

Land tenure systems in the slum settlements of Nairobi: implications for slum upgrading programmes

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ABSTRACT

This study utilizes secondary data to assess and describe the state of land ownership, tenure and tenure systems in the informal settlements of Nairobi, Kenya. There are 206 informal settlements in Nairobi covering an area of approximately 1184 hectares and hosting a population of more than 1,382,205 people or approximately 60% of the total population of Nairobi. Land tenure systems are defined as structures and processes of delivering access and rights in land. It comprises possible bases for land allocation, security of tenure, transactions of property and land, land use and management of land disputes. In this paper we look at the categories of land tenure in the informal settlements and how developers of informal settlements in Nairobi access land, secure their rights, control transactions and solve land related disputes. The findings indicate that there are seven main categories of land tenure in the informal settlements of Nairobi. These include freehold land (2.6%), uncommitted state land (31.8%), land planned for public utility (6.2%), private land (7.3%) regularized land (42.6%), city council land (3.1%), group land (6.4%). All these categories experience varying tenure systems, however, the overall land management process is handled by the provincial administration through chiefs, other stakeholders include clan elders, self help welfare groups, violent gangs and local government officials. These groups are responsible for enabling access to land, managing transactions, handling development control, information management and land dispute resolution. Most of the land management services offered by these groups are informal, overt, illegal and is responsible for most of the conflicts in ownership. What are the implications of the informal land tenure systems to slum upgrading? By using a simply matrix system aided by force field analysis the study finds that apart from the unsuitability of land for settlement and the constraint of population density, absentee landlordism is the main constraining factor to slum upgrading efforts in Nairobi. The study findings indicate that more than 86% of residents in all the seven categories of land tenure in the informal settlements of Nairobi are tenants who pay rent to

absentee land lords through agents. This aspect is the source of all the conflicts that are experienced in the slum upgrading processes in Nairobi. The situation is worse in those settlements occupying uncommitted government land including Mathare, Kibera, and Korogocho and affects more than 90 % of the population in the informal settlements. The study recommends community land ownership rights paradigm to accommodate the large number of settlers in this settlements and manage the issue of absentee land lords. Further detailed study is however required to provide detailed information on the seemingly intricate land tenure relationships in the informal settlements of Nairobi. The study concludes that for effective slum upgrading to be realized, the issues concerning land tenure in each settlement category will have to be understood to guide the development of appropriate slum upgrading strategies. The complex land ownership and use relationship in these settlements should be assessed in details focusing on the various players and stakeholders. The purpose should be to find ways of manipulating the existing tenure relationships to develop strategies for developing a pro-poor land management paradigm to be tested and applied all over the world

BACKGROUND

In 1950s, only 15% of the population in Africa lived in towns. The figure rose by 13% in 30 years to 28% in 1980s and then to 34% in 1990s. The figure is expected to hit 50% by the year 2020 and 60% by 2030 (United Nations, 2002). In 1960, Johannesburg was the only city in Africa with a population of over one million inhabitants (Chabalala). He further observes that, in 1970s there were only four cities with over 1million inhabitants including Cape Town, Johannesburg, Kinshasa and Lagos. In the late 1980s, Abidjan, Accra, Addis Ababa, Dakar, Dar es Salaam, Durban, Harare, Ibadan, Khartoum, Luanda and Nairobi joined the list. Presently the urbanization scenario in Africa is quite astounding. Kinshasa the capital city of the Democratic Republic of Congo, which had a population of only 50,000 inhabitants in 1940s, now has a population of more than 10million people and has become the 23rd most populous city in the world. It is estimated that at its current rate of growth, Lagos in Nigeria is going to become the third megalopolis in the world after Tokyo and Bombay. The rapid urbanization processes in Africa can therefore not be ignored given that it's occurring in the context of poverty and poorly performing economies hence resulting in development of slum settlements. This process of rapid urbanization in Africa has been blamed on decline in performance of rural economies leading to increased rural poverty, urbanization of poverty and development of slum settlements.

It is estimated that presently, a third of the world urban population of 3.3billion lives in slum settlements. The majority of this approximately 1.1 billion slum dwellers are found in Africa, Asia and Latin America. Slum settlements, which for the purpose of this study will imply the same thing as informal settlements have been defined to include those settlements lacking durable housing of permanent nature; sufficient living space both inside and outside the house; easy access to safe water, adequate sanitation, social amenities and infrastructural facilities; and security of land tenure (UNHABITAT, 2003a) subsequently, slum settlements are characterized by squalor, overcrowding, marginalization, harmful environmental exposure, poverty, insecurity, high health risks and high crime rates (Jankowska, 2010; UNHABITAT, 2003a).

