

Land Tenure



Historically, WaterAid's water and sanitation projects have concentrated on rural areas in some of the poorest countries of the world. However, the growing number of low-income families living in deteriorating urban areas has led WaterAid to recognise the increased need for urban water and sanitation projects.

There are three main common difficulties which have to be overcome in order for poor urban communities to access water and sanitation services. These are as follows:

- The legal position of the residents with respect to land tenure
- The locality of the settlement in which the communities are living including distance and accessibility due to narrow access roads
- The cost (construction, operation, maintenance, servicing, etc) of accessing services

This information sheet considers the first of these barriers, focusing on the problems created by the lack of legal land tenure, and the relationship between legal land tenure and water and sanitation facilities for the urban poor.

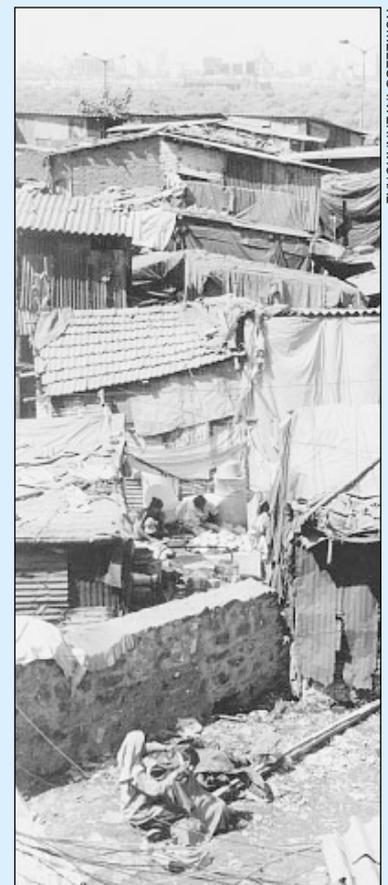
Legal land tenure provides people/communities with official status and documentation to live in their settlement, or on their land. Many residents in developing countries lack legal land tenure and this has a detrimental impact on their ability to engage with the formal sector, whether to raise capital for business, access services, find a job or resist evictions.

The problem

In many cities, municipal and private water and sanitation service providers do not supply these essential services to communities which lack legal tenure. This can be the case even where policies exist which state that water and sanitation should be made available to all citizens. Reasons given for the lack of services can be that the land is unsuitable for habitation, inaccessibility, overcrowding or a perception that poor communities are not able to pay for services. This is despite the fact that the poor generally pay more per unit¹ for services than middle-income communities, as they are forced to buy water by the bucket, rather than through a piped system, or pay to use latrines at some distance from their homes.

Municipalities may not supply services to settlements that lack land tenure because it could be seen as political acceptance of the settlement as

Most city housing in developing countries is organised, planned and built by the poor. These settlements are often outside the law and unrecognised by the government. However, the residents are essential for the working economy of any city.



HOMELESS INTERNATIONAL

Dharavi slum in Bombay is the largest slum in Asia with a population of approximately one million people.

¹Sometimes as much as 25 times more

a bona fide place of residence. If the settlement is on land that has been earmarked for an alternative use, such as a road, or if the settlement is built on a pavement, as is the case in many South Asian cities, the municipality may not be willing to grant legal land tenure to residents.

Those without security of land tenure are often invisible in city planning. They are not on voter registration lists nor included in national statistics and are consequently not identified for, or are consciously left out of, planning for urban water and sanitation services.

Although national policies frequently state that the government should provide water for all its citizens, in practice the application of this policy is often impossible without formal land tenure. This is generally due to bureaucratic systems that require citizens to hold ID cards. However, people can only obtain ID cards if they have land tenure and so those without are not registered citizens and are therefore unable to receive water and sanitation services.

Possible solutions

Legalisation processes

One solution to the problem of ‘illegal’ slum communities has been to call for the authorisation of land tenure so that the communities have title deeds. This allows the provision of water and sanitation services to communities and in turn assists the improvement of living conditions including housing, access to financial services, voting rights, etc. However, experience has shown that this can also act as a negative development tool, where land with legal tenure becomes more desirable for middle-income residents and the poorer residents are forced to move to yet more marginal land, often on the outskirts of the city, far from work opportunities.

Also, many municipalities are not willing to confer these rights to residents living on ‘unsuitable’ land, eg riverbanks, pavements or areas which are flood-prone. Equally municipalities are unlikely to confer rights to communities living on highly desirable or valuable land, for example land close to the centre of the city, as this land could be used for other, possibly more lucrative, purposes.

A possible solution to this problem is to break the links between water provision or water rights and legal land tenure. This would enable municipalities to overcome the legal difficulties of water and sanitation provision to poor communities. In Dhaka, Bangladesh, communities are currently struggling to access water and sanitation services due to their lack of land tenure. Through negotiating with the local municipalities, local non-governmental organisations (NGOs) working with these communities have been able to install services with a proviso that services are delivered with a tenured status for a limited period, generally five years. In principle this makes essential services available without the municipality having to grant tenure to the settlement in the long-term. Through this process it is hoped that a mechanism will be established for marginalised communities to apply (and by extension, reapply, in the case of evicted communities) for essential services. This also gives the

The lack of land rights has implications for a variety of other rights including the right to occupy a house or rent, the right to sell property or land, the right to vote, the right to access water and sanitation, the right to other services such as education, health and the right to law and order.



