

POLICY AND PLANNING CONTESTATIONS IN SQUATTER SETTLEMENTS IN NEPAL

Background

Communities living in poor and vulnerable areas should secure their interests in resilience planning and investments. Resilience is a broader term and can be specified as per the prevailing national or local conditions or as per the thematic area we intend to work in. It depends on the levels of risk and vulnerability that triggers social exclusion and marginalization (Niță and Pârvu, 2020). Resilience can be the ability of the system to withstand a major disruption within acceptable degradation parameters and to recover within an acceptable time and composite costs and risks (Haimes, 2009).

Squatters and slums need to secure political space for more equitable resilience, accounting for social vulnerability and differentiated access to power, knowledge, and resources.

The root of these insights lies in the necessity for the transformation of circumstances for which marginalized groups can join in the decision-making process (Schlosberg et al. 2019; Blackburn 2018; Ziervogel 2019). Participation, however, has remained a challenge for good governance practices (Castán Broto, 2017). In Nepal, it was only after 1990s that squatters and slums started getting attention. Recognizing their importance in the urban development agenda was felt with the speedy growth of the informal urban settlements. The government of Nepal has adopted the Habitat Agenda and expressed its obligation to the goal of 'Shelter for All'. The 2015 federal constitution of Nepal has also paid full attention to shelter issues.



Recurring floods on the Manohara River affect the settlements every year.

Emergence of Squatter Settlements

Sengupta and Sharma (2009) identified natural calamities being the cause of the emergence of squatter settlements in urban areas of Nepal. Unplanned urbanization, immigration to urban centers, the opening of highways and roads, enhanced people's mobility access to the Kathmandu Valley for better livelihood opportunities, and political factors have contributed to the growth of squatter settlements in Kathmandu Valley (Dahal, 2011). Other reasons may include rapid population growth, poverty, natural disasters, and climate change (Potsiou, 2014). In the early 1990s, it was believed that there were approximately 30 squatter settlements in Kathmandu Valley, but these numbers have substantially increased in recent years. In 2008, Lumanti, an NGO working for the upliftment of informal settlements in Nepal, reported 45 such communities in Kathmandu Valley, of which 40 were considered 'squatter settlements' as they did not have land rights. The five were considered as 'slums' because of their status as 'permanent indigenous settlements'. About two-thirds of these communities are located on the banks of polluted rivers (Table 1).

Informal settlements do not have land tenure security and the minimum physical and social infrastructures such as adequate housing, proper sanitary conditions, and drinking water and electricity. Despite these issues, they have set up temporary structures and semi-permanent residences. The older settlements have permanent houses, schools, businesses, and public community halls. People are engaged mostly in the informal sector economic activities, daily wages, and small



Manohara river passes through a squatter settlement.

businesses. There have been gradual improvements in both infrastructure and livelihoods in slum and squatter settlements. There is, however, a lack of comprehensive and reliable information/data of landless people in the country. Usually, squatter settlements are set up in flood plains and disaster-prone areas. Flood is a recurring problem in most of these settlements. People living in riverine settlements have greater vulnerability than those living in non-riverine settlements (Sharma et al, 2016). Access to information and right and timely climatological data and early warning could reduce their vulnerability and save lives and properties.

Table 1: Classification of squatter settlements (Kathmandu Valley)

Settlement category	Riverine	Non-Riverine
Small: (2 to 150 households for riverine) (6 to 40 households for non-riverine)	1000 households	225 households
Medium: (151 to 257 households for riverine) (41 to 129 households for non-riverine)	1107 households	253 households
Large: (258 to 700 households for riverine) (130 and more households for non-riverine)	1220 households	235 households
Total households	3327 households	713 households
Total settlements	40 settlements	

Source: Sharma et al., 2016

Land Use Policies in Nepal

Land and its associated resources are integral to sustainable development, particularly in developing countries where the people’s main asset and the livelihood option is only land. The UN Conference on Environment and Development in 1992, held in Rio de Janeiro emphasized the importance of an integrated approach to land planning and management to achieve the MDG goals.

