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THE RELATIONSHIP BETWEEN URBAN LAND CONFLICTS AND INEQUITY: THE CASE OF NAIROBI.

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A thesis submitted to the Faculty of Engineering and the Built Environment, University of the Witwatersrand, in fulfilment of the requirements for the degree of Doctor of Philosophy in Town and Regional Planning

Johannesburg 2011

DECLARATION

I declare that this project is my original work, submitted for the Degree of Doctor of Philosophy in Planning in the University of the Witwatersrand, Johannesburg. It has never been submitted before to the university or any other university/college for academic credit. The information and other sources have been acknowledged as required

Signed:



Date 28 March 2011

DEDICATION

This work is dedicated to Ruth, my wife, my children Annette and Nicole for their love, care and support despite my long absence as a result of the project.

ACKNOWLEDGEMENTS

Many individuals and institutions played critical roles in the process of my working on this thesis. However, my greatest gratitude is to Prof. Marie Huchzermeyer; she did not only supervise my research work but has been the greatest source of support from the inception of the project to its conclusion. She adopted me after a period of orphanage following Prof. Philip Harrison's temporary departure from the University. As such I will always have a great sense of gratitude to her.

Prof. Philip Harrison, too, played a critical role at the beginning of my work, safely handing me over to Prof. Marie Huchzermeyer. I will always remain indebted to him as well. Prof. Aly Karam continuously prodded me and encouraged me. He remained supportive throughout the study period, on many instances going beyond the call of duty. I owe him much gratitude in this respect. I am grateful to the staff of School of Architecture and Planning for their interest, support and encouragement during my stay at the University of the Witwatersrand. Indeed, their desire to ensure I had the necessary resources to undertake the work, was very encouraging.

In the process of this work I developed enriching academic and social relationships with both staff and students from different parts of the world, which I cherish. In this respect my special appreciations go to Grace Lubale, Georgine Peters, Nancy Ondendaal, Collins Miruka and Chris Wasike, among others. Ken Aduda ensured that my presentations were clear and spent valuable time assisting me in their preparations. Prof. Alfred Taluhaba of the School of Construction Economics, Prof. Rok Ajulu, School of International Relations, were great sources of inspiration and support. They ensured that I remained focussed on the goal.

Dr. John Momoh, Dr. C. Mbilemi, Dr. Abdul Lamin and Dr. Salah Mohamed all ensured that my stay in Johannesburg was bearable. Indeed, Lamin gave me ree accommodation for close to a year. Dr. Momoh always provided assistance whenever need arose. I cherish the relationships that emerged from these interactions.

I also wish acknowledge the support and encouragement I obtained from Prof. Washington Olima, Prof. Gichunge and Prof. Syagga all of the School of the Built Environment, George Omondi from School of Business all from the University of Nairobi. I wish to further acknowledge the support from Dr. Marenya of University of Venda during my stay in South Africa. He was often available for long telephone discussions, always writing off the costs.

I further wish to thank the many comrades that made the exercise exciting through numerous emails, intellectual jokes and telephone supports. Their support was critical in ensuring that the fire continued to burn to completion of the thesis.

Finally, I must thank both University of Nairobi and Witwatersrand for supporting me financially at various times. The support was central in ensuring that the work was completed. I will remain grateful to the two institutions for the support.

LIST OF ACRONYMS AND ABBREVIATIONS

ADB	African Development Bank
CBOs	Community Based Organizations
CBS	Central Bureau of Statistics
COHRE	Centre on Housing Rights and Evictions
DFID	Department of International Development
FGDs	Focus Group Discussions
FORD	Forum for Restoration of Democracy
IPS	Inter Press Service
KANU	Kenya African National Union
KSHS	Kenya Shillings
NARC	National Rainbow Coalition
NGOs	Non-Government Organizations
NSSF	National Social Security Fund
ODM	Orange Democratic Movement
PCEA	Presbyterian Church of East Africa
SID	Society for International Development
UN ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNRISD	United Nations Research Institute for Social Development
UNU	United Nations University
WIDER	World Institute for Development Economics Research
ZANU PF	Zimbabwe African National Union – Patriotic Front

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ABSTRACT

This thesis sets out to deepen our understanding of the linkages between urban dynamics that influence access, use and ownership of land in developing countries. This is because land scarcity, increased competition for land and inequitable allocation of land in African cities and the mediation of power, politics, ethnicity and corruption, coupled with inequitable access to land, often contribute to conflicts over land. The thesis explores this reality through the case of Nairobi.

Two arguments premise this thesis; one argument posits that urban land conflicts persisting in Africa are largely resulting from land commodification which is not in conformity with existing African land relations. The second argument is that the persistence of urban inequity well beyond colonialism into the present time has produced reinforced inequity in access to and ownership, thereby producing patronage, ethnic and corrupt approaches to land management and allocation processes. These have invariably led land conflicts. As such the study sought to answer one major question that could help establish the links between land scarcity, ethnicity, corruption and conflicts. The question is: what is the relationship between land conflicts and inequity?

The thesis aimed to explain the linkage between land commodification processes and inequity, exploring the nature, causes, extent, dimensions and dynamics of land conflicts. It further sought to explore the linkage of the existing institutional arrangements to urban land conflicts. It anticipated the drawing of conclusions on the linkages between land conflicts, land management, commodification, ethnicity, corruption and political patronage and how these linkages contribute to inequity and, subsequently, land conflicts.

The study applied a qualitative case study approach, exploring the relationships between land conflicts and inequity. Four in depth case studies, Tassia, Embakasi Jua Klai, Pipeline and Mathare North, were conducted in Nairobi. The study drew on a combination of theories, including ethnic manipulation, structure and agency, institutional analysis, uneven development,

grounded theories and group interest. These helped in the analysis and informed the data collection approaches. In addition, they assisted in the development of appropriate explanations of the dynamics between factors such as ethnicity, corruption, and the market, among others. In drawing conclusions, they were useful in unraveling the relationships between land conflicts and the various mediating factors.

The results from this study include the establishment of the fact that urban land conflicts result from social, political and economic factors. The factors are mediated by several factors that are institutional, ethnic and patronage-based. The thesis reveals the linkage between ethnicity and corruption, and the simultaneous relationships between power, corruption, institutions and ethnicity. For the Nairobi case, the study brings to the fore the central role of ethnicity in resource conflicts. It also reveals the dynamic nature of land conflicts, thereby suggesting that land issues are social, economic and political. Addressing land conflicts conclusively requires a careful political process that must also be embedded in the legal systems of the particular country.

The study concludes by proposing areas for further study, including ethnicity and land ownership in Kenya's urban areas; corruption, politics and landlordism in Nairobi; land markets and conflicts in urban areas; the development of appropriate models for urban land management, and the links between land tenure and conflicts over land in urban areas.

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INTRODUCTION

1.1 Introduction to the study

Debates on land policy reforms in Kenya are on the increase. The intensity of these debates has been necessitated by the failure of existing land laws, institutions and the market to respond to societal needs. This has seen civil society take a leading role in the search for just and equitable access to land. Indeed, the joint launch of a publication entitled "Unjustified Enrichment" (2006) by the Kenya Human Rights Commission and Kenya Land Alliance points to the undying desire of Kenyans to have the land question addressed. The *East African Standard's* (October 1, 2004) article entitled; "Who Owns Kenya," which appears to have been borrowed from Professor Jacob Harvey's, *"Who Owns America: Social Conflict over Property Rights"* (1999), indicates that there is an urgent need for land reform in Kenya. It also points to the persistence of land conflicts in the country.

In relation to the foregoing debate, this study hopes to deepen the understanding on the interactions between various factors that affect land relations and, consequently, land conflicts in an urban setting, in particular with regard to Kenyan land reforms. Although this is explicitly an academic study, there is hope that key results and insights eventually could be disseminated in a form that would deepen the understanding of the stakeholders on Kenyan land reforms. n the process the study results would contribute positively to debate on land policy reforms in Kenya.

Land policy reforms are currently being undertaken in Kenya to facilitate efficient land market operations, including the public land allocation processes. The stakeholders in this process hope that reforms in the land market operations will facilitate easy access to land by both the poor and investors. The reforms are also viewed as one of the ways of addressing problems of land conflicts that seem to be on the increase in many urban areas in Kenya. However, different actors have limited understanding of what really constitutes land conflicts. The study's main assumption was that land conflicts result from a combination of forces and/or factors, the main one being uncontrolled commodification of land. In the context of inadequate laws, institutions and markets, the study attempts to establish existing linkages between land conflicts and inequity. Given inadequacy of existing laws, institutions and the market, the study thus further attempts to deepen our understanding of the linkages between corruption and political patronage on the one hand and ethnicity and land conflicts on the other hand.

This is because governance of resources, including land, which is an important resource in many African countries, is largely influenced by ethnic and political considerations.

The study uses selected settlements within the city of Nairobi as case studies in exploring and explaining these linkages. The settlements were examined to establish the types, nature and dimensions of land conflicts and their influence on equitable access to land and on poverty reduction. This is against the background of increased problems of high population growth rates and urbanization amidst increasing poverty in Kenya (United Nations, 1993; Obudho and Juma, 2002; Olima and Kreibich, 2002).

It is clear that land conflict in Kenya is in large part a product of uncontrolled commodification which is mediated by many factors, among them ethnicity, historical injustices, land scarcity, land market operations, traditional prejudice, corruption and ethnic manipulation and socio-political economic transformations.

1.2 The City of Nairobi and the Land Question

The city of Nairobi has its origins in the colonial period, having initially been created as a railway stopover during the construction of the Kenya-Uganda Railway. However, due to favourable climatic conditions and its perceived centrality, it later became the administrative and commercial headquarters of the colonial government. Thus by the time Nairobi was declared a Municipal Council in 1919 it had a population of about 15,000 people of diverse racial and ethnic backgrounds and it occupied about 18 square kilometres. Its boundaries were later changed, particularly when it became the colonial headquarters, and also due to an upsurge in commercial and agricultural activities (Salau, 1988).

The boundaries of Nairobi have been changed three times (1920, 1927 and 1963) following population increase. The plans for Nairobi were finalised in 1905, 1927, 1948 and 1973. However, the last master plan to be implemented was the 1948 master plan. Ironically, the only post-colonial plan for Nairobi, the 1973 Growth Strategy, was never implemented. However, the reasons for non-implementation of the plan remain scanty and mainly speculative. Chief among the reasons is that there was lack of foresight in the city leadership as it was keen on ethicising the council, and moreover it was involved in massive corruption, thus being unable to deal with real and serious issues, such as the implementation of the plan (see Hirsch and Lamba, 1976).

It is important to recognise that the British colonial administration conceived Nairobi as a European city where Africans were tolerated only for their labour. This led to the introduction of pass laws that restricted the migration of African populations. However, the city was also meant to accommodate people of diverse races and ethnic origins. This set the framework for racial segregation, a practice of British colonialists that prevailed up to independence (De Souza, 1988). Due to this policy, the city was systematically racially zoned in the plans of 1905, 1927 and 1948. This was ostensibly to achieve a disease-free environment with minimum expenditure (Syagga *et al.*, 2001). The colonialists had linked diseases to Africans due to the perception that African way of living was prone to outbreaks of communicable diseases.

Given the background and intentions of colonial plans for the city, it is intriguing that the plan that influenced the development of Nairobi to date is the same 1948 master plan. It should be understood that the 1948 master plan condoned racial segregation and unequal distribution of land among different racial groups. The Africans were the most disadvantaged group, yet they comprised the bulk of the population of the city. The segregation and unequal distribution of land in the city has persisted even after independence, though acquiring a socio-economic dimension with African elites replacing the whites who departed in large numbers between 1963 and 1970. The majority of the population, which has a low income, therefore has limited access to land. This situation has informed the prevailing land conflicts and poses a major challenge for urban land management.

Land remains a major issue in Kenya, as in other African countries (ADB, 2007). The land tenure system defines ways of land holding, both legal and illegal. In Kenya, the prevailing tenure system is a combination of both English and customary land laws. Yahya (2002:233) argues that the system evolved out of superimposition of the British system in a territory where various land relations and tenure systems already existed. Obala and Njambi (2002) have shown that this process, as well as the desire to transform the colony into a modern state, produced three main tenure systems. These are private, customary and public land ownership. Evolving from this is the neo-customary tenure that borrows from the prevailing formal tenure system (Obala and Njambi, 2002). It is generally argued that neo-customary tenure in peri-urban settings therefore mimics the formal tenure as well as the customary, arguably making it flexible (Durand Lasserve, 2003).

As in most urban areas in Kenya, two main categories of tenure systems exist in Nairobi. These are

private and public land tenure systems. Private land tenure refers to a situation where individuals or companies own land. There are two types of private land tenure, one is where land can be held for a term of years ranging between 30 and 99 years, depending on the allocating authority as well as being subject to conditions of development and payment of annual land rents and rates. The other category of private tenure is freehold interest with an unlimited term but subject to planning, local authority bylaws, and payment of rates, among others. Most land in Nairobi is held under private tenure systems. Public land tenure refers to land owned by the state. This land is used for the state's own purposes and may be held for future alienation to individuals and institutions. Interestingly, customary tenure although popular in the neighbouring districts of Nairobi, does not exist in Nairobi except for parts of Dagoretti Division.

In addition to various land tenure types, in Kenya, there are several pieces of legislation that guide land registration and subsequent transactions on land (see table 1.1 below for summarized information on the same). Okoth-Ogendo (1991) gives a chronological summary of the evolution of the existing tenure systems in Kenya. He points out that in Kenya a broad and somewhat ambiguous proclamation was made in 1897 declaring all 'waste and unoccupied land' crown land, hence vested in the imperial power. He further indicates that this ambiguity was removed in 1899 on the advice of the Law Officers of the Crown who argued that in Kenya all land had in fact accrued to the imperial power simply by reason of assumption of jurisdiction. He asserts that thereafter, Kenya slipped very quickly into a territory of individual private estate owners whose titles derived their legitimacy from the imperial power.

Okoth-Ogendo (1991) further indicates that by 1920, when Kenya was formally declared a colony, all land in the country, irrespective of whether it was occupied or unoccupied, was regarded by the colonial government as 'Crown Land' hence available for alienation to white settlers for use as private estates. Even when attempts were made in 1922 and thereafter to address the issue of land rights and tenure security for African cultivators, the device then used was just to create 'reserves' for each ethnic group, thereby offering no protection in the face of settler advance. And, as the Masai[1] were to discover to their detriment, not even 'treaties' similar to those concluded elsewhere in Central and Southern Africa were capable of offering protection. Okoth-Ogendo (1993) further argues that land reserved for use by Africans remained 'Crown Land', hence available for alienation at any time. It was only after several inquiries and commissions that a clear separation in colonial law (rather than in fact)

[1] Masai refers to an ethnic group in Kenya, which resisted land dispossession by the colonialists until they were coerced into entering into an agreement with the colonialists (Ndegwa, 2006).

was made in 1938 between 'Crown Land' out of which private titles could be granted, and 'native lands' which were to be held in trust for those in actual occupation.

