

# **Towards a Framework for Community Land Registration in Informal Settlements; Lessons and Experiences from Three Informal Settlements in Kenya.**

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**Keywords:** Community Land, Informal Settlement, STDM, Community Land Act, Land Policy, Fit-For-Purpose

## **SUMMARY**

Community Land Act of 2016 stipulates procedures and regulations for the recognition, registration and protection of community land in Kenya. While the Community Land Act (Act) is meant to apply to ethnic communities in rural and urban areas, its implementation in informal settlements presents unique opportunities and challenges. The Act is at a nascent level of implementation with limited application in rural contexts due to limited capacity, resources and the absence of inventories at the county level. Adapting the Act to inform registration of community land in informal settlements is subject to huge debate that requires strong support by policymakers for its realisation.

Residents in informal settlements have expressed strong interest in registering settlements as community land. This calls for assessments of community interest in the particular settlements, building consensus among residents and providing means to accommodate all land users, including tenants in the communal interest. It also entails addressing the private interest and private land owners living outside the settlements that complicate the matter. The essence of the Act is strengthening communal rights in securing access to land and promoting equal land rights in managing land and natural resources. Past experiences from World Bank funded projects under the Kenya Informal Settlements Improvement Project (KISIP) observed that individual land titling in the informal settlements is unsustainable. Immediately land is registered, the owners begin transacting on land, resulting in the evictions of land users. Hence, this impacts social justice and the livelihoods of slum dwellers.

Informal settlements in Nairobi rest on public or private land, most of which are contested, some with ongoing court cases from threats of evictions or disputes with third parties. Regardless, the population has grown steadily. A closer look at the major cities shows that 60 percent of population in cities lives in informal settlements.

GLTN and Pamoja Trust, a Civil Society Organisation in Kenya, are implementing a project to register informal settlements as community land. This paper aims to demonstrate the approaches taken and the impacts of the project. The experience from three use cases will add to normative and practical knowledge towards application of the Act in other contexts. Based on these outcomes, a procedural guideline was developed with recommendations to policymakers on the opportunities for using the Act to register land in informal settlements.

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## 1. Introduction

The growth of informal settlements in urban centres in Kenya depicts gaps in land governance, weak tenure security and inadequate social safety nets for low-income groups. The population in the informal settlements is estimated at 60% of the total population in the city (UN-Habitat, 2013). This greatly impacts equitable development in the rising urbanisation, inequitable access to services and lack of decent livelihood for the residents of the informal settlements. The ripple effects are seen in deplorable housing conditions and the prurality of informal development (UN-Habitat, 2015). This situation may not change in the near future without serious reflection on the current legal framework to address land governance in informal settlements.

According to statistics from Kenya Bureau of Standards, the population living in slums represented 54% of urban population in 2009. It is estimated that this number increased to 56% in 2014. The recent statistics shows that the number has significantly increased. Taking a closer look at the major cities, 36% of the population in Nairobi and 24% in Mombasa live in informal settlements. This represents 21.2 per cent of the total population according to the latest census of 2019. The emergence of the informal settlements in Kenya provides an intriguing history of past occurrences of the evolution patterns (International, 2009). The slums cover a small portion of Nairobi city land, estimated to be less than 5%, either public or private (Omwoma, 2013).

Tenure security in informal settlements has not been seen from a communal rights perspective in the past. Delivering tenure rights using the legacy practices of the formal land administration have a punitive approach due to peculiarities in informal settlements that result in evictions, demolition and displacement. In other contexts, this leads to chaos. Currently, 80% of the population in informal settlements comprise of tenants. The actual or perceived land owners in the informal settlements are usually absent landlords (Ngâ, 2019). The Continuum of Land Rights approach (UN-Habitat 2008) and flexible approaches of Fit-For-Purpose Land Administration informed the thinking of communal rights. This approach seeks to introduce an alternative solution that would enable a win win solutions for all residents in the informal settlements. It also seeks to eliminate the issue of eviction and displacement.

Based on these experiences, a lot has emerged and triggered a huge debate with the Ministry of Land to interrogate what is needed for its application in informal settlements. Much has been done such as developing a procedural guide and setting up local governance structures and land inventories. This paper summarises the progress, accomplishments and impacts to add to the knowledge how the existing Act can be applied for tenure security in informal settlements. The paper shows the key takeaways and recommendations given by the stakeholders to ensure that it can be part of the formal process of land registration using the Act.

