

LAND RELATED CHALLENGES TO SLUM UPGRADING IN KENYA

Land is fundamental to the shelter process. If there is no land on which to build housing, then none can be built, irrespective of the availability of the other inputs required for shelter provision. In particular, an adequate supply of land is required in the right place, at the right time, and at an affordable price for the poor. If not, poor people will continue to be forced into unplanned slums and informal settlements, developed outside the regulatory framework. This has adverse consequences for orderly urban development, service provision, and the housing and welfare rights of all urban dwellers, but in particular the poor and vulnerable and disadvantaged groups.

Abstract

Slum upgrading efforts in Kenya got a boost with the inauguration of Kenya slum upgrading programme (KENSUP) in 2003. This is a collaborative initiative between the government of Kenya and UNHABITAT who work together with a variety of other partners to address the problem of slums. Further indication of serious focus on the problem of informal settlements in Kenya has been indicated by another World Bank sponsored Kenya informal settlement improvement programme (KISIP). While all this may excite hope in the over 1.4 million slum dwellers in Nairobi with the big promise for improvement in their living conditions, the implementation process seem to be bedeviled with myriad obstacles that may not be easy to surmount. Some of the most obvious obstacles include lack of space for decanting, high population densities, absolute poverty and resistance from structure owners commonly called slumlords. This paper is going look into some of land related challenges facing slum upgrading efforts in Kenya. The study utilizes information from previous experiences with slum upgrading to illustrate some of the land related factors that have constrained the achievement of anticipated results in the slum upgrading programmes. This is a desktop study that utilizes literature review, government reports and documents and NGO studies to point out pertinent land related obstacles to slum upgrading process in Nairobi.

Introduction

Informal settlements are found in all the eight divisions of Nairobi city. These settlements vary both in demographic characteristics and size. According to KENSUP (2012) there are 206 informal settlements in Nairobi covering a total area of 1,184 hectares of land and hosting a population of approximately 1,382,205 people. The four largest informal settlements include

Kibera, Mathare, Korogocho and mukuru Kwa Njenga. The overall population density in the slum settlements is 1167 people per hectare, although some settlements like Commercial in Makadara division have as high as 12,000 people per hectare. While Dagoretti has the highest number of informal settlements in Nairobi, Langata division has the highest number of people living in the informal settlements (42.36%). Informal settlements in Kasarani cover the largest land area.

Slums are characterized by poor housing, unhealthy living conditions, overcrowding and insecurity. In its new land policy the Government of Kenya defined slums as those informal settlements which lack security of tenure and planning. In order to deal with the challenges presented by slum settlements, the government promised to undertake development of a slum upgrading and resettlement programme under secure system of tenure for existing slum. To do this, the government was to establish the suitability of the land occupied by slum settlements in terms of tenure and usage

Slum development in Kenya is related to many factors. These include unplanned urbanization where by the towns receive more immigrants than it is prepared to accommodate; urbanization of poverty where poor people who cannot afford decent housing come to urban areas and ; dysfunctional, discriminative, complex and exclusive land management and planning systems where land occupied by the poor is excluded from the main urban management menu

The tenure of land on which the informal settlements of Nairobi are established varies within a broad continuum from insecure tenure to secure and titled tenure. The existence of secure and titled tenure in the informal settlements is a clear indication that the origin of such settlements can be blamed on other factors rather than security of land tenure. There are about eleven variations of land tenure systems experienced in the slums of Nairobi all of which are based on three basic tenure categories of government land, private land or freehold land.

The government attitude towards slum settlements has been negative and characterized with threats to eviction and neglect until recently. However over the years, there have been several attempts to upgrade slum settlements in Kenya using different strategies; however these efforts have been unfocused , poorly managed and mostly unsystematic.

Slum upgrading concept

Slum upgrading is 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 (CITIES ALLIANCE, 2006).

CITIES ALLIANCE (2008) has noted that with successful slum upgrading, three processes occur simultaneously over time:

1. the slum dweller becomes the citizen,
2. the shack becomes the house, and
3. The slum becomes the suburb.