UNEP has observed that urbanization in Kenya is at 7.05 % is one of the highest in the world. Presently more than 38% of Kenyans live in urban centres of which 71% live in slums (KNBS, 2010). Nairobi the largest city in Kenya has a population of 3,138,369 spread over an area of 695.1 square kilometres with an average density of 4,515 people per square kilometre (KNBS, 2010). According to UNHABITAT (2003), 60% of Nairobi residents live in slums which occupy 5% of the total area of the city. According to the recent Kenya population census, the total population of slum dwellers in Nairobi is approximately 1,382,205 people who occupy an area of 1167 hectares. According to KENSUP (2011) there are 206 informal settlements of varying sizes in Nairobi with four largest being Kibera, Mathare, Korogocho and Mukuru Kwa Njenga in that order.

Efforts to upgrade these slums started in earnest in 2000 with the formation of Kenya Slum upgrading Programme (KENSUP) which was a collaborative initiative between the Government

of Kenya and UNHABITAT. Slum upgrading has been defined by CITIES ALLIANCE on its web portal as a process through which informal areas are gradually improved, formalised and incorporated into the city itself, through extending land, services and citizenship to slum dwellers. It involves providing slum dwellers with the economic, social, institutional and community services available to other citizens. These services include legal (land tenure), physical (infrastructure), social (crime or education, for example) or economic

Earlier attempts to upgrade slum settlements in Korogocho, Mathare 4A and Huruma in Nairobi city, had been met with a lot of resistance over the issue of land rights. The conflict was mainly between the residents and structure owners who have a de facto claim on the land but reside outside the settlements. These land related conflicts had devastatingly negative impacts on the slum upgrading processes leading to either abandonment of the projects or delays in implementation which led to escalation in costs and minimal achievements. It is on this account that this study has attempted to investigate the land tenure systems in the slum settlements of Nairobi. It is expected that detailed understanding of the land tenure systems in these settlements will help in designing appropriate strategies for intervention on the aspect of land tenure regularization in the slum upgrading process.

THE PROBLEM OF STUDY AND OBJECTIVES

CITIES ALLIANCE one of the Organizations with a major stake in urban development has derived from their experience of more than twenty years, certain principles that are considered vital for any successful slum upgrading process. Central among these principles is provision of security of tenure. They state that:

Secure tenure is at the very centre of slum upgrading. Without some form of legal tenure security the situation of slum residents and their neighbourhoods is uncertain: they could be removed at any time. People who fear eviction will not invest in their houses. They will invest, however, once they have a sense of permanence and realise that they can sell their house and recoup their investment. Furthermore illegality and informality make them susceptible to exploitation, corruption and extortion (<http://www.citiesalliance.org/About-slum-upgrading>).

Access to secure land and shelter is widely accepted to be a precondition for securing basic living conditions, livelihood opportunities and a necessary means to reduce poverty (Laksa and el-mikawy, 2009).

It is very clear from the above observation that understanding the state of land tenure is a necessary prerequisite in the design and development of appropriate strategies for slum upgrading interventions all over the world.

In order to focus on the problem of land tenure security in the processes of slum upgrading this study set four research questions to guide the study towards achieving four objectives of the study. The four questions included:

1. Who has the ownership rights and user rights of the land occupied by the informal settlements in Nairobi?
2. What is the land tenure system utilized by the developers of slum settlements in Nairobi? That is to say: how do they access the land for development? How do they control development and transactions over land? How do they manage information and how do they solve land tenure related conflicts?
3. What is the implication of the land tenure relationships in the slum settlements of Nairobi to slum upgrading processes?
4. What would be the best approach and solution to the land tenure security problem in the slum upgrading processes in Nairobi?

The above research questions translate into four objectives of understanding user, ownership rights and land tenure systems in the slum settlements of Nairobi; assessing the implications of the existing tenure rights and systems on the slum upgrading processes; and thinking out the best solution to the observed paradox between slum upgrading and secure tenure.

