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Land Tenure in Slum Upgrading Projects

Paul M. Syagga

Abstract

This paper gives an overview of slum upgrading in Kenya observing that slums are a major urban housing phenomena in Kenya that require immediate attention. Rather than demolishing them, which renders many people homeless, they should be upgraded through tenure security and infrastructure improvement so as to provide a better living environment for the residents currently living in the settlements.

Introduction

According to the United Nations Human Settlements Programme (UN-HABITAT), a slum is a contiguous settlement where the inhabitants are characterized as having inadequate housing and basic services. A slum is often not recognized and addressed by the public authorities as an integral part of the city (UN-HABITAT, 2003). This is one of the reasons why little data on slum dwellers can be found. In addition, a slum household is defined as a household that lacks any one of the following five elements: (1) access to improved water; (2) access to improved sanitation; (3) security of tenure (the right to effective protection by the state against arbitrary, unlawful eviction); (4) durability of housing (including living in a non-hazardous location) and (5) sufficient living area (no overcrowding).

Slums sometimes seem to emerge overnight, compacting humanity into filthy, densely packed areas with poorly constructed and often dangerous homes. Due to rising population, especially in urban populations, the number of slum dwellers is growing. In the late 20th century, slums have exploded worldwide becoming a cause for serious concern among humanitarian organizations as an alarmingly high number of people live in regions which could be considered slums. Table 1 shows the slum growth in selected developing countries.

Table 1: Slum growth in selected developing countries

COUNTRY	SLUM ANNUAL GROWTH RATE %	SLUM POPULATION (000)	SCENARIO 2020 WITH NO CHANGE
Angola	5.28	3,918	10,677
Kenya	5.88	7,605	23,223
Nigeria	4.96	41,595	76,749
South Africa	0.19	8,376	8,677
Uganda	5.32	3,241	8,904
Tanzania	6.16	11,031	35,561
Brazil	0.34	51,676	55,074

Source: UN-Habitat (2010/2011). *State of World Cities: Bridging the urban divide*.

If nothing is done to stop the current trend, the current number of approximately 1 billion people worldwide living in slums and informal settlements is expected to rise by 1.6 billion by the year 2020 and to 2 billion by 2030 (UN-HABITAT, 2008). In African, Asian and Latin American cities, slum dwellers comprise of over 50% of the total population. As seen in Table 1, each of the three countries in East Africa registered an annual slum growth rate of over 5%.

In Kenya, management of slum areas has undergone three distinct development paradigms. From 1895 to the 1970s, the approach to slums development consisted of demolition and eviction of slum residents. However, the more they were demolished, the more they increased in absence of alternative accommodation. Elements of this approach are still recognizable in many urban settlements of Kenya today.

The second phase marked the entry of international pressure and civil rights groups in the 1980s which made Kenya begin to slowly recognize the need to improve slums with funding mainly from multi-lateral agencies. This process was challenged, particularly during the international development phase in the 1990s, by structural adjustment programmes (SAPs). These SAPs did not only remove subsidies, but they also required State governments to play facilitating roles rather than be involved in project implementation. When the second and third urban projects (Nairobi, Mombasa, Kisumu, Thika, Eldoret, Nakuru and Nyeri) were completed in early 1990s, public housing development including squatter upgrading and site and service schemes stalled but slum development continued to an extent that more than 50% of the population of Nairobi, the capital city, now lives in slums.

Following the Habitat 11 Conference in 1996 at Istanbul (UN-HABITAT, 1997), the international community re-evaluated the worsening housing situation and reiterated the need to accelerate the pace of facilitating adequate housing and security of tenure for all. This heralded the third phase marked by the shift to acceptance and integration of slums in development concerns from the 1990s. This was reinforced by the United Nations (UN) member states' adoption of the Millennium Development Goals (MDGs), in the year 2000, that address essential dimensions of poverty and their effects on people's lives. It was observed that an urgent need for coordinated policies and actions related to slum-upgrading, environmental management, infrastructure development, service delivery and poverty-reduction was needed at large. The MDGs articulate the commitment of member states to improve the lives of at least 100 million slum dwellers by the year 2020¹.