Appropriate land-use policies are required to address the issues of landlessness. Such policies should address locally adaptive, sustainable, and resilient land management issues. Though, Nepal has a land-use policy, the issues of landless people, especially poor and marginalized groups, have not been adequately addressed. The institutional setup formed by the government for landless or squatter people has extensively been debated and has contestations over the past thirty years. The issue of landless, small landholders, marginalized or vulnerable is critical. Out of total landholding in the country, people having less than five hectares of land are about 47 percent, whereas this group possesses only about 15% of the total land (Table 2).

Table 2: Landholding size based on household

S.No.	Land holding size in hector	Population Percentage of holding	Percentage of area (ha.)
1	Less than 0.5	46.93	14.7
2	0.5 to less than 1	27.22	24.18
3	Greater than 1	25.85	61.12
	Total	100	100

Source: CBS, 2011 (Agricultural Census)

The table's figures signify that small landholders (with less than 0.5 hecter) are about fifty percent, but they are marginalized and hold only fourteen percent of the land.

It signifies that the higher population percentage of the country has the lowest percent of land area holdings. However, they are always excluded from mainstream development and resilience planning. The fact that the state does not address their land issues, which cannot be undermined.

The Constitution of Nepal (2015) has given priority to the right to property (both moveable and immovable) through modern land reforms, management, and regulations. Nepal's land use policy 2015 included land classification in the number of zones based on suitability and preparation of the federal land-use plan. National Land policy introduced in 2019 included an agenda to increase agricultural lands accessible to farmers and classify land-based on utility for sustainable use. The land use act of 2019 focuses on implementing the land-use plan. There is also a provision for local /state/ national level land use committee and implementation committee.

The issues of slums and squatters have been recognized by government in National Shelter Policy (1996), National Urban Policy (2007) and the Tenth five-year plan (2002-2007) for the construction of cost-effective shelters and providing basic services and facilities. However, its implementation part is weak. The government of Nepal has also signed numerous international commitments concerning the right to housing (Brooks, 2016).

The policies and legislation are guided mainly by different political ambitions in the changed context of the government and emerging socio-economic scenarios rather than analyzing from the ground realities on their implications. Marginalized and landless people are the victims of such trends.

Contestations

In Nepal, a land ownership certificate is a basis for getting public services, such as sanitation, waste collection, electricity, and water. Thus, most the squatter settlements do not receive such services from the government (Adhikari 2007; Acharya 2010) as they lack ownership papers. However, some settlements got few services through informal channels. Under the new Constitution of Nepal (2015), everyone is entitled to basic rights such as adequate housing, basic infrastructure and living in a safe environment.

The constitution also protects individuals' right to security of tenure. Without tenure security through land certificates, squatter settlements are vulnerable to eviction. The eviction process continues; however, it has not been successful. On the other hand, government-driven relocation and forced eviction can be considered housing policies for protective security as most of them reside in vulnerable areas such as river banks.

The government faces challenges to successfully removed squatter settlements permanently from public land for the last four decades as these programs were designed top-down, the voices of affected people were not heard, and programs were mutually exclusive.

Some policies, plans, and acts in this sector contradict each other, affecting the smooth move to solve the squatter problems. Nepal et al. (2020) argue that some land use planning and management policies cause problems in implementation due to overlapping and conflicting provisions. For example, Chure range has been proposed for protected forestry development in the Nepal Environmental Policy and Action Plan (NEPAP), whereas Agriculture Perspective Plan (APP) allows low-intensity use with intercropping near the settlement area.

Similarly, the Local Government Operation Act (LGOA) (2017) allows local governments to develop roads,



Squatter settlement of Manohara with facilities such as roads and electricity.

