



Strathmore University
Law School



University of Nairobi



Strathmore University
School of Finance and
Applied Economics



IDRC | CRDI

International Development Research Centre
Centre de recherches pour le développement international

Canada

Improving Access to Justice and Basic Services in the Informal Settlements of Nairobi

Executive Summary

Introduction and Study Setting

An innovative study has found a staggering ‘Poverty Penalty’ in Mukuru, where residents can only access more expensive yet lower-quality services than in Nairobi’s formal estates. Such inequitable burdens are only compounded by slum-dwellers’ exclusion from formal finance, lack of access to justice, and chronic land tenure insecurity. Mukuru residents must also cope with entrenched poverty, gender inequality, and frequent threats to their dignity that stem from their paltry housing and services. Population figures in Mukuru are highly contested and uncertain, similar to other slums, but residents are at elevated risk of forced evictions due to Mukuru’s prime location upon mainly private lands in the industrial area. In this rapidly-expanding informal settlement, households are usually crowded into tiny iron shacks with only minimal service provision. As one Mukuru resident noted, *‘I have never seen latrines or toilets where I live. The water that is brought to us is so dirty that it is green in colour. We just survive by the grace of God.’*

To address these overlapping challenges, an interdisciplinary team of Kenyan experts recently proposed holistic strategies to support tenure security, equitable access to services, and justice for residents of Nairobi’s informal settlements. The research project was spearheaded by city planners at the University of Nairobi, pro-poor financial strategists at Akiba Mashinani Trust (AMT), legal and finance professors at Strathmore University, and lawyers at the Katiba Institute. Supported by the International Development Research Centre (IDRC) from 2013-2015, this consortium partnered closely with residents throughout a multi-stage research process. A detailed situation analysis helped to reveal key links between meagre services, insecure land tenure, and unjust governance institutions in Nairobi’s informal settlements. In addition to exploring alternative models of service delivery, the situation analysis examined the complex relations between settlement types and service provision in Mukuru. Using extensive surveys, focus groups, and spatial data, the team subsequently developed a set of proposals to benefit households in Mukuru. The final report explores the potential of applying public interest-oriented legal, planning, and financial tools to tackle governance challenges in Mukuru, while strengthening the legitimacy and accountability of public authorities in the process. Furthermore, researchers have offered an array of policy-relevant

recommendations such as inclusive slum upgrading initiatives, pro-poor financial strategies, and supportive legal frameworks in Mukuru (see below for detailed findings and proposals).

The study has wider relevance for development policies across Kenyan cities and will contribute to broader debates about improving well-being among the urban poor, helping to fulfil the promise of equitable development in Kenya's Constitution and devolution reforms.

Researchers have also uncovered extremely dire living conditions and the interrelated challenges of a poverty penalty, gendered burdens, insecure land tenure, and paltry services in Mukuru, as follows:

- Minimal Water, Bathrooms, or Toilets: Surveys with over 800 households in Mukuru found that as few as 3.6% had access to adequate bathrooms, just 7% had adequate toilets, and only 29% had adequate water provision.
- Dangerous Illicit Electricity: Although 78% of households had electricity, access is mainly through tenuous illegal connections that are controlled by cartels. These unreliable, hazardous services may only spawn other challenges for Mukuru residents, such as regular blackouts and elevated risks of electrocution.
- Poverty Penalty: In a key finding, the researchers discovered that Mukuru residents can only access higher-cost, lower-quality services as compared to nearby formal estates. For instance, the average structure in Mukuru (a 10-by-10-foot rented room without amenities) is *10% to 26% more expensive per square-foot* than neighbouring formal estates with all services provided. Similarly, Mukuru households must pay *45% to 142% more* for their monthly electricity bills than residents enjoying formal KPLC provision. For water, the poverty penalty is especially crippling as slum-dwellers usually consume less water, at lower quality, but at higher costs than residents with formal provision. Mukuru residents typically pay tariffs per cubic-metre that are as much as *172% the rates of formal water customers*.
- Women and Girls' Double Burden: Women and girls are disproportionately afflicted by poor service delivery, particularly when they risk rape or assault to use Mukuru's inadequate toilets after dark. Alternatively, to avoid the threat of gender-based violence, women may resort to using plastic containers underneath their beds as emergency toilets yet this may only increase their ongoing humiliation and lack of dignity.
- Uncertain and Contested Land Tenure: Many of the challenges in Mukuru's service delivery are rooted in insecure land rights. Households usually live on lands held by private individuals, who often acquired their parcels in unclear legal circumstances. During recent years, lands have gained in value and Mukuru residents are therefore confronting greater eviction threats. As argued below, alternative policies and interventions will be critical to guarantee tenure security as well as to improve service delivery in Mukuru.

