

POLICY ALTERNATIVES FOR LAND TENURE AND
ADMISTRATION SYSTEMS IN INFORMAL SETTLEMENT
UPGRADING , KENYAN EXPERIENCE

Peter Ngau
Nairobi University

Constitution of Kenya, 2010

- ▶ The constitution provides that Land in Kenya shall be held, used and managed in a manner that is ***equitable, efficient, productive and sustainable, and in accordance with the following principles:***
 - ▶ (a) Equitable access to land;
 - ▶ (b) Security of land rights;
 - ▶ (c) Sustainable and productive management of land resources;
 - ▶ (d) Transparent and cost effective administration of land;
 - ▶ (e) Sound conservation and protection of ecologically sensitive areas;
 - ▶ (f) Elimination of gender discrimination in law, customs and practices related to land and property in land; and
 - ▶ (g) Encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

Classification of Land in Kenya

- ▶ According to the Constitution of Kenya (2010), Art 61. (1) all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. Land in Kenya is classified as:
 - ▶ **public,**
 - ▶ **community or**
 - ▶ **private.**

Types of Land Tenure

The Land Act 2012 establishes the following tenure options:

- ▶ **Freehold Tenure**

- ▶ Freehold connotes the largest quantity of land rights which the State can grant to an individual. While it confers unlimited rights of use, abuse and disposition, it is subject to the regulatory powers of the State.



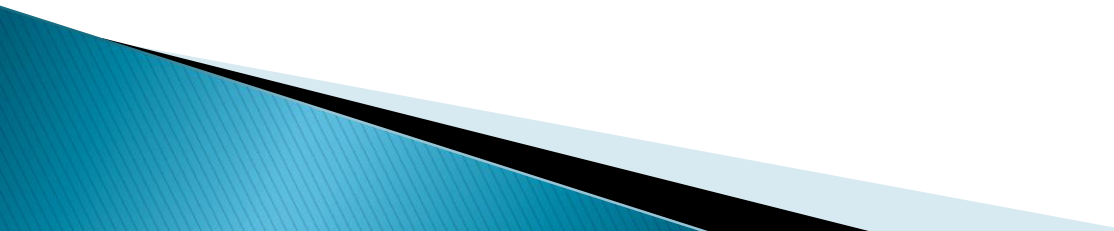
- ▶ **Leasehold Tenure**

- ▶ Leasehold tenure is the right to use land for a defined period of time in exchange for the performance of certain obligations such as the payment of rent. Leasehold rights provide a flexible mechanism for transacting rights in land and for land use control.

- ▶ **such forms of partial interest** as may be defined under this Act and other law, including but not limited to easements; and

- ▶ **Customary land rights**, where consistent with the Constitution.

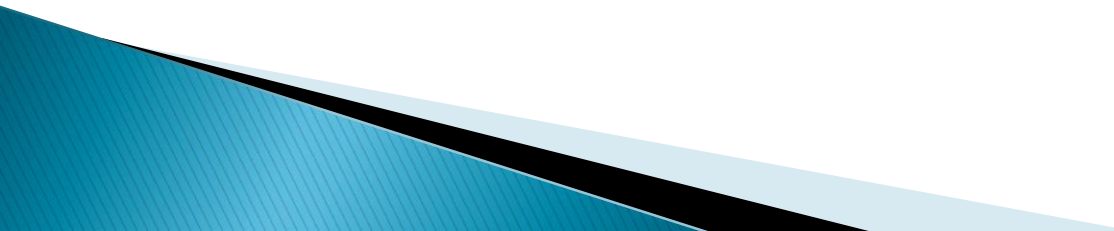
Types of Land Tenure Cont.

- ▶ There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.
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Under the Land Act, 2012 Title to land may be acquired through

- ▶ allocation;
- ▶ land adjudication process;
- ▶ compulsory acquisition;
- ▶ prescription;
- ▶ settlement programs;
- ▶ transmissions;
- ▶ transfers;
- ▶ long term leases exceeding twenty one years created out of private land; or
- ▶ Any other manner prescribed in an Act of Parliament.
- ▶

Land Tenure and Administration in Informal Settlements in Kenya

- ▶ Tenure for many who live and work in the informal settlements is insecure.
 - ▶ The primary constraint to the improvement of the living conditions of informal settlements is, and remains, insecure land tenure, affordability problem and the high standards set for housing, infrastructure and service provision.
 - ▶ To be meaningful, any slum upgrading programme has to ensure that land tenure is secured for the majority of residents. .
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Slums in Kenya are characterized by:

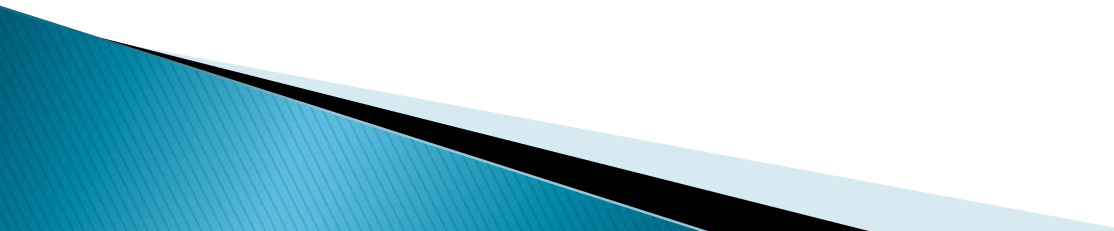
High population densities per unit area of land.

- ▶ According to the 2009 census, 55% of Nairobi's population occupies only 5% of the total land area of 680 square kilometers, mostly in the informal settlements;
- ▶ For instance, Kibera, the largest informal settlement in Kenya, measures approximately 2.5 square kilometers the density is 68,000 persons per square kilometer.
- ▶ Physical layouts are relatively haphazard thus making it difficult to provide infrastructure and related facilities without carrying out some demolition;

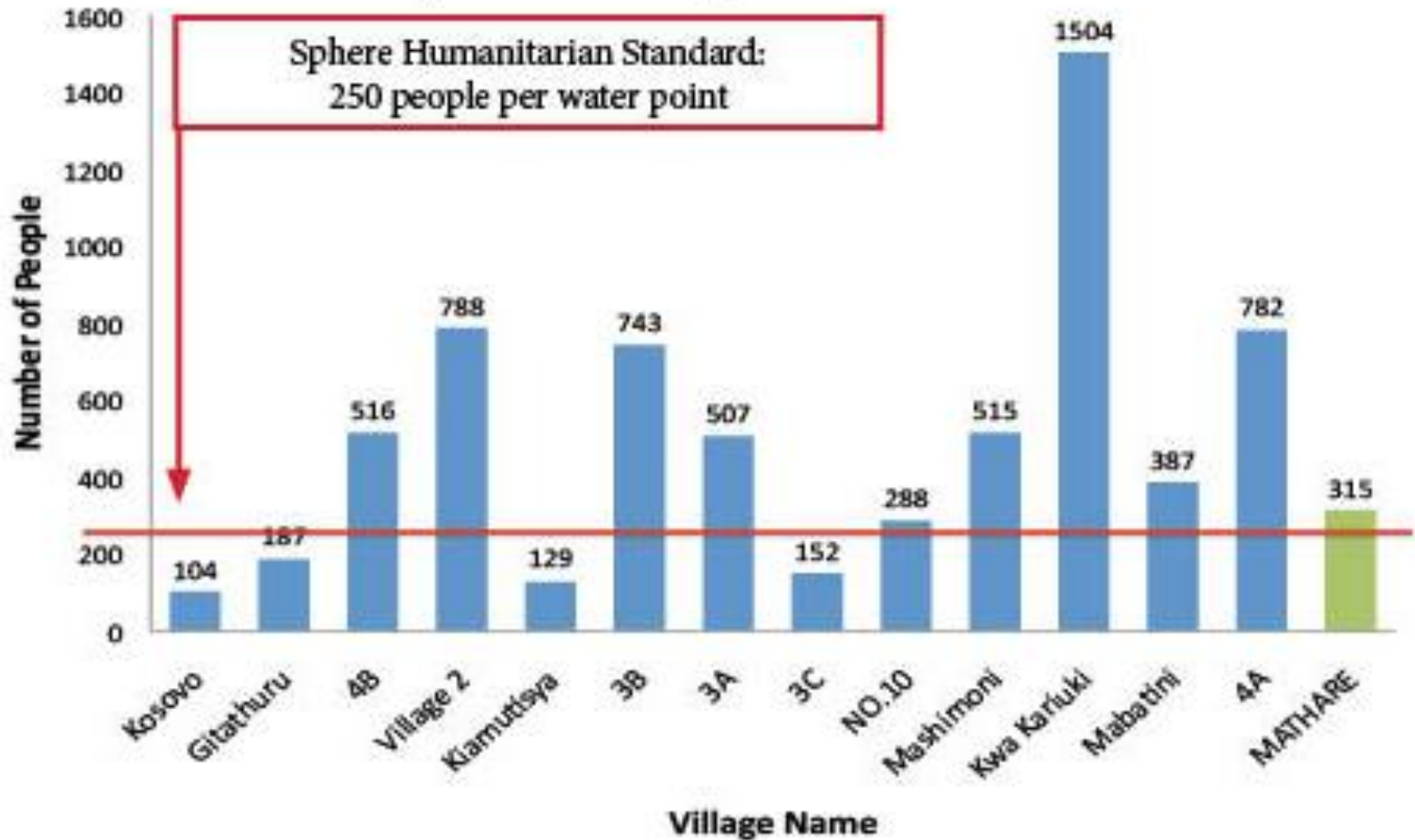
Urban services are minimal or non-existent