### **Past experiences on slum improvements**

In the past, many projects have dealt with slums fundamentally around housing and service provision (Muraya, 2006). Although notable development has been recorded through these interventions, this has not dealt fully with the further growth of informal settlements (Millington, 2017). The number of slums continues to rise in Kenya. This also signal gaps in the interventions whose impacts were not sustainable. Some key challenges touted by others point to limited financial investment to provide comprehensive upgrading and a lack of sustainable models in the long term (Nzau & Trillo 2020). According to UN-Habitat, slum upgrading, redevelopment resettlement or relocation has been applied in many contexts and involves huge cost. From an economic perspective, this has not provided impetus from the private sector and government to carry out huge investments.

It is also worth mentioning that limited policy and legal framework around land tenure regularisation has contributed to the escalation of slums in Kenya. Hence, the gaps in the law were exploited under different initiatives and led to the capture of big projects through market forces or political capture. For instance, the government initiative to improve the slum question in 1970 was captured by market forces (Njihia, 1982) and other community-led slum upgrading with support of Pamoja Trust and other faith-based organisations faced challenges related to housing market forces leading to gentrification, insufficient funding, limited capacity and coordination (Alam et al., 2005, Nzau & Trillo 2020 ). Despite these limitations, the question of land tenure never received much attention then over time.

### **Lessons from land tenure delivery in government programs**

Cities must now provide better living conditions, including secure tenure in slums as a priority. Recognising the role of secure access to land provides a solid foundation for interventions in poor urban areas. Also, this has a transformative approach in local people's perception and ability to invest in the land (Patel, 2012). UN-Habitat (2003) observed the need for secure tenure because tenure issues in urban poverty analysis strongly correlate with housing conditions, access to services, and environmental and health problems. The delivery of tenure in informal settlements ought to adopt a wide lens depending on the context and existing legal framework, social norms, cultural values, and other preferences. The Kenya National Slum Upgrading Policy of 2016 recommended for flexible, integrated and sustainable options for providing land tenure security to slum dwellers (Anderson, & Mwelu, 2013). Still, the recommendations align with the Fit-For-Purpose Land Administration (FFP LA) approach that should take precedence in addressing access to land in slums. It also fulfils the quest of the Kenya Vision 2030 towards an inclusive, sustainable and secure urban environment. Unfortunately, not much has taken place with the policy.

The government of Kenya has implemented a number of initiatives to improve tenure security and slum upgrading projects. The notable projects include the Kenya Slum Upgrading Programme (KENSUP), which aimed at participatory-driven slum interventions on housing and social-economic development with the support of UN-Habitat (Muraguri, 2011). The recent project by the World Bank, dubbed the Kenya Informal Settlement Improvement Programme(KISIP), sought to promote tenure security and develop physical and social

infrastructure to transform the selected settlements. These projects were pegged on improving the livelihoods of people living and working in informal settlements in the urban areas of Kenya through the provision of security of tenure and physical and social infrastructure and housing to spur economic development. The model used in these projects embraced participatory approaches, decentralisation, empowerment, and improving local governance. However, in terms of the broader impacts, several studies have shown that the policies aimed at improving land tenure security in slums do not always have the intended results (Anderson & Mwelu, 2013). Tenure security faced numerous gaps regarding identifying actual beneficiaries and landowners in the settlements. KISIP did impressive work in delivering tenure security in informal settlements. The efficiency of completion of planned programmes, particularly tenure security under KISIP was largely affected by numerous land conflicts and delays in the verification of land owners (World Bank, 2020). A few lessons emerged around land tenure regularisation and the participatory approach.

### **Fulfilling the Agenda 2030**

The Sustainable Development Goal (SDG) 11 on Sustainable Cities and Communities aims to make cities and human settlements inclusive, safe, resilient, and sustainable. More specifically, target 11.1 calls for by 2030 to ensure access to adequate, safe and affordable housing and upgrade slums. Using the analogy of UN-Habitat, which states that lack of access to land relates to conditions in informal settlements, it is critical to prioritise land tenure security in slum upgrading through flexible and locally owned practices. Moreover, SDG target 1.4 commits by 2030 to ensure that all men and women, particularly the poor and the vulnerable, have equal rights to economic resources and access to basic services, ownership and control over land and other forms of property. Similarly, New Urban Agenda (NUA) recognises the need to secure land tenure for all, especially for women and vulnerable groups, by recognising the plurality of tenure options and application of the Continuum of Land Rights Approach in developing gender-responsive solutions (UN-Habitat, 2016).