1 For example Nepal Environmental Policy and Action Plan (NEPAP) (1993), Forestry Sector Policy and Local Government Operation Act (LGOA) (2017), and Agriculture Prospective Plan (APP) (1995-2015)

drinking water, irrigation, school buildings etc., in the Chure area. In 2019, the Government of Nepal tried to take ownership of Guthi land from the community and proposed the bill in the house. It was only after a huge protest against this bill, the government decided to withdraw the debated Guthi Bill.

In Nepal, the entire land reform and management debate has concentrated on types of rights. Earlier land reform agendas addressed landless and marginalized sections of society. Fundamental political dialogue and contestations now rotate around the issue of the multiple identities of the settlers and their relationship with resources (Maharjan, 2016). The land has always been a political, social, and economic issue for all political parties and ruling parties. Particularly after 2007, as a federal democratic republican state, political discourse has revolved around land reform concerning land ownership under a federal state linked to identity politics and management. Further, Maharjan (2016) argues that ownership can mean more than just

Almost 40% of court cases in Nepal are related to land disputes (CBS, 2008). It reflects the scale and level of contestations over land. Furthermore, about 62 Acts and 23 legislations in Nepal have been formulated in the past six decades related to land (Nepali and Basnet, 2013). Nevertheless, they have failed to manage land, initiate land reform, and fully address the contestations of the indigenous people, marginalized unauthorized settlers, and squatter people.

The past 14 land commissions formed to manage and distribute the land for landless people signify the same and have failed to address the social and political agenda of the landless people. Thus, the affected families' expectations are minimal from the 15th land commission recently reformed by the government. Several contestations, questions and counter-arguments on land ownership, land utilization, and the institutions exist. At the center of these issues, the claims of squatter settlements have also emerged. One of the factors for this emergence is historical injustice, discrimination, and inequality.

A lack of consistency and stability in the government creates ineffective development process. Squatters can still play an effective role in such a process regardless of government efforts. Their roles have been completely ignored in the development agenda, and this is one factor for emerging contestation issues.

Squatter settlements respond to government and resettlement plans through fear of insecurity. Their interactions are usually confrontational with the government. They demand security for their families. They opined that security is not just tenure but linked with their livelihood, too (Brooks, 2016). Although the government does not ensure these forms of livelihood in squatter settlements, residents develop local informal methods to access these elements. Focusing only on illegal encroachment of public land shows the government's inability to create policies that recognize and address the complex causes and consequences (Brooks, 2016). This has also created contestations among different stakeholders.



ownership of land but emotions and livelihood aspects attached to it.

Case studies

There are prominent numbers of informal settlements along river banks and urban core areas. Such settlement's planning and policy management issues have always been contested, including their fear of eviction. The three examples are worth mentioning as success, neutral and failure stories for planning and policy management.

Success Case

Case of the Kirtipur Housing Project is considered a successful project of re-settlements of informal dwellers with a cost recovery scheme (Sengupta and Sharma, 2009). The project resettled the people of the Vishnumati river corridor who got evicted during the construction of Vishnumati Link Road. The Kathmandu metropolitan city (KMC) also supported this program. Before construction, the evicted families were consulted on various social and technical issues. This project also considered a cost recovery scheme (Sengupta and Sharma, 2009).

Neutral Case

The Manohara squatter settlement (the largest settlement of this kind in the valley) along the Manohara River is an excellent example for a study to analyze the applicability of social and economic services for regularization. The government has neither been able to manage this settlement nor evict or shift from there. Although the settlements do not possess legal recognition, the Manohara settlements got the utility services such as electricity and

drinking water from the authorities due to squatters' pressure. Different NGOs and Tole Lane Organizations (TLO) are functional in Manohara and provide services as required. Many of squatter settlements lives in fear of eviction and uncertainties.

