



'Promoting Institutionalization of the Social Tenure Domain Model (STDM) for improved Tenure Security and Inclusive Planning for Sustainable Urban Informal Communities'

Guidelines towards a National Strategy for Uptake of Fit for Purpose Tools



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II. ABBREVIATIONS & ACRONYMS

ASPM	:	Adaptive Settlement Planning Model
ADRM	:	Alternative Dispute Resolution Mechanism
CCO	:	Certificates of Customary Ownership
CGA	:	County Government Act of 2012
CLA	:	Community Land Act 2016
COK	:	Constitution of Kenya (2010)
CONAREF	:	Coordinator for National Committee on Land Reform
ELCA	:	Environment and Land Court Act No. 19 of 2011
FFP	:	Fit- For Purpose
FGD	:	Focus Group Discussion
FLTA	:	Flexible Land Tenure Act
FLTS	:	Flexible Land Tenure System
GLTN	:	Global Land Tool Network,
GPS	:	Global Positioning System
HPK	:	Housing Policy of Kenya
KAA	:	Kenya Airports Authority
KENSUP	:	Kenya Slum Upgrading Programme
KISIP	:	Kenya Informal Settlement Improvement Program
LADM	:	Land Administration Domain Model
LAS	:	Land Administration Systems
LIMS.	:	Land Information Management System
LIMS	:	Land Information Management
LRA	:	Land Registration Act 2012
LSA	:	Law of Succession Act Cap. 160
MPA	:	Matrimonial Property Act 2013
MWPA	:	Married Women's Property Act
NCKK	:	National Council of Christian Churches of Kenya
NHAG	:	Namibian Housing Action Group
NLC	:	National land Commission (NLC) Act of 2012
NLP	:	National Land Policy
NRA	:	National Reconstruction Authority
NSUPP	:	National Slum Upgrading and Prevention Policy
OCPD	:	Officer Commanding Police Division
PGIS	:	Participatory GIS
PLUPA	:	Physical Planning and Land Use Act of 2019 #
PT	:	Pamoja Trust
SPA	:	Sectional Property Act of 2019
STDm	:	Social Tenure Domain Model
UACA	:	Urban Areas and Cities Act No 13
UHRRP	:	Urban Housing Renewal and Regeneration Policy of Nairobi City County

III. EXECUTIVE SUMMARY

This Framework Document bears a specific approach. Informal urban development is said to be a function of planning or lack of it, but often it is important to remember that planning is politics, and the political decision making as researchers in land use management aver, will only be legitimized if the public is truly engaged in the process. “It is thus imperative that the planning process be transparent and inclusive and that citizens be encouraged to fully participate”. As the numbers of urban dwellers increase the need for urban planning is ever more urgent. It is widely accepted that it is a challenge for governments to plan and manage informal settlements and the people in them are often overlooked and excluded. Lack of tenure security is often a very central characteristic of these settlements and so is poor housing and infrastructure.

Given that conventional planning systems and tools do not exhaustively address the complexity of informal tenure in urban spaces, innovative alternatives are necessary to secure land rights for all. One such innovative alternative is the Social Tenure Domain Model (STDM). STDM a tool developed by the Global Land Tool Network seeks the recognition of the need for legal pluralism and a broader recognition of person-to-land relationships. Pamoja Trust has been implementing this framework in informal communities in which it works and evidence suggests that this tool heralds new hope for off-register communities and inhabitants of communal areas who lack security of tenure.

Kenya’s National Land Policy and related legislation frames an institutional design which if nuanced can provide enablers for institutionalizing STDM. Because of the compelling need to balance STDM’s ambitions with the real-world constraints this framework document starts with a brief debate on the tenure security imperatives in the urban setting introducing in the process the purpose and objectives of this assignment.

- a) **Chapter One** then examines through a robust discussion the context and dimensions of tenure reforms and land policy debates that have dominated national discourse among policy actors in the wake of urban complexities in Kenya.

- b) **Chapter Two** identifies and outlines the commitment to formalizing informal tenure in Kenya's law and policy pinning down the place of STD M in current policy, institutional and regulatory framework including emerging jurisprudence in Kenyan Courts.
- c) **Chapters Three** outlines the value and relevance of STD M, the concept and who it targets, its benefits and advantages and how we can make it work. This Chapter examines how STD M relates to conventional land administration principles to make a case for its adoption
- d) **Chapter Four**, pins down a raft of guidelines and processes that can help the state to institutionalize and implement STD M to expand the opportunities for STD M to help communities plan and secure their tenure based on the experience of Pamoja Trust.
- e) **Chapter Five** defines a possible strategy for institutionalizing STD M in Kenya. It identifies resources that may be required and the ways in which the County and National Government are legally obliged to consider the rights of communities living in informal settlements/communal areas as well as the many potential tools from STD M that can produce results in a local setting. State institutions that deliver conventional land administration processes are identified with the possible roles that each may play in delivering STD M. Basic strategies around Co-Planning, Co-Design and Conflict Management are weaved in this chapter around the two themes of communication and funding possibilities.

IV. IMPROVING TENURE SECURITY IN URBAN INFORMAL SETTLEMENTS: STRATEGY & GUIDELINES STUDY

4.1 Background

The expansion of human settlements in recent times and more so urban areas has often been described as some form of crisis. According to the World Bank, the rate of urbanization in 2017 was 26.49%, up from 22.42% in 2007 (World Bank, 2018). What is worrying is that, of the total urban dwellers, 56% of urban dwellers live in informal settlements (UN, 2015). Further, in cities like Nairobi, informal settlements occupy a small fraction of the total landmass that is available for human habitation. This has resulted in skewed urban planning and inequitable resource allocation, which exacerbates the crisis of human dignity.

For Pamoja Trust the problem of urban areas is myriad and speaks not to some natural consequences of urban growth, rather the major problem seems to be the inability of the dominant tools of planning and land regulation to guide and foster inclusive urban governance. During the formulation phase of the National Land Policy, the need for considering Free Open Source Software based National Land Information System (LIMS) solutions for managing formal, customary and informal land rights was mooted (Mc Laren 2009). The idea was to Create and sustain land information in a Land Information Management System that is comprehensive, transparent and easily accessed by all stakeholders (ibid). Despite this recommendation, Kenya still lacks a formal land and property register for documentation of property development (Ouna, 2017).

Existing records have largely focused on the spatial extent of the land and fail to appreciate tenure relationships, which are particularly complex in informal settlements. The development of a proprietary NLIMS is however a step towards addressing this. However, the overlapping roles between the National Land Commission and the Ministry of Lands has seen the development of two parallel systems that are meant to address the land digitization question. But even then, the systems have largely focused on Government and Private land, with no consideration for informal settlements, which are considered as unplanned homogenous blocks.

It is for this reason that Pamoja Trust and the Global Land Tools Network (GLTN) have worked together towards localized modification and application of various tools that can capture the local realities and situation of the many urban dwellers at the risk of being left behind.

4.2 Partnership with GLTN in Improving Tenure Security for the Urban Poor.

Working with GLTN, Pamoja Trust has made use of the STDM to define context specific modes of understanding land tenure relations and claims. In so doing, the tool has not only contributed to reduction of conflicts and anxiety over land tenure relationships but also fosters innovative models of securing tenure security in lieu of award of ownership rights.

Since 2013, GLTN has supported Pamoja Trust in building the capacity of county and community stakeholders in informal settlements in Nairobi and Mombasa (Mathare, Kwa Bulu and Mashimoni) to use STDM for encoding of land information. So far over the years in different phases, over 1000 community members have been trained on the use of STDM. In addition, three resource centers have been established in the three settlements where community members can easily access their data. Pamoja Trust has also adopted STDM as part of its advocacy strategy in other programs and there has been uptake on the same in projects such as the Adaptive Settlements Planning Model (ASPM), which was implemented in 13 Counties across Kenya. Further, key stakeholders in the county and national government' department of land as well as key state institutions such as the National Land Commission have been engaged in the use and experiences of the STDM model.

In Mashimoni, residents are leveraging on the data in the STDM database to negotiate for tenure regularization through the Kenya Informal Settlements Improvement Program (KISIP). But the greatest result from the last two phases of implementation was the production of Certificates of Occupancy for residents of Kwa Bulu settlement in Mombasa. In a ceremony that was held on 11th July 2017, the County Government issued 977 Certificates as a move that towards registering the residents' individual legal claim over the land. This created an opportunity for the titling process that is currently underway. In addition, the partnership has also created working relationships with, organized community groups and influencers, County and National Governments as well as university students.

4.3 Collaboration in Upscaling and Institutionalizing the Social Tenure Domain Model.

Pamoja Trust seeks to secure these lessons, experiences and partnerships and use them to gain new ground for upscaling institutionalization of STDM in 3 levels as described below: At the meso and macro levels, the focus has been on extending the conversation on the importance and relevance of the Social Tenure Domain Model as the best fit response and model for integrated and sustainable use. Pamoja Trust has engaged County Governments of Nairobi and Mombasa counties as well as the National Government through institutions that include the National Land Commission and the Ministry of Lands and the Ministry of Transport, Infrastructure, Housing and Urban Development. Government Governments in especially developing areas have been grappling with the challenges of planning and providing for the ever dynamic and complex urban spaces in towns and cities. These challenges have mainly been caused by lack of modern, flexible systems and infrastructure within these governments to support the same. We believe that discourse with our county and national governments will result into flexible institutional arrangements, integration of STDM within the legal framework and the land information and management processes, standards and dissemination systems, and that STDM will be the employed as the main technology required to support allocation, land markets, valuation, control of use, and development of interests in land.

At the micro-level, we have engaged with informal communities in Nairobi and Mombasa in capacity building and advocacy activities. Emerging results from these engagements has been leadership from informal communities in Kwa Bulu, Mashimoni and Mathare 4B trained and supported to advocate for tenure regularization of their settlements using STDM, facilitation of engagement with government officials from Nairobi and Mombasa as well as creation of opportunities for communities and their governments to deliberate and negotiate on matters relating to attainment of their tenure security. An interesting outcome of this micro-level engagement has been the formation of STDM teams comprised of youth from the target settlements who have been engaged in capacity building and advocacy around STDM with the aim of creating space for youth to engaged in tenure matters in their communities.

4.4 Purpose, Scope and Objective of the Study

The main purpose of the assignment is to develop a national strategy that will inform and provide guidelines to government on the institutionalization of the STDM within national legal and policy framework. Specifically, the study;

- a)** interrogated the existing framework and identified challenges and gaps that STDM can respond to,
- b)** engaged with Pamoja Trust's STDM work and documented best practices from Nairobi and Mombasa counties,
- c)** engaged with stakeholders across micro, meso and macro levels in deliberations around the STDM tool and process
- d)** made recommendations of guidelines that will ensure the institutionalization of STDM
- e)** presented a draft National Strategy to various stakeholders in multi-stakeholder platforms and conferences.

4.5 Methodology

The study took a cross-sectional design where data was collected at only one point in time to provide a snapshot of the issues under investigation. Based on this understanding, the design had qualitative approaches mostly rich in-depth information from literature review and the experiences and perceptions of key respondents from the communities and the Reference group meetings that constituted the Focus Group Discussions (FGDs).

4.5.1 Data Processing & Analysis

The data collected was collated, analyzed and verified in order to make inferences, judgments and conclusions that are as accurate as possible.

4.5.2 Data Quality, Validation and Dissemination

The quality of the data benefited from three Reference Group meetings facilitated by Pamoja Trust at which implementing groups helped the consultants to eliminate

interviewer bias but also helpful in validating the experiences. Participants to the reference focus groups provided their perspectives and validated the findings based on their professional experience. Pamoja staff read the draft report and provided comments and suggestions to improve the report and framework.

4.5.3 Final review, editing and submission of Guideline

The consultancy team reviewed the report to incorporate new issues arising from the validation forum, edit the report and submit a final version, along with all electronic, audio-visual data materials.

4.6 Approach in Delivering the Assignment

4.6.1 Community Meetings to Document Best Practice

On November 4th 2020, a tripartite session of Pamoja Trust, Community and the County Government of Mombasa met in Mombasa to review how STDM had been implemented at Chelanga, Mnazi Moja, Kwabulo and Mwakirunge. The community and government representatives enumerated their experiences on the Kwabulo settlement following a Court Case pitting the community and the land owner that Government appealed to protect the land from being sold to an outsider. After a valuation that was ordered following a caution by the then Minister for Lands James Orengo a PDP was recommended. Community engagement, surveying and planning followed. Details of these practical steps are outlined in the Guideline section.