Table 1.1: Land Use and Legislation applying to land tenure categories

Land tenure Category	Owner (Holder of the land)	Status of the land	User	Legislation
Government land (public)	Government on behalf of the public	Utilized, unutilized, unalienated, reserved	Government use, general public use	Government Land Act (1965) – administered by the Commissioner of lands
Trust land (communal)	Trusteeship under county councils (customary laws and rights)	Utilized or unutilized	Local residents, various uses	Trust Land Act Cap 288 (1965); Constitution of Kenya (1963)
Private land	Private individuals	Freehold or Leasehold tenure	Registered individuals and organizations, various uses	Registered Land Act, Cap300 (1965)

Source: Republic of Kenya (1999); Yahya (2002) and Okoth-Ogendo (2006)

These events created pressure for land in most of the highlands that had good agricultural land. Indeed, Meek (1946) indicated that the acquisition and confinement of Africans in small and delimited areas that were inadequate for animal grazing was quickly driving them towards land individualization. This is because land was becoming scarcer and individuals were keen on the survival of their households. Upon independence, a large proportion of the African population from rural areas moved to urban areas. This was in part due to the lack of any employment opportunities in rural areas other than on European and White owned farms. In some areas in Central Province, most rural households had been dispossessed by the emerging black elites. Therefore, part of the land pressure that had been generated by dispossessions in parts of Kiambu, Nyeri and Meru districts (Central Kenya) was transferred to Nairobi. This has been significant in shaping the urban land question in Kenya (Leo, 1984; Syagga, 2006).

It should be recognized that tenure systems emerged in the post colonial period as a result of the failure of the existing tenure systems of the colonial era to provide access to land to a large section of the population. The inability of the colonial tenure systems to provide access to land to the majority of the population led to inequity in land ownership, which has at times, contributed to conflicts over land between different groups. It has further contributed to the evolution of various tenure systems, which are part of deliberate strategies developed by different groups to access land. It is therefore not

uncommon to find large swathes of land on Nairobi's urban fringes owned by members of a cooperative society or a land buying company.

In addition to the three main tenure systems mentioned above, new tenure systems emerged in the post-colonial period aiming at providing access to the large proportion of the urban population currently having limited access to urban land. The new tenure systems have been identified by Yahya (2002) to include Temporary Occupation License, Community Land Trust, Cooperative Societies and Land Buying Company. Temporary Occupation License refers to an annual lease with a condition for temporary development and occupation. There is an increasing number of people applying for land under the new tenure systems, more so, as Yahya (2002) further points out ,in Nairobi, where there are increasing numbers of applicants for allocation of land under temporary occupation license.

Community Land Trust refers to a situation where the whole community jointly owns land and improvements are by individual members of a group. Community Land Trust is a modification of the traditional system of land ownership and falls under private land tenure system. Land Buying Company or Cooperative Society, on the other hand, refers to a situation where a company or a cooperative society buys a large parcel of land, which is then subdivided among members of the society, which also falls under private tenure systems.

1.3 Key Concepts

In this section only critical and key concepts that are likely to lend themselves to more than one meaning, are explained. The intention is to reduce misunderstandings and differences in interpretations. The concepts are: land, land conflicts, inequity, commodification, corruption,

ethnicity, ethics, discretion, competition and scarcity.

Land is one of the most critical resources in Africa and the basis of survival for the majority of its population (ADB, 2007). It is defined as the solid part of the earth's surface, as it is distinguished from the sea, water, or from air (Brown 1993: 1525). Abbott (1987:479-80) has also defined land as the dry part of the earth's surface. In this definition, land is seen to comprise any part of the earth that can be owned and exploited, whether mountain or valley, pasture or desert, town or country, dry land or land covered with water (ice). Brown (1987) adds that the meaning of land may be extended to all that is

annexed to it, whether by human or nature, as well as its natural produce above or below the surface. It is also seen as a basic source of material wealth and spatial setting of human beings (Fairchild, 1944:54).

Povinelli (2002) points out that the African perception of land is varied and not consonant with the western one. This is because among various African communities land belongs to all present and future generations, as espoused in the 1960s by the then Kenyan President (Kenyatta, 1967). Access to land is influenced through birth and every community member has a right of use. This is in contradiction to the western tradition, which emphasizes absolute or at times restricted individual ownership and where land is largely a private commodity. The urban perception of land in Africa is seen to be western in orientation. This is reinforced by Yahya's (1976) argument that the idea of the bed space as a function of land for urban Africans, as conceived by the colonial urban planners, did not sit well with Africans. To Africans land, whether rural or urban, should be adequate for all uses, including livestock rearing, burial and general farming. Furthermore, access to it should be open to the needy and not just for purchase in a competitive market.

Conflict is generally defined as tension between opposing views, interests, or wills (Suhrke and Chaudhary, 2007:387). Johnson (2000:57) explains the concept of conflict from a perspective that assumes that groups and/or individuals who struggle or compete with one another over various resources and rewards shape the world situation. Johnson (2000) adds that this results in distribution of wealth, power, and prestige in societies in a particular pattern. This goes on to shape not only the patterns of everyday life, but also the larger patterns such as racial, ethnic, and class inequality and relations among nations and regions of the world. Johnson's (2000) text reviews the arguments on conflicts by Marx and Max Weber. While Marx's argument is that most conflicts are economic and rest on unequal ownership and control of property, Max Webber has a broader view, considering it as encompassing economic relations as well as factors such as race, ethnicity and religion.

The definitions of conflict notwithstanding, the focus of this study draws attention to important dynamics in which social systems promote and serve as settings for struggle among diverse and competing interests. In many cases competition has been seen as a process in which one or both sides consciously interfere in the goal achievement efforts of the other side. At times, this takes the form of a struggle between two or more forces that create tension which must be resolved (Nasongo, 2000). In

other cases, conflict has been viewed as a state of opposition; that is, disagreement between two or more people or groups (Horowitz, 1985; Nasongo, 2000).

In this study, I have adopted a definition of conflict that is broad-based and draws on both Karl Marx and Marx Weber. It refers to land conflict as an interaction between two or more forces over land resources. The forces include social, economic, cultural and environmental factors. In addition, they include struggles to maximize an individual or group's land use related benefits. The struggle between the market and the State in the State's intervention process is also taken as a conflict in this process.

Competition and commodification are two terms that are critical to this study but which render themselves to more than one definition. Commodification refers to an item or resource attracting value, which it gains as a result of competition. This results from the finite nature of the universe and increasing population, which results in serious scarcity and higher demand (Mandel, 1984). Competition on the other hand has been defined variously by Johnson (2000:57) as a "struggle to maximize one's own rewards at the expense of others".

It is important to also recognize that competition is necessary for the achievement of social progress within a capitalist continuum. This is because competition is viewed as the engine of efficiency and one with a critical role in urban growth patterns (Johnson, 2000:57). Max Weber saw competition as a peaceful form of conflict, whereas Karl Marx saw it as having a relationship to conflicts but in a less peaceful way. Therefore, Marx saw competition as one source of contradiction that produces a variety of negative consequences — it contributes to exploitation of the working class and seriously contributes to their lack of consciousness and unity in the face of exploitation (Johnson, 2000).

The term corruption has diverse meanings, largely dependent on the institutions and individuals defining it. Indeed, in many cases the definitions are at variance with the perception of the general public. The World Bank (2007) has defined corruption as the abuse of office for private gain or for the benefit of a group to which one owes allegiance. It can be motivated by greed, desire to retain or increase one's power, or perversely enough, by the belief in a supposed greater good. Stapenhurst and Sedigh (1994) further note that although the term corruption is often applied to politicians and civil

servants, it describes a pattern of behaviour that can be found in every sphere of life. Transparency International (2007), in turn, defines corruption as the misuse of entrusted power for private gain.

The numerous definitions of corruption are viewed differently. For instance, Fjeldstad and Isaksen (2008) argue that there is a perception that a definition that confines itself to abuse of public office for private gain is seen as too narrow, legalistic and based on the western ideal of separation of the public from the private. Fjeldstad and Isaksen (2008) assert that such a definition does not fit the cultural context in developing countries. Further, Fjeldstad and Isaksen (2008) also dispute the arguments that the definitions they have espoused are too legalistic. They contend that, "the definitions do not depend on legal rules that may be incomplete or incidental". Fjeldstad and Isaksen (2008:5) further claim that the criticism on the basis of being western in orientation is a matter of application, but concede that the way, "the definition is sometimes applied by donors is informed by western idea of a public office". Thus they add that the:

> Definition does not in itself refer to a western office. In general, any well functioning society must have some productive allocation of tasks, to reap the benefits of organization and specialization. Corruption in this sense can thus be viewed as a violation of the basic norms of any well ordered society (Fjeldstad and Isaksen, 2008: 5 – 6).

Kenya's Directorate of Personnel Management (as cited in Kidombo, 2004) defines corruption as, "the possession or acquisition of any movable or immovable property either in an individual's own name or in that of another person, which is believed to have been acquired through improper, means contrary to the law or by coercion, undue influence, fraud or misrepresentation" (Kidombo, 2004).

As mentioned in the introduction to this chapter, the desire of Kenyans for society that is free from corruption is evident from their demonstrations and complaints. The outburst in parliament by Hon. Wetangula (East African Standard, March 22, 2007), protesting against President Mwai Kibaki's bias towards one ethnic group in the appointment of senior positions in Government, while it may be interpreted as political posturing for popularity,nonetheless conveyed the people's perception. Wetangula represents a large constituency in Western Province and as such his statement on corruption carries a lot of weight. The Afro Barometer (2005) survey also indicates the extent to which the Kenyan public is opposed to corrupt practices both by the powerful and by the less powerful in government.

The Anti-Corruption and Economic Crimes Act of 2003, which established the Kenya Anti-Corruption Commission, outlines the penalties that one should suffer for contravening the law. This Act defines corruption variously in sections 38 - 50 as:

> Receiving of a gift or reward as an inducement, receipt of benefit or expectation of which would influence a decision in favour of the other party, failure to disclose material information that would lead to secret benefits to the individuals, insider trading and conspiracy to defraud (Anti-corruption and Economic Crimes Act, 2003, sections 38 – 50).

In summary, the Act defines corruption as misuse and abuse of public office for private gain. The Act is relatively comprehensive in this regard. It is evident that definitions as to what constitutes corruption are varied, ranging from fraud to bias in decision-making processes. Similarly, interpretations as to what constitutes corruption are also varied and are influenced by many factors, including culture, environment and traditions. In this study I have, therefore, chosen an embracing definition, namely misuse and abuse of public office for private or communal gain at the expense of the larger society.

Equity and equality have been at the centre of debate in governments for along time. They were already prominent during the time of Adam Smith (1776), Karl Marx and John Stuart Mills (1865) and Alfred Marshall (1920). As Jolly (2006) points out, debate on these issues were more intense and brutal. Despite these intense debates the issue of inequity remains unresolved. This is despite the entry into the debate by the United Nations (UN, 1951), which helped point to the clear linkage between land ownership and inequity. Jolly (2006) rightly points out that the United Nations, though having discussed land over the years, has in the main been focused on the improvement of productivity. It is, therefore, clear from the literature that there has been limited attempts by major world bodies such as the United Nations to address the main issues that lead to inequitable access to land and other resources across the globe.

Okello and Gitau (2006), among others, have pointed out that addressing inequity remains a challenge to many governments. Suhrke and Chaudhary (2007) further illustrate that struggles to achieve equity objectives have in some cases led to revolutionary struggles (conflicts) as the cases of Central America and Nepal reveal. In the case of Central America, the landless and poor workers during t5he 1970s and 1980s fought the landed oligarchy that controlled the state and its armed forces in the country. In Nepal, caste and class combined to create highly unequal access to basic social services, economic opportunities and political power (Suhrke and Chaudhary, 2007:394). In the two cases the groups mobilized themselves and fought for their rights, leading to compromises in both cases.

It is important to clearly understand the two concepts. Inequality refers to a situation where systemic social, economic, and political unevenness exists. Equality however, connotes perfect parity in distribution of welfare regardless of the contribution made or distinct differences among people. It implies that everyone is entitled to the same equal shares as his neighbours (Okello and Gitau 2006:1). The notion of equality remains contentious owing to varied interpretations. However, as Stone (2002) argues, the controversial issue is the process of distribution. Stone (2002: 52) adds that the "process is important because distributions do not happen by magic but are undertaken by real people". The notion of equality therefore resonates more clearly with the idea of equal opportunities.

Equity thus connotes a sense of fairness and justice in distribution of things in society. It is here that the link to the process becomes critical because it is through this that fairness and justice can be achieved. As espoused by Okello and Gitau (2006:1), equity calls for variation in distribution of benefits based on a given criteria. It is the criteria that must be fair and just. The debate on equity is founded on John Rawls' (1971) Theory of Justice, which as Okello and Gitau (2006:2) indicate, posits "that individuals ought to have equal rights and liberties, which are commensurate with maximum rights offered to any one member of society". Second, Okello and Gitau (2006:2) add that Rawls' (1971), operating under the difference principle, further posits "that inequalities can only be permitted when they benefited members of the society, including the least well off, and that the processes that give rise to inequalities should be open to all members of that society.

Following Rawals' (1971) work, there have been attempts by several people to tackle the twin issues of inequity and inequality. They have included Dworkin (2000) and Amartya Sen (1992, 1999). In Kenya, Mwabu (2005) and Gor (2008) have been involved in addressing the question of measurements, while a host of other authors have looked at the various sectors of the economy. Issues currently affecting the country have largely driven the focus of Kenyan authors. Inequality and inequity are issues that Kenya inherited from the colonial government. The post-colonial government promised to conclusively address issues of inequity through the Sessional Paper Number 10 of 1965 by relying on African values that privileged humanity regardless of status and wealth. However, today inequality [2]is deepening, with Kenya being among the most unequal countries in the world (SID, 2006 and Syagga, 2006).

[2] For evidence of inequality in Kenya, see Syagga (2006) and SID (2006).

The link between equity and efficiency in resource allocation is critical towards achieving greater welfare. As Stone (2002) puts it, voluntary exchanges lead to efficiency and consequently trust in the market. The central tenet of the market rests on voluntary exchange that leads to efficiency and greater welfare for the society. It is through this process that access to resources is determined. However, as Stone (2002:66) adds, there must be involvement of the state — otherwise individuals would avoid transacting business in the market due to uncertainty over conclusion of contracts and ownership. This takes us back to the argument that inequality in ownership leads to serious hatred and bitterness. He asserts, therefore, that inequality led to the need for government to maintain law and order. Jolly (2006:4) adds that:

> The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy to invade his possessions. It is only under the shelter of the civil magistrate that owner of that valuable property – can sleep at night in security. The acquisition of extensive property, therefore, necessarily requires the establishment of civil government.