CONCEPTS AND METHODOLOGY

Understanding concepts

The main concepts of this study include land tenure systems and slum upgrading. The concept of slum upgrading has already been defined elsewhere in this text together with the concept of “slum settlement”. The core concept of this study is “land tenure systems” which has implications on the sub concepts of land tenure or manner of holding rights in land, “tenure systems” which implies the method of accessing, sustaining and disposing of rights in land and “tenure security”

Land tenure systems are defined as structures and processes of delivering access and rights in land (Williamson et.al, 2010). Land tenure systems in a given jurisdiction comprise the set of possible bases for land allocation, security of tenure, transactions of property and land, land use, the management and adjudication of disputes regarding rights and property boundaries (UNHABITAT, 2011). The security of land tenure enjoyed by a given slum settlement therefore depends on how far these systems are entrenched in the legal provision and how much they are recognised and accepted by the authorities.

A land tenure system can be formal or informal. It is vital to note that there is a difference between formality of a tenure system and security of tenure. The former refers to formal ownership as defined by law, while the latter may also encompass informal relationships among people defining their affiliation to the land. Security comes from the fact that the rights in question are underwritten by a known, and generally accepted, set of rules (Laksa and Elmikawy, 2009). Others observe that tenure doesn't necessarily mean ownership, or even collective, community ownership. Sometimes it could be as simple as a promise that the people will not be moved (Tibaijuka, 2004). Land tenure systems are institutionally established and are, therefore, difficult to alter. Political power structures; cooperative ties and class, cultural, and ethnic interests and motives all work towards maintaining the established forms (**Kuhnen, 1982**). Kuhnen is however quick to add that 'Systems of land tenure are not immutable. On the contrary, they are subjected to a continual process of change. Changes in the natural growing conditions and economic factors, technological innovations, changes in the size of the population, and influences emanating from the political power structures bring about changes in the land tenure system. As in recent times these factors have been changing more and more rapidly, the system of land tenure frequently lags behind the new situation and does not adjust to it on time'

A UNHABITAT Expert Group Meeting on Urban Indicators in 2002, defined security of tenure as the right of all individuals and groups to effective protection by the state against forced evictions." Under international law, 'forced eviction' is defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, Without the provision of, and access to, appropriate forms of legal or other protection." Others have observed that "Security is partly a matter of perception. Formal titles are not the only means of making people feel secure enough to invest in their homes and

neighbourhoods (*The people of Samambaia, Brasili, quoted by UNHABITAT, 2003*).” Francisco Bozzano-Barnes closes this argument by correctly observing that ‘Stable land management is closely linked to secure land tenure systems. Secure land access helps avoid conflict and create the conditions for inclusive development, not focused exclusively on growth that is sustainable and respects the ecological and social needs’. This tends to shift the blame for insecure tenure and development of slums to institutions charged with the responsibilities of land administration and management.

Methodology

This study is based mainly on materials published by Ministry of Lands, PAMOJA TRUST (2010) and KENSUP (2011) on nature of legal ownership and use of the land occupied by most of the informal settlements in Nairobi. Though some field observations were done by the author to confirm a few facts the study is mainly based on desktop review of written information and data, both published and unpublished. This information was categorized into various classes based on the initial holder of legal ownership or user rights. This gave us seven categories of tenure including slums settlements on freehold land; uncommitted public land; land reserved for public utility and infrastructure; planned and leased private land; regularized land; Nairobi city council land and; group owned land. The total number of slums in each category was computed regardless of the size of the settlement (see appendix one). The percentage of people living in each category of tenure was computed against the total population of all the slums in Nairobi. The percentage of area occupied by each category was equally computed against the total acreage occupied by slum settlements. The purpose of all these computations was to understand the most prevalent or dominant land tenure in the slum settlements of Nairobi.

Information on tenure systems was obtained partially from field work and partially from an unpublished study by Antony Lamba (2005) on *land management systems in the informal settlements of Nairobi*, a Master of Science thesis.

Information obtained about the radical title status, existing legally recognised user rights and legal ownership status together with other criteria of public interest were used to assess the chances of success of slum upgrading processes for each of the categories of land tenure in slum settlements of Nairobi. From the results of this assessment each slum category was awarded an upgradability index. The assessment utilized scores in a matrix system to arrive at a finally tally

that indicated the chances of a successful slum upgrading process. The scores represented negative and positive elements prevalent in each tenure category of the slums of Nairobi. Information about prevalent characteristics in each category was obtained from the above quoted sources and from personal observations. A total of eight negative elements were identified and encrypted as 'N' and awarded a score value of zero while six positive elements were identified and encrypted as 'P' and awarded a score value of one. Totals obtained row-wise indicated the total number of negative elements found in each category of tenure and hence determined its upgradability score. The higher the number the better the upgradability score. Column-wise totals indicated the prevalence of a given negative or positive element in the categories of tenure in the slum settlements of Nairobi.