There are many disruptive solutions today that can bridge the gap in flexible recording and accelerate the achievement SDG and NUA targets. According to the Continuum of Land Rights concept, the concerns should be how to improve the recording and recognition of a diversity of land rights and resources (UN-Habitat, 2008). Like many land administration systems, Kenya's current land administration system is not designed to record flexible land rights. Therefore, we need to review the current laws and tools and embrace the FFP LA solutions and tools such as the Social Tenure Domain Model (STDM) tool that supports documentation of relationships between people and land, including social and perceived tenure options. STDM has been very successful in recordation of land rights in various contexts, leapfrogging the recognition gap (Danilo, Njogu et al., 2020)

### **Relevance of the Community Land Act of 2016**

Communal land rights are secured under the Community Land Act 2016, an act of Parliament that gives effect to Article 63 (5) of the Constitution to provide for the recognition, protection, and registration of community land rights, management, and administration of community

land, to provide for the role of county governments concerning unregistered community land and connected purposes (Republic of Kenya, 2016). While the Act is designed to apply to ethnic communities those in rural and urban areas with presumed collective rights, its implementation in informal settlements has not been considered. In fact, there is no unique mention of its application in such contexts. However, it allows further investigation of the Act to support its interpretation and application in informal settlements. The biggest concern for the community is the interpretation of the community interest and how the definition of community in legal terms (Kenyan Constitution) intercepts.

According to the Act, community is defined as a distinct and well organised group of Kenya citizens who share attributes such as same culture, mode of livelihood, socio-economic activities, geographical space, ecological space, ethnicity or common ancestry. It enables community to manage and administer community land, including the procedures for registering community members. This constitutes the invitation of all members of a community with some communal interest to a public meeting to elect the members of the Community Land Management Committee (CLMC), election of the CLMC triggers generation of a comprehensive register of communal interest holders. Through the act, the CLMC comes up with the name of the community and submits the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration at the national level. The Registrar then determines whether the area can be registered under the Act. The law provides for the rights of all community members to equally enjoy the rights to access and use the land without any form of discrimination. The CLMC are elected for three years, upon which a new team is elected.

The application of the Act is limited by a lack of awareness, resources and guidance from the county and national government entities responsible for its implementation. Hence, community-led processes and initiatives are limited and often take too long to manage the negotiation, sensitisation, and mobilisation of different actors towards community land registration. This is the challenge in rural areas where the level of sensitisation is limited. UN-Habitat and the Global Land Tool Network together with a local partner, Pamoja Trust, A Civil Society Organisation in Nairobi, have attempted to implement the Act to secure tenure for communities in three informal settlements. The initiative has triggered an interesting debate with stakeholders, particularly at the Ministry of Lands. Largely, the argument of community interest in informal settlements is accepted but needs strong justification and application criteria. With the support of the aforementioned partners, knowledge building has been successful and developed among the local residents, and momentum has been gained towards the common goal. Having a common agenda among residents in the slum is important for promoting equitable benefit sharing and ensuring properly guarded community representation in decision-making and other strategic policy spaces.

## **Methodology**

### **The choice of the settlements**

The selection of the settlements was not random. Pamoja Trust has been supporting the select settlements in different activities for the last decade. Hence, their participation demonstrates a continuation of efforts towards secure tenure, housing, and livelihood improvement programmes. The three settlements are spread in Nairobi and Mombasa. These include Mashimoni and Mabatini (Nairobi) and Mnazi Moja in Mombasa.

Similarly, the situation on the ground has greatly changed, including escalating land conflicts, land-grabbing incidents, and rising court cases. Pamoja Trust has provided strategic and technical support to address various challenges through paralegal support, data generation, household surveys, and participatory mapping and to set up local governance structures. For instance, in Mabatini, a court case has been ongoing since 2019 and Pamoja Trust has been with the community supporting them in the process. The case relates to grabbing of settlement land by a private developer that produced dubious documentation contesting the land ownership by the community. The conclusion of case favours the community.