The ultimate achievement of the slum upgrading process include adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure, such as water-supply, sanitation and waste-management facilities; suitable environmental quality and health-related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost (UNHCS, 1997).

The road to achieving the above element for the slum dwellers is wrought with a lot of challenges. This paper however focuses on land related challenges in the process of slum upgrading. CITIES ALLIANCE (1996) lists provision of security of tenure as one of the principles of successful slum upgrading. They note that secure tenure is at the centre of slum upgrading. CITIES ALLIANCE (2008) further:

“The real challenge is to deal with the precarious land and housing tenure situation of those who are physically and socially excluded. To face up to this challenge, a shift in paradigms is required. A project-based approach grounded on the production of new housing and the extension of urban infrastructure networks, conceptualized and implemented separately by the different sectors of the municipal administration, must be replaced by a programmatic and integrated approach.”

To say the least land related challenges are the most central in the slum upgrading process.

Slum upgrading in Kenya: past to present efforts

Concern about proliferation of slums in the urban centres of Kenya may be traced to early 1970s with the advent of World Bank sponsored site and service schemes. The ideas behind the scheme was to provide serviced sites to spur development of low cost housing by the urban poor. These projects were set up in major urban centres all over the country. The thought to arrest the slum situation in Nairobi started way back in 1960s with development of City council housing in Jericho, California among others. In 1970s the site and service programmes were launched by World Bank in collaboration with the government of Kenya. Later these low cost housing programmes failed to deliver the expected results as the sites were taken over and redeveloped into multistorey buildings by people with higher income (Syagga et al, 2002). This effort did very little to reduce slum settlements in Nairobi. The areas that benefited from these programmes include Dandora, Umoja, Fort Jesus, Ayany and Olympic all of which were built in the neighbourhoods of major slum settlements including Mathare, Korogocho and Kibera. The idea was to avail low cost housing for the poor to discourage the development of these slums. However in spite of these efforts slums continued to grow even more vigorously in 1980s and 90s. Syagga et al (2002) report that these schemes led to higher land values, higher rents and the marginalization of poor tenants from the redeveloped areas.... as slum settlements continued to multiply.

In the 1990s up to present time many slums have come up in Nairobi and currently these settlements are home to more than 60% of the city's population and occupy a total land area of 5% only. The most prominent among the recent slum settlements which came up in the 1990s include Mukuru Kwa Njenga, Soweto, Viwandani and Buru -Buru city centre.

The UN millennium development goal number 11 focuses on improving lives of people living in slum settlements (UN, 1999) this effort has elicited renewed fresh interests in the slum settlements by international agencies. The renewed interest in slum settlements in Kenya has been manifested by two internationally funded programmes, the Kenya Slum Upgrading Programme (KENSUP) and the Kenya Informal Settlements Improvement Programme (KISIP). These programmes have hit the ground running with fresh determination to change for better the

lives of people living in slum settlements in Kenya. The central objectives of these programmes are to provide infrastructural facilities, community amenities and security of tenure for people living in the slum settlements. The approach used by Kenya Slum Upgrading Programme (KENSUP) and Kenya Informal Settlement Improvement Programme (KISIP) for slum upgrading may be described as insitu as it involves upgrading where they are without resettlement. That is to say upgrading is done within the slum settlement itself. This paradigm aims at providing the missing services, facilities and land rights to slum residents without moving them to other settlements. However in Nairobi given that most slums are build on either privately owned land or land planned for public utility; many challenges related to land have groped up. This is made even worse given that slums occupy only 5% of the total area Nairobi (1184 hectares) and are home to approximately 1.4 people.

The KENSUP and KISIP Slum upgrading efforts in Nairobi have been confined to three slums including Kibera, Mathare, and Korogocho which occupy Government owned land.

The purpose of this study is to establish some of land related challenges that may affect the new slum upgrading approach adopted by KENSUP and KISIP in Nairobi. The specific objectives are:

1. To review the land tenure situation in the slums of Nairobi.
2. To identify land related challenges experienced in the process of slum upgrading in Nairobi.
3. To make recommendations for strategies to address the land related problems.