Thus, as Stone (2002:68) argues, for exchanges to be considered voluntary, decisions regarding it need to be based on full information and the decisions of parties to a sale should not affect the welfare of those who were not party to the sale. Under these conditions it is possible to achieve allocative efficiency. Since voluntary exchanges result in movement of resources to where they are most needed and to a situation where no one is left worse off. However, there are challenges about the ability of the market to work efficiently in all circumstances. This is because the idea of allocative efficiency presumes, as Stone (2003:70) has observed, a given income distribution. This is, however, not always the case and particularly in countries like Kenya where inequalities in income distribution is widespread as Kenya is among the ten most unequal countries in the world and one of the five most unequal in Africa (Dafe, 2008). Thus access to resources such as land in Kenya purely through the market would lead to inequity due to unequal income distribution which, as Dafe (2008) points out, has been spatially and ethnically predetermined.

In addition, there are arguments that many activities that make people content fall outside exchange, therefore, "a society conceived only as a network of exchanges fails to capture what are perhaps the most important sources of human happiness and well being" (Stone, 2003:73). There are also arguments that perfect market conditions do not exist in real life, besides, there are often manipulations from inside the market (advertising is seen as one of those), and added to this is the "vastly unequal distribution of income" (Stone, 2003:74). These arguments imply that achieving a perfect market condition is almost impossible. Other measures must therefore be identified that would lead to access to resources that are critical to all rich and poor.

1.4 The Rationale for the Study

The study focuses on land conflicts in relation to urban land management practice. Evidence from the medieval period indicates that land conflicts were a major problem at the time (Markakis 1987; Davies and Fouracre, 1995; and James 1998). Land conflicts remain a problem in many parts of the world. Davies and Fouracre (1995) and James (1998) further confirm that one major cause of land conflicts remains the perception of land as a status symbol today as it was in medieval Europe, America and the Far East. The same situation existed from about the 14th up to the early 19th century in the horn of Africa (Markakis, 1987).

Over the years, the rule of western law has become dominant in almost all societies, and policies aiming at reducing inequity in access to resources such as land have been formulated and implemented successfully in many parts of the world. However, issues of land conflicts and inequity still persist in many countries, including Kenya (Syagga 2006 and Kanyinga 2006). Indeed, in many countries, including Kenya, there have been no significant positive changes. Kanyinga's (2006) arguments confirm the difficulties experienced in addressing issues related to inequity and land in particular due to the complexity of land and equity related issues.

There are indeed many situations in Nairobi where attempts to promote new and innovative systems of land delivery, such as the ones pursued by Cooperative Societies and Land Buying Companies, although very useful, that have produced new forms of land conflicts. This further complicates matters and calls for sober analysis of the phenomenon if appropriate solutions are to be identified.

1.5. Statement of the Problem

Land is recognized as important in the creation of wealth and alleviation of poverty (African Development Bank, 2007). This leads to serious competition for land, particularly in urban and peri-urban areas where there is an ever-growing population (African Development Bank, 2007). The report of the Department for International Development (DFID, 2002) on land policy formulation in Africa argues that fast increasing population on the urban fringes has significantly contributed to inequity and made management of land in these areas problematic. It is also evident that the cost of land for shelter, economic enterprise and access to basic services has increased in Nairobi (Syagga *et al.;* 2001). This has further made it difficult for the majority of people to access land at affordable prices.

It should be clearly understood that land conflicts result from competing interests of the different sectors in society. These include social, economic, political and environmental interest groups, each acting as a competing force. The tension between these forces has been a driving force in determining land values (prices), access and ownership. These, coupled with the imposition of western laws by the British colonialists (Okoth-0gendo, 1993), have led to several consequences, including distortions in land relations. Other consequences have been the evolution of a dual system of land management, thus causing conflicts between western (legal) and traditional systems (Kassanga and Kottey, 2001), and confusion and difficulties in land management, thus making the so-called western formal land management appear to have no social legitimacy and outreach (Yamano *et al.*, 2004).

There is also a need to understand that western land management based on western laws ensured perpetuation of inequity in access to land. The application of land use planning instruments such as zoning that were also western in orientation has further contributed to inequity in access and ownership of land, both in the colonial and post-colonial periods. Thus zoning of residential areas did not only consider density but also brought to the fore the segregation of races. Thus, despite Nairobi having a majority black population, larger and better land was designated to white residents followed by Indians. This further indicates the level of inequity that was created in the colonial period.

A similar situation prevails in Kenya after 40 years of independence except that racial segregation has been replaced with income stratification. Thus a limited population largely made up of the rich own most of the land in both rural and urban areas. It is also interesting that there appears to be an ethnic angle to this — since independence, land has been accessed by and concentrated in the hands of the Kikuyu ethnic group that had state support and controlled the state resources (Kanyinga, 2006 and Syagga, 2006). Due to political polarisation and following allegedly rigged elections and recurring political division along ethnic lines, conflicts erupted in January 2008, arguably over ethnic distribution of land (East African Standard, February 2008).

Land remains a major source of economic and political power in most developing countries (African Development Bank, 2007). This is because there are limited alternative sources of economic power, placing land in a very special position. Land is indeed a basic economic resource and a major platform for economic and social activities. This notion, which is embedded in many western and traditional African societies, has led to social, economic and political manipulation of the land management processes, further causing major land administrative, procedural and structural problems (Davies and Fouracre, 1985; Kanyinga, 1998; Olima, 1998). As a consequence of these problems, imbalances,

distortions and inequities in the land market are exacerbated (Larbi, 1995). The distortions in market and land management in general provide the excuses for interference and thereby corruption and informalisation of the land management processes.

Further literature review indicates that there is a connection between land conflicts and ethnicity (Green, 2004). However, as Peters (2004) and Green (2004) have suggested, researchers—particularly from Africa — are reluctant to address this. Peters (2004) further points out that there is no consensus on methods and theories for explaining the problems of land conflicts and ethnicity. Stanfield (1993:4) and Williams (1993:141-3) show that these are universal problems. They emphasize that studies on land have the risk of suffering from ideological and cultural biases. Thus Peters' (2004) call for consensus building in land conflict studies remains urgent.

Studies on other African cities, for instance on Jos in Nigeria (Adetula, 2005), indicate that issues of ethnicity, patronage and corruption influence the daily operations of these cities. In Jos, as in Nairobi, associations of old students, professions (lawyers, doctors, surveyors, engineers, and teachers) and ethnic groups keep intervening in the national stage on behalf of their members. Ethnic and regional associations are among the most inclusive[3] associations found in Jos (Adetula, 2005:207). The same applies in Nairobi. It is through these networks that ethnic and political patronages are established. Corruption, on the other hand, relies on the networks and often makes use of the networks established regionally or based on ethnicity as is the case cited by Adetula (2005). Thus beaureaucrats and politicians tend to make decisions favouring their own interest groups. Often these decisions are not in the best interest of the State or the public at large.

It is therefore not surprising that literature and media reports from cities across Africa are replete with examples of similar problems. For instance, in the case of Dar es Salaam the poorest people derive their security of tenure through informal processes (Lupala, 2002). The processes associated with this have direct links to the failure in the land management processes — influenced by corruption, ethnicity and patronage. Kombe (1997) has reinforced this by indicating that about 80% of landowners in Dar es Salaam acquired land through informal delivery approaches. He has further confirmed that recognition and security of ownership hinges on social recognition. A study by Rwechungura (2003) concluded that out of 350,000 housing units in Dar es Salaam 327,000 are in unplanned areas.

[3] These associations are considered inclusive because membership is not restricted to any class as long as one meets one criterion. Particularly in the ethnic associations a messenger may be the leader to his chief executive. In general, they are exclusive to people in a specific region or in specific groups, say an ethnic group or former students of a school, university or college (Adetula, 2005).

The case of Nairobi is no different. Majale (2002) indicates that more than 70 per cent of Nairobi's population live in unplanned settlements. The 1989 Census survey [4] (CBS, 1989) indicated that these unplanned settlements housed about 0.75 million people representing about 55 per cent of the population of Nairobi. This huge population rent houses and operates in the informal sector of the urban land market. Referring to the CBS survey, Huchzermeyer (2007) further notes that about 84 per cent of Nairobi's households rent housing and these include the poor who rent mainly in the informal settlements and slums. Given the proportion of those who rent housing and the inadequacy in housing supply, the poor are left with no choice other than to resort to the informal land market, which is prone to uncertainties and conflicts.

In conclusion, it is evident from existing literature that it is almost impossible for the majority of the population to access secure tenure in Nairobi. My assumption in this study was that this is mainly due to land scarcity, failure of the land market, corruption, ethnicity and political patronage.

1.6 The Overall Purpose of the Study

The land question in Africa today and Nairobi in particular is at a critical point particularly as the demand for good governance and efficiency in public service increases in the face of increasing urban poverty and conflicts over land. This is further complicated by the unprecedented high urban population growth rates averaging about 7.1 per cent per annum between 1962 and 1969, while between 1969 and 1979 the intercensal population growth rate averaged about 7.9 per cent per annum (Obudho and Juma, 2002). Syagga *et al.* (2001) have further indicated that the population growth rate for Nairobi averages 5 per cent per annum between 1999 and 2010. This, coupled with the concomitant increase in the number of slums and conflicts over land further complicates the land question in Nairobi.

The overarching purpose of this study is to establish the link between land conflicts and inequity at both micro and macro levels. While this study has not set out to develop strategies, the overall purpose is that understanding generated through this thesis may inform those engaged in developing more

[4] There is evidence of a contradiction in the census survey results and what Majale (2002) reports as the proportion of the urban population living in the informal settlements. The discrepancy is due to the source of information that Majale used, which should be from the Matrix survey of 1985. The World Bank (2006) in their study of Nairobi also noted the discrepancy of information available from literature on Nairobi and resolved to use the Central Bureau of Statistics figures due to the robustness in approaches used by the CBS.

effective strategies to confront poverty and ultimately contribute to the achievement of the United Nations Millennium Development Goals, particularly that of halving poverty by 2015.

1.7 Objectives of the Study

Since land conflicts are considered critical in the study, the definition of land conflicts adopted in this study encompasses both universal and local perceptions. This is important in understanding the dynamics of land conflicts and their interaction with other factors that influence land conflicts, namely commodification, ethnicity, corruption and political patronage and their resultant contribution to land conflicts and inequity.

The objectives of the study therefore are to:

- Explain the linkage between land commodification processes and inequity;
- Deepen our understanding of the land conflicts — their nature, causes, extent, dimensions and dynamics;
- Explain the existing institutional arrangements and their contribution to land conflicts; and
- Draw relevant conclusions on the linkage between land conflicts, management, commodification, ethnicity, corruption and political patronage and how this linkage contributes to inequity.

1.8 The Research Questions

Urban land conflicts are persisting in Africa and the main assumption of this study is that this is largely a result of land commodification, which is not in conformity with existing African land relations. Commodification of land has largely been blamed for inequity in land ownership and access. This leads us to the main question of the study: what is the relationship between land conflicts and inequity? In answering this question, it is important that a set of related questions be addressed as well. These are:

- What are land conflicts, what are their main causes and dimensions, and how do they contribute to inequity?
- How does land commodification interact with land conflicts to contribute to inequity?
- Do such factors as ethnicity, corruption and political patronage interact to contribute to land conflicts? If so, how?
- How do existing land tenure, management systems and institutional frameworks interact to influence land conflicts and impact on inequity?

1.9 Propositions

For adequate understanding of the proposed research, it is critical that propositions are made. Propositions facilitate easier understanding of the issues being studied, particularly where the phenomenon being studied is being influenced by several variables (Kombe, 1994). In a study such as this, propositions constitute the reference point against which the collected data is collated and results generalized (Yin, 1993). The formulation of the propositions for the proposed study is based on the research questions for the study and the current debate on land conflicts in Africa.

The main propositions for the study are:

- Land commodification is the fundamental cause of unequal access to land, yet it cannot on its own explain the variations in inequity and land conflicts experienced within an urban area;
- Inequity in access to land is a major cause of land conflicts, yet the degree to which it contributes to land conflicts cannot be verified;
- Land conflicts and inequity are influenced by ethnicity, politics, corruption in public land allocation processes, and interference in the land management processes, and
- Existing land tenure systems are unable to mediate the contribution of land conflicts to inequity.

1.10 Research Method

1.10.1 Research Approach

As outlined in detail in chapter 4 sections 4.2.1 and 4.2.2, the approach adopted in the study was a multiple case study approach. The approach was adopted due its ability to help capture and preserve the actual character of cases and similarly, as Kombe and Kreibich (2006:21) assert, "to focus on in-depth investigation". A variety of techniques were used in collecting data for the study. The details are outlined in chapter 4 sections 4.4.1 – 4.4.5 in this thesis. The approaches, although suitable, were subject to various limitations that included ethical considerations and changing social and political dynamics in the study settlements. In this respect ethical, ethnic and political influences have had significant bearings on the study exercise.

1.10.2 Limitations

The study is on a sensitive and emotive issue in Kenya. It was undertaken against a background of intense political debate, at a time when the country was set to adopt a new land policy. It was anticipated that these developments would have some impacts on the results of the study. For instance, there was the possibility that the state's proposed land policy, if adopted within the time of the research, would to some extent address issues relating to access and tenure security by the poor. Although the stakeholders adopted it within the research period, my review of the land policy document indicates that, while it goes a long way in addressing numerous overarching issues, those relating to access to land by the poor will remain unresolved for a long time.

Likewise, the facilitation of an efficient and effective land management system and more efficient market operations, devoid of corrupt practices and political and ethnic manipulations, remains utopian in a country where ethnicity and political manipulations reign high. Indeed, a further review of the proposed land policy reveals that it is unlikely that the aims can be achieved through the land policy. This is because its implementation is likely to be mediated by persisting ethnic and parochial interests of the political class.

Having completed the research, it is becoming increasingly evident that the results of the study will be useful in informing implementation of critical aspects of the proposed land policy[5]. However, ethical questions remain as this study was cleared by the University of the Witwatersrand's Ethics Committee with the caveat, among others, that the results of the study are to be presented in such a manner that nobody would be able to identify the respondents and that the results would be used mainly for academic purposes.

Indeed, recent speeches by both the President and Prime Minister indicate that land issues are to be given more attention. President Mwai Kibaki, during Kenyatta Day celebrations in 2008, acknowledged that the high increase in population has presented the country with new challenges in shelter provision. The Prime Minister, Raila Odinga, on his part indicated that there is need to focus on key issues such

[5] At the time of writing the first draft of this thesis in January 2009, the Land policy document was awaiting discussion and adoption by the cabinet before a new legislation detailing its implementation is prepared and enacted by parliament.

as constitutional review and the question of land (East African Standard, October 21, 2008). The two speeches by President Kibaki and Prime Minister Raila Odinga indicate that land remains central to Kenya's development and increasing demand for its proper use.