Towards the conclusion of the court case, the community do not have a clear plan to secure their rights and avoid future occurrences of similar conflicts with private developers. Hence, they have considered to rally together and collectively register the land using the Community Land Act of 2016. Individual land titling has always led to demolition and evictions of the tenants, who are the majority in each settlement. This has not been appreciated in these contexts with the experiences of KISIP projects. Similarly, absentee landlords are mostly not part of the discussions but are afraid that ensuing conflicts are bad for business. Hence, in these contexts, they feel comfortable securing their interest in the communal land registration and, later on, devising local arrangements to keep all land users in the current structures and land as tenants. This consensus has taken many years of deliberation and sensitisation. This also means the community are ready to seek help to buy land from private owners (as the case of Mombasa through the county government) for communal registration.

### **Participatory Land demarcation and land governance improvement**

Pamoja Trust has created a strong network within settlements and provided capacity on land tenure and other livelihood methods. Hence, they have managed to bring together communities into one accord around secure land tenure. The Global Land Tool Network (GLTN) has supported in the FFP LA methodologies in adopting low-cost tools for data generation at the settlement. The data is used to setup local inventories and information systems managed by community members in a resource centre (GLTN, 2014). Equally, this information is essential in court cases as evidence of the beneficiaries, their history, and their social relations in each settlement. All the generated data is verified and shared with local leaders and the community for inventory within the resource centre.

In addition, the STDM tool developed by GLTN has emerged as an adequate land information management tool to capture both enumeration and mapping data for informal settlements that have not been captured under formal cadastres. It has the capability to record the informality and complexity of the various tenure situations exhibited in the many informal settlements in Kenyan towns/cities. STDM bridges the gap between communities and land professionals by addressing the slum questions with pragmatic and realistic solutions

The community-generated information has contributed to various Government interventions, including tenure regularisation, relocation and planning. This is because it demonstrated who owns land and structures and who the tenant is, settlement aspirations, and goals for the future. Communities have used the information to negotiate with land sector stakeholders on the future interest within the settlements. In this regard, it was clear that communities wanted to register their land as community land. All necessary conditions were satisfied as per the Act, including forming the CLMC in each settlement. This information has been submitted to the Ministry of Lands and county government to demonstrate consensus among residents without any objection at the local level. The requirements accomplished as the Act include;

1. Develop a register for all community members.
2. Formation of a CLMC.
3. Demarcation of the community resources/ land.
4. A map of the settlements.
5. Resolution and minutes for the meetings.

### **Development of Survey questionnaire**

A survey tool was developed and targeted at stakeholders in the government, community, Civil Society Organisation and other experts to gather views and opinions on applying the Act in registering informal settlements. The critical questions the survey intended to raise were whether all informal settlements qualify. It also needed to note if the Act is sufficient for application in its current form or what other amendment could be necessary. The survey tool was circulated to about 60 respondents, and feedback was collected from seventy-five percent of the target respondents. The key respondents came from the Ministry of Lands, National Land Commission, Kenya Land Alliance, Habitat for Humanity, Kenya Association of Planners, UN-Habitat, Action Aid in Kenya, and beneficiaries in the three settlements. This information was necessary to consolidate views from experts working in informal contexts.

The survey was administered online via Survey Monkey tool (<https://www.surveymonkey.com/>) and all responses received via the same platform. Pamoja Trust, that was leading with the community sensitisation and engagement with Ministry, supported the selection of key participants and shared the links with them. It took a month to get all the responses.

### **Compiling a procedural guide based on local experiences- a write shop approach**

A write shop was organised that brought together experts from the county level, Ministry of Lands, National Land Commission, Survey Department, Civil Society and other land governance experts. This was a knowledge-sharing and writing session that included the drafters of the Act. They did share their rationale, the background on the application context of the Act. It was very enriching to note that properly organising communities as communities with shared interests does not limit the Act. During the three days, the write shop managed to gather useful information compiled into a procedural guide to inform the selection criteria of informal settlements, as well as the requirements and procedures needed for registration. The guide is awaiting validation and approval by the Ministry of Land. After its approval, there is

high chance for the guide to move to parliament for adoption as a supplement piece to the Act. The guide will be considered a framework document that provides the logic, criteria and requirements for selecting and registering informal settlements.

### **The Findings from Survey**

From the forty participants who responded to the survey questionnaire, 80% were male and 20% female. In terms of familiarity with the Act, 50% mentioned being very confident in its application and 40% being informed. Nearly everyone was aware of its use in other contexts, but none had information on its application in informal contexts. When asked if it can be used in informal settlements, 70% agreed it can be used in its current form. In addition, we followed the question with whether it would apply to all settlements and the feedback was that nearly all settlements can qualify. However, 30% disagreed with its application, citing challenges in getting consensus among residents, different cultural perspectives, lack of common interest, and hinted at a possible review of the Act to explicitly include informal settlements.