4.6.2 1st Reference Team Focus Group Meeting: Deliberations on Policy Paper on STDM

A Policy Paper focusing on “Improving Tenure Security and Inclusive Planning in Informal Settlements through the Social Tenure Domain Model (STDM)” commissioned by Pamoja Trust and developed by Prof. Oyier was the subject of the Reference Group’s first meeting¹ that took place on 9th November 2020.

¹ See Annex 3 for list of Participants

The rationale for Pamoja Trust in commissioning this policy study was to boost efforts that seek to institutionalize STDM as an approach to adaptive settlement planning given the changing context of the city overtime punctuated by rampant evictions and unequal distribution of both resources and infrastructure development due to the tenure challenge in the informal settlements. Noting that promoting inclusive land governance and management procedures provides a solution to these challenges and STDM stands out as one of the tools whose foundation, operation and process can respond to these challenges, it was crucial that STDM is ingrained in the National Land Policy review process to situate land administration and management in informal settlements in the legal, regulatory and institutional frameworks.

The draft Policy Paper is a contribution to the national policy review for greater recognition of informal settlements and low income areas. Problems of security of tenure date back to the 90s when National Council of Churches in Kenya (NCCCK) condemned massive evictions that took place at Moroto at a time when right to own property in Kenya was facing a crisis as only a few people enjoyed the ownership rights. To restore sanctity on property, evictions were ordered by the property class. *According to Shawn Lock's understanding of society, every person has a right to liberty, life and own property however, if most people in a country don't own property then the right collapses.* Similar evictions took place at Mitumba which became the subject of Court action highlighted within this report.

STDM is a tool that is able to respond to such challenges by recognizing the different bundles of rights to land i.e. right to own, access, use, inherit and manage land despite the level of informality. This is in line with efforts of the Global Land Tool Network which advocates for development of land tools that are fit for purpose, gender responsive and inclusive and that provide for viable and cheaper land reforms in order to meet SDG goals. GLTN seeks to promote institutionalization of STDM in Kenya as it has been done in Uganda where it's being used in giving customary certificates of ownership to communities residing on customary land and in Nepal where municipalities adopted the STDM in collecting information of communities living on complex spaces.

4.6.3 Key outlines of the Policy Document

The policy document:

1. Interrogates various legal and regulatory frameworks i.e. Constitution, land policy, National Slum Upgrading and Prevention Policy, Urban Housing Renewal and regeneration Policy, Public participation policy, Urban Areas and Cities Act, Sessional property act, Land registration Act, Community land Act, Physical Planning and Land Use Act, Environmental Management and Coordination Act, Land Act in the country to identify barriers, challenges, opportunities and gaps STDM can respond to.
2. Demonstrates how STDM responds to land governance, public participation, land administration, documentation of interest over land, land management, equitable and sustainable land use.
3. Depicts how STDM provides system for physical planning, speaks to service delivery, supports dispute resolution, zoning, redevelopment and infrastructure development
4. Depicts how STDM responds to National Land Commission Act as an institutional framework.
5. Demonstrate STDM as an advocacy tool supporting land and property rights

4.6.4 Reflections on the policy paper

A detailed glance by the experts on the policy paper document revealed that the paper;

1. Ought to provide a more detailed contextualization of the STDM process in Kwabulo and Mashimoni. A more conversational approach on ground-truthing the lived experiences of Kwabulo and Mashimoni would reveal how STDM legitimizes individual house construction while further influencing land use in Kenya. This should help highlight how STDM can be made adoptable based on the experiences of Kwabulo and Mashimoni.
2. Needs to relay how STDM can respond to the mandate of the National Land Commission on matters land allocation, land management and further needs to show the relation between STDM and various state led programs.
3. Should be detailed enough to support the development of a national strategy that can inform the guidelines of the state on how STDM can be institutionalized in the national framework
4. Should further interrogate institutional frameworks STDM addresses or can address and identify spaces that need to be invented for STDM to respond to varied issues.

5. Should address barriers that might be existing in the policy, legal and institutional frameworks

4.6.5 2nd Reference Team Focus Group Meeting: Deliberations on STDM Framework

The second reference team meeting² held on 20th November 2020 via zoom deliberated on the concept and process of the Social Tenure Domain Model (STDM) as well as experiences from the pilot projects in Mombasa and Nairobi. Special focus was given to Chapters 2 and 3 of the policy paper which deal with Land Administration Policy and Legal Framework and The Concept of Social Tenure Domain Model respectively. Participants then interrogated the roles of land-related policies to defend land rights through the rule of law or administrative procedures in conformity to globalization processes, national economic growth, and the development of democratic society. Diana Wachira and Sally Miruri made presentations on STDM and Enablers of STDM in the legal framework respectively.

4.6.6 STDM: Purpose and Scope

In collaboration with Global Land Network, PT has been advocating for STDM as a tool best fit for improvement of tenure security especially for informal communities. STDM responds to challenges in the informal urban as it is able to capture local realities and situations, in this way understands the informal tenure relations and claims. STDM can broaden the scope of land administration by providing a land information management system that is based on the continuum of land rights. Primarily, STDM captures the land rights that are not currently captured by conventional land rights. These informal rights include occupancy, adverse possession, tenancy, use rights, and customary rights... The purpose of this system is to integrate formal, informal and customary land rights and systems within the current land and administrative systems for attainment of tenure security as well as inclusionary planning.

4.6.7 STDM: Process and Content

STDM cannot work in isolation and needs to be captured within the existing policy and legal structure. The Social Tenure Domain Model (STDM) is a refinement of the Land Administration Model through the identification and inclusion of informal land rights and tenure. As a concept, a model and a process, STDM is imbued with five main steps process-wise namely; inception phase, problem identification, data and information

² See Annex 4 for List of Participants

gathering, analysis and proposal development and plan validation. This process aims to shape development strategies, influence community vision and adaptive standards while building sustainable communities and settlements. STDM as a model is flexible in that it is adaptable to different needs and capabilities which include:

- i. Recognizing informal tenure arrangements based on the continuum of land rights
- ii. Unpacking existing social tenures
- iii. Opening options for innovative and incremental approaches to improving tenure security utilizing conversions
- iv. Giving a snap-shot of the 'people-land' relationships at any given time.

STDM aims to model the relationship between people and land. This relationship can be supported by documentation which could be in the form of a sketch, photo, video audio etc. This then makes it a very unique feature as it allows for the recognition of various social tenure relationships including use rights, occupancy, ownership, customary tenure, common land among others.

4.6.8 Invited Spaces for STDM

The meeting was introduced to sections of the law that anchored STDM in the current legal and policy framework. The Social Tenure Domain Model should be considered in the policy space because it seeks to fill the gaps present in the conventional land administration systems. Review of policies has identified several enabling spaces within our current existing legal space. Analysis of these enabling spaces was based on analysis of two key policies as outlined below; The Constitution of Kenya, 2010 and the Land Policy 2009.

The Constitution under Art 40(4), makes provision for compensation to be paid to 'occupants in good faith' for land acquired under clause (3) who may not hold title to the land. The term 'occupiers in good faith' tries to bring an aspect of 'invisible rights' which is a key component of the Social Tenure Domain Model. In the National Slum Upgrading and Prevention Bill 'invisible rights' are defined as 'differentiated land rights'. The policy refers to "different rights to land, these include ownership (freehold, leasehold, community ownership and public ownership, and user rights, temporary, occupation license, leases and access rights etc.). The National Land Policy, 2009 incorporates the term 'use of land' under land tenure. This means that use of land can exist without other rights such as acquisition, disposal and transmission.

STDM Principles of inclusivity, land management and dispute resolution are mentioned in other policies concerning land. The land policy has identified gaps brought about due to absence or lack of adherence to the aforementioned principles. The policy has proposed a Land Information Management System (LIMS). The Social Tenure Domain Model is also an information system that not only complements the LIMS but also identifies the gaps identified by the policies, but also propagates the principles clearly outlined under the Land Policy. This is more evidence of STDMs complementary nature to the Land Policy proving that it can indeed find space within our current policies.

4.6.9 Reflections on STDM and Guideline Development

There was need to find a place for land tenure reforms overall in this discussion. What land reforms are taking place? Why is formal tenure more recognized, supplied and serviced to the detriment of informal tenure. How can off-register communities demand tenure support? Who generates demand? Community or Local Government or both? How can land administration be democratized to erase the tension between the state and informal occupiers of land? Are existing policies flexible and amenable to incorporating STDM? STDM can cure the data challenges in the land registries that are mostly overlapping and out of date by building on the resource centres established by Pamoja Trust. State can adopt STDM and regularize informal tenure and the certificates of occupancy as well as complement the LIMS.

4.6.10 STDM provides an avenue for participation

Land reforms have the potential of stirring conflict over ownership. These reforms are however needed since there are cases where settlements are on land owned by other people. STDM should focus on dispute resolution. A case study of Thailand shows the need for engagement between the settlement and landowners. The STDM process should also be structured as a negotiation tool in cases where settlements are found on environmentally fragile areas and in cases where the reform process is affected by political interference.

STDM ought to focus on averting potential conflict over land ownership and for mainstreaming rights and access to service and resources. It has also incorporated the co-planning and co-design approach. **“Conventional planning approach does not have adequate and strong participation but STDM has provided a profound avenue for participation hence averting conflict.” Dr. Musyimi Mbathi.** The outcomes of the STDM ought to be of spatial relevance. These outcomes include spatial justice, spatial sustainability, spatial resilience and spatial quality. The outcomes are essential to ensure STDM meets the needs of our communities, especially within the informal settings.

From the experience of Caleb Ngala of Mathare 4B, the STDM process should be insulated by ensuring that after the community is trained to engage with data collection that clear timelines are agreed to for the delivery of the tasks but that an information centre where residents can collect information and make inquiries should precede the training to avert rumors about the process. The process should be made more credible by guaranteeing the safety of personal information collected.

4.6.11 STDM can help County Governments Avert Disputes

Ms. Munupe mentioned that STDM is providing the Mombasa County Government with innovative solutions to averting disputes through Alternative Dispute Resolution. She also mentioned that in a bid to improve informal settlements, the County Government lacked capacity especially in terms of surveyors who would survey these informal settlements. The Social Tenure Domain Model is making work easier because it has already aided in the mapping of specific structures. Carrying out STDM in many settlements at the same time will also aid in dealing with the issue of squatters. This can be done through having a database that will eliminate double registration of participants since one's name will already be in the system. She highlighted that the issue of land reforms may be hindered by the fact that most informal settlement dwellers sell their land upon receiving titles. This results in these settlements being converted to high-rise dwellings (flats) which does not benefit the intended beneficiaries (slum dwellers). She added that the County Government of Mombasa was seeking to initiate the STDM process in Ndongo Kundu but they were informed that the settlement would be a pilot project done by the University of Nairobi. Ms. Munupe also commented on the numerous opportunities and potential presented by the Social Tenure Domain Model. This model could capture so much more including the issue of hawkers.

Mr. John Kahi from the Global Land Network shared his perspective, "STDM should complement the National Land Administration process and recognition of land rights. STDM should also be aligned to a land registration system that is inclusive, participatory and fit for all. The fit for purpose land administration approach at both the National and local level is a tool for an inclusive land registration system. At the local level, a localized approach to the local settlements can provide a road map for integrating data that has been collected locally to the national system."

Dispute resolution mechanisms at the local level should be formulated to sustain the STDM process. This should be coupled with sufficient capacity for all stakeholders to enable them to collect the information. GLTN also advocates for frequent review and

amendments of the existing National level laws in land rights. Information and lessons from the ground must inform these revisions and amendments. It is key for these aspects to be included in the STDM policy document. STDM certainly has leverage points in existing laws. It would be critical to cost the STDM process. These views were picked up for inclusion and strengthening of the Guidelines.

4.6.12 3rd Reference Team Focus Group Meeting: Draft Guideline and Nexus with Conventional Land Administration Tools

The draft framework was presented to the last Reference Group session that had online and offline participants for input and reflection. STDM and the 10 principles of land administration were introduced together with guidelines and procedures for recognition, allocation and recording of rights; transactions and public engagement. The mainstream system of landholding is unsuitable in situations that obtain in urban informal settlements. The poor have mechanisms by which they administer their land and other resources. "At Toy Market we have cards issued to every stall owner that the market management utilize to ascertain the credentials of each member whenever they seek loans that are charged on the business" Ezekiel Rema, Chair Muungano Wa Wanavijiji. Participants from the National Land Commission observed the need to ensure that any Guidelines developed:

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1. Capture challenges encountered in formalizing informal settlements from past experiences especially litigation from inside, outside or by politicians and mostly gatekeepers who are used by invisible hands
2. Design a clear process and procedure for managing public land/spaces that is created in the planning process between community, County or anyone else
3. Should deal with the possibility of change of use and offer guidelines such as what happened in Mathare 4A where residential housing was changed to commercial use
4. Incorporates the social housing concept and the emergence of high-rise buildings and notions of sectional property

On the questions of the human resources to do this, there is need to upgrade the community enumerators to para-surveyors who can be streamlined into statues of land administration. This requires surveyors and professional associations, planning schools and universities to be involved and the planning curricula broadened to include STDM.