1.10.3 Ethical considerations

Given the nature and the sensitivity of the phenomena being studied, I anticipated that some respondents might refuse to give information or even to respond to some of the questions. In this respect and in accordance with the ethical research practices I had committed to, which I explain in detail in the paragraphs below, I ensured that I was transparent and honest to the interviewees on issues relating to my ethnic and political background. The need to explain my ethnic background and political orientation (although it was feared that this could affect the results of the study) was necessary as part of the confidentiality clause from the ethics committee of the University of the Witwatersrand. It gave the respondents the opportunity to either grant or refuse an interview based on my ethnic background and political orientation as well as to clearly stated intentions for the research. I observed that a number of respondents were very cautious and therefore held back some information due to either my ethic background or political orientation.

In order to ensure that a large number of respondents did not decline to respond to the interviews, the tools were designed to ensure that direct and sensitive questions were avoided. Different approaches, namely archival surveys, key informant interviews, individual interviews and focus group discussions were used. This facilitated triangulation and counter checking of the field survey results. It should be noted that in order to avoid the sensitivities during key informant interviews and focus group discussions, issues of concern such as protection of the interviewees' identities were discussed and agreed upon. This was necessary because the study touches on issues such as corruption, ethnicity and inequity, which evoke political and ethnic animosities.

The process of obtaining a research clearance took unusually long. This was partly due to the Committee's insistence on obtaining a legal opinion. Professor Pantazis of Wits School of Law was approached for this. However, Professor Pantazis returned the research proposal together with extracts from *The Anti-Corruption and Economic Crimes Act*, 2003 laws of Kenya. In a brief response to the Ethics Committee, Professor Angelo Pantazis indicated her inability to give a legal opinion on the ethical aspects of the research, suggesting that I obtain a legal opinion from a Kenyan lawyer or obtain legal-ethical approval from a Kenyan ethics committee.

I therefore chose to obtain a legal opinion from a Kenyan lawyer who is now resident in South Africa but who had practiced law for over seven years in Kenya. I presented the legal position obtained from this lawyer orally to the Ethics Committee and responded to the questions from the committee. The position was that Kenyan laws do not require a researcher to report to police the results that may be criminal in nature. In addition, I reported to the committee that as long as there is interviewee anonymity there would be no problem and that anonymity had to be protected. The Committee was thus convinced that Kenyan laws do not require a researcher to report results that may be of criminal nature to the police and therefore agreed and issued the ethics clearance.

The ethics clearance was issued subject to certain conditions over and above the ones mentioned under limitations above, namely that the results will not be disseminated beyond an academic environment. Additional conditions were protection of the identity of the respondents, full disclosure of the purpose of the study and exercising of caution when asking questions relating to equity and ethnicity. In this respect I was expected to put questions on ethnicity and equity carefully to respondents since they are considered sensitive. I was also required to be open to the respondents regarding my background and clarify all questions relating to how the study results would be used. In all cases it was clarified to the respondents that the detailed direct results from the interviews would not be used for reasons other than academic and that dissemination of overall findings and conclusions to the Kenyan Government would not contain any recognizable details of the respondents.

The issue that was anticipated as likely to present problems was that of ethnicity. This has today acquired new dimensions, and Kenya is today more polarized than it was in 2006 when I embarked on this study. The situation changed significantly following the post-election violence that visited the country early in 2008. The opinion and/or commentary articles one reads in newspapers point to tensions and polarization, as my review of commentaries on articles in the *Daily Nation* and *East African Standard* from the beginning of January to the end of February 2008 confirms. While my fieldwork was carried out before the outbreak of ethnic violence in Nairobi, the ongoing ethnic polarization required that reports from the study be treated with great care and soberly.

The other sensitive and controversial question is that of the interaction between ethnicity and inequity. The two terms are related, given that ethnic groups see themselves as either partaking of the national

cake or not, depending on the number of men and women of a particular ethnic group occupying senior positions in government. This scenario is clearly manifested within the civil service where high positions are often allocated on the basis of ethnicity. Thus I expected resistance to questions relating to ethnicity and inequity unless the purpose of the study and the use of the collected information were clearly communicated.

A study of this nature has the potential to unearth activities and actions that border on criminal acts. The question therefore was how to treat such information. This, in addition to historical conflicts over land in Kenya, further contributed to the sensitivity of this study. It meant that the study results were to be treated with a high degree of integrity. The information is also used mainly for the intended purposes, that is, academic work (preparation of a PhD thesis and writing of journal papers).

1.11 Justification for the study

A review of existing literature on land conflicts and inequity indicates that there are numerous factors influencing the relationships between land and humans. The factors span institutional, social, and political to economic issues (Larbi, 1995). It is also evident from the literature that there has not been any serious examination of the factors affecting land ownership and conflicts in African urban areas. Suffice to add that as argued by Peters (2004) as well as by Kassanga and Kottey (2005) there are no serious studies on the relationships between urban poverty, ethnicity, corruption, politics and land conflicts.

However there is a rich literature emerging on the role of land tenure in urban land supply and planning of urban areas (Olima and Obala, 1998; Olima 2002; Obala and Kimani, 2002; Majale, 2002; Yahya; 2004; Payne, 2002). This is still limited to illustrative studies, leaving out the deeper analysis that would be useful in providing answers to more vexing questions relating to tenure and planning, market and the new land ethic. More importantly, there are very limited studies on the role of customary tenure in poverty reduction, equitable distribution of land, urban planning and land conflicts. Yet it is increasingly becoming clear that major urban land questions require the analysis of these issues if they are to be addressed.

There are no explanations on the inability of the existing tenure systems to unlock the potentials for urban development. Thus even de Soto's (2001) explanation of the mysteries of capital does not offer all the answers. His argument on missing information, unavailability of capital, lack of political awareness, legal failures and inability to learn lessons from other parts of the world seem to only offer partial solutions (Royston, 2006). Indeed, an argument such as that of Olima and Kreibich (2002) that external models may not work further complicates matters, with the result that there are no clear or simple directions to be taken on the issue urban land.

It is generally agreed that political patronage, ethnicity and corruption influence urban land ownership and conflicts. However, very little is known about their relationships, dimensions and effects on development and poverty reduction. In cases where studies have been undertaken, they have been mainly focused on places where there have been civil wars (see Yamano and Deinninger, 2005). Furthermore, these studies have faced several methodological problems and limitations and therefore remain largely anecdotal. This has meant that there is very limited knowledge, if any, on the role of the triumvirate contributors to land conflicts: political patronage, ethnicity and corruption. In addition, most studies on land in Kenya have been on agricultural productivity and tenure and have not been related to urban land.

Furthermore, there are no studies addressing issues of methodologies and theories specific to land conflicts. Yet, as revealed from the literature review, land conflicts is an area of serious contestation. This study must therefore be seen as contributing to knowledge in adopting a methodology that minimizes the biases and emotions that may influence such studies. The approach I chose tries to ensure this by studying both the beneficiaries (elites and bureaucrats) and the poor who are often ignored by other studies so that their voices are not heard or heard through others. It should be acknowledged that the poor are often portrayed as the losers and are an ignored group in many studies. Indeed, as Feagin, Orum and Sjoberg (1991) put it, their views are often obtained from the viewpoint of the elites. This implies that reality on the ground is often not captured, analysed and understood.

In summary, urban land conflicts in many African countries are influenced by a plethora of factors and processes. The existing theoretical frameworks such as the Georgist[6] and Neo-Classical theories and

[6] Georgist theory sees land as a common resource and a gift of nature whose value is created and maintained by the public. In that respect it advocates for payment of taxes by those privileged to own land.

theories of Social Justice cannot or only in part explain the factors and process. This is because none of them is able to transcend its traditional realm. This leads to attempts by many scholars to use evolutionary theories at best. But as Peters (2004:271) posits, while these have been very useful in the past, they have now been overtaken by emerging theories and are now mere blinkers rather than powerful lenses for analyzing the land conflict situation. There appears to be attempts to use multiple lenses as in my case in analyzing the urban land conflicts, "largely influenced by postmodern and postcolonial writing that privileges ambiguity, multiplicity and indeterminacy" (Peters 2004:271). Peters (2004) adds that this has resulted in studies that celebrate agency and social maneuvers [7]at the cost of identifying both winners and losers in the process. This is a trap that I fear one can easily fall into. To avoid this, the study focused on a phenomenon that transcends agency and social maneuvers.

1.12 Organization of the Thesis

This thesis is organized into nine chapters. The current chapter is followed by an entry into the debate on land conflicts and inequity. It reviews literature on land commodification, perceptions of land, land scarcity, power, politics and corruption. It also reviews literature on land tenure and ethnicity, state and market in addition to issues of social justice. Chapter three then turns to theoretical debates revolving around ethnicity, corruption and land management, also espousing the theoretical strands that would be applicable for analysis and interpretation of the field results. This sets the foundation for the study.

Chapter Four focuses on methodological issues and gives detailed information on the selection of the study settlements — the selection process, the research design, methodology, analysis, interpretation and presentation of the results. The fifth chapter discusses the background of the study area and settlements, characteristics of the settlements emerging from the field results.

This is followed by the presentation of field work results in chapters Six and Seven. The results are discussed under broad themes such as community organisations, corruption, ethnicity, inequity, access to land and political interference, among others. This is followed by Chapter Eight which presents a cross analysis of the study results. The analysis is structured under similar themes to those of the field results in the previous two chapters, thereby comparing results across the four study settlements. In

[7] Agency and social maneuvers refer to the social and political dynamics that influence interactions over land in a number of countries.

addition, this chapter presents an analysis of the perceptions of various stakeholders, including the civil society, professional planners, land managers and administrators, both in the public and in the private sector, academics and the general population. It also analyses the role of patronage in accessing land and its effect on those unable to access similar benefits. Chapter Eight in turn presents and discusses cross analysis of the results, particularly on emerging key issues across the study areas.

The final chapter draws broad conclusions on key thematic issues such as relevance of the study approaches, theoretical framework, ethnicity, corruption, inequity, conflict and institutional framework among others. In the end it points to areas for further study based on the results of this study.

CHAPTER TWO

LAND CONFLICTS AND EQUITY DEBATE

2.1 Introduction

Land management in Africa and the developing world more broadly has over the last two decades been subject to serious conflicts. This, coupled with the increased demand for transparency in general public service delivery, has further intensified the search for effective land management tools and instruments capable of facilitating equitable access to land and efficient land market operations. It is the anticipation that effective and efficient land management and market operations are capable of reducing and/or minimizing urban land conflicts that has generated more interest in it. This chapter presents a review of the literature on the linkages between factors perceived to cause land conflicts in urban areas. It also aims at illustrating the relationship between land conflicts and inequity and identifying gaps in research and, consequently, knowledge, which I intend to address in part through the empirical contribution of this thesis. The review in this chapter will also inform the theoretical framework developed in chapter three.

In the first part of this chapter, a review of the literature on land commodification and its influence on land ownership patterns and access to land is presented. This is undertaken within the context of the Kenyan economy. In the later parts of the chapter I analyse the debate under the thematic headings of: land conflict, power and politics, political patronage, corruption, ethnicity and land tenure systems. This is aimed at assisting analysis of the broad issues of land conflicts and inequity. Towards the end of this chapter, concepts such as scarcity, resource utilization, the global agenda (comprising equity and social justice), state and markets are reviewed.

2.2 Land Commodification and Individualization

Land commodification, coupled with individualization of ownership, has had profound effects on production systems and relationships in different societies. The effect is felt more in developing economies, and more particularly by their emerging urban citizenry. This is because of the importance of land in the development of the productive sectors of the urban economy. This position is further

reinforced by the Vancouver Plan of Action of 1976 and Global Action Plan of 2000, which indicate how important land is in the urban economy.

Available literature suggests that urbanization, coupled with commodification and individualization of land ownership, are recent phenomena in many African countries. For instance in Kenya, formal commodification has only taken place since independence in 1963. It followed the Swynnerton Plan of 1954 which recommended the granting of secure titles to Africans. The plan was reinforced by the Natives Land Registration Ordinance of 1959, replaced in 1963 by the Registered Land Act and the Land Adjudication Act of 1968 (Migot-Adhola and Place, 1998). However, the introduction of these two pieces of legislation was without creation and development of proper institutions of land administration (Okoth-Ogendo, 1993).

Despite the influence of commodification in the determination of access to land in many societies, there are a number of other factors that influence land access. These factors include socio-cultural beliefs and traditions, religious beliefs and legal circumstances, as well as historical and political forces (Markakis, 1987). Markakis (1987) and Davies, *et al.* (1985) further contend that land commodification was influenced by common factors both in the West and in Africa. They argue that increasing population, the emergence of a perception of land as a factor of production, emergence of organized and structured leadership and the resulting demand for revenue to finance the operations of the leadership have all contributed to higher demand for land and further exerted pressure for the commodification of land.

Indeed, Larsson (1997:7), relying on the history of land individualization from his native country Sweden, in addition to vast experience on land titling and studies on land in other countries, including Kenya and Australia, reinforces this analysis of causes of land conflicts through illustration of the process of land individualization. He points out that transformation from communal ownership to individualized land holding was largely determined by land scarcity as a result of the increase in population, thereby creating more demand for land and, consequently, creating value in land. This, he claims, provided the impetus for exclusion of others except for the clan or family.

2.3 The Emergence of Market-Based Land Ownership

As Haila (2007) puts it, we have been privileged to follow the recent transformation of economies of diverse countries – China, the Soviet Union and Eastern European countries. Emerging from Haila's (2007) argument is that transformation processes take a long period and can be manipulated by the state. The state's manipulation process involves formulation of laws and policies to facilitate a process that is desired by the state.

Land transformation processes that include ownership and commodification are influenced by a multitude of factors such as urbanization, globalisation and scarcity. These factors are further influenced by demographic, economic, social as well as political factors. Thus a proper understanding of transformation of land ownership, access and management processes would require a deeper understanding of the society, including historical external linkages such as those traced back to colonial history (Leo, 1984; Peters, 2004; Syagga, 2006).

2.4 Perceptions of land

Like other factors that drive land conflicts, perceptions of land influence responses of a people towards land. Anthropologists have consistently indicated that these perceptions remain as diverse as are communities. Illustrating this, Povinelli (2002) gives the cases of ancient Rome and pre-colonial Australia where land was viewed as part of a people. Povinelli (2002) adds that in some places ancestors were seen as part of both the living and the land. Similarly, de Copper (1995) gives us a picture of communities where land may be seen to own people rather than the other way round, and where land may be perceived as a person with a soul.

Authors such as de Copper (1995) and Povinelli (2002) claim that in these kinds of cases, conflicts over land were often more intense due to the beliefs of the people. Conflicts over land in parts of Kenya can also be traced to the way land is regarded. This is particularly clear among Kikuyu, as illustrated by Kenya's first President, Kenyatta (1937[8]). Kenyatta (1937) indicates in his work that his Kikuyu people see land as belonging to both present and future generations. This could to a great extent explain the intensity of conflict that emerged over land in Kenya before independence as well as the vicious struggle for access to land in the context of commodification that continues to date.