For a given category of slum settlement the negative or positive element was either present (PN) or absent (AN). The scores were therefore represented as $PP_i = 1$; $AN_i = 1$; and $PN_i = 0$; $AP_i = 0$

The formula for upgradability (U_{Pi}) for each category was given as

$$\{PP_i - n + AN_i - n\} + \{Pp_i - n + Ap_i - n\} = U_{pi}$$

Conclusions made from the results however did not take into account the different strength and magnitude of each of the elements (Operation of this method is given as appendix two).

Conclusions in this study were arrived at by subjecting the findings to professionals in the ministry of land and Housing and other property experts.

LAND TENURE SYSTEMS IN THE INFORMAL SETTLEMENTS OF NAIROBI.

Land tenure: ownership and user rights

The finding of this study indicate that there seven main tenure regimes identified in the informal settlements of Nairobi based on the holder of radical title rights, user rights, freehold rights and leasehold rights of the land occupied by the informal settlements in Nairobi . These categories include:

1. Informal settlements on freehold land that was formerly native reserve land affecting the western informal settlements of Kawangware, Riruta, Waithaka and Kangemi. These settlements are built on land for which people hold freehold titles granted through adjudication of native land. Informal settlements in this category of tenure are either put up by the owners or with permission and/or knowledge of the owner. The category has

very little land ownership disputes and informal developments may be blamed on incomplete subdivision and change of user processes. This land tenure category only represents 2.6% of land area covered by the slum settlements and houses 3.9% of the people living in the informal settlements in Nairobi.

2. This is land in which the government holds the freehold rights but has not alienated this right to any other part nor committed the land for any use. It may be land that is deferred for future use or land whose lease has expired. Nearly a half (49.5%) of the people living in informal settlements in Nairobi occupies uncommitted Government land which covers 31.8% of all the land occupied by these settlements but is home to 49.5% of the residents of the informal settlements in Nairobi. This tenure affects the slums of Kibera, Korogocho and Mathare. The population density under this tenure is 1929 people per hectare which poses a lot of challenges for improvement of security of land tenure through ratification of ownership.
3. The third category includes those settlements on public utility land. This is either former trust, acquired or government land that has been set aside through planning for public utilities. Approximately 13.8% of informal settlement residents occupy land that is planned for various public utilities including road and railway reserves, power way leaves, open spaces, oil pipelines and land meant for schools and riparian reserves. These settlements have the highest population density of approximately 2864 people per hectare. The area of land occupied by this tenure makes 6.2 % of the total area occupied by informal settlements in Nairobi. Informal settlements that fall within this category of land tenure include Lunga-lunga, Sinai, Kenya Wine, Kingston and Maziwa in Makadara division; Githogoro, Deep Sea and Ndumbuini in Westland division and Kanguku and Njiku in Dagoretti
4. This category includes all those informal settlements on leased government land and refers to private land which is occupied by without permission from the legal owners. In some cases the legal ownership is acquired when the informal settlement is already in existence like in the case of Mukuru Kwa Njenga. Approximately 15% of people in the informal settlements live on private land which they invaded without the authority of the owner. There are cases though where the land was allocated to private developers when

the informal settlements had already been built. Settlements that fall within this category include Mukuru Kwa Njenga, Mowlem, Pipeline, Tasia and Mukuru Sisal all in Embakasi division. Most of the land invaded is planned for industrial purposes but is being used for residential use by the invaders.

5. This category involves those settlements found on land that has already been regularized. Ratification of ownership happens when the Government gives ownership papers to people who are illegally occupying government land. The land is first planned to accommodate the settlers after enumeration exercise. When this process is mishandled it ends up benefiting people who are not resident in the settlement. In Nairobi, only 5.6% of informal settlement dweller lives on land whose ownership has been ratified. Settlements which have benefited from this exercise include Kibera Udongo, Majengo, and Kamae and Buruburu City cotton. However in some places like kibera and Majengo the impact of this intervention has not been realized as the residents are too poor to pay for the stand premium required by the government.
6. Group owned land category define that tenure where legal ownership is held jointly either as a land buying company or cooperative or as a community land trust (CLT) title. Informal developments in this category of land ownership often result from lack of individual legal ownership documents because of incomplete subdivision process or deliberate provision of substandard but affordable housing like in the case of Mathare 4B. The main settlements in this category include Mathare 4B which is held under a community land trust (CLT) title, and Babadogo and Bondeni both of which are under land buying companies.