V. CHAPTER ONE: CONTEXT AND DIMENSIONS OF TENURE REFORMS IN KENYA

5.1 Introduction

“Secure land and property rights are critical for reducing poverty and for enhancing economic development, gender equality, social stability and sustainable resource use. When land is poorly managed, the associated problems often lead to disputes, land degradation and lost socio-economic development opportunities. Secure land tenure and property rights can exist in a variety of forms.”³

“Secure tenure is, in part, a matter of perception and relationships of trust and it can be safeguarded by various mechanisms provided that the rights of land users and owners are clearly assigned. In addition to formal titles, security can be achieved through long-term rental contracts or formal recognition of customary rights and informal settlements. This range of possible forms of tenure has become internationally recognized as being a continuum, along which each form of tenure provides a different set of rights and different degrees of security and responsibility”⁴

The UN Habitat Report continues to confirm that Kenya has several major tenure systems. The first, freehold, defines rights and restrictions very well. Rights are only restricted through compulsory state acquisition in the public interest and based on fair compensation, for example as a result of planning and environmental requirements. The second tenure system is that of leasehold arrangements, where the leasehold period commonly varies between 30 and 99 years. Customary tenure is the third system, predominant in regions without ascertained individual rights under statute.

³ UN Habitat; Land Tenure Security in Selected Countries; Synthesis Report 2/2014

⁴ UN Habitat; Land Tenure Security in Selected Countries; Synthesis Report 2/2014

"Despite some improvements in tenure systems, tenure insecurity is still high in Kenya. It has different forms and is driven by colonial injustices (the concept of tenants of the crown, dispossessions) that were not properly addressed after independence and include land settlement programmes that continued after independence, special regulations for the coastal strip (ten mile strip), urban sprawl as well as competition between wildlife and human settlement needs. For leasehold land, tenure insecurity may be due to land grabbing, double land allocations and fraud, which result in conflicts and violent clashes. These conflicts are aggravated by the individualization of tenure of formerly customary lands; this is a new legal framework that does not sufficiently consider holistic indigenous tenure concepts. Corruption is also a major cause of insecurities."⁵

5.2 Are Tenure Reforms in Kenya necessary? Content, Approach and Target.

The disruption of customary land tenure systems by distortions imposed by colonialism led to a dual system of land relations in which areas occupied by settlers had their land governed by formal private property rights drawn from English law compared to areas whose establishment the colonial system engineered, i.e. enclaves variously known as "Native reserves" in which the African majority was shunted for easy governing and easy recruitment for farm labour. African lands were governed by customary law that the white settlers billed unsuitable and inferior to support modern development.

Owing to the fact that Kenya's decolonization process was an adaptive, co-optive and a pre-emptive process in which protection of the right to private property was an imperative to the conclusion of the Lancaster negotiations, the new power elites in accord with the accepted bargain were given access to the European economy and thus inherited political structures, institutions and economic production systems left by the British. The new ruling elite was co-opted by the outgoing rulers in a process that was geared towards preventing the mobilisation of a nationalist base that would be opposed to continuation of colonial policies after independence. Given that land was the basis of the nationalist push for freedom, the contentious politics that land provokes today must be understood by appreciating the divine and glorified position that land enjoyed, long before colonialism and independence as well as its centrality to spiritual and cultural lives of many local communities. The problems of availability, accessibility and use that are on the

⁵ UN Habitat; Land Tenure Security in Selected Countries; Synthesis Report 2/2014

increase have a lot to do with the increased inequalities created under colonialism that were passed on by the compromised nationalist movement and subsequent governments. Within our social and political system, land distribution, use and tenure is a national catastrophe and as the 2007 post-election crisis demonstrated, land management and administration must be consolidated, harmonised and integrated. The system of land administration whose net effect has been to perpetuate a dual system in which a small number of elite control large holdings of high potential land ('European economy') and a highly degraded subsistence periphery and fragmented small holdings operated by a huge African peasantry on the other is untenable.

In the urban environment unplanned proliferation of informal urban settlements and severe tenure insecurity thrives because the policy environment is designed to facilitate the development of the European sector of the economy by under-developing its African counterpart. Clearly then the target of land reforms must be the elite who engage in unproductive and speculative landholding, the lack of interface between rural and urban areas due to overlapping rights, those who disinherit women and vulnerable members of the community, injustices related to the privatization of public land through wanton and illegal allocation of such land to private individuals and corporations in total disregard of the public interest in the post-independence period to name the key land questions.

The content of any land reforms ought to focus on restoration of land rights to those that have unjustly been deprived of such rights and address circumstances which give rise to lack of access to land and security of tenure including injustices linked to history. A recognition that the lack of access to land may be due to unfair Governmental policies and laws underscores the need to go beyond conventional land administration systems.

5.3 Why have tenure reforms been marginal in Kenya?

Whereas conventional land administration systems are not designed to include all forms of tenure, the need to consider customary and informal tenure is not always recognized and neither are institutional changes that address these limitations easy to implement. The Social Tenure Domain Model is a pro-poor land tool in the rubric of Land Administration Systems (LAS) that, "allows for the recordation of all possible types of tenures"⁶

⁶ The Social Tenure Domain Model: A Pro-Poor Land Tool, Christiaan Lemmen; 2013

Complete coverage of all land in a Land Administration (System) is only possible with an extendable and flexible model that enables inclusion of all land and all people within the four land administration functions namely land tenure, land value, land use and land development. The conventional 'parcel approach' that depends on traditional land survey that is costly and time consuming remains largely unsuitable in situations where there is little or no land information or where value, use of land and land development plans need to be managed. STDM presents the flexible option for identifying various kinds of land tenure in informal settlements and customary areas. (Lemmen C, 2013)

In recognition of the complex urban problems, Pamoja Trust and the Global Land Tool Network (GLTN) have worked together towards this localized modification and application of various tools that can capture the local realities and situation of the many urban dwellers at the risk of being left behind. A sustained advocacy for the adoption of STDM, as part of the Adaptive Settlements Planning Model (ASPM), is currently being implemented in 8 Counties across Kenya.

In Mashimoni, in Nairobi residents are leveraging on the data in the STDM database to negotiate for tenure regularization through the Kenya Informal Settlements Improvement Program (KISIP). In Kwa Bulu settlement in Mombasa 977 residents were issued with Certificates of Occupancy at a ceremony held on July 11, 2012 by the County Government of Mombasa in preparation for formal registration of individual claims over the land. Training on the use of STDM and establishment of resource centres has marked these interventions. Plans to incorporate STDM in the SymbioCity planning approach is underway with the local implementing agency in Meru.

5.4 Contemporary Land Policy Debates in Kenya: Tensions among policy actors that attend to Land Reforms

Kenya a country with a history of settler colonialism, labour migration, and land dispossession that has produced a dual land administration system is home to enduring tensions between state control of land and tenure reforms that vest rights on people living on land or between class agendas (and therefore models) of reform that explain the populist redistribution or more limited, elite approaches that attend to land reforms. (Akoth S., Ochieng P., Unpublished paper, Some thoughts on Community land law legislation and protection of the poor from markets; 2012). While for the urban poor in

the urban informal settlements and millions of residents in rural, peri-urban and customary informal settlements land administration systems are seen as a preventive measure that should protect them from being dispossessed by market forces and to secure their material basis, the state and the landed elite see registration, freehold tenure and market mechanisms as the only way to guarantee development. The friction between tradition, custom and constitutional rights finds explanation in these binaries.

5.5 Complexities of Urban informal tenure

"On Monday May 4, 2020, the Government's public front of impunity imploded when the Nairobi Water and Sewerage Company rendered more than 5000 families homeless by mowing down all their houses in an atrocious demolition at Kariobangi North in Nairobi. Not even the raging floods and the heavy rains or the life threatening spread of the COVID 19 for which the same government has imposed draconian policy measures or even the ongoing Holy Month of Ramadhan for Muslim families or a Court Order that stopped this eviction, stood in the way of the demolition crew. Not even the plight of the elderly, the mothers, the children and people with ailments could deter the Area DC and the OCPD who gave the residents a 24-hour Notice from ordering the bulldozers to bring down the houses under the supervision of Police in uniform.

The evicted residents were owners of allotment letters awarded to them two decades ago and for which they had been paying rates to the Nairobi County as they await official titles. Land and Housing CS, Farida Karoney, her Water, Sanitation and Irrigation counterpart Samson Chelugui, the Deputy County Commissioner Nairobi, the Registrar of Titles, the Chief Land Registrar and the Attorney General are respondents in the suit the residents filed to contest the eviction at the Land and Environment Court. The order stopping the eviction by Justice Samson Okongo served on these respondents in July last year has been dismissed just like the many provisions of the Constitution as well as the vagaries of the moment. All organs of government have not spoken about this terrible inhumane and degrading treatment in the midst of a pandemic." (Press Statement by Kenya Tuitakayo Movement to condemn the brutal eviction, May 2020). A human rights survey KTM commissioned to monitor human rights violations during the COVID response confirms:

"Cases of evictions by landlords are on the increase for nonpayment of rent due to the difficult economic times following the lockdown and for every resident the study interviewed 39% had witnessed an eviction take place in their neighborhood, 61% had not. For those that had not witnessed an eviction, 80% had seen tenants being locked out, 25% saw family items being confiscated, while 18% saw doors being removed, 13% saw a section of the roof being vandalized as punishment, 10% disconnection of electricity, 4% disconnection of water while 3% saw windows being removed." (Excerpt of Situation Room Report on Human Rights Situation in the COVID Response Week 2 May 2020)

5.5.1 Kwa Bulu Settlement, Mombasa County

Kwa Bulu is an informal settlement, which is located in Mombasa County in Nyali Constituency, Kadzandani ward. The settlement measures 86.84 acres of land on plot number 391/1/MN, which originally was 181 MN and 187 MN. Issuance of the certificates was a culmination of a long journey towards tenure regularization for Kwa Bulu Settlement. The STDM tool has been critical to the process as it has enabled the residents to register their interest in the land, thereby guaranteeing them some bundle of rights over the land. It must be appreciated that these Certificates are not in themselves land ownership documents. Rather, they offer the individual an assurance of a particular bundle of rights over the land. This could include but not limited to access rights and user rights. Issuance of these certificates is part of the journey towards regularizing the tenure conditions for the residents of Kwa Bulu, even as the process of preparing title deeds is explored. Further, the STDM data has proven useful for decision making to support sustainable development intervention, and ease land administration by maintaining a detail record of the settlement.

5.5.2 Mashimoni Settlement, Nairobi County

Mashimoni settlement is one of the 14 settlements within the larger Mathare Settlement, the second largest slum in Kenya. It is one of the first informal settlements in Kenya where STDM was implemented in collaboration with Pamoja Trust and GLTN. The STDM process included enumeration and mapping for the entire area of Mashimoni settlement and sought to establish the total number of people living in Mashimoni, levels of income generation/ employment, infrastructure development (including shelter, road networks, water and sanitation, waste management) and social and cultural issues (community organization, security, communications/information flow). The STDM process created an opportunity for the settlement to be included as a beneficiary of Tenure regularization under the KISIP program as the community had already organized themselves around their data. This process also enabled the community leadership to begin conversations and negotiations with relevant government offices in relation to issues around planning, resource allocation and attainment of security of tenure. The STDM process provided an opportunity for the Mashimoni Community to employ advanced technical tools that could identify and recognize their presence in their space. This included enumeration and mapping for the entire area of Mashimoni settlement and sought to establish the total

number of people living in Mashimoni, levels of income generation/ employment, infrastructure development (including shelter, road networks, water and sanitation, waste management) and social and cultural issues (community organization, security, communications/information flow).

VI. CHAPTER TWO: LEGAL BASIS FOR CO-PLANNING & CO-DESIGN MODEL FOR SOCIAL & INFORMAL TENURE

6.1 Background

The challenges of planning and the ever dynamic and complex urban problems such as the provision of modern, flexible systems and infrastructure and institutional arrangements calls for a fit for purpose tool and model which is why integration of STDM within the legal framework and the land information and management processes, standards and dissemination system is urgent. STDM has the potential to support allocation, land markets, valuation, control of use, and development of interests in land while informal communities will achieve better leadership and more meaningful engagement with government for improved tenure security. Youth will also be able to take part in tenure issues.