[8] It should be noted that Kenyatta wrote this book long before his Presidency, which spanned between 1964 to1978.

The Biblical illustration that Sandy Mather (1986) uses provides a useful contrast in attitudes to land. In the book of 1 Kings, Chapter 21 the story is told of Naboth's vineyard. Ahab, King of Samaria, wished to purchase Naboth's land as an extension to his own property. As Mather (1986) points out, Ahab regarded land as a commodity to be bought and sold. Naboth, on the other hand, places a different value on his land; since it is an inheritance from his family and he is merely a steward over it, he refuses Ahab's offer. Mather (1986: 2) uses this conflict to outline two conceptions of land:

> On the one hand, land is simply a form of property that may be traded at will. On the other hand, land is much more than just a personal private property, and its possession is not (just) a matter for market forces to determine. In the second concept, a sense of stewardship is attached, and land is a form of common property, either in the sense of succeeding generations or by extension, in the wider sense that community has interest in it.

The tragic ending of the Ahab Naboth dispute, namely the killing of Naboth, is a reminder of the role of power relations in land disputes and the need for rational mediation. It brings out clearly the importance of perceptions towards and points to their contribution in persistent land conflicts.

2.5 Transformation of Land from Communal to Private Property

It is also interesting that laws that deal with land markets in almost all African countries were inherited wholesale from Europe with limited modifications. But, as Bhalla (1996) argues, in support of Bentham's (1973) often quoted dictum, "property and law are born together and die together" (cited in Paish and Culyer, 1973:47). This supports the centrality of property in society. It also points to the linkage between property, society and laws. The linkages are critical to the development of relationships between people and land, including the laws and regulations that govern access, use and ownership.

However, land commodification, although important in shaping these kinds of relationships, has not been exhaustively studied in African countries as pointed out by Larbi (1995). Larbi (1995) adds that many studies on land commodification have been concerned with land conversion from one use to another, largely from agricultural to urban such as residential, commercial and other urban uses. Other studies focused on relationships between land markets and productivity. Most of the case studies in the literature have been situated in rural areas with very few studies touching on urban areas (Larbi, 1995).

Indeed, the more recent works by Yamano and Deinninger (2004, 2005) on Kenya and Uganda have also been more concerned with rural land conflicts.

Furthermore, there seems to be no consensus by researchers of African land issues on a single model for analysis of the differentiation emerging as a result of the commodification process (Peters 2004:283). Peters (2004) disagrees with the notion that commodification merely acts as a powerful solvent of the ties that connect locale with community as espoused by Bernstein and Woodhouse (2001:319). Rather, she contends, that like other economic processes, commodification shapes, reshapes and transforms pre-existing social and cultural ideas, practices and relations, even as it is shaped by the changing social and economic practices and relations. This view is shared by authors such as Peters (1988) and Odgaard (2003).

It is evident from historical records that land ownership has always been important in defining relationships in society as well as in determining political and economic interactions. Thus property in land influenced the administrative arrangements, obligations and liabilities. It also influenced the relationships between religion and the State. Thus, as Shafir (1995) observes, the promulgation of the Land Code of 1864 in the Ottoman Empire that allowed purchase of land by foreigners in Palestine set the stage for the current Israeli/Palestinian conflict. This is because it created a new relationship between the Palestinians and Israelites in the area, giving the Israelites the chance to determine the Israel Palestine political and economic direction. Similarly, Abyssinia's land issues can be seen to have had a profound influence on the social/political direction of Ethiopia (Shafir, 1985). In all these cases, commodification of land upset the *status quo.* This is the view supported by many authors (Sider, 1986; Guyer, 1997; Bernstein and Woodhouse, 2001:319).

Cultural analysis is critical in helping us understand class formation. In particular, the story Peters (2004) cites from Sider (1986) gives an insight that would be applicable to the analysis of many poor urban communities. This will help in identifying their linkages with the other sectors of the urban economy, their economic activities, internal social and economic dynamics, and generally how their activities fit into the urban planning system. In the final analysis it will help in establishing if the land conflicts are based largely in ethnic or class struggles, or both.

In many African societies, the transformation of land from a social to an economic good with a price took a relatively shorter period than it did in Europe and America, therefore allowing little time for adaptation by the people (Syagga, 1993, 2006; Kreibich and Olima, 2002). This is particularly evident in former settler colonies of Africa such as Kenya, Zimbabwe and South Africa. In these countries, the process of land commodification was accompanied by the adoption of laws that prescribed land use, ownership and management regulations. These laws were based on western traditions and culture with no regard for existing traditions and practices by the African population. The net effect was the uprooting of people from their land, leading to their disorientation, impoverishment, disenfranchisement and persistent land conflicts between the Africans (Olima, 1998).

Larsson (1997) and De Soto (2000) confirm the view that urban land management models and practices have largely been borrowed from Europe and often inherited from colonialism. Indeed, land management practices in many developing countries, especially Africa, have been described by several authors variously as controlling (Mattingly, 1996), outdated (Glenn and Wolfe 1996), inappropriate, overly detailed and inflexible (Farvacque and McAuslan 1992, Dowall 1991), reactive (Zaghloul, 1994) and oligopolistic (Leaf 1992).

What these authors do not say, however, is that these practices were developed with no reference to the local population and were largely meant to exclude Africans from participating in urban development. Olima and Kreibich (2002) conclude that all these characterizations and land management practices point to a common theme: existing land management practices are inappropriate. This situation has been more pronounced in urban areas due to the adoption of western individualized culture and western approaches such as the concept of bed space, promoted by urban managers who invariably received their education in western countries. The concept views urban areas largely for residential use and is not inclusive of such activities as farming as many blacks would want it.

It is thus not surprising that a cross section of literature points to the inability of African countries to effectively manage urban land (for example Yahya, 1986 and Larbi, 1995). Furthermore, many authors argue that rapid urbanization within a limited period, coupled with the adoption of western management approaches, may have also contributed to the chaotic situation in urban land management as witnessed today (Syagga, 1994). It is apparent, as observed by Syagga (1994), that urbanization in the west took place over an extended period, permitting gradual emergence of economic, social and

political institutions to deal with the problems of transformation. However, in Africa urbanization has been rapid and continues to be so against a background of shortages of resources, employment and, consequently, inability to cope with the demands of a growing urban population.

The transformation of land from a communal to an individual good with value for exchange based on western values and traditions has contributed to a number of problems. Yahya (1976) lists these as land speculation, urban sprawl, pollution, formation of informal settlements and environmental degradation. These factors have led to the twin challenges of illicit land development practices and corruption, which often hamper attempts to improve land delivery systems for the urban poor (Badiane, 1997; Owor and Bartle, 1997; Durand-Lasserve, 2001). The general lack of accountability in land allocation processes by the educated elite, coupled with corruption and political patronage, all work in tandem to fuel land conflicts.

McAuslan (1992) has observed that the existence of many pieces of legislation, rules and regulations based on western traditions and culture has been responsible for confusion in land management in many countries. It is evident that in a number of countries these laws impact negatively on the land market (Farvacque and McAuslan, 1992; Larbi, 1995). Their application means that customary, statutory and informal laws existed side by side. This has further hampered coordinated urban land development (Olima and Obala, 1998).

The existence of inappropriate land policies in many African countries, including Kenya, has been blamed for the chaos in the land market (Larbi, 1995). For instance in Kenya both local and central governments are expected to make decisions with regard to use, transfer and taxation of land. This is, however, done in an environment where there is no coordination and information sharing between the various agencies (Mwangi, 2002). This inevitably results in poor decision making and/or corrupt practices, leading to defective or ineffective land delivery and a distorted land market. This affects the poor even more. Chaos is being witnessed in urban development in many countries in Africa due to governments' inability to manage urban land development (Mabogunje, 1991).

Practitioners and scholars alike have argued that the distorted urban land markets and ineffective land management practices in Kenya, which have resulted in rampant and questionable land acquisitions by political elites, have extended to land reserved for public use such as schools, prisons and research institutions (Daily Nation, 2nd April, 1996; Ndungu, 2006; Olima, 1998). However, studies by Harbeson

(1971), Yahya (1976), Okoth-Ogendo (1991) and Karuti-Kanyinga (1998) all point to the inability of existing institutions to effectively provide for efficient allocation, access, ownership and management. This calls for a review of the land management processes and institutions.

As already mentioned, the late President Kenyatta made strong statements regarding land such as, "land is held in trust for the unborn as well as for the living, and since it represents an individual's partnership in the common life of generations, he will not lightly take it upon himself to dispose of it" (Kenyatta, 1937:311). However, during Kenyatta's tenure as president from 1964 to 1978, access to land was manipulated by the new politically entrenched elite, especially in favour of the Kikuyu ethnic group. The hallmark of the period was a general lack of attempts to formulate land policies by the government that would be responsive to the poor. The manipulation of access to land that had been initiated by elites and their relations continued unabated at the expense of the poor. Inequality has therefore flourished in parallel to increasing poverty among the poor (Leo, 1984; Kanyinga, 2006; Syagga, 2006).

The United Nations through its publications such as UNCHS (1996, 1999, and 2000) and authors such as Magel and Wehrmann (2002) increasingly indicate in their work the persistent need for change in land management. This implies that land management institutions will need to become more open and democratic. Participation of stakeholders in the decision-making processes in land allocation, access and ownership, among others, will have to be institutionalized and promoted. In addition, there is a need to integrate the processes as well as structures with the relevant laws to reduce inconsistencies in decisions.

2.6 Land Scarcity and Conflicts

Hodge (1986) categorizes land conflicts into two groups, namely inevitable and controllable, depending on their causes. On the one hand, controllable land conflicts result from human endeavours during the process of land development and utilization and are therefore not technically orientated. On the other hand, inevitable land conflicts result from natural causes and therefore are technically oriented. Hodge (1986) further indicates that land conflicts take various forms, namely disharmony, nuisance and interference, undesirable mixture of incompatible land uses and space competition, encroachment into one land use by another and unnecessary loss of agricultural land in the urban periphery. Olima (1993), Omunga (1997) and Government of Kenya (1970) have also identified that the other major causes of

land conflicts include competing interests between politicians, landowners, planners and town residents. Incompatible land uses have also been identified as a major problem in Nairobi's urban fringes

Meadows (1972) indicates that the other causes of land conflicts relate to high population growth rates. This is a view that is held high by those who believe in the Malthusian theory which, as Gausset and Whyte (2005:9) points out, is based on the assumption that:

> private decisions to procreate leads to collective tragedy and that the private exercise of restraint in order to live within one's means is the key to controlling population and thus to placing greater share of wealth in the hands of the poor.

This argument has, however, been contested and as Gausset and Whyte (2005) argue, it is limited in its territorial orientation and simplicity as it uses only one factor — population growth.

The Malthusian views seemed to have been lent credence by the 1972 publication of *The Limits to Growth* (Meadows *et al.,* 1972) to the Club of Rome and the 1973/4 oil crisis that seemed to fulfil, the long-held Malthusian theory on population growth and overexploitation of the world resources. However, opposition to this came up strongly following the oil glut of the early 1980s. This gave birth to a clear divide between, on the one hand, conservation activists who appear more conservative and pessimistic of the world's natural trends, and, on the other hand, scientists armed with knowledge on possible changes and with faith in increasing technological advancement and the ability of science to provide solutions to societal major problems (Mandel, 1988; Gausset and Whyte, 2005).

Scarcity is viewed as a complex and multifaceted concept. It is defined as, "the ratio of human demand to the environment's ability to supply the resource" (Mandel, 1988:4). Mandel (1988) adds that there are two types of scarcity – real and contrived. Real scarcity, he argues, relates to the physical and ecological combination of a relatively depleted resource with a relatively large human population. Contrived scarcity relates to psychological, perceptual, technological, and economic as well as political conditions. The argument is that of the two, real scarcity is more severe — an issue, which he acknowledges to be as controversial as the question whether economic and technological conditions are facets of contrived scarcity or scarcity in general.

More relevant to this study is the position held by anthropologists on the issue of scarcity of land as espoused by Verdery (2003) who sees land scarcity as largely contrived by social and economic factors and, more particularly, for the purposes of political and economic dominance. Further, Verdery (2003) argues that it is loaded with western notions, with the belief that once it is allocated to an individual and others are excluded, then it will be efficiently used. This notion is, however, criticized because it assumes that resources are scarce *a priori*. However, in the world of anthropologists, resources are abundant for as long as access to them is open to all. This notion should, however, not be mistaken as construing support for communal ownership of resources, rather that there are opportunities for others to access the resources through well established channels or institutional arrangements.

Scarcity, whether supply or demand oriented, affects growth and development and enhances inequity. Mandel (1988:15) points out that scarcity:

- Leads to relative scarcity of resources;
- Disrupts national development process;
- Distorts equitable distribution of resources; and
- Disrupts relationships between interdependence parties which could be nations, regions or even individuals (Mandel, 1988:15).

It is clear that conflicts between different parties, institutions and nations arise out of disruptions, scarcity of resources and distortions in distribution of resources. Mandel (1988) adds that contrived scarcity promotes the greatest misdistribution because the poorest do not have access to economic and technological means for gaining access to resources. This is because the poor are often under severe political and economic constraints. In summary, this leads to frustrations and consequently the propensity for eruption of conflicts is higher. Evidently, in cases where this is accompanied by severe inequality there will certainly be strife.

Campbel *et al.* (2000) outlined four main causes with respect to land conflicts in arid and semi–arid areas in former settler economies such as Kenya. The causes include colonial legacy, competition for resources (particularly water) between animals and humans, altered land uses (resulting from both local and international initiatives such as increased interest and promotion of biodiversity conservation), promotion of arid and semi-arid land development programmes, and national policy changes (Campel and Migot-Adhola, 1981). Western (1982, 1989, and 1994) also indicates that the increased management of wildlife, immigration of farmers and structural changes have all contributed to the land conflicts. This is largely so because of the interaction between each of these and with the resource base.

Campel and Migot-Adhola (1981), Western (1982, 1989 and 1994) and Campbel *et al.* (2000) further identify the drivers of land conflicts particularly in arid and semi-arid areas as including economic, political, policy, institutional, social and cultural forces in addition to environmental concerns. These drive land conflicts, irrespective of location. However, the application factors vary with economic activities in a particular area (Campel *et al.*; 1994). For instance, as shown by (Campel *et al.*, 1994; Mwangi, 2005) the case of Kajiado district in which the land use is changing to embrace agriculture, residential and commercial development amidst a pastoral group, whereas conservationists compete for the area to retain the old activities, brings out the interplay between business interests, changes (individualization) and the international community's interest in conservation.

At the other extreme are political, policy and institutional forces driving land conflicts. Indeed, such forces work through local institutions with established modes of operation to influence access to land resources. At play is power as well as institutional mandates with the ability to circumvent the established process of resource allocation (Campbel *et al.*, 2000).