The pressures on urban land are intense. In this slum in Addis Ababa, Ethiopia, long negotiations took place between the slum community and the municipalities over land on which to build these latrines.

‘Most new housing and new neighbourhoods in developing countries are organised, planned and built outside the law. Most urban citizens have no choice but to build, buy or rent an ‘illegal dwelling’ since they cannot afford the cheapest ‘legal’ house or apartment.’*

community the opportunity to demonstrate to the municipal authorities that they are capable of managing a waterpoint and paying for the service.

While this has been a successful strategy in the majority of settlements, there are still cases where communities are evicted by other municipal departments which have not been involved in the negotiations for water connections, and may have other reasons for instigating evictions. Also, as this land tenure is not officially a long-term solution, it does not necessarily lead to improvements in other aspects of poverty alleviation as communities may not make further investment in improved housing, roads, etc.

While this process is a positive step towards alleviating poverty through the supply of essential services to vulnerable communities, solutions need to be found that can improve the status of tenure in poor settlements, and consequently access to water and sanitation, without excluding the poorest residents. This can best be achieved when development projects are led by local grass-roots organisations, which protect, represent and involve the interests of the poorest residents.

Payment for services

Where communities don't have security of tenure their commitment to pay for water and sanitation services is often questioned. It is also thought that they are unlikely to pay the capital costs of service installation. This is a particularly pertinent question in cities where high proportions of residents are renters (for example 90% of slum residents in Nairobi are renting). Equally, landlords who will not directly benefit from the installation of services may not be willing to pay for them. However, landlords will often benefit from an increase in rental income, which in turn could force poorer residents to move to settlements without services. In some countries, such as Uganda, there are regulations in place which state the landlord's responsibility to provide and maintain latrines, but these regulations are difficult to monitor, almost impossible to enforce and are currently worthless.

Contrary to this assumption, in Dhaka, communities with no security have been prepared to pay the full cost of the installation, operation and maintenance of waterpoints (which are supplied either by the municipal water supply or from boreholes). This cost is still cheaper than buying water from vendors, which residents previously had to rely on, but depends on communities working together to achieve results.

Private sector participation²

Private sector participation is being advocated by the World Bank and others, with the assumption that if the private sector becomes more involved in the provision of water and sanitation services, the accompanying increased levels of efficiency and access to investment capital will ensure that even the poor communities living in squatter

²This section refers to large-scale private sector participation in the delivery of water and sanitation services. But small-scale private sector also has an important role to play.



WATERAID/VIRGINIA ROAF

People live in extremely precarious conditions on the sides of a flood embankment in Dhaka, Bangladesh.

The total value of the fixed property held (but not legally owned) by poor people living in developing and former communist countries is a least \$9.3 trillion.

(The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere else: De Soto, Hernando, Basic Books.)



WATERAID/VIRGINIA ROAF

The Chikalwadi slum built on a rubbish dump in Bombay.

'It could be said that the unnamed millions who build, organise and plan illegally are the most important organisers, builders and planners of the cities of developing countries.'^{*}

settlements will ultimately be provided with services. However, it remains to be seen whether the private sector can provide water to residents without security of tenure any more efficiently than the public sector bodies.

It is also argued that the private sector is more able to see the longer-term view and the possible revenue available from connecting poor communities to services. Service provision would therefore be dependent on the expected permanency of settlements rather than legal status.

An example of private sector participation can be seen in Buenos Aires, Aguas Argentinas, where the concessionaire has promised 100% coverage to all residents within their area of jurisdiction, within the 30 year lifetime of their concession. The reality of access to this supply is the length of time that communities must wait for installation. Poor communities are likely to be the last group targeted for delivery, as they are perceived to be unable to pay for services. Also, the cost of installing services may be higher in areas which are unplanned, and it could be assumed that it will take longer to recover installation costs in communities where consumption is not as high as in middle-income areas. There is also a demand from the supplier for the same high standards of service for all users, which may make it difficult for poor residents to afford municipal services.

Land market

In Bangladesh, local politicians and business interests largely control the land market. In other countries there are traditional systems where chiefs or slum landlords play an important role in allocating land to residents. These systems are generally outside the legal system and can be overridden either by the local government or by the landlords themselves.

In many cities where land is not being made available to low-income residents, land invasions occur. This is officially seen as a negative force in urban development, but the reality is that many land invasions are informally recognised as an essential part of city development and are often unofficially sanctioned by local politicians who may be gaining from them. Jockin of the National Slum Dwellers Federation in India explains the role of squatters as 'bulldozers', improving land that was previously unsuitable for habitation into desirable land, from which the residents subsequently face the risk of eviction, as public or private land owners, recognise its increased value.