6.2 Key Legislation

6.2.1 The Constitution of Kenya

The Constitution of Kenya provides for a classification of land tenure in Kenya called “community lands” – assuring Kenyans that this form of tenure is on equal par with other more commonly recognized forms of land tenure. This provision is expected to provide land tenure security to millions of residents in rural, peri-urban, and urban informal and customary settlements. The Constitution directs Parliament to develop a community land law that would prescribe how community lands will be delineated, administered, and managed. Under the Constitution, Community Lands are to vest in and be held by communities that are identified on the basis of ethnicity, culture or similar community of interests. The constitution of Kenya (2010) lays the basis for enactment of a number of legislations on land administration. In Article 2⁷ the COK (2010) regards as null and void customary or religious laws that are in contradiction with its provisions paving way for reconsideration of land and property rights. In line with the principles of equity and

⁷ COK (2010) Article 2(4): Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid

gender sensitivity, the constitution promotes equality and describes the equal rights for men and women to equal treatment and opportunities in political, economic, cultural and social spheres. It prohibits discrimination against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth. The constitution recognizes equity and non-discrimination as part of the value systems and principles of social justice. The Bill of Rights section outlines essential entitlement to the 1948 Universal Declaration of Human Rights (UDHRs) and Chapter IV guarantees social, economic and cultural rights while recognition of practices that are harmful to vulnerable groups as being unlawful. Specifically, Article 40 (1)⁸ of COK (2010) has entrenched equal rights for every person, either individually or in association with others, to acquire and own property of any description and in any part of Kenya.

For this reason, adoption of STDM would facilitate equity and non-discrimination among residents of informal settlement as far as tenure and service delivery is concerned as envisaged in National Slum Upgrading and Prevention Policy (NSLUPP). Through public participation, STDM would generate data to entrench the principle of subsidiarity in physical planning and service delivery with informal settlements as envisaged in Article 10⁹ of the constitution. Anchored in article 60¹⁰, the constitution through an appropriate policy would enable STDM to facilitate usage and management of land in a manner that is equitable, efficient, productive and sustainable, and in accordance with the principles of equitable access and security of land rights.

6.2.2 The Land Act 2012

The Land Act 2012 provides for sustainable administration and management of land and land-based resources. The Act provides for the protection of the marginalized; democracy, inclusiveness and participation of the people in land management. The Land Act 2012 is strong on the need for 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. It therefore means, the Land Act 2012 acknowledges adoption of

⁸ COK (2010) Article 40 (1): Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property (a) of any description; and (b) and in any part of Kenya.

⁹ COK (2010) Article 10 (2b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized

¹⁰ COK (2010) Article 60 (1) 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;

alternative pathways towards realization and fulfilment of land and property rights, which opens opportunity for STDM to be adopted in enhancing the provisions of Land Act 2012 through promoting community land rights, plight of informal settlements through regularization and providing a link between formal and informal land tenure practices. This is in line with NLP requirements for an efficient land administration system that guarantees the recording of land rights, promotes tenure security, and guides land use. In adopting STDM, it will be possible to provide residents of urban informal settlements with appropriate forms of documentation to guarantee land rights, and support the processes of land allocation, land dispute resolution and fiscal management of land. The Act designates the Cabinet Secretary in charge of lands the responsibility of land management and administration while the National Land Commission is the body mandated with the making of regulations to secure the land rights of the minority communities to individually or collectively access and use land and land-based resources

6.2.3 The Urban Areas and Cities Act 2012

The provision for public participation envisaged in NLP and the Constitution Article 118, is entrenched in UACA Article 2(1) and County Government Act of 2012 (CGA) Article 105 that allow informal settlement residents to participate in STDM process. Involvement of residents of urban informal settlements in STDM process would be key for making strategic decisions relating to delivery of service plus land and property rights in general. The UACA Article 22¹¹ has a provision for citizen fora to which the STDM innovation could breathe life in to and extend land rights, service delivery and other matters of concern to residents of informal settlements. Through the fora, it is possible to hinge STDM as a planning strategy for engaging the various levels and units of government on issues concerning citizens. Further, UACA in Article 40¹² provides for an integrated approach,

¹¹ UACA Article 22 (1) Residents of a city, municipality or town may—
(a) deliberate and make proposals to the relevant bodies or institutions on—

- (i) the provision of services;
- (ii) proposed issues for inclusion in county policies and county legislation;
- (iii) proposed national policies and national legislation;
- (iv) the proposed annual budget estimates of the county and of the national government;
- (v) the proposed development plans of the county and of the national government; and
- (vi) any other matter of concern to the citizens;

(b) plan strategies for engaging the various levels and units of government on matters of concern to citizens

¹² UACA Article 40 An integrated urban area or city development plan shall reflect—

- (b) an assessment of the existing level of development in the city or urban area, including an identification of communities which do not have access to basic services;
- (c) the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equalization funds;

which could ride on STDM in assessing existing level of development in the city including an identification of communities, which do not have access to basic services, plus determination of any affirmative action measures for inclusion of communities for accessing funds from the equalization funds.

6.2.4 The Physical and Land Use Planning Act (PLUPA) 2019

Article 37¹³ of the PLUPA, states that the object of a county physical and land use development plan shall provide a basis for infrastructure and services delivery. Planning for service delivery should include informal settlements and information, which would heavily benefit from STDM. As envisaged in Article 39 of PLUPA, STDM would provide information in form of diagrams, illustrations and description of current and anticipated developments in the county. Specifically, STDM would provide information for zoning, urban renewal, or redevelopment; for guiding and coordinating the development of infrastructure as provided in article 46.

By providing information for zoning, urban renewal, or redevelopment; guiding plus coordinating the development of infrastructure, STDM is an advocacy tool in influencing declaration of informal settlements as a special planning area due to observable uniqueness in terms of development and challenges or for specialized development activity as provided in article 53¹⁴ of PLUPA. Information from STDM would enhance advocacy to declare informal settlements as special planning areas by highlighting the grounds and detail assessment of the social, environmental and economic conditions for consideration by the county governments. In tandem with land rights delivery principles of NLP, STDM process would be critical in mobilizing various institutions and government departments in ensuring that land records are authenticated, documented, and their custody and sanctity secured. STDM has become revered land rights' recordation tools embracing Information Technology in expressing social tenure relationships in an

(f) a spatial development framework which shall include the provision of basic guidelines for land use management system for the city or municipality;

¹³ PPLUA Article 37 (c) The objects of a county physical and land use development plan shall be to provide a basis for infrastructure and services delivery

¹⁴ PPLUA Article 53. A special area plan shall contain —

(b) the challenges the special plan intends to address;
 (d) the infrastructure needs of the special plan area;
 (e) a detailed assessment of the social, environmental and economic conditions of the special plan area;
 (g) proposed conditions for development in the special plan area;
 (h) how public participation and innovative approaches will be used in planning and implementation process; and
 (i) a framework for the implementation, monitoring and evaluation of the special plan.

affordable way, hence a key tool in advocating for computerization of land records and facilitating access to land information.

In facilitation of access to land information, STDM process would be useful to Physical and Land Use Planning Liaison Committees as provided by PLUPA Article 87¹⁵ in allowing the public to scrutinize various land registers. In this regard, STDM would enable implementation of Urban Housing Renewal and Regeneration Policy of Nairobi City County (UHRRP) as far as access to planning documents are concerned towards realization of the right to housing.

6.2.5 Sectional Property Act of 2019

Under Section 7 of Sectional Property Act of 2019¹⁶ and information provided by STDM, residents of informal settlement would enjoy incidental rights as common owners for the purpose of service delivery. Incidental rights include all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, air and all other services of whatsoever nature.

Through STDM process it possible for residents of informal settlement own part of land property under both Sectional Property Act of 2019 and Sessional Paper No 3 of 2016 on Housing Policy of Kenya including transfer of property to siblings or spouse as envisaged in Section 23¹⁷ of the former. As envisaged in NLP, STDM would be instrumental in developing mechanisms for identifying, monitoring and assessing the vulnerable groups. In this case, STDM could be instrumental in providing information for national Government in collaboration with county governments to develop criteria for identifying the target groups and other special groups for consideration for social housing as identified by income levels, need for housing, and vulnerability among others. STDM as tool would facilitate County Governments in prioritizing provision of social housing

¹⁵ PPLUA Article 87. (2) Each register maintained by Physical and Land Use Planning Liaison Committees shall be made available to the public for scrutiny.

¹⁶ Sectional Property Act of 2019 Article 7. (1) The common property and each unit on a sectional plan shall, by virtue of this section, have as appurtenant thereto all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, air and all other services of whatsoever nature (including telephone, radio and television services) over the parcel and every structure thereon as may from time to time be necessary for the reasonable use or enjoyment of the common property or unit.

¹⁷ Sectional Property Act of 2019 Section 23. (1) Every memorandum of transfer of the whole or any part or parts of the common property shall, in addition to any plan that the Registrar may require to be deposited under section 4, be accompanied by a sectional plan which shall be in substitution for and shall be deposited under the same number as the existing sectional plan, and shall show the effect of the transfer to the satisfaction of the Registrar.

through provision of infrastructure and availing serviced land with security of tenure. STDM would be instrumental in setting aside suitable public land, compulsory acquisition, recovery of grabbed public land that is kept idle for speculative purposes for use in settling residents of informal settlements

6.2.6 The Community Land Act 2016

The CLA gives effect to Article 63 (5) of the Constitution and provides for the recognition, protection and registration of community land rights; management and administration of community land and the role of county governments in relation to unregistered community land and for connected purposes. The Act defines community as a consciously distinct and organized group of users of community land who are citizens of Kenya and who share common ancestry, similar culture or unique mode of livelihood, socio-economic or other similar common interest, geographical space or ethnicity.

The Act defines community tenure system that recognizes unwritten ownership practices in which family, clan or designated community leader controls and owns the land. The role of County governments on unregistered community land is clarified and communities claiming interest or right over community land have room to register such claims. The Act directs the Cabinet Secretary and Counties to document, map and develop inventory of community land in a transparent, cost-effective and participatory manner. The administration and management of community land is assigned to a community land management committee who have power to plan for the development and management of the community land. There is provision for the issuance of a certificate of title upon application and the use of ADR to resolve conflicts and disputes. These provisions provide useful windows for the implementation of STDM because of the potential to register informal settlements under the CLA. STDM would provide expedition towards the implementation of the procedural guidelines for the registration of community land which is what this Framework seeks to offer.

6.2.7 Dispute Resolution in Existing Land Administration Frameworks and STDM

As an information tool, STDM would be critical in dispute resolution as envisaged in Law of Succession Act of 1981, Article 93¹⁸ Land Registration Act (LRA) and Environment and Land Court Act No. 19 of 2011 (ELCA) which operationalizes Article 159 (2)¹⁹ of the Constitution in relation to the right to access justice. STDM is key alternative forms of dispute resolutions including reconciliation, mediation, arbitration and traditional mechanisms, embraced by ELCA consistent with the Bill of Rights in Constitution. Still on dispute resolution, STDM would be important in protection of women as provided by Matrimonial Property Act 2013 (MPA) and Section 105²⁰ of the Land Act.

Therefore, STDM as an information tool would be important in recognition and protection of matrimonial property and in particular, the matrimonial home during and on the termination of marriage. Further, given the fact Section 105 of the Land Act gives the court

¹⁸ LRA Article 93 (1) Subject to the law on matrimonial property, if a spouse obtains land for the co-ownership and use of both spouses or, all the spouses—

(a) there shall be a presumption that the spouses shall hold the land as joint tenants unless—

(i) a provision in the certificate of ownership or the certificate of customary ownership clearly states that one spouse is taking the land in, his or her own name only, or that the spouses are taking the land as joint tenants; or

(ii) the presumption is rebutted in the manner stated in this subsection; and

(b) the Registrar shall register the spouses as joint tenants.

(2) If land is held in the name of one spouse only but the other spouse or spouses contribute by their labour or other means to the productivity, upkeep and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labour to have acquired an interest in that land in the nature of an ownership in common of that land with the spouse in whose name the certificate of ownership or customary certificate of ownership has been registered and the rights gained by contribution of the spouse or spouses shall be recognized in all cases as if they were registered .

(3) Where a spouse who holds land or a dwelling house in his or her name individually undertakes a disposition of that land or dwelling house—

(a) the lender shall, if that disposition is a charge, be under a duty to inquire of the borrower on whether the spouse has or spouses have, as the case may be, have consented to that charge; or

(b) the assignee or transferee shall, if that disposition is an assignment or a transfer of land, be under a duty to inquire of the assignor or transferor on whether the spouse or spouses have consented to that assignment.