The main hypothesis of this study is that land related issues are more central to slum upgrading than other issues and should therefore be given more attention for the process to be not only successful but also sustainable.

Land tenure in the slum settlements of Nairobi

Understanding the ownership and tenure status of land occupied by the slum settlements in Nairobi provides perhaps the first glimpse at the gravity of land related challenges to insitu slum upgrading approach adapted by KENSUP and KISIP.

Land occupied by slum settlements in Nairobi may be classified into seven tenure categories (Matende, 2012). These include:

1. Free hold titled land in the former native reserves.
2. Uncommitted public land.
3. Land planned and reserved for public utility.
4. land for open space and riparian reserve
5. Regularized leasehold land.
6. Land reserved to the city council for residential development.
7. Group owned land.

In the below table we present information indicating the most prevalent land tenure in the informal settlements in terms of total population in each category.

Prevalence of land tenure category in informal settlements of Nairobi

Tenure category	Total& percentage population	Density of population	Percentage area covered(ha)
Freehold titled land	56,700 (3.9%)	1929	29.405 (2.6%)
Uncommitted public land	709,350 (49.5%)	1991	356.1 (31.8%)
Public utility land	198,356 (13.8%)	2864	69.25 (6.2%)
Invaded private land	215,851 (15.0%)	2645	81.6 (7.3%)
Regularized public /private land	81,000 (5.6%)	169	477 (42.6%)
NCC land for residential development	83,615 (5.8%)	2395	34.9 (3.1%)
Group owned land	86,700 (6.0%)	1209	71.7 (6.4%)

Total	1,431,572	1279	1119.05
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SOURCE: Matende (2012)

A brief look at each of these categories will help understand the underlying tenure land scape in the slum settlements of Nairobi.

Freehold titled land

In Nairobi slums occupying freehold land include Kawangware, Ngando, and Kangemi. Freehold land is defined as a free tenure or absolute tenure in which the owner has the maximum rights permissible within the tenure system for indefinite duration (Williamson et.al 2010). This tenure connotes limited or absence of any development control measures.

This land tenure type is found mostly in Dagoretti division in the locations of Mutuini, Riruta, Uthiru-Ruthimitu and Waithaka. It includes land that has been informally subdivided or those under disputed ownership. The owners feel that the formal land subdivision process is complex and expensive and that is the reason why they opt for the informal process. However the settlements are incrementally improving as the owners obtain titles for the subplots and apply for change of user. This land tenure only represents 2.6% of land area and houses 3.9% of the people living in the informal settlements in Nairobi.

2. Uncommitted government land

This is land in which the government holds the freehold rights but has not alienated these rights to any other part nor committed the land for any use. It may include land that is deferred for future use. Nearly a half (49.5%) of the people living in informal settlements in Nairobi occupy uncommitted Government land which covers 31.8% of all the land occupied by slum settlements. 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. Public utility land

This is 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 roads 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 division.

4. Invaded private land

In this study we are using this phrase to refer to private land which is occupied by informal settlements without permission from the legal owners. Approximately 15% of people in the informal settlements live on category of land. 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. Ratified leasehold land

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, 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 tenure

This is a case where the main title to land is held by a group either as a land buying company or cooperative or as a community land trust (CLT) title

Informal developments in this category of land ownership result from lack of 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.

7. 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.

It's very clear that only those settlements occupying freehold land, uncommitted public and Nairobi city council land can benefit from insitu slum upgrading if the challenges posed by high population density are addressed. These settlements accommodate more than 70 percent of the slum settlements in Nairobi. The insitu slum upgrading approach may not be tenable in those settlements occupying land planned for public utility or invaded private land. Approximately 28.8% of people living in the slum settlements of Nairobi cannot benefit from slum upgrading by KENSUP and KISIP.

Land related challenges to slum upgrading in Nairobi.