Working together

In order for urban projects to be effective, all work should be done on two levels, at the local level, with local communities, and at the city level, building an understanding of the policy and legal environment. Each community is part of the whole city, and the whole system should ideally find solutions for each community, including the poorest. Working with communities that are 'invisible' within the existing policy frameworks needs to be promoted to guarantee cities become inclusive. NGOs have an important role to play in working with these communities to ensure that their voices are heard.

The lack of land tenure clearly puts poor communities at risk of eviction, should the land owner (public or private) wish to use the land for an alternative use, for political or financial reasons.



WATERAID/VIRGINIA ROAF

This family living in the embankment slum in Dhaka washes with water provided by WaterAid and its partner Assistance to Slum Dwellers (ASD). Six months later many families were evicted from the land.

'This illegal process, by which most new city houses and neighbourhoods are developed, has been evident for many decades, and yet very few governments are prepared to acknowledge it. Most governments mix indifference with repression; some illegal settlements are tolerated while others are bulldozed.'*

Box 1 **Legality of Evictions**

According to the UN declaration of human rights, evictions are discouraged unless alternative appropriate accommodation is found. Recently the United Nations Centre for Human Settlements (UNCHS) 'Global Campaign for Secure Tenure' has been launched around the world and it is hoped that this will succeed in ensuring that this human right is enshrined in law in all signatory countries. However, the emphasis of this campaign against evictions is on the recognition that a rights-based approach alone will not improve security of tenure, and that governments will need to work proactively with poor communities to improve conditions.

Impact of Evictions

Evictions have a worse impact on the poor, who do not have as many coping mechanisms against disasters as those who are better off. Evictions often have the greatest impact on women, who are responsible for their homes, ensuring that



SPARC

Thousands of families lost their homes and possessions in the evictions that took place during the demolition of the Railway Squatter Settlement in Bombay in March 2000.

their children are looked after while they work and for most of the household income. Evictions will almost invariably destroy social links between families which are crucial for the survival of the most vulnerable residents.

Case study TTC Bustee, Jeigoan, Dhaka

TTC bustee is an informal, unplanned ribbon development bordering three low traffic roads in Dhaka. Adjacent to this is a high rise residential compound, referred to as The Colony, which houses post office staff. In May 1999, TTC bustee comprised 1,700 families (around 8,500 people) with no formal land rights and one unsanitary communal latrine facility.

Through negotiations between the community, the local NGO, Dushtha Shasthya Kendra (DSK), the Dhaka City Corporation (DCC) and the Dhaka Water and Sewerage Authority (DWASA), permission was granted for the building of a communal latrine and connection to the municipal sewerage system.

The neighbouring Colony residents resisted the implementation of the community sanitation block, believing that the structure would in some way legitimise the TTC bustee; however, the block was opened in March 2000.

The TTC bustee was evicted on 16th May 2000 with no relocation of families planned and no prior warning. By November 2000, the majority of families had returned to their previous sites and the waterpoints and latrine have been rehabilitated.

WaterAid

During the last 20 years WaterAid has gained considerable experience in the delivery of water and promotion of hygiene and sanitation. Working with a wide variety of partner organisations in South Asia and Africa, WaterAid has helped to provide water and sanitation to over six million people in rural areas. However, in the last few years WaterAid has turned its attention to the problems of a lack of access to water and sanitation for the poorest people in urban areas.

Despite different country contexts, certain themes occur throughout these projects and WaterAid is now drawing together a range of solutions and approaches to take its urban work forward.

WaterAid's current activities

Considering the many complexities in the provision of water and sanitation in the urban environment, why should an organisation like WaterAid add to its tasks by working in areas where communities lack land tenure?

In Dhaka, Bangladesh, this question is particularly vital, as the majority of settlements where poor people live do not have security of tenure. Some of the communities where WaterAid Bangladesh has worked to install water and sanitation services are under threat of eviction and a few have actually been evicted from their land. As a result, the financial and social investments that have been made by the communities are threatened.

While work in Dhaka shows the most extreme example of this problem, similar problems have also been experienced working in communities in Addis Ababa, Ethiopia. Here a community of 30,000 is being threatened with eviction due to the local municipality planning the sale of the well-positioned land they live on to a foreign investor. As WaterAid expands its work in urban areas, this issue will become more apparent.

WaterAid is committed to working with the most vulnerable communities, and in urban water and sanitation, this means working with communities that lack security of tenure.

For further information about WaterAid please contact:

WaterAid
Prince Consort House
27-29 Albert Embankment
London SE1 7UB

Tel: 020 7793 4500
Fax: 020 7793 4545
email: wateraid@wateraid.org.uk
www.wateraid.org.uk

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'Very few governments have taken action to ensure that poorer households can find legal alternatives to these settlements'*



WATERAID/VIRGINIA ROAF

Communities build dwellings wherever there is space. Here in Pathivari in Kathmandu, low-income families live adjacent to middle-income families.



WATERAID/VIRGINIA ROAF

This tower block in Dhaka is being built on land that was previously occupied by squatters.

*Taken from *Squatter Citizen*, Jorge E. Hardoy and David Satterthwaite, Earthscan Publications Ltd.