(4) If the spouse undertaking the disposition deliberately misleads the lender or, the assignee or transferee by the answers to the inquiries made in accordance with subsection (3)(a) or (3)(b), the disposition shall be void at the option of the spouse or spouses who have not consented to the disposition.

¹⁹ COK (2010) 159 (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted

²⁰ Land Act Section 105 (1) The Court may reopen a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

wide powers in considering an application to reopen a charge on matrimonial property, STDM process would be an important reference

Article 159 (3) of the Constitution provides for traditional dispute resolution mechanisms while Statement No. 169. Of the NLP observes the need to ensure access to timely, efficient and affordable dispute resolution mechanisms. This will facilitate efficient land markets, tenure security and investment stability in the land sector. Statement No. 170 adds that in order to facilitate effective, fair and efficient dispute resolution, the Government shall: (a) Establish independent, accountable and democratic systems backed by law to adjudicate land disputes at all levels;

6.2.8 The Limitation of Actions Act

"The law on adverse possession is found in the Limitation of Actions Act. According to the Act, people can legally acquire free property which they have, without interruption from the registered owner, occupied continuously for 12 years. Registered owners cannot hold to claim to such property. Courts of law often grant title to such land to the squatter on the premise that the registered owner slept on his ownership rights. Adverse possessors must, however, prove to the court that they entered the land adversely and without legal title. It must also be proved that the registered owner of the land was aware that the people had entered his or her land without title. The other requirement is that the legal owner should not have interrupted the 12-year stay of the adverse possessor"²¹ (Nduku M. I; Securing Tenure Rights in Informal Settlements; 2017 Final dissertation, Nairobi University)

6.2.9 National Slum Upgrading and Prevention Bill

This Bill defines these invisible rights as differentiated land rights i.e. or rights that 'refers to different rights to land, these include ownership (freehold, leasehold, community ownership and public ownership), and user rights temporary occupation license, leases and access rights etc.)

²¹ Nduku M. I; Securing Tenure Rights in Informal Settlements; 2017 Final dissertation, Nairobi University

6.3 Emerging Jurisprudence from Kenyan Courts: Some Select Cases

6.3.1 Sangor Osmanet al. v. Municipal Council of Garissa et al

Kenyan Courts have delivered rulings in Cases dealing with forced evictions from informal settlements under the new Constitutional framework. For instance, in the case of Ibrahim Sangor Osmanet al. v. Municipal Council of Garissa et al a forced eviction of 1,122 persons was executed by the local authorities. While the community had been considered an informal settlement on public land, it had resided on the land since the 1940s, had constructed permanent housing and had close social ties to the area. The Court relied on the constitutional right to adequate housing as informed by the ICESCR (including General Comments No. 4 and No. 7) and the International Covenant on Civil and Political Rights in finding the forced eviction to be unlawful because it was carried out with no written notice, without a court order, and without consultation with the community. The Court ordered restitution of the land, reconstruction of the homes, schools and other buildings that were destroyed, the provision of infrastructure such as water and sanitation, and awarded other damages amounting to US\$2.6 million. The Court also placed the relevant authorities on notice that they would be liable to process of contempt by committal, sequestration or otherwise as the High Court may direct for the purpose of compelling them to obey the same.²²

6.3.2 Pamoja & Mitumba Vs. Kenya Airports Authority

The problem of invisibility of community's right to occupy and use certain spaces can be evidenced by the Mitumba case which Pamoja Trust alongside the community of Mitumba had appealed to the high court to stop the evictions that were being perpetrated by Kenya Airport's Authority (KAA) with the claim that the community occupied the Wilson Airport's land. During the first hearing, the High court in favor of the community passed forth a judgment to have the attorney general, Civil Society Organization, Commissioner of land and Kenya Airport Authority jointly develop a resettlement framework for the community. The Court of Appeal however over-ruled this decision with the claim that the court cannot delegate authority to non-judicial actors and further highlighted that the Mitumba community had no right to claim right property owned by KAA nor did KAA have the right to allocate land. This was despite the fact that the government had allocated the community the

²² Ibrahim Sangor Osman et al. v. Municipal Council of Garissa et al., Constitutional Petition No. 2 of 2011 (16 November 2011).

parcel of land after they were moved from City Cotton. This scenario depicted the invisibility of the community's rights over the land.

6.4 Summary

In summary Article 5 of the Land Act 2012 provides for recognition of land rights arising under all tenure systems. Provisions of the Sectional Property Act of 2019 allows residents of informal settlements to own housing units within informal settlements while under the Community Land Act informal settlements can be registered for purposes of recognition of community land. Under the PLUPA of 2019 the informal settlements can be considered as Special Planning Zone. All these enablers have the potential to enhance the realization of the right to housing. In all these instances the STDM process provides an avenue of registration of informal settlements as community land as well as providing information for consideration as special planning zones. As a storage for information, STDM would be a critical administration tool that provides a detailed register of property within urban informal settlements and the space they occupy. Once done and houses constructed under slum upgrading programs, provision of Sectional Property Act of 2019 would allow residence to own housing units within informal settlements.

6.5 Key Policy

6.5.1 The National Land Policy

The NLP provides additional details on the historic need for greater protections for community lands, and directions for how the government should frame the legislative framework for such rights. The NLP, under Chapter 3.1 paragraph 33, seeks to adopt a plural approach, in which different systems of tenure co-exist and benefit from equal guarantees of tenure security. The rationale for this plural approach is that the "equal recognition and protection of all modes of tenure will facilitate the reconciliation and realization of the critical values which land represents."

The NLP directs the government to craft legislation for Community Lands to ensure that customary land rights, such as "family interests in land, the rights of "strangers'...and communal rights to clan land..." have equal legal recognition as do other forms of private

and public land rights (para. 64). Enactment of the National Land Policy (NLP) in 2009 provided a platform for an extensive overhaul of current policies and institutions to address chronic land tenure insecurity and inequality question, land use management issues, land administration and land issues requiring special interventions. It called for reconsideration of constitutional protection for the property rights of those who obtained their land irregularly

Statement No. 52 of the NLP outlines the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of or transmitted. Statement No. 70. Speaks to Rights of ownership in which reference is made to the quantity of rights that different tenure systems confer on individuals, groups of individuals and other entities. The principal rights of ownership are the right to use, the right to dispose of and the right to exclude others from the land owned. Statement No. 71. Makes reference to the power of individual holders to sell land a right that has often been exercised at the expense of persons who hold legitimate rights over the same land.

The 3 principles of STDM inclusivity, land management and dispute resolution are all entrenched in the NLP i.e. Statement No. 158. of the Land Policy on Land Information Management Principles states that Kenya lacks up to date information on different land uses such as agriculture, forestry, wildlife, water and infrastructure. Lack of this vital information complicates effective planning, zoning and overall management of land.

Statement No. 159. Confirms that land information consists of datasets for decision making in land administration and management. These include data on geo-referencing, mapping, land ownership, land rights, land use planning, valuation and inventories of different categories of land. Statement No. 160. Defines a Land Information Management System (LIMS) as an information system that enables the capture, management, and analysis of geographically referenced land related data in order to produce land information for decision-making in land administration and management.

6.5.2 Urban Housing Renewal and Regeneration Policy (UHRRP) of Nairobi City County

Specifically, UHRRP gives effect to Article 43 (1) (b)²³ of the Constitution, which is the legal and constitutional framework on the right to housing in Kenya. It is an important milestone in Nairobi City County's strive towards the fulfilment, respect, observance, promotion and protection of the right to housing, which would immensely benefit from STDM process. As much as the policy focuses on rehabilitation of old and decaying estates, it provides for appropriate housing and infrastructure for disadvantaged groups or groups with special needs, such as the elderly and persons living with disabilities.

From a public participation perspective, STDM would act as a framework for the implementation, monitoring and evaluation of informal settlements as special planning areas. Nairobi City County through UHRRP embraces public participation as an important national value and principle of governance, codified in the Constitution and a component of STDM. UHRRP places citizens at the center of public decision-making and reverses the country's past legacy of a top-down approach to governance. The policy stresses affordability following redevelopment to suit different segments of city population including residents of informal settlements. STDM could provide information for social impact assessment provision of UHRRP for planning purposes. Social impact assessment should take into consideration the provision of Land Act in Article 5²⁴ for 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 including STDM.

6.6 Key Institutions

This paragraph discusses some of the key land and housing institutions²⁵ that should deliver STDM alongside their core mandate.

6.6.1 Ministry of Lands Housing and Urban Development

²³ COK (2010) Article **43**. (1b) Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation;

²⁴ Land Act Article 5(2) 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

²⁵ Owiro D.; Poverty Rights Regime in Kenya: Implications for Small Businesses; IEA Research Paper 2014

The Ministry is the main policy making body of the land and property sector and is also in charge of the land registry. The key role of managing of state and trust land was given to the National Land Commission by the new constitution and subsequently enacted in law. Management of the land registry still remains a contentious issue, as this had previously been the main source of corrupt practices.

6.6.2 National Land Commission

The National Land Commission was established by the National Land Commission Act of 2012. Its functions are to manage public land on behalf of the national and county governments, to recommend a national land policy to the national government, and other functions.

6.6.3 Judiciary

The judiciary plays a very important role in enforcement of property rights when it comes to dispute resolution, apart from other Alternative Dispute Resolution Mechanisms (ADRM), such as mediation, arbitration and others. The on-going judicial reforms are important in enhancing property rights protection and enforcement in the country because the lack of independent and impartial judicial system has contributed to massive corruption in the land administration and management. In particular, the establishment of the Environment and Land Court in 2011, as envisaged by the constitution, will help ease the heavy backlogs in the judicial system when it comes to settlement of disputes.

6.6.4 County Governments

The constitution also provides for devolution of land administration and management to the 47 county governments. This plays an important role in bringing these services closer to citizens at the county level. Land administration and management at the county level, including surveying and adjudication, among other duties originally earmarked for the newly established County Land Management Boards by the law was eventually abandoned.

VII. CHAPTER THREE: VALUE AND RELEVANCE OF STDM

7.1 What is STDM?

An integrated social system where access to land is an incident of membership to a social group and whose control and management is vested in a governance organ of the community.

7.1.1 STDM as a Concept

Seeks to bridge the gap to represent people to land relationships in-dependent of the level of formality, legality and technical accuracy.

7.1.2 STDM as a Model

Is a 'specialization' of the ISO-approved Land Administration Domain Model (LADM), describes more nuanced tenure and land administration components and arrangements that do not fit into the more general descriptions within the LADM, such as customary and informal tenure

7.1.3 STDM as a Process

Provides the front-end interface for testing and applying the STDM Concept and Model.

7.2 Why STDM? Value and Relevance of STDM

Three motivations justify the decision to consider anchoring STDM in the existing legal and policy framework. First is the gap in the conventional land administration systems such that customary and informal tenure cannot be easily handled. There is a need for complimentary approaches in land administration. Second is the need to respond to land rights as a continuum a framing that conventional land administration approaches cannot support making it impossible for conventional approaches to deliver security of tenure at scale.

Third, most “off register” rights and claims are based on social tenures and cannot be described relative to the conventional parcel based concept (e.g. cadaster), and therefore alternative forms of spatial units are needed. STDM aims to bridge these technical gaps.

7.2.1 Who is targeted by STDM

Challenges in Mashimoni/Kwa Bulu	Recognizing Rights at family/individual level	Towards institutionalization	Form(s) of Recognition
Tenure Insecurity	<ul style="list-style-type: none"> • Pavement dweller • Squatter tenant • Tenant (unauthorized subdivision) • Tenant with contract • Squatter owner • Owner (unauthorized subdivision) • Legal owner (unauthorized construction) 	a) Eviction-threatened settlements b) Title-ready settlements	Certificates of occupancy
Forceful Evictions (Deprivation of Human Rights/Dignity)	<ul style="list-style-type: none"> • Squatter tenant • Tenant (unauthorized subdivision) • Tenant with contract • Squatter owner 	c) Social housing-integration ready settlements d) Resettlement-targeted communities	
Conflicts over land ownership	<ul style="list-style-type: none"> • Squatter owner • Owner (unauthorized subdivision) • Legal owner (unauthorized construction) 	e) Certificate of occupancy-ready communities f) Cooperative-ready settlements	
Inadequacies in infrastructure and services	<ul style="list-style-type: none"> • Leaseholder and freeholder • All categories 	g) Service/infrastructure-ready settlements	

7.3 Benefits and Advantages of STDM

7.3.1 Delivering land information

The direct involvement of community members whose tenure is being planned generates transparency and trust among the local residents. Once the purpose makes sense to the residents the data gathering will improve and locals will more easily cooperate and provide the information required. They can have a say in the methods being used, and can share their experience, expertise and knowledge about their own situation, in ways that can improve the quality of data obtained. They can ensure that local elites do not capture, exploit or block the process. Community data are needed for a wide range of purposes: to enable residents to demand their rights, to improve land tenure, to plan the provision of infrastructure and services, to redevelop slums or plan to resettle people in new areas, to guide land allocation and adjudication, to use in land administration systems, and so on. Each of these uses requires data at different levels of detail or aggregation, on different subjects, and with different levels of reliability. A land administration system, for example, requires data on individual land parcels and relies on a significant level of proof (such as title deeds).