Further, review of the literature indicates that in some areas causes of land conflicts are similar in both urban and rural areas. This is particularly evident in the case of Ghana (Kassanga *et al.*, 2001). It emerged from Kassanga *et al.*'s (2001) study in northern Ghana that commodification of land, coupled with increased population and the lack of clear boundaries, have all contributed to land conflicts. Consequently, the number of litigations and related problems has soared in these areas, thereby affecting household expenditure patterns.

There also appears to be a convergence in terms of locations that experience land conflicts. For instance, Hitte (1998) indicates that land conflicts are common on the urban fringes and are caused by increased demand for land resulting from the effects of globalisation. The conflicts in such areas are largely between traditional land uses and new land uses. At times conflicts between rural and urban land uses occur because globalisation reduces distances between places. In the process, there is more intensive competition for land, leading to land conflicts. The conflicts are intensive in the frontiers (peri-urban areas) where returns from rural and urban land uses equal each other. It follows thus that rapid urbanization and expansion of city boundaries cause land use changes and produce land conflicts on the urban fringes (Larbi, 1995; Hitte, 1998).

It is evident, that one of the effects of globalisation at the local level is crowding out less competitive rural land uses such as subsistence agriculture and urban uses such as residential housing development (This, however, does not imply that land conflicts are solely due to globalisation). However, activities that have high premiums and use limited land sizes such as poultry farming usually survive the land conflicts at the urban fringe (Hotte, 2001). Given the property dynamics at the urban fringes and the changing transportation costs in major urban areas, more and more low-income earners settle on the urban fringe where rents and food prices are lower and households may practice market gardening to supplement their incomes. Hitte (1998) asserts that with the reduction in transport costs in the twentieth century, the American urban fringe has undergone a revolutionary process.

Even though Hotte (2001), like Hitte (1998), asserts that conflicts over land are common at the frontiers, they refer to different frontiers. Hotte (2001) refers to the new lands, largely forest land, in South America, which is being utilised for the first time. The conflict here results from a number of factors, which he outlines as lack of security of tenure, open access and costs of enhancing security of tenure amidst increasing competition for land. Hitte (1998) refers to land at urban periphery in North America (Canada), which is subject to competition between different land uses. Several factors interact to cause land conflicts including changing land uses, increasing population and increasing land values.

Boschken (1982) argues that there is no clear evidence that the competition around traditional property rights and economic considerations are responsible for urban land conflicts. In his argument, the conflicts are around what he calls a "new land ethic". He adds that this ethic does not respond to issues of highest and best use as exemplified by Barlowe (1972). It instead stresses livability based on environmental concerns, thus introducing a new dimension to land conflicts. Besides, Boschken (1982) adds that conflict over land is neither always related to scarcity nor to territorial context. His argument introduces two dimensions to land conflicts: planning versus the market. It is clear that some conflicts emerge as a result of the decision-making process. Boschken (1982) therefore argues that it is important to understand the interplay between public decision-making processes and the land market operations in resource allocation.

2.7 Power, Politics and Corruption

Land has in both African and western traditions been treated as a source of power and prestige. This is clearly illustrated by Markakis (1987) and Davies *et al.*; (1985). Markakis (1987) uses the case of Abyssinia (the Horn of Africa) while Davies, *et al.* (1985) refer to the case of medieval Europe. Over the years land conflicts have largely been related to power. Indeed, land has been used to buy political loyalty and perpetuate regimes facing rejection as has been the case in Kenya (Olima, 1998).

It is evident that land conflicts in many developing countries have been a result of political influence. For instance, the land clashes that occurred in Kenya in the early 1990s have largely been seen as politically motivated. These clashes, although they started in rural areas, had profound effects in the neighbouring urban areas. Similar cases have been reported for countries such as Ghana and Cote d'Ivoire (Chauveau, 2006; Firmin-Sellers, 2000), Rwanda and Burundi (Kairaba, 2002).

Corruption and the misuse of political power have emerged as major causes of land conflicts in developing countries. Durham (1979) reports a case in Honduras where about fifty families were evicted from land that was national property to pave way for its allocation to a large private landowner who had devoted resources to influence the decisions of public officials. This episode clearly demonstrates the role of corruption in decision- making processes and the resultant land conflicts. There are many similar cases around the world, as is explained by Lundahl (1979), Dorner and Thiesenhusen (1992) and Olima (2002), among others.

In Kenya, corruption has been practiced at the highest level of government since independence, on many occasions in order to buy political loyalty and reward ethnic groups (Olima, 1998). Olima (1998) indicates that the past two regimes have used land in a similar manner. Ndegwa (2006) in his autobiography exposes how President Kenyatta went about allocating land to himself and his cronies during the early years of independence. He narrates a case where the president spent a day in the field with people demarcating land and at the end of the day allocated himself land measuring more than 100 acres with the most decent house in the area. This ostensibly was in reward for his hard work. However, the land was meant to be allocated to the landless that had been dispossessed by the colonialists who, Ndegwa (2006) reports, were being allocated 5 acres each. Evidence abounds indicating that the majority, even from Kenyatta's ethnic group, the Kikuyu, were not allocated land, as the summaries I present under historical injustices below reveal. The practice, however, was continued under Moi, favoring his ethnic group, the Kalenjin.

The perception survey by the Kenya Anti-Corruption Commission (2007) identified the various forms of corruption practised in Kenya. They include giving and taking bribes, acquiring money or property through dishonest means, engaging in illegal acts, mismanagement and misappropriation and undue influence, among others. Featuring high among the vices are dishonest acquisition of property as well as land grabbing. The actions of Presidents Kenyatta and Moi of allocating public resources, including land, to their families, ethnic groups, cronies and political supporters therefore constituted corrupt practices at the highest level of governance.

Ndungu (2006) in his paper entitled *Tackling Land Related Corruption in Kenya* (2006) asserts that Kenya's Presidents (Kenyatta and Moi) conveniently overlooked important constitutional principles upon the country becoming a republic that had implications on how land is to be governed. Ndungu (2006) argues that this was undertaken to give the President's unfettered powers over land allocation. As such Ndungu (2006: 4) asserts as follows:

> There is a world of difference between a Monarch and a President. In general terms, a Monarch is the supreme ruler of a country with limitless powers over his subjects and assets of such a country. A President is the elected head of a Republican State, where the people themselves hold the supreme power. Therefore, when Kenya adopted a republican constitution in 1964, the President and his government became trustees of the people, with authority to run the country on behalf of the people and to manage the country's affairs including its assets and liabilities only in the interests of the people (Ndungu, 2006: 4)

Ndungu (2006:4) adds that:

> The Presidential advisors further failed to advise the president that the section of the law that purported to grant him unfettered power to allocate land was itself subject to all other laws of the land, such as laws governing town and country planning, forests, environment, water. (Ndungu, 2006:4).

He further laments that:

> These noble legal constitutional principles were totally ignored. The President started to exercise his perceived powers of allocating land to his cronies. It started on a fairly small scale in the 1960s but by the 1980's it had become the norm (Ndungu, 2006:4).

Corruption and abuse of power in land allocation remains endemic in Kenya. The political and ethnic elites from the "big man's tribe" (as the Kikuyu came to be referred to) are often rewarded with prime land. This is what Syagga (2006: 335) calls the "big man syndrome". Syagga (2006:335) traces the syndrome to the colonial period when there was land consolidation (1950s) in Kikuyu land. "The big man tended to gain most from consolidation. More often than not, he was a loyalist and a prominent

supporter of the consolidation as well as other officially sponsored projects" (Syagga, 2006:335). It is this syndrome that bedevils Kenya to date.

The concern over abuse of political power in land allocation was clearly brought to the fore through the Ndungu Report (2005). The import of these abuses and trends from other parts of the world reveal the inability of the State to meaningfully influence access to resources. Moore (1998:33), for instance, while reflecting on state incapacity in Africa, argues that programmes to create equitable distribution of property have been frustrated by individual actions. Moore (1998) further emphasizes that the ability of an ordinary person to ignore, avoid, manipulate or subvert government rules can be substantial. The effect of this on land resource access policies is further reinforced by Berry (1993) and Ranger (1993) who have both emphasized the inability of the state to use its power to determine the direction of its policy implementation. Ranger (1993) in particular adds that with the emergence and assertion of civil society, the state is further weakened and its inventions are surpassed, transformed and often thwarted.

2.8 Land Tenure and Ethnicity

Deinninger and Castagnini (2004) assert that many land conflicts result from the failure of the prevailing land tenure systems to respond to changes in demand for land. The demand for land changes as a result of demographic as well as economic factors. In that respect, existing tenure systems that are recognized by law need to be responsive to the various community value systems and traditions (Deinninger and Castagnini, 2004). However, this does not apply in the case of Kenya. Tenure related land conflicts in Kenya are therefore at least in part a consequence of failure of the exiting land tenure systems to respond to local values and traditions (Olima, 1998).

It is clear from literature that a traditional system should be facilitated to evolve into a system capable of preventing and/or resolving land conflicts (Yahya, 2001). A survey by Obala and Njambih (2002) in the informal and peri-urban settlements of Nairobi indicates that a new land management approach that mimics both traditional (customary) and formal systems is already evolving and is more flexible, relies on local knowledge and is adaptive to locally mediated rules and regulations. As Durand–Lasserve (2002) shows, the evolving system appears flexible, able to transcend the class barriers and withstand the changing political and economic processes.

In Kenya, as in many African countries, the planning approaches being applied in urban areas are based on western values and traditions (Kunzman, 2005). The approaches have, therefore, been inappropriate and have made land use planning difficult. In Kenya, this inadequacy, coupled with a rapid population growth rate, explains why vast proportions of the urban population live in homes and settlements characterized by lack of basic services such as water, sanitation and health care (Syagga, 1998 and 2002).

Rapid growth of unplanned settlements and urban sprawl are mainly due to the failure of the official system to provide land for development. Consequently, planning authorities are unable to provide adequate amounts of land for housing, industrial and commercial development. Mabogunje (1990) noted a similar situation in Nigerian cities and confirmed that planning authorities, particularly in Africa, control only a limited amount of land in urban areas, despite their claim to the contrary. In Kenya, most land in urban areas is privately owned, making it difficult for the government to access it for development of public facilities except through compulsory acquisition. This situation further makes access to land contentious (Mabogunje, 1990).

Bohannan (1967) and Yahya (1976) have both observed that there is a conflict between western oriented and African tenure systems. They argue that the western tenure system brought with it the notion of a plot, with exclusive rights, either as private property or as leasehold. Africans developed and maintained communal tenure system, but with absolute ownership, thus not subject to planning rules and regulations. Bohannan (1967) argues that Africans preferred this approach because it conferred status and prestige. However, planning was based on western traditions and values that privileges individualism, which allowed elites to abuse the land allocation processes. Thus the elites accumulate at the expense of the poor and further contribute to persistent land conflicts.

In many countries, there have been serious land conflicts that are ethnic oriented. The case of Ghana clearly comes into focus, particularly the case in Northern Ghana where ethnic conflicts over land between the ethnic groups such as the Tendembas, Dagombas, Conjas and Kokombas have been recurring since the 1980's (Kassanga and Kottey; 2005). The introduction of commercial farming has also precipitated land conflicts in the Brong Ahafo region of Ghana. In the Ashanti region of Ghana, however, there are more conflicts due to the rapid expansion and growth of the property market, changing tenure systems, lack of planning and rapid urbanization (Asiama, 2002).

The work by Boaten (1995) on Northern Ghana further points out that an increasing number of conflicts over land have ethnic/racial dimensions (Boaten, 1995). This has been reinforced by Kassanga and Kottey's (2005) work, which among others indicates the existence of land conflicts in the area. Despite Boaten's (1995) open bias against the Konkombas whom he views as generally troublesome, lacking proper leadership structures and thus control and restraint, this case gives a historical account of land conflicts in northern Ghana and brings forth the concepts and meanings of strangers and outsiders within the traditional African setting. Thus Boaten's (1995) work brings to the fore the role of ethnicity in fuelling such conflicts. In addition, it seems to argue for the exclusivity of ethnic groups as he claims that a major cause of the conflicts in northern Ghana is settlement of the Konkomba among the seven ethnic groups in northern Ghana. Hildyard (1999:5-21) points out the case of the Rwanda genocide and, like Boaten (1995), indicates that historical animosities are critical in fuelling ethnic and land related conflicts. This is particularly so when struggles for control of state resources are added.

Interestingly, studies by Kassanga and Kottey (2005) confirm the widely held view that customary tenure and traditional land management approaches are most suited to solving and reducing land conflicts. This is clearly demonstrated by the speed with which land cases in the Ashanti region in Ghana were sorted out (Kassanga and Kottey, 2005). The Gbawe land management success points to the veracity of the customary/traditional approaches. The traditional land management approaches are, however, constrained from evolving into a strong system by the continuous interference by the western-leaning bureaucratic systems that operate in Africa (Blocker, 2006).

As Peters (2004) indicates, several writers have rightly pointed out that the over emphasis of the ethnic character of conflicts across Africa, which range from sporadic, localized violence to protracted civil and cross-border wars, has obscured the fact that so-called 'ethnic' conflicts are linked simultaneously to 'preoccupations about land' and contests over power. The Rwandan and Burundian cases point this out clearly. Thus an appropriate summary is that "the age old peasant concern with land stares social scientists in the face but the ethnic dimension of the violence blinds them" (Peters, 2004: 14).

2.9 Good Governance and Institutions

The concept of governance has since the beginning of the 1990s acquired prominence in development debate in Africa and within international development agencies. This followed a realization by the so-called development partners from the North and llied institutions such as the World Bank, DFID, GTZ, SIDA, and CIDA, among other donors, that the opening up of markets alone could not lead to the realization of improved quality of life for the people. This contributed to the realization that improved quality of life or development could only be achieved if the institutions were reformed to be responsive to the desired changes. This brought to the fore the idea of good governance. This is further reinforced by North (1992) who argues that few western economists understand the institutional requirements essential to the creation of efficient markets; the majority simply takes institutions for granted. Yet, it needs to be understood that land conflicts result partly from interactions in the market and at times due to the failure of the market to efficiently allocate the resources.

It needs to be well understood that governance entails decision-making and implementation. It is defined by UN ESCAP (2005:1) as "a process of decision-making and implementation". This definition embraces the eight attributes of good governance namely:

> Participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. Good governance approaches try to assure that corruption is minimized, the views of the minorities are taken into account and the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of the society.

Magel and Wehrmann (2004) argue that effective land management should adopt these attributes. They add that adopting these attributes would reduce land conflicts and increase efficiency in urban land management and poverty reduction.

Due to the potentials of the application of the principles of governance to help in poverty reduction and the increasing importance of urban areas, the United Nations Human Settlements Program (UN-Habitat), the Global Campaign for Good Urban Governance (UNCHS, 2000) and the Global Campaign for Secure Tenure (UNCHS 1996, 1999). The campaigns are linked by their common focus on urban poverty reduction. However, citizens largely link the campaigns (particularly Global Campaign for Secure Tenure) to the provision of access to resources such as land. It is generally accepted that access to land enhances a sense of belonging in people and motivates citizens' participation in urban management.