The last category involves Nairobi city council land planned for residential development. Over the years the government has granted land to Nairobi city council for various purposes including residential development. Sometimes such land remains undeveloped for lack of funds and is thus unofficially allocated by council officials to individuals for temporary development. Informal settlements built on land reserved for council housing include Kayole-Soweto, Kahonoki, Buruburu City carton and kinyako. Approximately 5.8% of the informal settlement population lives on this type of land which covers 3.1% of the land occupied by informal settlements in Nairobi.

The table at appendix three summarizes land tenure situation in the informal settlements of Nairobi.

Land tenure systems: accessing, securing and disposal of rights

Land tenure systems in the slum settlements of Nairobi represent perhaps the most awesome extralegal land administration system in Kenya. De Soto (2000) states that extra legal systems are adapted when 'the cost of obeying the law outweighs the benefits' De Soto adds that: 'the migrants become extralegal to survive: they stepped outside the law because they were not being allowed inside'. Land administration processes in Kenya have been described as inefficient, bureaucratic, corrupt, expensive and colonial (GOK, 2009). These characteristics of the land administration system are unaffordable and inaccessible to the poor and thus serve to exclude them from formal property ownership resulting in informal property ownership systems and informal development in the urban areas.

After being locked out of the legal system by the factors narrated above, the informal developers may devise their own extra legal systems of accessing, securing and disposing of their rights in land. De Soto adds that:

The extralegal arrangements they cobbled together are explicit obligations between certain members of society to provide security for their property and activities. They represent a combination of rules selectively borrowed from the official legal system, adhoc improvisations and customs brought from their places of origin or locally devised, and they are held together by a social contract supported by the community as a whole and enforced by authorities the community has selected (Desoto, 2000)

In the informal settlements of Nairobi extralegal system is operated by district officers, chiefs, elders and several communities based organized groups and even gangsters that seem to have been granted authority by the communities to provide access to land and security for their properties and exercise power over dispositions. The extralegal authorities that administer land in the informal settlements of Nairobi have devised their own rules of access and disposal of land, their own documents of ownership and systems of keeping information and records. There is however need for detailed research on the extra legal land administration systems in the informal settlement. It's important however to point out that the extra legal authorities that give access to

land for slum settlement development take liability to offer protection to ensure security of tenure for some regular token payment. The nature and composition of these extralegal authorities depend on the category in which the settlement falls. While council officials play the extralegal role authority in those settlements on council land, chiefs and district officers dominate in those settlements on uncommitted government land. Access to private land is prominently in the hands of organized community groups styled as self help groups and prompted and protected stealthily by the hidden hand of some senior provincial administration officials.

Implication of tenure and tenure systems for slum upgrading

Slum upgrading programmes and projects are designed with the aim of improving living conditions of the poor in the slum settlements. However evidence above indicates that more than 86% in the slum settlements are under the control of absentee land lords who claim defacto ownership rights. From the above it's very clear that for any process of upgrading informal settlements to succeed, detailed knowledge and information will be required on the prevailing systems of land administration together all the vested interest by the tenants, extralegal powers and absentee slum lords.

result from Matrix assessment approach

Existing land tenure systems in informal settlements can either have a positive or negative impact on settlement upgrading process.

A matrix assessment was used to evaluate proportion of existing land tenure categories in the informal settlement that have appropriate land tenure relationships that can aid settlement upgrading processes.

The columns in the matrix contain both positive and negative aspects of land tenure referred to as N and P respectively. It should be noted that the matrix system has limitations as it assumes that all the elements bear the same strength and influence on the upgrading process.

The categories of tenure found in the informal settlements are entered in the rows as N and P elements entered against each and a total computed for conclusions.

Totals are made for both the rows and columns. In the rows the total figure implies the proportion of appropriateness for upgrading process while the totals in the columns indicate the proportion of that particular element in the categories of land tenure in Nairobi. a high N results indicates the most negative aspect that may impact on the upgrading process while a high P results implies the most positive element that may aid the upgrading process. P elements can be viewed as opportunities and strengths while N elements may be viewed as threats, obstacles and weaknesses in the settlements for the upgrading process.