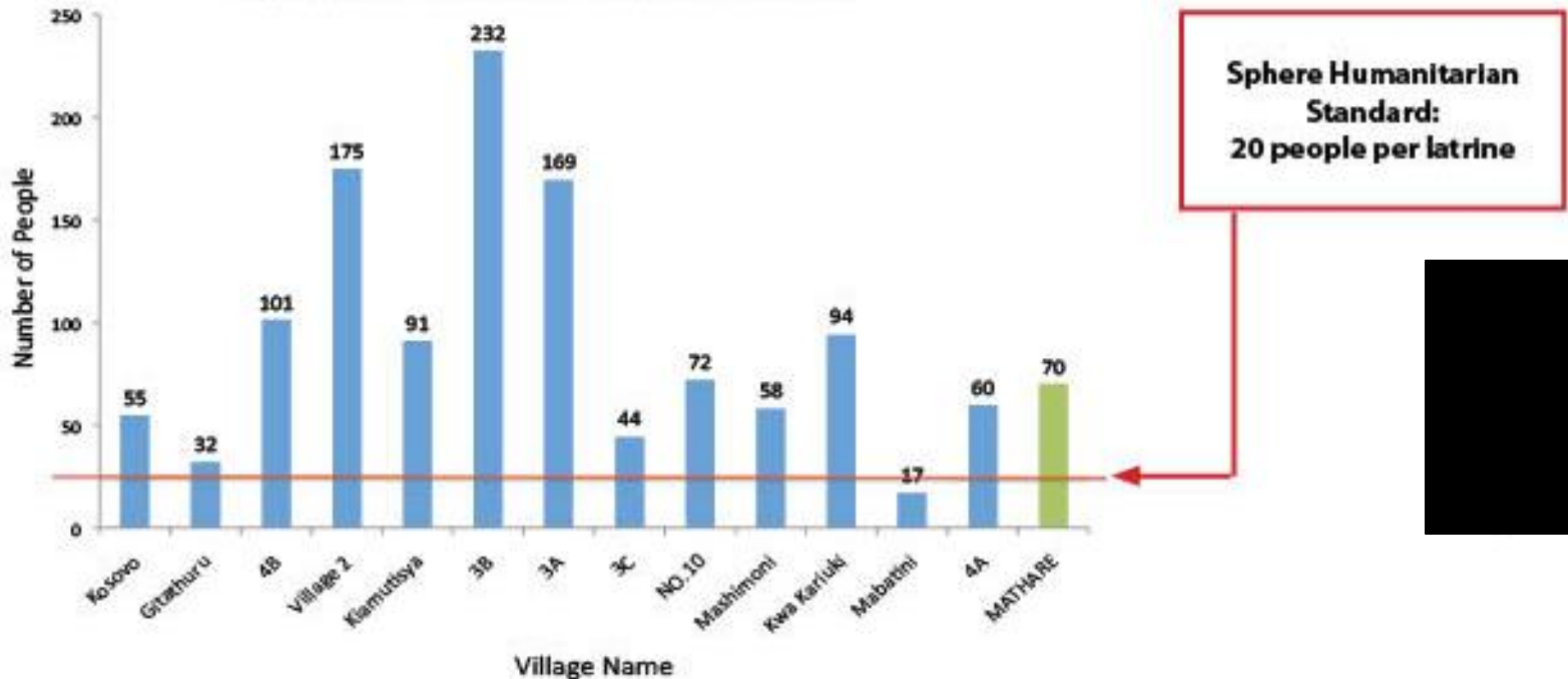
Slums in Kenya are characterized by: Cont.