1. Characteristics of Slums in Kenya

Slums in Kenya are usually referred to as informal settlements. Of the total urban population of 32.4%, the slums accommodate more than 50% of the urban population in Kenya (Government of Kenya [GOK], 2009). Many people view slums as the ultimate symbol of inequality and in many parts of major cities such as Nairobi, slums have ended up in some very unexpected locations, sometimes neighboring up-market estates where they provide a pool of labour in form of house helps, gardeners and security personnel. Organizations which campaign against slums argue that no human being should be forced to live in slum conditions and that as a basic act of humanity, cities need to provide livable low cost housing and regulate construction to eliminate the growth of slums. This is far from being realized in Kenya and many other developing countries. While the slums in Kenya may share similar conditions with slums in other countries, they particularly possess the following characteristics:

- High population densities per unit area of land. For instance, Kibera, the largest informal settlement in Kenya, measures approximately 2.5 square kilometers and even going by the Kenya Population and Housing 2009 Census of 170,070 people, the density is 68,000 persons per square kilometer. Indeed, according to this census, 55% of Nairobi's population occupies only 5% of the total land area of 680 square kilometers, mostly in the informal settlements;
- Physical layouts are relatively haphazard thus making it difficult to provide infrastructure and related facilities without carrying out some demolition;
- Urban services are minimal or non-existent;
- Housing structures are constructed largely of temporary materials in relation to building regulations;

¹ Target 11 of Goal 7 is a direct recognition that slums are a development issue which needs to be faced (UN-HABITAT, 2003).

- The accommodation layout is on a room by room basis and majority of the households occupy a single room or share a room;
- Majority of the residents are low-income;
- Majority of residents are tenants who outnumber owner residents at a ratio of 9:1.
- Morbidity and mortality rates caused by diseases stemming from environmental conditions are significantly higher than in planned areas of towns;
- Tenure in the informal settlement is mixed e.g. squatters on public/private land, group purchases through land buying companies, illegally subdivided land by original owners who subsequently sold it. This latter situation has various implications.

There are those who own the land and have carried out development without planning approval, hence the settlements lack basic infrastructure. Others own shared certificates from original land owners who carried out illegal sub-divisions. However, there is still one title for the whole land and sub-titles will never be issued without planning approval. In the meantime, unapproved developments continue. There are those who hold Temporary Occupancy Licenses (TOLs) who formally got letters of allotment from responsible authorities to occupy public land on a temporary basis, mainly roadside garages, food kiosks, etc. but who have continued to stay and converted the sites to residential accommodation.

The quasi-legal rights holder has unregistered rights obtained through allocation by a local authority official/councillor or national government official (but who has no authority to allocate land under the law). Another category occupies customary land which has not been registered and is not planned therefore the settlements remain reminiscent of rural settings with no services. Finally, there are those who squat on public or private land without permission of any sort. These illegal settlements are not planned and therefore lack the requisite infrastructure and related facilities.

2. Slum Upgrading

Slum upgrading is a process of intervention for economic, organizational and environmental improvement to an existing human settlement undertaken collectively among citizens, community groups, governments (national/local) and any other development partners (Non-governmental, multi-lateral/bilateral organisations). Although the reasons for slum upgrading may vary from place to place, the main push factors have included the demand for affordable tenure options, environmental health considerations and poverty reduction.

Actors in slum upgrading can be many and varied. In Kenya, they include the following: (1) tenants; (2) resident structure owners; (3) non-resident structure owners; (4) land owners and (5) support institutions (national/local governments, Civil Society Organizations (CSOs), the private sector and multi/bilateral development partners). Slum upgrading often depends on the scale of upgrading and stakeholders' priorities. It usually includes, but is not limited to:

- *Community infrastructure*: Installing or improving basic infrastructure notably water reticulation, sanitation/waste collection, rehabilitation of circulation, storm drainage and flood prevention, electricity, security lighting, etc. while leaving existing structures generally intact or subject to incremental improvement;
- *Regularization of tenure and housing rights*: Plots are surveyed and titled, with minimum infrastructure installed, leaving existing structures generally intact or subject to incremental improvement;
- *Comprehensive upgrading*: Includes both community infrastructure and titling usually where environmental conditions are very poor. It could therefore include redevelopment.