The UNCHS (2000) document on the campaign for good governance concludes that there is a need for sharing of power that leads to equity in access to and use of resources. It promotes the participation of women and men as equals in all urban decision-making, priority setting, and resource allocation processes. UNCHS (2000) states that it is desirable that third world cities become inclusive thereby limiting inequity among the city residents. When the concept of inclusive cities is applied to urban land management, as Magel and Wehrmann (2004) illustrate, city governments would be called upon to be responsive to the eight key attributes, including sustainability in urban development that implies balancing the social, economic and environmental needs of present and future generations. It is clear that being responsive to the eight attributes of good governance would entail facilitating achievement of certainty in law and rule of law (Zimmermann, 2001).

Kreibich and Olima (2002), however, argue that African cities need to find appropriate homegrown solutions and models to address the teething urban problems. They add that it is only then that issues of urban poverty and inequity in African cities will be realistically addressed. Furthermore, Easterly and Levine (1997) argue that reasons for slow economic growth and persistent poverty in countries such as Kenya remain open to debate as there are no clear answers. Interesting are explanations offered by authors such as Collier and Gunning (1999) that slow economic growth is a result of several sets of factors that include the geographical, tropical character of many countries, macro and microeconomic policies. It is these factors that have resulted in the erosion of social capital, lack of openness and economic volatility, that are reason enough to promote global campaigns for good governance.

While the aims of major international development agencies are often positive, the results of their activities aimed at transformation of communities have at times attracted conflicts, as the case of Juba Valley in Somali (Besterman, 1999:215) confirms. It is evident that multinational corporations do not share the agenda of international development agencies. Land concessions and foreign direct investments seen in economies facing instability due to internal conflicts in Africa further confirm that the interests of the multinational corporations are at variance with principles of good governance. Besterman (1999) illustrates this using the case of Mozambique where about 40 million hectares of land were given out in the name of concessions for mining, forestry, hunting, and grazing at a time when conflict was at its peak. This points to the fact that the multinational corporations could have been part of the conflict.

Olima (1998), in his investigation of land tenure systems in Kenya found that the main drivers of land conflicts included tribalism (ethnicity), poor land management and administration, misuse of discretionary powers, land speculation, political patronage and interference in public land administration, among others. Similarly, Olima and Obala (1998) pointed out that one of the sticking sources of land conflicts in urban areas is freehold interest, particularly in the peri–urban and rural areas newly included in the urban areas. However, they also point out that the passing of the Physical Planning Act of 1996 would address the difficulties that hitherto could not be dealt with. This is because before the passing of the law, freehold interest had no limitations on use and there was no binding authority to obey any regulations or planning requirements. Mwangi (2002) points out that the problem of urban planning and the inability of the planning laws to meet the desired expectations are not limited to Nairobi and the bordering towns, but is a challenge to the whole country.

In general it should be understood that good governance implies application of the attributes that translate into decentralized decision-making processes. These are efficient and effective service delivery, equity, promotion of local economic development, transparency, provision of a secure environment, facilitation of participation of the urban citizens in the decision-making which is critical for effective and efficient land management and land market operations.

2.10 Development and Land Conflicts

The concept of development elicits diverse opinions and remains contested. It has been in the public domain for over 200 years but only gained prominence about 50 years ago (Thomas, 2000). However, it acquired special position after the Second World War when the then American President Harry S. Truman in his inaugural speech on January 20, 1949, declared that

> We must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for improvement and growth of underdeveloped areas. The old imperialism – exploitation for foreign profit – has no place in our plans. What we envisage is a program of development based on the concepts of democratic fair dealings (Truman, 1949, quoted in Esteva, 1992:6).

The speech ,according to Esteva (1992), ushered in the era of development. But the period also ushered in the cold war. The United States of America and the European allies then took a leading role

in determining how development was to be undertaken in the west with a fundamentally different trajectory in the eastern bloc (Thomas, 2000).

The period from 1949 to the 1970s coincided with that of independence from colonialism in most developing countries. Sachs (1992) points out that every regime, whether dictatorial or democratic, declared that development was their main agenda. Sachs (1992:1) succinctly puts it that:

> Like a towering light house guiding sailors towards the coast, 'development' stood as the idea which oriented emerging nations in their journey through post-war history. No matter whether democracies or dictatorships the countries of the south proclaimed development as their primary aspiration after they had been freed from colonial denomination.

However, Sachs (1992) adds that today many countries in the South remain underdeveloped, undeveloped or developing. The many years of attempts to develop the countries, have not achieved much. This has brought to prominence the failure of development, which has in turn seen the emergence in 1980s of the "post-development school", which argues that development has always been unjust, has never worked and has now clearly failed. Sachs (1992:1) adds that, "the idea of development stands likes a ruin in the intellectual landscape and "it is time to dismantle this mental structure". Through these arguments, the concept of development remains confusing. However, others such as Thomas (2000), although conceding that there have been set backs and disappointments, argue that on the balance there have been successes. This refers to the progress in achieving some level of development in the south.

Left leaning authors such as Alvares (1994) argue that development is "a label for plunder and violence, a mechanism of triage[9]." Alvares (1994) further gives the example of a situation where a resource that people relied on is both polluted and rendered useless because of so-called "development". This is a situation where a few people benefit directly at the expense of others.[10]

Given the contradicting debates and positions on the concept of development, the question that remains is: What is development? In the midst of the confusing debate and endless contradictions, Chambers (1997) defines it simply as good change. Thomas (2000) clarifies the definition by Chambers

[9] Triage refers to a situation where development benefits only a section of the society. In some instances people are just deliberately excluded from benefiting from the results of the development activities. The situation is referred to as triage (Alvares, 1994).

by breaking it into two sections. The first section interprets what good means – and Thomas (2000) argues that it implies that a vision of desirable society (well being for all). This is something that one looks forward to or aims at, a state of being with certain positive attributes which can be measured and therefore one can talk of less or more development (Thomas, 2000). The second section interprets change, which implies a process that may entail disruption and which may or may not be possible to direct (Thomas, 2000:8). Thomas (2000) therefore concludes that development should be understood as embodying competing values and aims (political and social), and contrasting theories of change. These competing values and aims lead to competition for resources such as land between various classes in society and in places with high-density population it leads to conflicts.

2.11 State and Markets

The interests of the state in land and conflicts arguably go beyond its interventionist policies and include facilitation of the operation of the land market, maintenance of law and order, without which transactions may not be honoured, and generally integration of land into the national development agenda. Thus the way the state relates and engages with issues and interests that are local, national and international, are critical in this respect (Cheru, 2000; Cooper, 2001; Durand-Lasserve 2006). In this case we should take heed of a warning by Sandercock (1976) of state failures often leading to transfer of wealth from the poor to the rich.

Durand-Lasserve's (2006) case study results on Kigali (Rwanda) and Phnom Penh (Cambodia) give evidence of situations where state policy leads to transfer of resources from the poor to the rich. In the eviction case of Kigali, compensation to the informal occupants was based on an assessment by the city council. These assessments, he adds, left out the value of land and only gave the replacement cost of the structure. This means that the individual households were expected to raise additional funds to purchase a new site in addition to relocation costs, which most could not afford. For those renting, the situation was even worse. They were not entitled to any compensation, yet they made up to about 47.7% of the urban population in a city where over 80% of the population live in informal settlements (Durand-Lasserve, 2006).

The case of Phnom Penh is no different. As Durand-Lasserve (2006) reports, there have been evictions both by the municipal authority and private sector market operatives. In a city where about 25% of the population live in informal settlements, compensation to households evicted from the

informal settlements was based on provision of at least one of the documents proving land ownership. These are receipts acknowledging a person's claim to land, and certificates, which are state-authenticated documents certifying land ownership. Those who had certificates and titles form a very limited proportion.

Durand-Lasserve (2006) indicates that there is significant evidence that pressure was exerted on the municipal authority to release land for private development. The target of the developers, he argues, was the high value land in the poor inner city. He gives the case of the Koh Pich area community who resided on public land. The land was required for private commercial development by a Cambodian bank through its parent company, Overseas Cambodian Development Corporation. The land was argued to be worth between US$24 and $26 per square metre. But the offer of compensation by the municipal authority to residents was merely US$2.50 per square metre.

The cases cited by Durand Lasserve (2006) support Sandercock's (1976) argument on the role of the state in determining access to and ownership of land. It also reveals the influence of the state in planning of urban development and equity. Thus as much as the market has a specific potential and role to play in society, that is to promote efficiency and stimulate the idea of freedom of choice, the state equally has a duty to mediate and ensure that there is fair play in transactions, as the case of Phnom Penh reveals. On the other hand, the state has a duty to create a fair and balanced society. But within the state there are other mediating factors such as culture, individual interest and traditions that work against this noble goal.

From the discussions it is emerging that numerous forces mediate in the interaction between the state and market. It is also apparent that these forces are often at variance, often on opposing ends, and therefore they exist in continuous tensions (Forgacs, 1999; Perry, 1984:219-233). The entry of civil society as a mediating force has been critical in reducing the influence of both market and state forces. Many times, the state is forced to renegotiate its policy stand, while at times the state manipulates civil society to fulfill its agenda. The influence of civil society is evidenced in many cities, the case of Phnom Penh in Cambodia (Durand-Lasserve, 2006) being only one.

2.12 Urbanisation and land conflicts

Urbanisation in sub-Saharan Africa is as a result of diverse forces, the most important ones being declining agricultural productivity and rising rural population density, which have consequently pushed out the landless and the under-employed. Furthermore, availability of more jobs and higher incomes in urban areas relative to the rural areas among other factors continue to pull more people to urban areas (Berghall, 1995).

However, unprecedented urbanisation and population increase in many African countries, including Kenya and particularly after independence, has overstretched the capacity of urban authorities rendering them incapable of providing adequate infrastructure for the increasing population, including housing, leading to enormous pressure on the existing infrastructure (Mabonguje, 1990; Syagga, 1991). Hermann and Khan (2008) add that in addition to lack of infrastructure there are no adequate employment opportunities for the increasing urban population in most developing countries. The majority of the urban population in Africa's urban areas is unable to pay rent in decent areas. As such there is sustained proliferation of informal settlements to provide accommodation to the increasing population (World Bank, 2006). The informal settlements once developed are difficult to eliminate, as Herman and Khan (2008) have observed.

Thus, as Tibaijuka (2005) pointed out to the United States of America's Senate Foreign Relations Committee, African Affairs Subcommittee Hearing on "Housing and Urbanization Issues in Africa" on 4 May 2005, Africa faces a daunting challenge in addressing the social, economic, political, cultural and environmental implications of rapid urbanization. In addition, Africa leads in urbanisation growth with the urban population expected to reach 500 million by 2015. Cities in Africa must, therefore, prepare themselves to handle the expected increase of pressure on resources.

The situation in Africa confirms observations such as that of Berner (2001) that the "positive process, urbanisation, which was associated with modernisation, industrialization and global integration", is today questionable given the shrinking of economies, increasing unemployment and lack of industrialization, as is appropriate in the case of Kenya. Similar situations pertain to many Sub-Saharan African countries. This therefore calls for a review of the urbanisation processes. Existing literature further makes the situation appear more precarious as it paints a gloomy picture on the state of urban areas thus:

> More than 600 million people in cities and towns throughout the world are homeless or live in health threatening situations. Unless a revolution in urban problem solving takes place, this numbing statistic will triple by the time this century passes its first quarter (N'Dow 1996: xxi).

As many countries in Africa, Kenya is at a cross roads as it faces rapid urbanization amidst increasing poverty and competition for the single most important resource – land. Various publications indicate that urban poverty is on the increase globally, as reflected by the percentages of the population living in the slums. For instance, about 43 per cent of the population of developing cities live in slums, with 71 per cent living in the slums in sub-Saharan Africa (Durand-Lasserve, 2006; Moreno, 2003 and UN-Habitat, 2003). Most of the popular and populous urban neighbourhoods are today described as illegal, squatter, irregular, informal, and spontaneous and self-help settlements (Razzaz, 1994). Urban areas that were once seen as providing hope for the future in the early years of independence in many African countries are fast turning into nightmares and the search for solutions to urban problems is today more urgent.

The quotation from Calvin (1997), that Pieterse (2008:3) uses at the beginning of his book *City Futures: Confronting the Crisis of Urban Development*, appropriately indicates what cities are, and particularly so in the developing economies like Kenya, as it brings out the uncertainties that are today associated with our urban areas. The quotation from the work of Calvin (1997:1) reads as follows:

> With cities, as it is with dreams: everything imaginable can be dreamed, but the most unexpected dream is a rebus that conceals a desire, or its reverse, a fear. Cities like dreams are made up of desires and fears, even if the thread of their discourse is secret, their rules are absurd, their perspectives deceitful, and everything conceals something else.

The city of Nairobi where my study sites are located hosts political, social, economic and environmental institutions of value. The interactions between these institutions are locally, nationally and globally mediated and produce numerous uncertainties. But conflicts over resources such as land seem to be the norm and are easily branded political and ethnic. There has been very limited debate on these —when the media and the political elites find them suitable.

Many authors have blamed land conflicts in urban areas on inability of the urban managers to manage land properly (Larsson, 1997; Swazuri, 2002). Swazuri (2002) further argues that to reduce land conflicts, land management need to be seen as part of a wider doctrine of land development and physical planning. In this respect, he adds that land management must entail orderly and lawful allocation, transfer, utilization, distribution and conservation of physical land in urban areas for the benefit of all the actors. On the other hand, Larsson (1997:9) has defined land management as a comprehensive expression of activities aiming at established goals for the use of land. There appears to

be a consensus on the aims of land management. However, urban areas are dynamic and full of uncertainties (Calvin, 1997) as goals keep changing.

Development Workshop (2005:37) argues that, "land is a unique resource in that it is limited, and all the more so in urban areas, especially where social and economic opportunities are limited". It adds that while such land values rise rapidly, at the same time the predominantly low-income populations have limited investment capacity to access land or develop it formally. This explains why the predominantly poor opt to invade land for development of their shelter.

In addition, tensions and conflicts arise regarding decisions on how best to undertake land management activities. The choices are often limited to either the market or state led processes. However, the final choice is influenced by the existing tenure systems and prevailing socio-economic and political circumstances.

2.13 Historical Injustices

Historical injustices refer to wrongs that were committed against people and may include forceful evictions from their rightful lands, as is the case in Kenya. In Kenya the major question has been acquisition of land after independence and, more particularly, the rights of communities that were displaced by colonialists. A few civil society institutions have been at the forefront in agitating for a relook at the issue as it threatens to disrupt peace and harmony in the country.