FIGURE 4: matrix for assessment of impact of land tenure on settlement upgrading process.

Category of tenure	N1	N2	N3	N4	N5	N6	N7	N8	P1	P2	P3	P4	P5	P6	P7	TOTAL SCORE	%
G1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	15	93.75
G2	0	0	0	1	1	1	0	0	0	0	1	1	1	1	1	11	69
G3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	13
G4	0	0	0	1	1	1	0	0	0	0	0	0	1	1	1	6	37.5
G5	0	0	1	1	1	1	1	1	0	1	0	1	1	1	1	11	69
G6	0	0	1	1	1	1	1	0	0	1	0	1	1	1	1	10	62.5
G7	0	0	1	1	1	1	1	1	0	1	0	1	1	1	1	11	69
TOTAL	6	6	4	1	1	1	3	4	1	4		5	6	6	7		
%	86	86	57	14	14	14	47	57	14	57	14	71	86	86	100		

SOURCE: Developed by the author from available information.

TABLE 6: land tenure factors that impact negatively on upgrading process in informal settlements of Nairobi.

Factor code	DESCRIPTION OF LAND RELATED NEGATIVE FACTOR	Percentage of occurrence
N1	Most Residents in the informal settlement don't own structures/ are tenants	86
N2	Most Structure owners are absentee land lords living outside the settlement	86
N3	Most Land was occupied without authority of the owner	57
N4	Land occupied by the settlement is planned for public utility	43
N5	Land occupied by settlement is planned for environmental conservation	29
N6	The settlement is incompatible with the surrounding developments	26
N7	The settlement has external claims and disputes of ownership	43
N8	Tenants know the landlord does not own the land	57

4.4.2: Findings of the matrix assessment

Findings on negative land related factors

1. The most prevalent land related factors that negatively affect informal settlement upgrading process include:
 - A. Most residents living in the informal settlements are tenants who don't have any claim on the land or the structure (86%)
 - B. Most structure owners who claim land and structure ownership live outside the settlement (86%)
2. The least prevalent negative factor that affect the upgrading process include:

A. very little of the land occupied by informal settlements is planned for environmental conservation

B. Very little land occupied by informal settlements is incompatible with the plan and the neighbourhood.

TABLE 7: land tenure factors that impact positively on upgrading process in informal settlements of Nairobi.

Factor Code.	DESCRIPTION OF LAND RELATED POSTIVE FACTOR	Percentage of occurrence
P1	Most Resident structure owners are higher than absentee land lords	14
P2	Most Residents know that the landlord owns the land legally	57
P3	Land occupied is uncommitted public land	14
P4	Land is planned for residential purposes or is compatible with the neighbourhood	71
P5	Land occupied is not required for public purposes	86
P6	Land occupied is not hazardous for human habitation	86
P7	Land has been in occupation for more than twelve years.	100

Findings on prevalence of positive land related factors

1. Most slum residents don't own structures they live in except in 14% of the cases.
2. 71% of tenure categories occupy land that is planned for residential or is compatible with residential use or is un-committed public land.

3. 86% of tenure categories in the informal settlements of Nairobi fall on land that is not required for public purposes and is suitable for human habitation
4. In all tenure categories, settlements have been in existence for more than twelve years.

The table below indicates the results of row wise interpretation

TABLE 8: upgradability index for the categories of land tenure in the informal settlements of Nairobi

Category	Total % of population affected	Density of population In settlement category	Upgradability index (%)	Major informal Settlements affected
G1	3.9	1929	93.75	Dagoretti slums: Gatina, Ngando, Kabiria, Congo, Riruta East
G2	49.5	1991	69	Kibera, korogocho, parts of Mathare slums.
G3	13.8	2864	13	Viwandani slums
G4	15.0	169	37.5	All slums except Dagoretti slums
G5	5.6	2395	69	Kibera udongo, majengo and Buruburu city carton.
G6	5.8	1209	62.5	Kayole-Soweto and Kahonoki.
G7	6.0	1279	69	Baba dogo, Mathare 4A and 3C

Findings for upgradability index

Which land tenure category in the informal settlement lends itself to easy upgradability?