- ▶ Housing structures are constructed largely of temporary materials in relation to building regulations;
 - ▶ Majority of the residents are low-income and high unemployment rates;
 - ▶ Majority of residents are tenants who outnumber owner residents at a ratio of 9:1.
 - ▶ 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.
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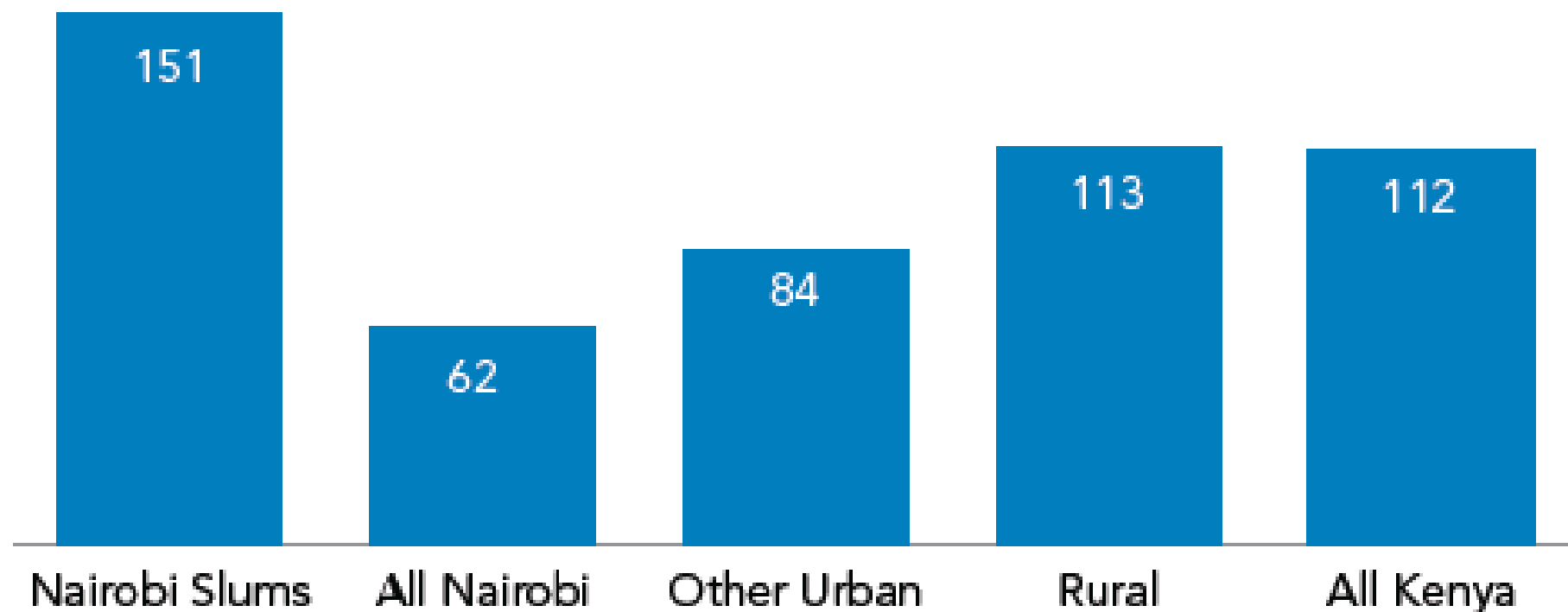
People Per Functioning Public Water Point



People per functioning latrine



Child Mortality Rate (Deaths per 1,000 Births)



Source: African Population and Health Research Center, *Population and Health Dynamics in Nairobi's Informal Settlements: Report of the Nairobi Cross-Sectional Slums Survey* (Nairobi: African Population and Health Research Center, 2002).

Land Tenure in Informal Settlements: From Legal to Illegal

- ▶ 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 subdivisions. However, there is still one title for the whole land and sub-titles will never be issued without planning approval.
- ▶ 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.