In the face of such multi-layered challenges, the interdisciplinary researchers have developed the following recommendations that can respond to the complex realities in Mukuru. Moreover, these legal, planning, and financial strategies can also inform integrated, long-term solutions benefiting residents of Kenyan informal settlements more generally.

Legal Analysis and Recommendations

Addressing the plight of Mukuru residents will require transforming the multi-layered land tenure arrangements in the settlement. We argue for converting private holdings in Mukuru into community land, using provisions from the Constitution, Land Act, and the draft community land bill. In particular, we advocate establishing a Community Land Trust (CLT) that can build upon successful experiences in the Kenyan city of Voi. The CLT should recognise and secure the property rights of Mukuru's squatters, while also producing a long-term solution to land conflicts in the settlement. This strategy will help to achieve the Constitutional rights to housing, water, health and

sanitation, in addition to respecting and protecting individual property rights. The CLT will ensure that Mukuru's current residents and future low-income communities will have access to secure, lasting tenure rights. Our findings and recommendations to support secure land tenure and constitutional rights to shelter are as follows:

- **Promote Security of Tenure:** Tenure security in Mukuru and other informal settlements will be critical for the enjoyment of services. The Constitutional rights to water, sanitation, and housing will not be realised in the absence of secure tenure. We underscore the pivotal importance of tenure security, which serves as the bedrock of slum upgrading initiatives and can promote equitable access to key services.
- **Create Innovative Ways to Establish Community Land Rights:** Community land rights can create a highly promising window of opportunity for enhancing tenure security in slums. Past models of private and public land tenure have often fallen short, as they typically struggle to promote tenure security in informal settlements like Mukuru. Innovative ways to establish community land rights, by contrast, can facilitate a wider range of individual rights to basic services and shelter. Additionally, community land rights can better overcome the financial challenges of delivering services and affordable housing for the urban poor.
- **Develop Flexible Approaches:** Any innovation seeking to improve tenure security should be flexible in order to accommodate Mukuru's unique features, as well as to promote vigorous grassroots participation in decision-making processes surrounding land rights.
- **Ensure Government Support:** Across the national and county levels, the Government has essential policy and legislative roles to play that can foster land tenure security in Kenyan informal settlements.

Planning Analysis and Recommendations

In its model, the planning team aimed to foster liveability, safety, affordability, and inclusion of all residents. The proposed strategies will support in-situ, incremental upgrading *and* comprehensive redevelopment in Mukuru. Interventions are intended to benefit residents regardless of their income levels, tenure or ownership patterns. Beneficiaries in Mukuru will therefore encompass 1) Current land-owners; 2) Structure-owners and tenants on new land allocations (with resources in contested lands); 3) Current tenants and structure-owners before land allocations (with minimal resources on contested land); and 4) Vulnerable groups like widows, orphans, or the very poor. To reach these beneficiaries, we recommend the following planning initiatives and cross-cutting approaches that can support equitable access to services, shelter, and livelihoods in Mukuru:

- **Improve Service Delivery Via Community Partnerships:** We propose a two-pronged approach based upon a partnership between service providers and grassroots actors. To represent residents, we suggest establishing community-based management structures. For providers, we recommend an efficient monitoring and surveillance system in service distribution. This multifaceted strategy should help to dismantle the cartels that offer only insecure, low-quality, and costly services in Nairobi's informal settlements.
- **Promote gender equity:** Gender-equitable approaches should be mainstreamed throughout the slum upgrading process, including particular efforts to ensure the visibility of women and girls, as well as to provide gender-equitable benefits in property and livelihoods. For instance, women in Mukuru will enjoy equal opportunities to participate in the economic and livelihoods aspects of the project. We also propose the equal representation and recognition of female-headed households when granting property rights. Finally, improved water,

sanitation, or other services in Mukuru may especially benefit women and girls, since slums' inadequate provision is often linked to gender-inequitable burdens. Our model can thus support gender equity in access to services, livelihoods, and property rights, in addition to ensuring gender-equitable forms of participation throughout the project.