The appropriateness of any of the above approaches needs to be driven by the status of environmental conditions, physical infrastructure and tenure. While comprehensive upgrading would be the preferred choice, where choices are to be made, operationally it would be better to have infrastructure first, followed by land tenure because improvement in infrastructure immediately improves living conditions and welfare faster than land tenure regularization alone. However, according to Hernando De Soto (2000), tenure security is paramount on grounds that heavy investment has already been put in place. This may not necessarily be so depending on the location of the slum to be upgraded, environmental conditions and settlement density.

An evaluation of past upgrading projects in Kenya (Syagga, Mitullah and Gitau, 2002) found that many slum upgrading projects are stand-alone, pilot, innovative practice projects which are not always scalable or sustainable on account of possible high delivery costs, unsustainable technologies and institutional structures that need ongoing resources. Furthermore, multi-sectoral, partnership approaches to slum upgrading in Kenya involve external actors who plan and implement a project, successfully engaging with the community and facilitating participation. After project completion, these actors may leave the scene, community groups may break up and poor people's priorities may change with time.

However, a collaborative initiative between the Government of Kenya and UN-HABITAT, the Kenya Slum Upgrading Programme (KENSUP), is a first attempt to provide a nationwide framework on slum upgrading in Kenya (GOK, 2005). The programme aims to adopt a mixed development approach ranging from complete redevelopment to partial redevelopment and in other instances providing sites with secure tenure and infrastructural services allowing for incremental improvement. This, however, remains a sectoral approach in absence of a national urban development policy in which slum upgrading should be an integral part.

3. Tenure Options for Slum Upgrading

- *Legitimacy versus Legality*

Security of tenure is a fundamental component of housing rights. All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Security of tenure also provides further protection against the arbitrary deprivation of property whether that property is housing or land (UN-HABITAT and OHCHR, 2002). It is argued that those with titled land tenure can use it as a store of wealth against which they can leverage financial assistance such as loans. The conventional belief in policy circles is that the best approach to upgrading of low-income settlements involves tenure legalization or provision of legal title, particularly in areas where residents do not own the land.

However, according to Hernando De Soto (2000), formal property is more than a system of titling, recording and mapping assets, it is an instrument of thought representing assets in such a way that people's minds can work on them to generate surplus value. A good property system is not about "mere paper", but one that facilitates release of capital that is latent in the assets to enhance productivity and it should aim to alleviate social and economic conflicts. In dealing with tenure options in slum upgrading, one may therefore be faced with an ethical dilemma. Is tenure security a perception of legitimacy or legality? *Legitimacy* refers to tenure regularization as opposed to *legality* which refers to tenure legalization. It is often stated that in the absence of security of tenure, residents will be hesitant to invest in their housing as they will be concerned about demolition, displacement and relocation. As De Soto points out, the strategy is premised on the assumption that security of tenure encourages residents to upgrade their houses and settlements.

The documentation of legal title allows beneficiaries to use their property as collateral to obtain housing improvement loans from housing finance institutions. It is also expected that legalization will generate revenue for the State. This is based on the assumption that the State could charge beneficiaries for the security of tenure. This last assumption, however, negates the assumption that slum residents are poor, in which case high tenure legalization costs will disenfranchise the majority poor, particularly the women.

- *Tenure Legalization and Community Land Trust*

Tenure legalization becomes problematic in reconciling the varying interests of stakeholders in the slum settlements. This approach is complex and takes very long to implement. In the Kenyan context, four interested groups include tenants, resident structure owners, non-resident structure owners and land owners. Who will qualify to get titles in such a scenario? Instances in the past have arisen, for instance, in Korogocho where tenants have demanded the right to titles on the grounds that landlords have benefited from the rents at the expense of tenants when they do not own the land. There are also cases of absentee landlords who only have structures for commercial purposes and yet they do not live in the settlements.

It is also not conceivable that there is enough land in any given settlement to be parceled out individually to all residents. Consequently the best titling option to defuse competing interests in slum settlement without land owners is to include every resident under the Community Land Trust (CLT) rather than issuing individual titles. In principle, land legalization strategy ensures that: (1) land is owned by a registered Trust that leases it out to the families who live there; (2) the house and other structures put on the land are owned by the individual families; (3) each family can sell its house but at a regulated price by the Trust and (4) governance is shared between the Trust representatives (families who live on the land) and other stakeholders (public officials) (Davis, 2010 & Jaffer,1996).