7.3.2 Achieving social goals

Participatory enumerations also offer opportunities of self-empowerment. Residents can initiate and retain control of the process, to ensure that it speaks directly to their needs, aspirations and basic human rights. Through such initiatives they can grow in confidence and with a sense of ownership of the process, can begin to negotiate with the authorities. They can use the information to contest and correct inaccurate information and misconceptions about their settlement, and to meet specific challenges being faced such as threatened evictions or planned relocations. They can also use it as a platform for direct involvement by residents in the upgrading, development and servicing of their settlement. If people's relationships to land is secure they will find it easier to sell their labour, produce food and contain land disputes as well as achieve gender equity.

7.3.3 Reducing the divide between formal and informal land owners

From the point of view of external organizations including progressive NGOs, foundations, institutes, agencies and those government officials or Ministries, Departments and Agencies wishing to work in collaboration with communities, participatory approaches can avoid some of the shortcomings of the more conventional methods of land

administration and data gathering. Involving the residents directly can improve data gathering and yield better data. Process design, data gathering and verification procedures. The reliability and relevance of information gathered can be improved – which is particularly important when trying to unravel the complexities of land tenure challenges in informal settlements. Including the disadvantaged in participatory enumerations can reveal information that governments, and even community members themselves, were not aware of. Through broad-based participation by residents, the actions of powerful elites within a settlement can be countered, and marginalized groups (women, tenants, seasonal contract workers, backyard dwellers, etc.) can be included in the upgrading and development processes that follow.

7.3.4 Delivering sustainable development

Data legitimacy and improved collaboration overall public legitimacy of enumerations and related initiatives can be enhanced, as can the prospect of long-term, multi-institutional partnerships and even co-governance arrangements between organized communities, support institutions and the relevant government. Local buy-in and sustainability Participation can make activities and interventions more sustainable, a key issue in unsuccessful urban development. It can create building blocks for the next phases of development and going to scale through building trust between different stakeholders and transferring knowledge over time– all necessary for ongoing and sustainable development. This can form a foundation for more appropriate, equitable and efficient land administration systems that will respond to economic, environmental and social dimensions of sustainable development.

7.3.5 Encouraging use of new technologies on land

STDM can facilitate the recording of all forms of land rights and claims (e.g. slums, customary, overlaps, claims, etc.) based on open and free software packages that is affordable and scalable. It does not require highly skilled professionals to operate – It is simple to use

7.3.6 Providing a framework for delivery of basic services

Organizing utilities and services to homes and businesses depends on how access to land is organized. Access to clean water and sanitation is possible when access to land is organized. STDM offers a flexible and multi-purpose tool to urban informal settlements to engage in participatory delivery of tenure security for purposes of improving service delivery.

7.3.7 Managing how people think about land

Land occupies a very unique place in the life of a nation, local area and to specific groups of people. This emotional attachment in the case of Kenya and obsessive drive for majority to own land influences land use, institutions, management and people. Consequently, the land administration system that has been developed possesses predatory tendencies that do not deliver for urban informal communities. STDM bears the potential to contribute a service driven model that conforms to social and spiritual meanings people attach to land.

7.3.8 Building the economies of occupiers

The invisibility of residents of informal settlements is the core problem STDM seeks to deal with to define land rights beyond title to encompass comfort, ownership, management and ability to inherit. This idea of comfort and non-eviction helps solve the problem of scarcity in urban areas but also gives the informal dwellers citizenship, justice and minimum protection against those who rule the marketplace. This scope that spans beyond ownership enables STDM to touch livelihoods and therefore economies of the occupiers i.e. personal wealth, business investments and other economic advantages.

7.3.9 Managing crisis

Water, housing and disasters are some of the hard issues that governments must deal with that is only possible through a more democratic land and resource management that is designed to have those targeted participate fully. This will also impact on improved management of the modern city that has inadequate water and sanitation.

7.4 STDM and Conventional Principles of Land Administration

According to the United Nations Commission for Europe (UNECE) Land Administration Guidelines, (1996) land administration is defined as “the processes of recording and disseminating information about ownership, value and use of land when implementing land management policies.” Delivery of sustainable development should be one of land administration’s key response so that land enables society to generate wealth, alleviate poverty, ensure food and land security but also assist in equitable land distribution. STDM prioritizes the importance of information and participation of the people in the process of tenure management. This framework proposes that in the implementation of STDM government in cooperation with private, academic and NGO sectors will engage the

public to institutionalize STDM within the existing land administration system in ways that as far as possible expand anchor these principles of land administration: -

7.4.1 Sustainable development:

STDM is incorporated in to the infrastructure (legal framework, institutional arrangements, processes, land information management, technologies etc.) for implementation of land policies and land management strategies that support sustainable development.

7.4.2 Land Management Paradigm:

STDM offers innovative that speaks to the land management paradigm that addresses tenure, land use, land development, value and their interactions.

7.4.3 People and Institutions:

STDM is used to engage the people in their unique social and institutional fabric to contribute to a Land Administration System in which society's thoughts as users about land are centred through capacity building, institutional development, citizen participation in decision making and implementation

7.4.4 Rights, Restrictions and Responsibilities:

STDM enables stakeholders to exercise the freedom to conceptualize their rights (tenure), restrictions (control and use) and responsibilities (ethical commitment and good husbandry) in the context of each unique situation/informal settlement

7.4.5 Cadastres:

Spatial Integrity and Unique identification of each parcel are strengthened by STDM through documentation of usable parcels, records of land rights (digital and geocoded)

7.4.6 Dynamism:

STDM strengthens the four dimensions of land administration namely, first the evolving nature of the land to people relationships on account of economic, social and environmental forces, two the evolving ICT/globalisation dynamics and its effect on design and operation of a LAS, third the dynamic nature of information and its constant changes in ownership, use and subdivision and fourth the changes in the use of land information

7.4.7 Processes:

STDM is imbued with processes that can manage change and ensure that land transfer, mutation, creation, distribution of interests, development incorporate actors and their obligations while respecting the principle of improvement and comparison

7.4.8 Technology:

STDM utilises technology for collection, storage, management and dissemination of land information offering opportunity for improved efficiency in land management

7.4.9 Spatial data infrastructure:

STDM has potential to act as an enabling platform that links people to information and supports the integration of natural and built (land parcel or cadastral) or environmental data for sustainable development and aggregation of land information from the local to the national level

7.4.10 Measures for success:

STDM's institutions, processes, and technologies offer a LAS that can manage and administer land efficiently, effectively and at low cost. STDM is also able to manage and administer land to meet the specific needs of users effectively, efficiently and at low cost

7.5 How to make STDM work: Consolidating the Experiences of Kwa Bulu and Mashimoni

Successful STDM Case Studies

By Diana Wachira, Pamoja Trust

This model has been implemented successfully in two informal settlements in Mombasa namely Mashimoni and Kwabulo. This process was triggered in Mashimoni by the constant threats of eviction. Through STDM, the residents were able to come together which gave them bargaining power with other key stakeholders such as the government. Kwabulo settlement also benefited greatly from the STDM process with the main output being the issuance of certificates of occupancy. This certificate would be used to identify legitimate beneficiaries later during the resettlement process. The success of the project in Kwabulo settlement is largely attributed to support from Mombasa County Government. For further success in future projects, it is fundamental for the Social Tenure Domain Model to be incorporated within government institutions to ensure government support. Key project highlights in the successful implementation of the project in Kwabulo settlement include;

- i) Issuance of certificates of occupancy realizing tenure regularization within the settlement
- ii) The STDM tool has enabled residents to register their interest in the land, thereby guaranteeing them some bundle of rights over the land
- iii) It is important to note that these certificates are not land ownership documents rather they are an assurance to the residents of some bundle of rights over the land

VIII. CHAPTER FOUR: GUIDELINES AND PROCESSES FOR IMPLEMENTING STDM

8.1 GLOSSARY OF TERMS

TERMS

“Occupant in good faith”	A person who has occupied land without the express or tacit consent of the owner or person in charge for a reasonable period of time without any right in law to occupy such land and that person does not have sufficient income to purchase or lease alternative land
“Off Register rights”	Claims based on social tenures which cannot be described relative to the conventional parcel based concept
“Invisible rights/ differentiated land rights”	Different rights to land, these include ownership (freehold, leasehold, community ownership and public ownership), and user rights temporary occupation license, leases and access rights etc.)
“Land tenure”	The terms and conditions under which rights to land and land-based resources are acquired, retained, <u>used</u> , disposed of, or transmitted
“Rights of ownership”	The quantity of rights that different tenure systems confer on individuals, groups of individuals and other entities.
“Principal rights of ownership”	The <u>right to use</u> , the right to dispose of, and the right to exclude others from the land owned.
“Land Information Management System (LIMS)”	An information system that enables the capture, management, and analysis of geographically referenced land related data in order to produce land information for decision-making in land administration and management
“Participatory enumeration”	A data gathering process which is to a significant extent jointly designed and conducted by the people who are being surveyed
“Land Rights”	Under STDM this should include comfort, citizenship, justice and non-eviction
“Governance”	The process of governance includes formal as well as informal actors involved in decision making and implementation of decisions made, and the formal and informal structures that have been set in place to arrive at and implement the decision
“Tripartite”	Spectrum of interest groups and constituencies that constitute the STDM team at each planning unit that includes government, local and national, support NGOs and community representatives
“STDM”	Social Tenure Domain Model, a flexible tenure system from the Global Land Tools Network of the UN-HABITAT that can be used to plan informal settlements

8.2 Guideline Framework

8.2.1 Application of this Framework Document/Guidelines

Who may use this Guideline?	This Guideline can be used by a wide range of organizations: a plethora of agencies at local, city, and national government levels, as well as community organizations, non-government organizations, researchers, development agencies and the private sector.
Circumstances under which Guideline is Applicable	Specific/concrete problem, challenge or crisis such as <ul style="list-style-type: none"> a) Urgent need for development b) Threatened eviction c) Planned relocation d) Slum upgrading e) Improvement of tenure security

8.2.2 Assumptions

Assumptions underpinning the Guidelines	<ul style="list-style-type: none"> a) Security of tenure is essential for an effective housing policy; b) Access to water, shelter, food are fundamental human needs; c) Sustainable development is dependent on the State co-sharing the responsibility for managing information about the ownership, value and use of land, even though the private sector may also be extensively involved; d) Both land and information about land are resources that must be husbanded in order to achieve sustainable development. e) legal acknowledgement that customary and other longstanding unregistered land tenancy amounts to a real property interest, registered or not to reverse the squatter conditions communities have wrongfully endured for years
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8.2.3 Targets of STDM

Groups Targeted for STDM	<ul style="list-style-type: none"> a) Families and individuals, occupiers in good faith and settlements facing tenure insecurity, or threat of forceful evictions, or threat of deprivation of dignity/human rights or conflict over land ownership or inadequacies in infrastructure and services b) Pavement dweller; Squatter tenant; Tenant (unauthorized subdivision); Tenant with contract; Squatter owner; Owner (unauthorized subdivision); Legal owner (unauthorized construction); leaseholder or freeholder facing any of the conditions in (a)
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8.2.4 Purpose and Aims of STDM

Purposes of STDM	<ul style="list-style-type: none"> a) To help local residents get organized, b) To empower residents of informal settlements to campaign for their rights to improved tenure, rights, resources and services, c) To resist eviction or projects imposed from outside without consultation. d) To address mutual suspicion and conflict between state actors and non-state actors e) Opportunity for self-determination and expansion of choices f) Manage community dynamics through self-regulation and community building
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- g) Leverage community resources, knowledge and social capital to plan and regularize tenure
- h) Enable planners make appropriate decisions, allocate scarce resources and resolve conflicts between city governments and residents
- i) Accelerate implementation of development
- j) Provide planners with up-to-date information that reflects the needs of local residents, detailed as required, spatially referenced if necessary
 - i. population data
 - ii. information on infrastructure and facilities.