Tenure Systems in Informal Settlements

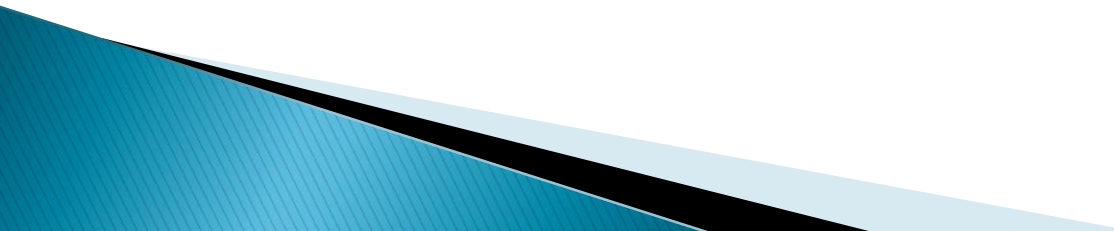
Tenure	Land Category		
	Public	Community	Private (Individuals and Institutions)
Legal (Formal)	Upgraded areas in former GOK land. (Pumwani, Nyayo Highrise, Decanting site- Kibera) Tenants/Sectional unit owners/ Sub tenants Upgraded areas in former Trust land.	Free hold areas (e.g Kisumu – Manyatta, Nyalenda, Obunga)	Site and service schemes
Quasi-Legal	TOLs by Chiefs, Parastatals, Local Authorities	Land buying Companies/ Societies (no individual titles)	Cooperative land (some Mathare villages), Temporary leases.
Illegal	Squatters, Invasions, IDPs,	Squatters, Invasions	Squatters, Invasions, IDPs

Issues / Interventions (Land Tenure and Administration):

Visible & Invisible Eviction

- ▶ **Double land allocation of land by the chiefs and other levels of Provincial Administration in collaboration with the city council , Ministry of Lands, other ministries and Office of the President.**
- ▶ **Evictions in the informal settlements and places where the government is doing any form of development.**
- ▶ **Corruption where high ranked officials change the land use from public to private without following any legal procedure .**
- ▶ **Land grabbing and invasion usually organized by politicians, and land brokers using the poor as shield.**

Tactics used in Land Invasion (Ngwata)

- ▶ Exploitation of asymmetric access to information and proximity to policy makers:
 - ▶ Formation of the amorphous Ngwata land association to avoid litigation:
 - ▶ The use of courts to resolve disputes between the Central Government and the Ngwata land
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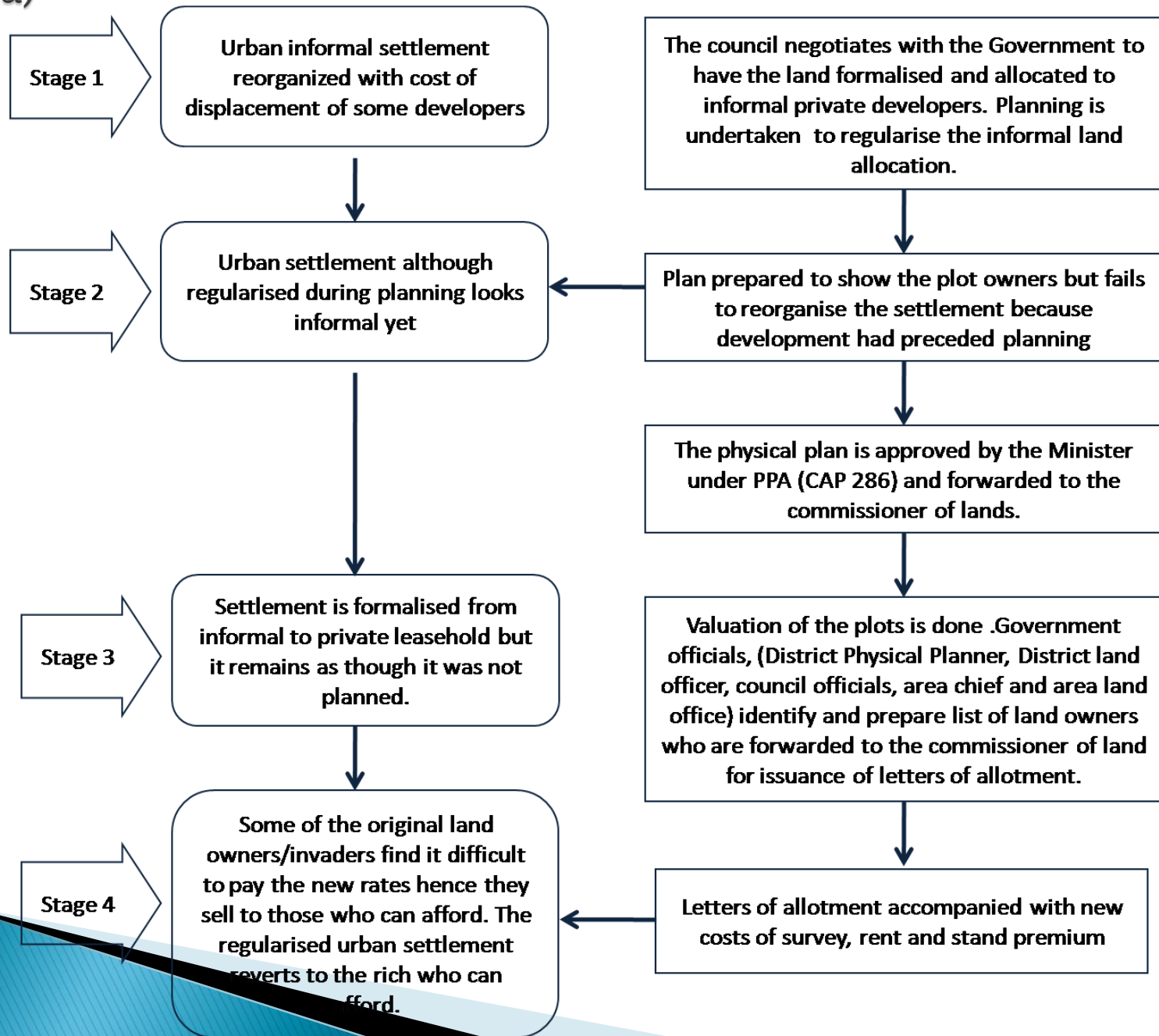
Tactics used in Land Invasion