- **Build Skills for Youth:** We recommend offering industrial trainings and developing entrepreneurial skills among youth in Mukuru. Building youth's capacities can promote skilled human resources and generate value-added activities, which will extend even beyond the slum upgrading project.
- **Support Community Savings Groups:** We advocate continued support for grassroots savings schemes in Mukuru for several reasons. Beyond improving the purchasing power of poor households, we argue that savings groups are a vital tool for community-building and enhancing residents' abilities to negotiate with their government representatives.
- **Create Holistic Planning Interventions:** Multiple models of slum upgrading are needed, in order to cater for the diverse challenges and multiple stakeholders in informal settlements. This appreciation of diversity calls for a plural, negotiated, and tailored approach to upgrading with a range of actors, as opposed to a singular or fixed strategy.

Financial Analysis and Recommendations

The finance team aimed to develop inclusive, affordable housing and financial solutions, which are rooted in the formal and informal institutions that together shape Kenyan slums. Utilising its situational analysis and review of past experiences, the team developed innovative strategies that can overcome past financing gaps and provide dignified shelter for the urban poor. The analysis also revealed 1) Existing institutional and structural bottlenecks that prevent Mukuru households from accessing livelihood loans; 2) Mukuru residents' willingness and ability to repay loans; and 3) Coping mechanisms amongst the lowest-income households, who are highly at risk of being displaced by gentrification. In light of these challenges, key findings and recommendations are as follows:

- **Bridge the Financing Gap in Shelter Upgrading:** A typical Mukuru household can only afford a housing unit that costs up to Kshs. 300,000, as explained in our costing calculations. However, just half of Mukuru residents can meet this cost threshold and the remaining 50% cannot qualify for the necessary credit. The state can play an essential role in bridging this gap via the provision of targeted subsidies (especially to reduce infrastructure costs and interest rates) and the development of policies to regularise tenure. Such policies will encourage financiers to develop mortgage terms and mechanisms that can promote repayment, which should be consistent with slum-dwellers' high variability of incomes.
- **Establish a Special Purpose Entity (SPE) in Mukuru:** Owned by the Mukuru community in order to redevelop high-end housing, the SPE could further reduce the financing gap. We propose establishing an SPE that can effectively steer the redevelopment process, with representation from community residents' associations, strategic private investors, and qualifying microfinance institutions or banks.
- **Issue Modified Revenue Bonds that Leverage Small Scale Service Providers (SSSP's):** SSSP's already possess invaluable on-the-ground knowledge of how to deliver affordable services in Mukuru, which can be leveraged when designing service distribution systems. Formal institutions can bring investors into the sector to provide core infrastructure, while using SSSP's to operationalise and maintain the systems. This arrangement could generate revenues for the formal agencies, in addition to building upon local expertise and enhancing service delivery for Mukuru residents.

- **Expand Participation in Community Savings:** As noted by the planning team, savings have several benefits and can strongly enhance slum upgrading projects. A household that saves Kshs. 50 per day for the next three years will accumulate Kshs. 54,000, or from 5% to 25% of the cost of shelter improvements (depending on the type of housing unit selected). This will give households greater leverage in negotiating their credit terms, as well as influencing favourable actions while making such improvements. According to the situation analysis, just 7.5% of Mukuru residents are consistent savers. We therefore recommend the embedding of a savings culture with widespread participation, so that these activities may have a more significant impact at the household and settlement levels.

For Further Information:

Akiba Mashinani Trust (AMT)

www.akibamashinani.org/

Katiba Institute

www.katibainstitute.org

Strathmore University

School of Law

www.strathmore.edu/sls/

Strathmore University

School of Finance and Applied Economics

www.strathmore.edu/sfae/

University of Nairobi Department of Urban Planning

www.urbanplanning.uonbi.ac.ke

www.centreforurbaninnovations.com