8.2.5 Procedures for public engagement

Decision to undertake enumerations/Initiative	<p>Circumstances that may occasion a decision to take initiative include</p> <ul style="list-style-type: none"> a) response to a crisis (such as an impending eviction), or b) part of a longer-term activity (such as planning for slum upgrading) or c) infrastructure development that may occasion displacement or d) acquisition under Art 40(4) of the Constitution that impacts Occupiers in good faith”
Building Trust and Laying Foundation for Stakeholder Participation/Tripartite	<ul style="list-style-type: none"> a) If outside organizations (NGOs, a development project or the government) are involved it will be their responsibility to build trust among the local residents, as well as among one other. b) If no outsiders are involved, the local initiators will build the confidence of other residents in order to include a spectrum of interest groups and constituencies
Preparation & Planning	<p>The Enumerations partners</p> <ul style="list-style-type: none"> a) shall delineate tasks and allocate responsibilities to organizations and individuals to ensure resources (time, material, skills, money) are mobilized to undertake the exercise b) shall use the Sectoral & County Planning processes (CIDP, ADP, Spatial plans) to integrate specific plans of respective settlements earmarked for planning
Training of Implementation team, Design of instruments/procedures and community mobilization	<p>Each enumeration process shall be led and steered by a small core group (representative of all spectrums of interest groups and constituencies), that will:</p> <ul style="list-style-type: none"> a) train and manages a larger number of enumerators who go from door to door to gather information. b) Make decisions on the purpose of the enumeration and methodology/ techniques for measurement, interviewing and recording responses. c) Gather secondary information from maps, aerial photos and other data sources to compare and contrast official data with those gathered through the enumeration d) Inform and mobilize the community of intentions to gather sensitive information on tenure, family arrangements among other data and purpose, use and privacy concerns

- e) Design enumeration instruments/procedures, pre-test and develop interview procedure and design mapping exercise including organizing the enumerators in different work areas

8.2.6 Information on land rights, right holders and parcels

Enumerations for varying contexts to deliver land information	<p>Participatory enumerations will be adapted to different needs, contexts and users by</p> <ul style="list-style-type: none"> a) types of information, b) different level of accuracy, c) intended use e.g. to formalize landholdings or resolve disputes between conflicting claimants.
Procedures for defining the boundary between parcels and people	<p>Depending on the nature and scale of the enumeration, teams of enumerators designated in various survey areas will in a given number of days no less than 3 days deliver data for each of their designated areas that will include:</p> <ul style="list-style-type: none"> a) Household socio-economic data b) spatial data that identifies boundaries, installations and landmark areas
Procedures for recording information on land rights for rights, right holders and parcels	<p>The implementation team shall obtain materials and equipment that may include pencils, paper, chalk, surveying equipment, GPS, personal digital assistants, computers, printers and the right software necessary including digital maps, GIS, spread sheets, database etc. and operators conversant with these gadgets to facilitate the full recording of information on all land rights</p>
Verification of data	<ul style="list-style-type: none"> a) Data shall be displayed in public and presented in discussion forums as a start of the verification process
Reporting and Analysis	<ul style="list-style-type: none"> b) Once data is reasonably free of errors the data will be analyzed to ascertain <ul style="list-style-type: none"> iii. calculating simple totals (e.g., number of residents) or iv. averages (e.g., mean number of people per household). Or v. tabulating data to reveal relationships of interest (tenure status of female-headed households, for example), or vi. more sophisticated statistical analysis or vii. public discussion of the Implications of findings.
Technologies for land management & information	<ul style="list-style-type: none"> c) All the data captured on the original paper forms (or personal digital assistants or maps) shall be transferred into a computer – usually into a spread sheet program.
Capture of data	<ul style="list-style-type: none"> d) Data will be verified with the community to remove errors, make entries for absentees, correct inaccurate information and rectify anomalies such as refusals and misleading responses or wrong entries by enumerators
Application of data, use, of information	<ul style="list-style-type: none"> a) Analyzed data shall be converted in to formats that can be used to include reports, maps, posters, graphics etc. b) The information shall be prepared in formats that are suitable for use by local government and the residents c) Community organizations may use participatory enumeration data to press for the rights of residents or advocate for change in policy d) Local and national government may use participatory enumeration data to plan resettlement or upgrade infrastructure.

Storage, updating and retrieval of enumeration data

- a) Participatory one-off enumerations data shall be applied to the immediate need that it was intended for
- b) Enumerations that gather information that will be needed for an extended period – e.g., for land administration records will make arrangements to store the information over time for access whenever required
- c) Data referred to in (b) above shall be co-owned and controlled by the community and government through the relevant agencies and shall be secured and accessed in accordance with agreed procedures from local resource centres established for such purpose and the LIMS d
- d) Data may be updated through periodic follow-up enumerations to take into account the nature of informal settlements where people move frequently, and tenure situations may change rapidly or through a system where records are updated as they change (e.g., when someone buys or sells a property, similar to the official land records system).
- e) Updating of data shall allow comparison over time, and trends analysis.

8.2.7 Recognition, allocation and passing of Rights

Procedures for recognising rights in STDM

Planning and development

- a) Verified, reliable and up-to-date spatial and socio-economic data shall be subjected to further community engagement in line with the public participation principles to enable planners and surveyors to produce Part Development Plan (PDP).
- b) The partners shall ensure the National Land Commission, the County Commissioner's Office and the County Assembly Land Committee make comments and endorse the plan
- c) Once adopted by the County Assembly the plan shall be gazette for a period of 90 days as per the National Planning and Land Use Act
- d) At the expiry of 90 days the plan shall be submitted to the Land Registry for consideration

Procedures for allocating rights

- a) Using the spatially referenced data the County Government shall issue Occupancy Certificates in lieu of formal documents
- b) Such certificates will be issued subject to an approved list from the land registry

8.2.8 Uncertainties and Disputes

Procedures for resolving uncertainties or disputes concerning land rights and boundaries

- a) The settlement Committee will establish Alternative Justice Systems(AJS) committees in each area to receive reports of disputes that may include
 - i. Displacement
 - ii. Lost records
 - iii. Property destruction
 - iv. Obliterated boundary markers
 - v. Disputes over boundaries
 - vi. Forced evictions
 - vii. Hostilities
 - viii. Seizure of property by neighbor

- ix. Breach of existing rules
- x. Disputes over transfer of rights
- xi. Co-ownership disputes
- xii. Subletting/extensions
- b) Whereas conventional land administration relies on various forms of paper evidence recording allocation, transfer or use the disputes committees will as far as possible rely on oral evidence, witnessing by holders and sporadic adjudication of rights and interests for every parcel in dispute or due for transfer or sale
- c) Data from participatory enumeration shall be used for upgrading to a systematic process that is backed by statute
- d) All dispute settlement shall start with sensitization and voluntary mechanisms based on principles of conciliation and appeal where the matter is not resolved

8.2.9 Procedures governing restrictions and transactions (sales, mortgages, leases and dispositions)

Procedures for passing rights to next generation	Each household is free to pass on their rights to the next generation provided the Land administration authorities are promptly informed and consent is secured from all persons with interest in the property with supervision from the Settlement Committee
Procedures for valuation and taxation	<ul style="list-style-type: none"> a) Local authorities shall levy taxes on properties in the STDM planning areas to pay for services that they provide b) The amount of tax charged on such property will depend on variables such as the size of the property, its use, the number of residents, the number of stores, location, and so on. c) Participatory enumerations, combined with remote sensing, geographical information systems (GIS) and global positioning systems (GPS) technologies, shall provide the data that will be used for tax purposes
Procedures for management of restrictions	The Settlement Committee shall take responsibility for ensuring that public spaces are protected from encroachment and supervise any new developments

8.2.10 Procedures to support management of utilities and provision of services e.g. electricity, water sewerage, communications

Management of utilities and services	<ul style="list-style-type: none"> a) The Settlement Committee shall partner with service providers to ensure that services are supplied in the informal settlement regularly b) The Settlement Committee shall constitute co-management principles and work with each provider to manage the provision of the service and avert disputes
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8.2.11 Institutions and processes for planning, controlling and monitoring land use

Spectrum of interest groups and constituencies implementing STDM	a) The primary stakeholders targeted by STDM implementation are families living in informal settlements who suffer <ul style="list-style-type: none"> i. the ill effects of degraded neighborhoods ii. the absence of basic infrastructure like water, sanitation, drainage, decent housing and iii. lack of tenure security.
Communities	b) The biggest role in planning and implementing citywide upgrading lies with the community
Local authorities	c) Community led surveys shall be their main means of playing their role in the STDM process.
Support organizations	d) Local authorities shall have the mandate and public resources to undertake planning, surveying, upgrading, and assist in identifying landowners, and negotiating with them.
Professional, technical and academic institutions	e) Support organizations shall include Ministries, Departments and Agencies of government both national and county, training institutions and NGOs whose roles include capacity building, provision of technical services, tools development, community organizing and designing “a people’s process” of community-upgrading. f) Professionals, technical and academic institutions and the technical experts (e.g., planners, architects, engineers) shall assist communities in developing their plans as well as refer communities to institutions that can provide equipment, software or technical staff.

8.2.12 Procedures for sustainability

Procedures for sustainability, budget support and citywide enumerations for STDM	a) The STDM process shall engage with the County planning process to institutionalize City-wide slum upgrading for a planned and systematic improvement of land tenure security, primary infrastructure (e.g., water and sanitation) and housing in poor or slum communities within an entire city. b) STDM shall focus on all poor areas within a city, rather than focusing on individual informal settlements. c) City-wide upgrading shall enable city governments to improve the living conditions of poor communities on a larger scale, plan infrastructure and tenure improvements to serve several slum communities at once. d) STDM shall bring benefits and change at a lower cost and ensure these plans are built in to the budget framework e) STDM shall improve sanitation infrastructure, reduce pollution and encourage on-site upgrading that allows poor families to remain close to their employment and to services such as schools, and avoids the disruption caused by relocation.
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IX. CHAPTER FIVE: STRATEGY: REQUIREMENTS, ROLE PLAYERS AND RESOURCES

CHALLENGES	Manifestation	PROPOSED STRATEGY	REQUIREMENTS	ROLE PLAYERS	RESOURCES
1. Lack of adequate land space	Private ownership of most settlements	Commission a national and county inventory of all urban informal settlements in Kenya	Inclusion of STDm within the Land Act and UACA to facilitate usage and management of land in a manner that is equitable, efficient, productive and sustainable in accordance with the principles of equitable access and security of land rights through public participation	MOLHUD, NLC Ministry of Planning, Civil Society, County Governments, Private Sector	Property taxes, Donations, Budget support, skills and time
	Lack of planning by Counties	Audit land and urban development policies and gaps that shape these settlements by county	Inclusion of STDm within PLUPA of 2019 to provide information for zoning, urban renewal, or redevelopment; guiding plus coordinating the development of infrastructure as provided in article 46 ²⁶	County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs	
	The difficulties of relocation	Commission a study to examine the impact of KENSUP 2004 and KISIP 2011 on livelihoods, tenure, infrastructure and housing post-relocation	County governments should adopt STDm to facilitate provision of infrastructure and especially social housing in availing serviced land with security of tenure. This would be important	KENSUP, KENSIP, UN-HABITAT, PT, MOLHUD KUDP	

²⁶ PPLUA Article 46. A county government shall prepare a local physical and land use development plan for —(a) zoning, urban renewal, or redevelopment; b) guiding and coordinating the development of infrastructure;

			towards achieving provision of Article 105 of CGA ²⁷ in planning		
2. Complexity of tenure arrangements	Lack of planning	Prepare physical land use plans by county and settlements to reduce and prevent informal settlements participatory	Inclusion of STDM within PLUPA to entrench the principle of subsidiarity in physical planning and service delivery as envisaged in Article 10 ²⁸ of the constitution.	County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs	Property taxes, Donations, Budget support, skills and time
	Poor housing	Introduce socio-economic and physical mapping and enumeration of residents on a case by case basis for housing development/ improvement		County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs	
	Lack of infrastructure	Prepare local development plans for infrastructure and service delivery	Roads, bicycle paths, pedestrian walkways, street/security lights, waste management, water drainage, sanitation, green spaces and platforms	County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs	
	Haphazard development	Prepare settlement specific development plans with settlement boundaries		County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs, Municipal/City Boards, Roads agencies, Water agencies	

²⁷ CGA (2012) Article 105. Planning in the county (1) A county planning unit shall be responsible for— (a) coordinating integrated development planning within the county; (b) ensuring integrated planning within the county; (c) ensuring linkages between county plans and the national planning framework; and (d) ensuring meaningful engagement of citizens in the planning process; (e) ensuring the collection, collation, storage and updating of data and information suitable for the planning process; and (f) ensuring the establishment of a GIS based database system. (2) The designated planning authority in the county shall appropriately organize for the effective implementation of the planning function within the county.

²⁸ COK (2010) Article 10. (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—(a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions.