- ▶ In some cases developers go to so far as to “buy” the lawyers defending the public interest and win the case on technicalities.
- ▶ Deliberate delay to either forestall the demolition of private development.
- ▶ Use of political power to coerce original land owners to relinquish interest.
- ▶ Institutional Friction between National and Local Agencies.
 - The Mavoko Municipal Council officials were reluctant to demolish the buildings even after the Central Government had made it clear that land was required for the Weigh Bridge and road widening.
- ▶ Intense lobbying from the Ngwata, association and politicians eventually led the Government to formalize some of the land in Mulolongo

Implications of Ngwata model of Urban Formation

- ▶ Community facilities are not provided for.
 - All plots were allocated as residential or commercial.
- ▶ Plots lack essential infrastructure i.e. drains, water connection, road reticulation, sewerage facilities, waste disposal sites, recreation facilities e.t.c. hence a health hazard.
- ▶ The lack of security of tenure tends to encourage informal development.
- ▶ Lack of fixed survey and proper records encourage disputes.
- ▶ Land certificates not recognized by lending institutions

Process of Formalizing the Informal Settlements (e.g. Mulolongo & Tassia)



Cost of Formalization

(Under GLA (PPA (cap 286) Cap.280), RTA (Cap, 281) & LGA (Cap. 265) –

ITEM	REQUIREMENT	COST
1.	Original certificate (Transfer)	Kshs. 37,000
2.	Land be Surveyed	Ksh. 60,000
3.	Submit Building Plans	Ksh. 120,000
4.	Local Authority charges, EIA, Physical Planning charges	Ksh. 62,000
5.	Stamp duty and Other Charges to Col	Ksh. 60,000
	Total	Ksh. 339,000

Note: Letter allotment comes with conditions of development and payment of rates

Peri-Urban Tenure Consolidation and Change in Mulolongo

Method of Land Acquisition	%
Allocated by MMC	12.9
Bought from 1 st Owner	41.9
Bought from 2 nd Owner	38.7
Bought from 3 rd Owner	6.5
Total	100

Other Costs of Formalization of Informal Development

- ▶ *Cost of Infrastructure* – pressure to extend infrastructure/ deferred to Government
- ▶ *Cost to households* – commuting, lack of public services/ dispersed facilities: education, security, health, infrastructure) –
-- *Trouble in paradise*
- ▶ *Social Cost – Breakdown of families losing land and possession*
 - *(Family breakdown, divorces, etc.)*

▶ THANKS