobilizing huge resources. After two decades the exercise of massive relocation is being reconsidered. The national alliance of people's movements has used the official admission that serious problems exist in the relocation policy, in part, as the basis for a new petition. This coalition demands basic civic amenities (water, sanitation and health for slum dwellers) as a right until an explicit policy is decided upon (Government of India, 1996[Q8]). Slum dwellers are organizing themselves and a slum dwellers' federation has recently been formed. The health crisis in the form of frequent epidemics is a result of the fast deteriorating environment of the city. The most vulnerable pockets for epidemics are the approximately 1000 slum clusters in the capital, which lack basic amenities. The health perspective on slum improvement is becoming critical. The recent trend also indicates a class conflict between slum dwellers and adjoining higher income localities. According to *The Economic Times* (3 April 1991) the implementation of improvement schemes and the utilization of resources have been very poor and marked by inefficiency.

The Slum Wing is heavily dependent on NGOs for organizing and mobilizing communities. An NGO forum was initiated in Delhi in 1991 with a view to involving NGOs in slum improvement. There are more than 350 NGOs in Delhi but barely 10 per cent are involved in organizing slum communities. NGOs have been facing problems because of the absence of supportive policies for land tenure (Centre for NGOs, 1993). The Slum Wing, which manages slum improvement, has been shunted several times between the DDA and the municipal corporation. Its present structure and mandate is hardly suitable to manage comprehensive sustainable slum improvements on a scale that will have a significant impact at city level. According to the 74th constitutional amendment, 'slum improvement' was one of the principal tasks of municipal authorities. Institutional capacity building is absolutely necessary to match the functional assignment of the Slum Wing.

Policies for unauthorized colonies

In 1961 it was decided to exempt built-up areas from statutory acquisition, under the 'large scale land acquisition and disposal' policy, and to regulate them with the following provisions: that they were built before the date of preliminary notification of the Land Acquisition Act; and that they could be fitted into the sanctioned regularization plan. This policy called for the regularization of 110 colonies. These colonies were regularized taking into consideration freehold tenure of plot owners.

In 1969 the government decided to also regularize (with leasehold rights) these colonies. However, the leasehold system could not be enforced because 62 colonies were located on non-conforming land uses (according to the master plan). The Delhi Lands (Restriction on Transfer) Act was adopted in 1972 to stop the sale and purchase of land; the sale of land in regularized colonies and urban villages without the permission of the competent authority was prohibited.

The central government announced another regularization policy in 1977 stating that all structures, within the union territory of Delhi, which arose through illegal subdivision of land up until June 1977, irrespective of their date of origin, were to be regularized (including those located in designated slum areas). Both residential and commercial structures were to be regularized once they conformed to a proper layout. Development charges, as determined by the authorities, were payable by the owners of the property for the provision of services. Those people displaced in the process of providing roads and community facilities were to be given alternative plots or accommodation. Land use as stipulated in the master plan was to be changed, wherever necessary, for the regularization of these colonies. Those colonies notified for acquisition were also to be considered for regularization;

they were classified and dealt with by both the DDA and the MCD. The residents considered the regularization charges too high. Out of the 607 colonies, regularization was started in 543 colonies, only five colonies were fully regularized and the others have remained at various stages of regularization.

Recovery of development charges was poor; most people stopped payment after the first instalment. Anomalies between the actions of different institutions created enough ambiguity about the status of settlements to help them survive. Plots earmarked for facilities in the regularization plan were invariably encroached upon, or sold, by the colonizers. After two decades of regularization, the majority of areas lack basic municipal services (Banerjee, 1994). The following land transfer mechanisms have been most commonly used: general power of attorney either registered or unregistered; receipt of amount against particular property on Rs2 stamp paper signed by both parties; and irrevocable will of landowner on Rs2 stamp paper, giving unlimited powers to the transferee to do anything with the plot of land.

The proposed regularization policy

In December 1996 the Delhi high court bench gave an order to the union government to form 'a high powered committee' to decide within three months on every aspect of long pending issues of unauthorized colonies in Delhi. In November 1997 the courts directed that until the matter of regularization was finalized, no further construction of any nature was to be undertaken in any of the unauthorized colonies of Delhi. The courts commented that the problem was reaching crisis proportions and made an analogy to that of war. In 1998 the court directed that the policy for regularization should be finalized, a clear definite cut-off date given and the amount set for development charges to be levied. The necessary penal action could then be taken against colonies which were not to be regularized; not just the demolition of a few selected houses but the colony as a whole. The courts referred to section 29 (Delhi Development Act) in their directives, which provides for imprisonment in cases of development without a layout. It further noted that the delay in decision-making was resulting in corruption at various levels. It was brought to the notice of the courts by the DDA that 'thousands of flats constructed by the DDA are lying unoccupied for want of electricity and water'. The court took notice of this and remarked that priority should be given to provide electricity and water to planned developments.

Ambiguities were noted on scrutiny of some colonies before regularization; many colonies had duplicate names and some colonies were not traceable. Boundaries of only a few colonies could be identified on available aerial photographs; for some only the location could be identified. Difficulties in physical identification of settlements are a serious hurdle to regularization. An effort was made to shift the cut-off date and include the number and extent of colonies that appeared between 1993 and 31 December 1997. This could not be done owing to a change in government.

Other policy measures

A major shift in land policy is that the union government, in principle, has decided to allow private colonizers and builders to supply land and housing in Delhi. With this the era of public sector monopoly of land will come to an end, but whether it will reduce informal supply remains to be seen. Recognizing the futility of restricting land transfers, permission is being granted to leasehold property owners to convert to freehold properties on payment of a certain amount. The government has gone a step further and is recognizing properties purchased on power of attorney. A decision was taken to regularize unauthorized construction in legally approved buildings. All these regularization measures appear to be a *fait accompli*.

However, with the change of the central minister (2000–2001), the central ministry had reversed its liberal stand and started a major campaign against encroachment and unauthorized construction. Eviction of squatters and resettlement is being vigorously pursued; it was planned that in 2001 30,000 squatters were to be shifted despite strong opposition by politicians from all parties. The 'five pronged' strategy to combat violations includes detection, demolition, prosecution, cancellation of lease and eviction. Similarly, in the event of any transfer of plots in the resettlement colonies, the properties are sealed and the buyers evicted. Hundreds of families have been evicted under this campaign. The recent changes highlight the issues of sustainability of government policies and the process of decision-making.