Box 1: Tanzania-Bondeni Community Lands Trust, Voi-Kenya

Tanzania-Bondeni Voi Community Land Trust (CLT) Project was a slum upgrading initiative of the Kenya Government and the German Technical Cooperative Small Towns Development Project (MLG/GTZ -STDP) implemented in Voi Municipality from 1991.

The design of the legal framework for the CLT model is based on five documents: (1) the Constitution and the Rules of the Society; (2) the Trust Deed; (3) the Head Lease; (4) the Prototype Sublease and (5) the Approved Subdivision Plan. The Society controls the charitable trust which holds the community's land. A management committee consisting of 13 elected society members runs the daily affairs of CLT. At least two trustees and two management committee members must be women. An elaborate system of checks and balances has been devised to ensure democracy in decision making.

Land tenure is not with the individual but with the community. Thus the title deed would be under the community's name. A resident would own the structure which s/he had built but would not own the land on which the structure was located and thus the land could not be traded. The beneficiaries own the developments, structures and other inputs on their plot; they can bequeath or inherit these developments and they can sell them according to a specific resale formula with the prerogative acquisition right by CLT to ensure that the land remains with the community.

The CLT model incorporates the traditional relationship between the land and the structures built on it. It is built on traditional African and Islamic tenure systems. The right of disposal of the land is separate from the right of disposal of the products of one's labour applied to the land.

Source: Jaffer, M. (1996). *The Case of the Tanzania-Bondeni Community Lands Trust, Voi*.

- *Legitimacy Tenure Security Model*

The basic assumption for tenure security is the guarantee of legal protection against forced eviction, harassment and other threats. While ownership enhances security of tenure, studies carried out in several cities in the developing countries show that tenure security can be achieved through other ways (Payne and Fernandes, 2001; Durand-Lasserve and Royston, 2002; Syagga, 2010 & Urban Land Mark, 2010).

As opposed to the focus on tenure legalization, it is suggested that policy-makers concentrate on other non-legal strategies. Tenure security can be achieved through the regularization of irregular settlements based on increasing the perception of security of residents, rather than placing too much emphasis on ownership. The practice in the informal settlements, for instance, is that land transactions go on without titles, using quasi-legal mechanisms that provide legitimacy and hence perceived tenure security. In a policy context, such legitimacy could be achieved through administrative recognition (council resolutions, government circulars, etc.) rather than legal recognition.

Pragmatically, the approach focuses on physical interventions such as infrastructure and amenities provision. These do not only add to the sense of security but arrest life threatening situations and also make upgrading feasible. This approach side-steps legal complications involved in tenure legalization and simply deals with improving the environment, irrespective of ownership structure in the settlement. Indeed, this is the approach taken by CSOs that work with informal settlements.

The approach may be conceptualized in the following ways based on aerial photographs and community verification that: (1) undertake physical mapping for identification of slum structures with or without a single GPS point reference; (2) undertake social mapping for occupants linked to structure number as agreed on a block layout with the community; (3) develop basic site plans with neighbourhood blocks and main roads but without individual plot boundaries; (4) provide communal level basic services; (5) issue letters of occupation/card acknowledging occupation based on list of occupants linked to a structure number and (6) register the letters under the Documents Act (not Registration of Titles Act). Any necessary payments will be passed on to structure owners as determined from the social mapping. If necessary, titling can be the second step and can take its own pace so long as the life threatening situations under poor slum conditions are under control.

Conclusion

Findings from international literature show that slum upgrading is increasingly becoming part of urban development policy. Its tenets include tenure regularization (titling), upgrading of sites and locations, relocation to new sites and services, up scaling of interventions to match demands other than isolated projects on their own over the medium and long term period.

However, it has been acknowledged that slum upgrading programmes, should not only emphasize individual titling as the only form of tenure security. Generally, legal approaches provide a superior level of tenure security in many situations, provided that this can be individual, communal or both. There is therefore a case for community land trust as good practice under title as form of tenure security.

Besides titling, incremental approaches to tenure security need to be acknowledged and harnessed. They are based on learning experiences from the operations of land markets in the informal settlements that perceive tenure security to be derived from legitimacy (administrative or community recognition) in absence of legal recognition. Learning from informal market operations is a good way forward in making land management and administration processes and procedures appropriate to the realities on the ground. Accordingly, an incremental security of tenure approach that does not necessarily involve titling is an equally important tenure security option tool in slum upgrading.

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