	High population densities	Detail maps, identify and verify beneficiaries	Inclusion of STDM within Sectional Property Act to support occupancy rights		
	Conflicts between majority tenants and minority structure owners	Ensure databases on land tenure have all plots surveyed for registry indexing for group/individual ownership Advocacy Strategies/Models	STDM for identification of socio-spatial relationships for resolution of conflicts	County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs, National Administration	
	Suspicion and mistrust due to cultural, religious and political inclinations of leaders and community	Propose guidelines for improvement and validation by all stakeholders	Inclusion of STDM within CLA to hasten registration of informal settlements as community land as well as providing information for consideration as special planning zones.	County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs, County Commissioners	
3. Conflicting, parallel and competing interests of multi-agency partnerships	Conflicting interests of NGOs, CBOs, FBOs, National Government, Counties and donor agencies	Facilitate formation of: - a). Housing Cooperative Societies b). Settlement Executive Committees c). Inter-Agency Steering Committee d). Funding Mechanism e). Intergovernmental forums and processes f). Adhoc Consultations	The Slum Upgrading Bill proposed should be fast tracked	County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs, County Commissioners	Property taxes, Donations, Budget support, skills and time
4. Lack of capacity and resources for planning, community organizing, conflict prevention and management in the settlements	Unclear institutions for participatory tenure	Participatory-repare city/town strategic plans and land use master plans		County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs, County Commissioners	Property taxes, Donations, Budget support, skills and time
	Gaps in skills for participatory tenure	Capacity building and training programs for community organizing and mobilization, conflict management and structures, communication & budgeting		County Governments, MOLHUD, SECs, IASC, Private Sector, CSOs, County Commissioners	

9.1 Conclusion

This chapter has outlined the ways in which the County and National Government are legally obliged to consider the rights of communities living in informal settlements and the potential of STDm to actualize this. The chapter has identified opportunities for STDm and resources that anchor this adaptive planning model which comply with existing legislation. This final part of this framework seeks to assist the state at both County and National level and other stakeholders to institutionalize STDm in practice by outlining key strategies and the institutional resources needed to implement them identified. The strategies include a number of legal reform proposals, a communication strategy, a strategy for Community institution frameworks and stakeholder forum strategy. In addition, how these ought to relate to other role-players is outlined.

Annex I: Legal Frameworks: Tracking Gaps and Enablers

REFERENCE	PROVISION	BEST PRACTICE/ENABLER	GAP/RECOMMENDATIONS
CONSTITUTIONAL FRAMEWORK			
Art. 2 (4): Supremacy of the Constitution	“Any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency and any act or omission in contravention of this Constitution is invalid”	Countries that view customary law as a source of law alongside statute and common law have succeeded in ensuring equal legal recognition for this law alongside statute and common law and therefore customary tenure systems are able to thrive	Despite the dominance of customary tenure systems, customary user rights are inadequately recognised as holders of real property rights by state and investors a position made possible by distorted versions of custom that dominate national level discourse and find favor with Art 2 (4)
Art 10 (2) (b) National Values and Principles of Governance	The national values and principles of governance include: -human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized	Through public participation, STDM can generate data to entrench the principle of subsidiarity in physical planning and service delivery within informal settlements to give effect to this constitutional provision	
Art 40(1): Right to property	Every person has the right either individually or in association with others to acquire and own property	Equality and non-discrimination recognised in the property clause expands rights for inhabitants of informal settlements a position STDM would extend to tenure and service delivery in accord with provisions of the National Slum Upgrading and Prevention Policy (NSLUPP)	The regularity with which the property clause is used to diminish communal rights has the potential to frustrate the evolution and development of indigenous law/tenure systems. The position taken by the NLP to reconsider protection of property that was acquired irregularly should be supported
Article 40(4): Deprivation of property	Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land	Reference to “ Occupiers in good faith ” positions off register communities at a special place and lends them virtue and recognition that STDM can exploit	Continue lobbying for improvements to the legal system to expressly recognise residents of informal settlements
Article 43 (1b): Economic & Social Rights	Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation	Residential security is a constitutional guarantee	Advocacy for expanded provisions in the land legislations
Article 43 (1d): Economic & Social Rights	Every person has the right to clean and safe water in adequate quantities	Physical infrastructure such as water supply is guaranteed by the constitution	Step up advocacy for more inclusion
Art 60(1): Principles of Land Policy	Land in Kenya shall be held, used & 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	STDM can give effect to this Art. & facilitate usage and management of land in a manner that is equitable, efficient, productive and sustainable, and in accordance with the principles mentioned. STDM encourages communities to settle land disputes through recognized local community initiatives	Participate in the national land policy revisions to lobby for these expanded provisions
Art 118: Public access & Participation	Parliament shall—(a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and (b) facilitate public	Public participation is an opportunity for entrenching the STDM process due to its elaborate citizen involvement bias	Expand public participation guidelines to include STDM

REFERENCE	PROVISION	BEST PRACTICE/ENABLER	GAP/RECOMMENDATIONS
	participation and involvement in the legislative and other business of Parliament and its committees		
Article 174 (f): Objects of Devolution	The objects of devolution of government are to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya	Social infrastructure (health, schools, community centres, recreation facilities), shelter improvement, waste management are all built into these proximate services	Do more advocacy for improved policies to support informal tenure
Article 184 (1):	National legislation shall provide for the governance and management of urban areas and cities and shall, in particular— (a) establish criteria for classifying areas as urban areas and cities, (b) establish the principles of governance and management of urban areas and cities; and (c) provide for participation by residents in the governance of urban areas and cities	The UACA should incorporate the development of strategic and land use plans that can anchor STDM to deliver housing, services and tenure security to inhabitants of informal settlements	Harmonise housing development policies with land use and administration
POLICY FRAMEWORK			
National Land Policy 2009	Provides a platform for extensive overhaul of land policies and institutions to address chronic land tenure insecurity and inequality, land use management issues, land administration and land issues requiring special interventions.	Introduction of a new category of land known as “community lands” to vest and be held by communities identified on the basis of ethnicity, culture or similar community of interest Art 63(1) of the Constitution	Land tenure insecurity to millions of residents in rural, peri-urban, and urban informal and customary settlements have been unaddressed for many years
NLP: Public participation	Provides a framework to guide the country towards efficient, sustainable and equitable use of land	Gives a ray of hope to vulnerable groups by declaring that the primary rights holder of a piece of land is obligated to obtain written and informed consent from all secondary rights holders before any land transactions	
National Slum Upgrading and Prevention Policy (NSLUPP)	Policy aims at addressing the issue of slum as a constitutional mandate as provided by Article 43 (1b) of COK (2010) to guarantee the right to accessible and adequate housing	Formalisation in to the formal laws to give effect to informal tenure	Advocacy for enactment of these policy provisions to law
Urban Housing Renewal and Regeneration Policy of Nairobi City County	Gives effect to Article 43 (1) (b) of the Constitution, which is the legal and constitutional framework on the right to housing in Kenya	Formalising the right to housing to make it justiciable	Advocacy to have these statements enacted to law
Sessional Paper No. 02 of 2019 on National	Aims at achieving gender and intersectionality equality through participation in national	Prohibition of discrimination	Advocacy to have these progressive statements made law

REFERENCE	PROVISION	BEST PRACTICE/ENABLER	GAP/RECOMMENDATIONS
Policy on Gender and Development	development for the attainment of sustainable development		
LEGAL FRAMEWORK			
Land Act 2012:	Gives effect to Constitution article on revising, consolidating and rationalizing land laws and eliminating culturally biased practices that hinder women's participation in the control of land. It also provides the framework for equal recognition and enforcement of land rights arising under all tenure systems including non-discrimination in ownership and access	Prohibition of discrimination and rationalizes land administration for the different regimes	Use the non-discrimination of tenure system to advocate for the special informal settlements
Community Land Act 2016	Sets a new framework for identification and registration of customary holdings and gives general provisions on community planning for communal spaces	Prohibition of discrimination	Utilise the planning for communal spaces in the general provisions to develop informal settlements and to lobby for financing
Land Registration Act 2012	Provides for joint spousal registration of land and joint spousal consent in dealings with land		
Urban Areas and Cities Act 13 of 2011 and Amendment Act 2019	Gives effect to Article 184 of the Constitution; to provide for the, classification, governance and management of urban areas and cities; and criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes	Declaration of areas as cities and therefore planning area and public participation	Consider the informal settlements in these special planning areas and cause budgets to be assigned for STDM implementation
County Government Act of 2012	Gives effect to Ch. 11 of the Constitution that defines the powers, functions, responsibilities to deliver services and connected purposes	Subsidiarity, distinct and inter-dependent levels of government	Delineate STDM functions to accord with these two levels
Law of Succession Act Cap. 160	Allows equal inheritance rights for men and women	Passing on rights and interests to future generations	Resolve the dilemma in STDM by adapting best practice
Matrimonial Property Act, 2013	Safeguards women's property rights during and upon dissolution of the marriage	Prohibition of discrimination on account of gender	Adapt this to STDM
Land Adjudication Act	Provides for the ascertainment and recording of rights and interests in Trust land	Recognition of group rights and interests	Adapt to the STDM principles
Environment and Land Court Act No. 19 of 2011	Creates a court with jurisdiction to hear disputes relating to land administration and management	Progressive jurisprudence possible from this specialized court	Progressive adaptation of rulings that speak to social tenure

REFERENCE	PROVISION	BEST PRACTICE/ENABLER	GAP/RECOMMENDATIONS
Physical Planning and Land Use Act of 2019	Makes provision for the planning, use, regulation and development of land and for connected purposes	The Physical planning Liaison Committee should be an organ adaptable for the STDM process	Add the Committee to the STDM institutions
Sectional Property Act of 2019	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 to provide for the use and management of the units and common property and for connected purposes	The concept of tenants in common and the guidelines for use and management of common property should provide lessons to STDM	Adopt and integrate such guidelines to the STDM guidelines
INSTITUTIONAL FRAMEWORK			
The National Land Commission Act of 2012	Provides a framework for ensuring that land reform initiatives guarantee the equal right to all citizens to possess, inherit, access, and transfer land to persons of choice	The mandate for management of public land for national and county government supports the STDM practise as public assets out of STDM should similarly be managed	NLC should be strengthened to support Counties to administer informal settlements
Kenya Informal Settlement Improvement Project (KISIP)	Initiative started by the Government in collaboration with the World Bank, Swedish International Development Agency (SIDA) and French Agency for Development (AFD) focused on improving living conditions in existing informal settlements by investing in infrastructure and strengthening tenure security	Initially targeting 15 municipalities the project was 10% counterpart funded by the government to plan future urban growth with slum prevention in mind. Institutional strengthening, enhancing tenure security, investing in infrastructure and service delivery and planning urban growth were the 4 components	These components remain relevant and the 10% funding should be retained and cascaded to counties to interest new donors
Kenya Slum Upgrading Programme (KENSUP)	Collaborative Initiative to redress slums executed by the Ministry and Counties across the country targeting all the former provincial headquarters	Collaboration with civil society, local community and private sector to improve livelihoods through security of tenure, physical and social infrastructure as well as income opportunities and housing improvement. Settlement Executive Committee (SEC) composed of people from the community main driver of program, Settlement Project Implementation Unit, Programme Secretariat (in the Ministry) and the Interagency Steering Committee (IASC) composed mainly of accounting officers in key relevant Ministries, Counties, United Nations Human Settlements Programme (UNHABITAT) and other development partners	STDM should be integrated in to this programme and its impact assessed and improvements made

Annex II: STDM Processes

No	Methodology	
1	Community mobilization and awareness creation	After meeting and sensitizing community leaders and settlement Executive Committee, the leaders will take up the role of sensitizing their settlements residents.
2	Training of Community Land Management Committees and mappers.	Socio-economic data collection community team: The community will be trained on how to collect data using mobile GPS-enabled platforms.
3	Actual Enumeration and Mapping	The process begins with numbering and thereafter, enumeration process
4	Data Entry, Data cleaning, analysis and digitization	Digitization of structures/parcel and socio-economic data analysis
5	Consultations and Social Planning	After data collection is complete, community participatory planning process will proceed under the guidance of planning ,spatial expert, environmental expert and social expert
6	Data verification	Community verification process: community to verify their data publicly to ensure data and process ownership by the community.
7	Community Register	The data is entered into a STDM database and documents are generated, for example, reports, maps, certificates of occupancy
8	Engagement with stakeholders using the STDM Outputs	The STDM outputs are then used to engage the relevant duty bearers; Tools for strengthening people's capacities in engaging with county, national and international authorities and leaders in the accountable governance of resources for common benefit and becoming actors in their own right.

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