Insecure land tenure

As indicated above, more than 28.8% of slum dwellers in Nairobi live on land that has insecure tenure. Such settlements exist under perpetual fear of demolition and eviction by land owners or the government in case of public utility land. In principle such land is not available for insitu upgrading until the legal owners of land are compensated and the land replanted into residential use.

High settlement density

Settlement density poses a problem to insitu slum upgrading paradigm as the space available cannot be able to accommodate the existing population together with vital infrastructure necessary for human settlement. Settlements which are due to benefit from the insitu upgrading approach include Kibera, Korogocho, and Mathare. However population densities in these settlements exceed 1991 people per hectare. This means that one person in these slum settlements occupy slightly higher than one square metre of living space. This is far below the planning standard of 6m² per person.

Conflicting interests between tenants and slum lords

More than 86% of people who live in the slums of Nairobi are tenants who pay rent to structure owners. Approximately 10% of the people in slums live in their own structures leaving about 86% of structures in the hands of slum lords who live outside the slums.

Unsuitable land

Approximately 5% of land occupied by the slum settlements in Nairobi is unsuitable for human settlement and hence excluded from insitu slum upgrading exercise. This includes land in Kibera, Mathare and Korogocho. Such land is sloppy or swampy and in some cases fragile.

Dysfunctional land administration systems

Land administration systems are methods of accessing land for development and acquiring security of tenure. The Kenya national land policy in its preamble describes land administration

systems in Kenya as centralized, bureaucratic, exclusive and corrupt. These dysfunctional qualities of land administration have locked out the urban poor from benefiting from the advantages that are associated with secure land. In Nairobi, several slum settlements have been ratified including Kibera Udongo, Majengo, and BuruBuru Cit Cotton. However beneficiaries of allocations in these settlements have found it difficult to access title deeds due to bureaucracy and red tape coupled with corruption. This has hampered slum upgrading efforts through ratification. Ratification is a processes of slum upgrading where the residents are given allocation of the land they occupy in hope that assurance of security of tenure will make them improve the slum structure into good shelter.

External interest

Many slums in Nairobi including Kibera and Majengo occupy what may be described as prime land. This has the danger of exciting external interest in the land and slowing the upgrading process. Even where such slums are upgraded they end up benefitting the upper low class population rather than the slum dwellers. This may be described as economic eviction of slum dwellers. Nyayo Highrise developed by National Housing Cooperation and Kibera Soweto apartments are cases in point.

What others have done to address the land challenges?

In order for us to be to suggest workable solutions to land related challenges to slum upgrading it is necessary for us to look at how other cities have addressed the land problem in slum upgrading process. We take our examples from Sao Paulo, Mumbai, Manila and Lagos.

Reporting on the slum upgrading efforts in Mumbai, India, the CITIES ALLIANCE (2008) notes that ‘Allocation of land for residents is possible only through the Slum Rehabilitation Scheme, in which the land is transferred to a society of the residents, instead of to individual persons. So while the individuals become owners of the flats, the land underneath remains in the name of society’.

Findings, conclusions and recommendations

Findings about the land challenges

1. population and development densities per hectare
2. Upgradability index based on land related factors.
3. land ownership and tenure systems
4. Slum lords and tenants proportion.
5. Findings about poor performance of ratification due to complex land administration systems and prohibitive standards and requirements.

Conclusions

Slums are indicative of a frictional struggle for shelter by man and are symptomatic of a bigger social problem. Addressing slums directly is therefore equivalent to placating symptoms rather than the root cause. Slums are actually symbols of increasing incapability of some people in urban areas to fulfill their basic needs coupled with systems of urban governance that are not proactive to the problems brought by the increasing dynamics of urbanization. The best planning approach will therefore focus more on capacities rather than structures. Enhancement of land tenure security in favour of the poor is only one of the ways of enhancing their capacities for better life. Enhancement of the capacities of the poor will automatically change the quality of structures or lead to relocation to better structures but modification of structures will lead economic eviction of those with low capacity to pay for the enhanced structures hence leading to more formation of slums.