1. Category 1 tenure offers 93.75% chances of upgradability. This means that the tenure category is 93.75% good for the upgrading process if other factors like population density are taken care of.
2. Four tenure categories (G2, G5, G6 and G7) have more than 50% good chances for supporting the upgrading process if disputes between tenants and structure owners can be solved.
3. Tenure category relating to public utility and private land have only 13 % and 37.5 chances of successful upgrading process

Land in many informal settlements in Nairobi can be available for upgrading of the settlement if approaches to handle the high population density and the relationship between tenants and structures owners can be found. Relocation of the informal settlements may affect only 13.3% of the population in the informal settlements who occupy land planned for public utilities that are hazardous to human habitation or those who occupy land reserved for environmental conservation. The remaining population of 86.3% can benefit from insitu upgrading process if the challenges posed by high population density and structure owners can be sorted out.

Summary of Findings and Conclusions

The findings on this study have indicated that most people (49.9%) in the informal settlements live on unplanned and unalienated government land. This is followed by 15% who live on private land without the permission of the owner. On the other hand 13.8 % of the population lives on land planned for public utility; about 6% live on land owned by groups or community trust; 5.8% on land reserved to the council for residential housing; 5.6 of the informal settlers in Nairobi live on ratified informal settlements ; while 3% live on freehold land.

. Though information on the existing land tenure systems was recorded subjectively for lack of time, the findings from key informants in the selected settlements indicated that access to land in the most prevalent tenure (unalienated and unplanned government land) was through allocation by the provincial administration. The provincial administration cadre most mentioned included the office of the chief. For fear of repercussions from the central government many of the allocations are recorded and managed by their agents who are non civil servants. Invasion of land by organized groups and gangs is another popular way of accessing land in informal settlements for development. Transactions and dealings, dispute resolution and land information management are equally mostly handled by the chiefs through their agents who include village elders. In Some settlements like the Nubian villages in kibera tribal elders manage the land tenure system using their cultural values.

Under objective three of the study on the impact of land tenure systems on successful slum upgrading, the findings indicated that the most prevalent factor in the informal settlement that may impact negatively on the upgrading process was the idea of absentee slum lords who don't reside in the settlements. This factor was observed in 86% of all the tenure categories in the informal settlements. The other negative factor which was observed in 46% of the tenure categories included occupation of land planned for public utility including roads, environmental conservation zones and so forth. Otherwise many positive factors were found to exist in the informal settlements of Nairobi to support insitu settlement upgrading. This included the following factors:

1. Land occupied by the settlements is uncommitted or unplanned public land (71%);
2. Land occupied by the settlements is already planned for residential or is compatible with residential use (71%);
3. The land occupied by the settlement is not required immediately or in near future for public purposes (86%);
4. land occupied is not hazardous for human habitation (86%); and
5. Settlements have occupied the land for more than twelve years hence meriting consideration for adverse possession award by the courts of law (100%).

From the above we conclude that most categories of land tenure in the informal settlements of Nairobi have good implications for insitu slum upgrading. However this can only be easy if the

issue of absentee slum lords is addressed with a view of finding a lasting solution. The other factors that may pose a problem for insitu upgrading include the high population densities witnessed in most informal settlements of Nairobi. Alternative tenure systems may be necessary for addressing this issue. Given that the ratification process in Majengo and Kibera udongo seem not to have born good results. Other models involving communal land ownership through trusts may be tried. The Mathare 4A model should be evaluated and modified for application in other informal settlements in Kenya.

Additionally the study has identified critical factors which may be useful in guiding selection and prioritizing of informal settlements for upgrading. These factors may also assist in estimating the strength of security of land tenure for a given informal settlement which is necessary for successful upgrading process.

Some of these factors are explained bellow.

1. **Land ownership by residents:** the easiest situation for informal settlement upgrading will be where the people living in the settlements are the owners of the land on which the structure is build. It will be an added advantage if the few tenants they host appreciate that they own the land and if there are no disputes. In this case we conclude that the informal settlements of waithaka and kawangware in Nairobi should be given priority in the upgrading process. Further investigation may reveal more settlements with secure tenure and fewer disputes for upgrading.
2. **Minimum internal disputes and external claims:** some informal settlements like Kayole Soweto, Mukuru kisii, and Baba dogo seem to have very minimal internal disputes and external claims. In such settlements where the tenants appreciate that the structure owners have the rights to land ownership the upgrading process may be easy if the right approach is used.
3. **Minimal or no eviction threat in the past:** those settlements that are always threatened with eviction are definitely insecure in tenure ship. In our study the informal settlements of Viwandani seem to have received the highest number of eviction threats followed by Mukuru Kwa njenga. Where possible and unless the land is planned for public utility (some of which may be highly hazardous) or is reserved for environmental conservation,

there may be need to identify the individuals or institutions issuing the threat and engage them in negotiation if their claims are genuine.