Interestingly, the respondent felt that community perception matters a lot in the selection of the settlements for community land registration. For instance, Pamoja Trust witnessed in one settlement in Mombasa where the landowners rejected the communal registration in favour of private land titling. Hence, Kwa Bulu settlement that was part of this project was disqualified. Regarding their perception of the ideal registration type in informal settlements, mixed reactions were recorded where 60% of respondents favoured mixed tenure (Private and communal) while 30% considered communal and 10% responded to private registration.

There were questions related to tenants role in the registration processes. When asked what the role of tenants would be, we received mixed responses. Some sentiments noted that tenants are temporary and do not own anything. Other responses suggested that tenants do not fall within the community membership under the Community Land Act. However, they can apply to be members through the Community Land Management Committee and approved by the Community Assembly or when ordered by the Court. In essence it became apparent that there are things in the Act that need further interpretation, either using other instruments of Law or further amendment of the Act if called for.

### **Write shop draft of the guide**

The write shop produced a framework document called a guide detailing the relevance, process and procedure for using the Act in informal settlements. First, the drafters of the Act recommended that the guide be included as a reference document for application in such context. However, it was mentioned that a robust evaluation and participatory process is needed to critique and enrich the guide towards comprehensive coverage. The draft covered five topics: summary and executive statement, legal and regulatory frameworks, data and procedures, Finance and resources requirements, and registration process. The draft is waiting Ministry's review and validation, which is anticipated to be completed by the first quarter of 2024.



The guide is a discrete document with very detailed procedures based on the experiences of Pamoja Trust in the three case studies in a chronological outline that depicts the path the community followed from engagement to consensus building. It also notes other rigorous steps such as dispute resolution, involvement of absent landlords, and development of a community vision. All these aspects are crucial in building communal interest as required by the Act. All pertaining laws and Acts were mentioned on the legal and regulatory framework, including particular articles/ clauses to reinforce key arguments in the Act. Finally, recommendations were drawn from the team, emphasising the county government's role in prioritising tenure security for the urban poor in the County Integrated Development Plan (CIDP), notably for resource mobilisation and consistency. These recommendations were also compiled to a policy brief to amplify the deliberation at the national level.

### **Recommendations**

The pending actions for the project is very critical to shape the discussion for tenure security in informal settlements. A few meetings are scheduled early in 2024 with the Ministry and other development partners to review and finally validate the guide. Given past experiences from the tenure regularisation processes under the Kenya Informal Settlement Improvement Programme (KISIP), this document addresses some gaps that related to local ownership and sustainability. Some of the key points this paper recommends include:

- Individual land titling will be considered as the last resort where communal land tenure fails to meet consensus among the residents.
- Secure land titles will enable residents to access essential services such as water, sanitation, and electricity that are required for the formal application.
- Communal land management in slums will transfer the development role to the community for the benefit of all.
- Community engagement and participatory decision-making empower the residents to a common development vision.
- It will reduce disputes and conflicts by clarifying tenure rights within the settlements.

There is strong optimism that many stakeholders will receive this guide hoping the validation process will be smooth. Hence, in the meantime, the guide is undergoing enhancement and polishing before the meeting dates are confirmed.

### **Conclusion**

Tenure security in informal settlements in Kenya has consistently failed because of the lack of a sustainable plan, resources and clear legislation for government involvement. This project has produced a very clear strategy and a document to inform current and future plans on slum upgrading and tenure delivery informal settlements. However, this paper argues that not all programmes in the informal sector will lead to community registration. Local dynamics are fundamental to inform the history of the settlements and key issues in a given slum. Essentially, managing all conflicts, land ownership tussles, consensus, and community vision can take a long time before the project is accomplished. Therefore, giving ample time for

sensitisation and addressing social issues in each settlement is the right step towards tenure security.

This guide will inform how to prepare the community in informal settlements for registration under the Act. Testing is needed to evaluate if the guide produced can be used in other context and in any informal settlement. The building block is demonstrating the communal interest in any context and uncontested communal resources. The Act already stipulates the procedures and responsibilities regarding managing the communal land and need to be evaluated if they are sufficient in informal settlements. This paper invites further research to assess if the same would apply in informal settlements where culture, social norms and perception of communal land may vary depending on the individuals.

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