The housing and market paradigm utilized in the past focused on the wrong group and wrong issues and did not take cognizance of the fundamental meaning and cause of slums (poverty). Slums are indicators of urban poverty. Slums will exist even in the situation of plenty of low income housing. Living or not living in slums is a question of affordability and not choice. When the housing options are used, economic eviction of the poor occurs but when the poverty eradication option is used, the slum is evicted. That is to say when the housing is upgraded the

poor move out and create demand for more slums but when the residents are upgraded the slum structures move out and the demand for more slums decreases.

Recommendations

What are the options?

Land sharing

The idea behind land sharing is that the landowner and the occupants (squatters or tenants) agree that the former develops the most economically attractive part of the land and the latter build houses on the other part with full or limited land ownership. In this way, land sharing brings gains to both parties: the landowner retains the most desirable portion of land and dispenses with lengthy and costly legal battles, while the occupants continue to live on their own portion with the added benefit of secure tenure. The four basic features of land-sharing projects include: increased density; reconstruction; participation; and cross-subsidies (Dowall and Clark, 1997). This approach may be used to provide an appropriate solution to the conflict of interest between the structure owners and tenants in the slum settlements of Nairobi.

Land re-adjustment

This approach may be appropriate for those slums build on private freehold land in Dagoretti and waithaka. This is a situation where the government enters such land to provide infrastructure in exchange for land from the land owner on which it builds low cost housing for the poor. The land owner recoups his value from the increased cost of his land necessitated by improved infrastructural facilities.

Land expropriation

This system uses the Governments eminent domain power to take land through compulsory acquisition for the settlement of the poor. These systems may be appropriate for those slum settlements found on private freehold and leasehold land including Dagoretti, waithaka and Mukuru Kwa njenga respectively. The land act 2012 gives the government of Kenya power to compulsorily acquire land for settlement purposes.

Community land trust

The basic concept of CLT is that the land belongs to the community, with individual members owning the development and improvements that they have under - taken in their plots. This discourages absentee landlords. If a member wants to move out of the settlement, he or she can sell the development but the land is not included in the price (UNHABITAT, 2006).

Legal provisions and social guarantees addressed the following concerns:

- Control of speculation in land transactions;
- Restrictions on disposal of the property without prior consent and approval of the community;
- retention within the community of all subsidies of a public nature;
- Mechanisms for the maintenance of affordability of housing for the poor;
- participation, control and empowerment of the community in the process of social organization”

Examples in Kenya where this system has been applied include Tanzania- Bondeni village in Voi and Mathare 4A in Nairobi. The paradigm can still be applied in Kibera slums especially for the areas occupied by Nubian community which is cohesive and with a long history of living together. Slum upgrading in Korogocho by the government of Kenya supported by the government of Italy was set to use the community land trust paradigm.

Sectional property paradigm

One of the biggest land related challenges in the slums of Nairobi is scarcity of land to accommodate all the household residents in these settlements. with an average occupancy of 1262 people per hectare of land, and approximately 30 percent of land occupied by these settlements being either for public utility or unsuitable for human settlement, scarcity of land becomes one the biggest challenges to slum upgrading in Nairobi. What therefore is the best solution to this problem?

Sectional property act is an act of Parliament that provides for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and for the use and management of the units and common property (GOK, 1987). The slums of Nairobi occupy approximately 1110 hectares of land which is about 5% of all the land covered by Nairobi city. Out of the 1110 hectares about 30% is not available for upgrading for one reason or another. This leaves approximately 779 hectares. In terms of sectional property concept this is sufficient land to house many residents currently living in slum

settlements in Nairobi. However the main challenges to these systems remains affordability, establishing sufficient space for decanting and availability of funds for such massive redevelopment. In spite of this shortcoming sectional property concept offer a bankable option to the challenges of access to land in the slum upgrading process.

Other options

- Shift in slum upgrading approach to focus on housing option in conjunction with land tenure security and poverty eradication options. Land tenure rights granted to slum residents should not be transferable.

Recommendation for further study to understand the exact extend of the land related problems in the slums of Kenya for better design of intervention measures.

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