4. **Land is uncommitted and owned by the state:** we found that such land is the most ideal for the upgrading process. However given its history of “free-for-all” kind of invasion, such settlements are so filled up with structures and have very high population densities that make upgrading more difficult. The allocation of land by the provincial administration to the “highest bidder” and well connected individuals has also introduced the element of absentee land lords who use agents to collect rent. The interests of absentee land lords and their agents present the worst challenge to informal settlement upgrading process. The commercial interests in the informal settlements of Nairobi are big money earning ventures that empower structure owners to resist cessation of their interests through court orders, sponsored demonstrations, gangsters and even sponsored violent riots.

5.2: RECOMMENDATIONS

From the above findings and conclusions we make the following recommendations which will go a long way to help the upgrading of informal settlements in Kenya.

1. Thorough study to be undertaken at national level to ascertain the prevailing land tenure systems in all the informal settlements in Kenya. This will serve to inform and direct the two main informal settlements upgrading programmes in Kenya which include the KENSUP and KISIP. Committing of funds directly towards improvement of housing and other infrastructural facilities may not bring about the expected results in these programmes. KENSUP’s aim is to improve the livelihoods of people living and working in slums and informal settlements in the urban areas of Kenya through the provision of security of tenure and physical and social infrastructure, as well as opportunities for housing improvement and income generation. As much as this is a noble goal, it may never be realized if the perennial sabotage and interference from outsiders who have interests in these settlements are not arrested through formulation of appropriate policies and legislation. These policies and legislations will in turn require thorough understanding of the existing tenure relationship.

2. The informal settlement upgrading programmes in Kenya should develop criteria for selection and prioritization of those settlements that lend themselves to easy upgrading instead of wasting time and other resources negotiating for land rights in those settlements with complicated land tenure relationships.
3. It has been realized that some informal settlements in Nairobi don't seem to respond to any upgrading efforts through ratification of ownership. The settlements in point include Ngando, Majengo, and Gatina, baba dogo and kibera udongo. There is need for a study to ascertain what factors drive the persistence of informality in spite of the improved security of land tenure.
4. . Many informal settlements were built on unalienated and unplanned public land. Though most of this land remains public, some of it was allocated in 1990s in disregard of the occupation by the informal settlements. These allocations have affected many settlements including mukuru Kwa Njenga, Mukuru Kwa Reuben, Kware and Mowlem. Our recommendation here is that residents in these settlements should not be evicted because they established their rights on the land earlier before the government gave out leasehold right to other parties. The government should revoke the lease allocation and find a way of compensating the new allottees. This will make land in Mukuru Kwa njenga and other related settlements available for *insitu* settlement upgrading.
5. The government should develop a policy and legal provisions to regulate the persistent interference in informal settlement upgrading by structure owners and other outside forces. Let it be clear by law that the beneficiaries of the upgrading process should be those who have been residents of those settlements for a given period of time. There is need for a clear policy to guide the upgrading of informal settlements and activities in Kenya.
6. The government should amend the new land act to include alternative and innovate tenure systems that can cater for the interest of the poor in urban areas and make documentation of rights to land easy, cheap and simple to understand. As a stop gap, the rights of tenure of those occupying public land in the informal settlements should be respected by invoking the bill of rights which gives them a right to shelter.
7. Given the dominant role played by chiefs and other cadres of provincial administration in allocation of land in the informal settlements, it may not be in their interest when the

secession of the rights of the absentee structure owners is contemplated. It's therefore recommended that chiefs and other cadres should be kept out of the upgrading process.

8. Given the high number of household in the informal settlement it will be prudent to develop community ownership rights paradigms which limit the household rights to use and inherit only like in the case of Mathare 4A. However this should be extended to include community mortgage programmes so that the rent they pay goes towards paying the mortgage. The loan for financing the development should be extended through appropriate social finance cooperation.
9. The government should through the new land laws remove the bureaucracy involved in procuring and documenting subdivision schemes for land on the urban periphery of Nairobi including Waithaka, Ongata Rongai, Njiru and Riruta. This will curb development of informal settlements caused by incomplete or informal subdivisions. Overallly the government should legislate to support pro poor land administration and management systems.

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The paradox of tenure for upgrading

Recommendations for breaking the paradox