Failure Case

The government initiated 'Janata Awash' program for the urban poor in the Ichhangu Narayan Land Pooling site in the North-west of Kathmandu. The Department of Urban Development and Building Construction (DUDBC) and Kathmandu Valley Development Authority (KVDA) constructed five apartment buildings for the poor. Due to poor policy on re-settlement and timely communication with the squatter families evicted from the Bagmati River corridor, Thapathali, the apartments could not be brought to operation though family identity cards were issues and documentation carried out. The department did not realize they needed to consult the affected communities during planning before constructing the apartment. The evicted squatter settlers denied settling in the apartment, arguing that it was far from the city and would be difficult to maintain their daily livelihood. According to a respondent of DUDBC, many land development initiatives and mapping were taken, but informal settlers did not accept those initiatives (Manandhar, 2019) leading to failure of the initiative.

Problems and challenges

Legalizing informal settlers through landownership certificates is a big challenge as the government does not wish them to settle permanently in disaster-prone areas like river banks. Some political parties are showing interest in the agenda of landless people and squatters for political and other reasons. The scenario of forming new land commission after the change in each government is ongoing.

Contestations arise even within the government due to ideological differences between political parties on the issues of landless people and squatters making landless issues complex and challenging. Generating common agenda among major political parties for these marginalized people is lacking.

Several land readjustment (LR) projects in Nepal focused on land issues. However, their implementation in an informal settlement is rare. The Kathmandu Valley Development Authority (KVDA) is a high level government body responsible for implementing LR in Kathmandu Valley. LR needs to deal with landowners and requires a strong participation of all stakeholders including political parties. Public participation is critical, which was always lacking in government programs (sharma et al, 2016).

The social composition of the squatter settlements of Kathmandu Valley is different from the general population of the Valley, in which there is a larger population of varied marginalized groups (*Janajatis, Dalits, poor and religious minorities*). The socio-economic conditions of people in these settlements is are poor (Manandhar, 2019).

Recommendations

Resilient Strategy

Considering the issues of the marginalized group, indigenous people, migrants, unmanaged settlers, slums, and landless, it is necessary to develop a coherent strategy for longer-term sustainability. Their contestations on land issues require analysis by recognizing them as important stakeholders (Maharjan, 2016). The local governments requires resilient strategies to deal with disaster events in the slums and squatter settlements.

Policy Option

The prior and informed consents, customary best practices, substantive issues of landless people, and community land tenure should be considered for differentiated policy options to recognize diversity and contestations (Maharjan, 2016).

Participatory approach

Environment should be created for squatters and marginalized groups to participate in government programs, policy formulation, and decision-making process.

Infrastructural services

Informal settlers should get minimum infrastructural facilities where they live as guaranteed by the constitution of Nepal.

Land commission

An autonomous authorized land commission should be set up as the commissions in the past have been extensively debated and politically biased.

Government legislations

The government plans, policies and acts of the sectoral ministries should be made similar to avoid contestations.

Multiple identities

The issue of multiple identities of individual settlers should be defined as per their categorization and status.

Livelihood

The issue of squatters is multidimensional. In addition to the land entitlement issues, livelihood aspect of the settlers need to be addressed.

Dialogue

There is an urgent need for dialogues with national and local stakeholders on Nepal's current land-use policies, rights of squatter and landless people to identify its strengths, gaps, and challenges in equitable resilience for necessary amendments.

Conclusion and way forward

In Nepal, the regularization of informal settlements involves the legalization of tenure and upgrading of public services infrastructures. However, some settlements can manage to get the services from formal authorities, but they lack legal tenure security. Legalizing tenure security is essential for reducing their eviction threat and improving other services (Manandhar, 2019). However,

informal settlements pose a difficult process and involve many issues. Issuing the land ownership certificates for those who have lands in other parts of the country is a setback. Producing various land development tools has involved upgrading public services and developing infrastructures, but the legalization of tenure security is left behind.

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Note

This policy brief is a part of the research program supported by The University of York and funded by GCRF (UK) for the project 'Political Capabilities for Equitable Resilience.