Thus in their desire to bring to the fore for inclusive debate issues of land that threaten peaceful co-existence of Kenyans, Kenya Land Alliance and Kenya Human Rights Commission (2006) jointly produced a policy brief entitled "Righting the Wrongs: Historical Injustices and Reforms in Kenya". Two years earlier, Kenya Land Alliance (2004) had already prepared a similar policy brief entitled, "Kenya National Land Policy: Addressing Historical Injustices", in which it stressed the need to address issues relating to historical injustices. Indeed, members of the public in different forums have privileged the issue of historical injustices over the years including the latest Commission of Inquiry into illegal and Irregular Allocation of Public Land, dubbed the Ndungu Commission (Government of Kenya, 2004).

The proponents of this are convinced that addressing historical injustices would unlock the problems of land ownership and conflicts. The Draft National Land Policy (2007) chapter 3, subsection 3.6.2 has proposed that the Government addresses historical injustices relating to land that, "stretch to colonial land policies and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved". Inter Press Service News Agency (November 24, 2007) reporting at a forum by civil society organisations on their position on the draft land policy wrote that:

> Previously, Kenya has had no clearly defined laws on how to manage land, leading to a breakdown in land administration. Disparities in land ownership, tenure insecurity and squatting have occurred, often resulting in conflict. The absence of a land policy has also opened the door to environmental degradation.
>
> The Draft National Land Policy of October 2006, drawn up by government, seeks to address issues of land administration such as access to land, land use and restitution -- and the proliferation of slums. However, activists have severely criticized the new initiative. They claim the document fails to spell out practical solutions to land problems in Kenya, particularly concerning the historical injustices that deprived Kenyans of land. While the policy notes, in the matter of restitution and other issues that government shall develop a legal and institutional framework for handling such matters, this statement has been reported (IPS, November, 2007) as being seen by many as vague and non-committal.

In addition, the paper (IPS 2007) gives sample accounts of individuals who were dispossessed during the colonial period yet were not resettled, indicating that the poor remained without land despite the elites acquiring huge chunks of land within the settlement schemes. The sample cases were as follows:

> 1. Former Mau Mau combatant **John Kiboko** is one of those people who experienced this neglect. "My land in Kirinyaga (central Kenya) was taken away after I and other fighters ran to hide in the bush, rejecting arrest by British soldiers in 1953," he told IPS of the five-acre plot that was confiscated in 1955 by colonial rulers. "I now live in Nyandarua (another area in central Kenya) like a squatter, hopping from one settlement to another. We fought for freedom and land. Yes, we got freedom, but where is our land?" the 70-year-old asked, as he hobbled along with the aid of a walking stick. He got the limp after being shot in the left leg while defying arrest orders. (IPS, November, 2007)
>
> 2. Seventy-six year old **Waguchu Mwambura**, another fighter, lost four acres of land. "My land in Murang'a (central Kenya) was taken away after I went into hiding for fear of being arrested by the Mzungu[11]. I now live in Naivasha town (in the eastern Rift Valley), as if I never had a place of my own," he said. "My question to the government is: 'Did the mzungu go with the land after independence or he left it here? If he left it here, why has it not been returned to us?" (IPS, November, 2007)

[11] Mzungu is a Swahili word for a white man.

The paper further reports that human rights bodies say more than 1,000 former freedom fighters had their land confiscated. Many have since died. The land was seized under the Native Land Rights Confiscation Order of the 1955 Kenya Proclamations Rules and Regulations. These accounts point to the role of historical injustices on land conflicts in Kenya.

The post-election violence that erupted in January 2008 in Kenya following a disputed presidential election further vindicated the position taken by public officials when the African Unions Eminent Persons' concurred with their perceptions when they identified land and historical injustices as the main issues that needed to be addressed to avoid future ethnic violence (Daily Nation; 20 January, 2008). It has to be understood that the above accounts only give a partial picture of the problem.

Indeed, the African Union group of Eminent Persons felt that for long term peaceful coexistence among the various ethnic groups in Kenya land issues and historical injustices must be exhaustively addressed. The import of this is that failure to do so would leave the people vulnerable to conflicts in the future. This position reinforces the perceptions of public officials as to what ails the land and its management in Kenya.

The Government, having obtained opinions from Kenyans through regional workshops as well as national workshops, individual presentations and expert position papers, has been bold enough to outline in the Draft National Land Policy (Government of Kenya, 2007) that among other things the Government will:

a) Establish mechanisms to resolve historical land claims arising in 1895 and thereafter (the explanation it has provided for the selection of 1895 is that it is the year Kenya became a colony under the British and it is also when massive dispossessions began);
b) Establish a suitable legal and administrative framework to investigate the historical injustices and recommend mechanisms for their resolutions;
c) Review all laws and policies adopted by post-independence Governments that exacerbate the historical injustices; and
d) Establish suitable mechanisms for restitution, reparation and compensation for historical injustices and claims (National Land Policy, 2009).

The Draft National Land Policy has, however, been dismissed by civil society organisations as being too general on the issue of historical injustices (see IPS November 24th 2007). Similarly, the Association

of Land Owners through their officials have dismissed the Draft Land Policy document as anti-market and unconstitutional and recommended the amendment of the sections on historical injustices.

2.14 Conclusion

The literature review has revealed that historical and traditional beliefs in addition to colonialism have contributed immensely towards the transformation of society's perceptions of land and towards economic development in general. It is through these that land commodification found its footing, both in the western economies and in Africa. It is the changing beliefs that saw the transformation of land from a social good to a factor of production with value that could be individually owned.

However, the process of transformation is generally agreed to have taken a relatively shorter period in Africa as opposed to western countries, thereby giving limited time for the people to fully embrace the new status of land. This, coupled with rapid urbanisation and other factors, has contributed to urban chaos and continuous conflicts over land in many developing countries, including Kenya. It has been made worse by the fact that land management and administration was implemented in Kenya without putting appropriate institutional frameworks in place. It is these missing linkages that have been responsible for serious land conflicts in Kenya.

It emerged in the first chapter that ethnicity, corruption and politics interact to deny access to land to certain sections of the society, creating inequity. As a result, there is general discontent among different groups within the economy and a sense of frustration as well as a feeling of being an outsider within the economy by the poor. The discontent has been a major factor contributing to land conflicts.

The literature review has further revealed that land conflicts result from a myriad of cross-cutting factors that include social, political, economic and environmental issues. It indicates that there are linkages between environmental, socio-economic, institutional, power, ethnicity and corruption, institutions, culture, market and the state. The main contention, however, is the contribution of each of the factors towards land conflicts. It is not clear from this literature review which of the factors is dominant or more significant than the others.

Finally, the literature review revealed that addressing urban land conflicts requires the development of home grown solutions that are flexible and adaptable to our situations. It is anticipated that through

this, land conflicts could be minimized and/or mediated. It is also clear from the review that explanation of the relationships between urban land conflicts and inequity requires a mixture of approaches. This is because the phenomenon under scrutiny is complex due to the difficulty of predicting its dynamics. The next section of this study presents the various theories that may be useful in explaining the interactions.

CHAPTER THREE

TOWARDS A THEORETICAL FRAMEWORK

3.1 Introduction

This chapter aims at ensuring that there is a good understanding of the interactions between my study research problems, tools of analysis and the methodology. It also offers a conceptual understanding of the key theories used in this study. The sections that follow discuss the theories of Uneven Development, Elite and Ethnic Manipulation, Darwin and Marxist theories, Structure and Agency, Semi-Autonomous Social Fields and Environmental. The theories have been introduced in chapter one. It further discusses the application of these theories to the Kenyan situation. This is followed by a discussion of the theoretical and analytical frameworks.

As Miruka (2007) argues, the theoretical orientation of a study is informed by the desire to develop concepts and ideas that link research to literature and to the approach to the gathering of empirical evidence. One challenge addressed in this chapter, and in the following chapter which outlines the research methods, is how to develop appropriate tools for measurements that are grounded in theoretical typology as espoused by Peters (2004).

It is important to re-emphasize the fact that this study concerns itself with a contemporary phenomenon – land conflicts. In addition, the study is being undertaken in one of the fastest growing cities in the developing world. As shown in the previous chapter, the phenomenon is influenced by a myriad of factors and has numerous meanings and is increasingly becoming difficult to explain and understand. This has contributed to the numerous theoretical debates witnessed today. These theoretical debates are at times contradictory but a few are found that are complementary and provide suitable lenses for interpretations of the different components of the phenomenon. This study therefore attempts to isolate the various strands of theory that may help explain the phenomenon better.

3.2 Theoretical Debates and Analysis

There are numerous theoretical debates revolving around urban land conflicts, including ethnicity, corruption, political manipulation and environmental, Malthusian and Boserupian theories. The latter two shed light on the various dimensions of resource related conflicts and are less relevant to the urban scene because they do not interact with other forces in the urban areas. In addition, urban land conflicts result from a complicated interplay of various forces that cannot be explained by environmental factors alone. Indeed, Mingione (1981:9) has pointed out that from existing literature it is apparent that the traditional tools and theories that have been used in explaining land conflicts are getting impaired as land conflicts and related phenomena become more complicated and multifaceted. This calls for better tools of analysis and explanations of the various phenomena.

It is thus critical to include various theoretical strands when the relationships between urban land conflicts and inequity are to be satisfactorily analyzed. The theories include structure and agency, institutional analysis, societal compliance and semi-autonomous social fields and Harvey's (2006) emerging theory of uneven development, given the influence of the political elites in land conflicts.

3.2.1 Theory of Uneven Development and Displacements

Uneven development refers to a situation where market forces combine with policies to displace the poor and contribute to conflict. The other distinct feature of this theory is that it brings to the fore the influence of globalisation in local and national conflicts. The theory can be traced to the works of David Harvey dating to the early 1970s. In his recent work, Harvey (2006) discusses the theory of uneven development with reference to the Chinese economy. This is relevant to Nairobi, although it seems distant from China. The issues raised in this work betray the distance and history. Indeed, if one brings to the fore Walker's (2006) article on "Gangster" Capitalism and Peasant Protest in China and compares this to the problems faced by the poor in the city of Nairobi, in addition to the historical development, then the analysis of the Chinese situation is apt for understanding land conflicts in Kenya's capital Nairobi.

A review of existing literature generally indicates that land conflicts being experienced in one part of the world may indeed be resulting from another part of the world. For instance, Harvey (2006) gives the case of China, which he calls "strange". In China, conflicts over land are a result of demand for land by foreign investors. Before 1976 the Chinese economy and market was largely a command economy. However, following the death of Mao in 1976 and difficulties of economic stagnation and political uncertainty, the Chinese government chose to open up the economy to reduce uncertainty and promote economic growth.

It is understood that the opening up of the Chinese economy was aimed at unleashing both individual as well as local initiatives to help increase productivity and spark economic growth. The Government's focus was initially on four areas: agriculture, industry, education, science and defense. It was thought that bringing market forces to bear internally within the Chinese economy would stimulate competition between state-owned firms, thereby sparking innovation and growth (Harvey, 2006:34). Harvey (2006) adds that when market pricing was introduced, there was rapid devolution of political-economic power to regions and to localities.

However, it had been expected that there would be certain levels of inequalities resulting from this move and which would be tolerated. The Chinese were, however, forced to learn rather belatedly that the market can do very little to transform an economy without a parallel shift in class relations, private property and all other institutional arrangements that are typically found in a thriving capitalist economy. Besides, the process was slow and tension-packed. In addition, it emerged that the role of the State was diminishing. The State could no longer supervise the process as was contemplated at the beginning of the reform process. In the process, commune leaders dispossessed many people of their land (Walker, 2006). This is what may be referred to as uneven development where acquisition takes place by way of dispossession.

The transition was, however, without adequate institutional reforms and therefore created uncertainty among party leaders and the general public. Consequently, it led to a large number of Chinese people being rendered jobless in the initial phases. And, in the urban periphery, an informal land and property market arose. This was accompanied by what Harvey (2006) has described as primitive accumulation. Here commune leaders assumed *de facto* property rights to communal land and assets in negotiations with foreign investors. These rights were later confirmed as belonging to them as individuals. This kind of accumulation is common to many economies, Kenya included, and the case of Nairobi typifies this. It is what Walker (2006) has called "Gangster Capitalism". Walker (2006) further indicates that despite

the earlier upheavals of unemployment the heavy investment in infrastructural development has for now absorbed large portions of people, thereby averting potential conflict.

In addition, Wang (2003) indicates that speculation in land and property markets in urban areas has been on the rise. This has arguably been exacerbated by a lack of clear systems of property rights. It should be recognized that private ownership of property was enshrined in the Chinese constitution in 2004. The move in China has thus further widened the structural inequalities that have continued to exist in China despite many years of socialism. The new wave was quite radical and quickly transformed itself into disparities in income among different classes, social strata, and regions, leading to social polarization (Wang, 2003). This is viewed to have a potential for class struggles as well land conflicts. The Chinese case indicates that land conflicts come in a myriad of directions that include: politics, religion, information and access to resources.

Furthermore, evidence from across the globe indicates that the role of the State is increasingly being questioned, particularly when issues of inequity come into focus. Thus it is not far fetched to argue that the role of State is seen as increasingly becoming ambiguous and contradictory. The traditional tools of analysis are therefore being rendered ineffective by the unclear roles of the State. The need for refining of the existing lenses for analysis of the phenomenon has thus never been so urgent.

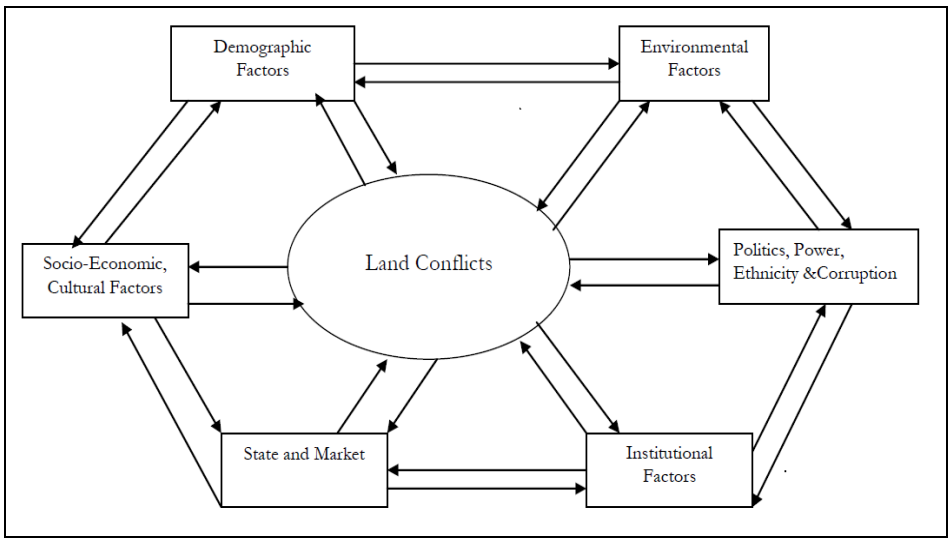
3.2.2 The Relevance of Grounded theory to understanding of land conflicts

Land conflicts arise from a variety of socio-economic, cultural, environmental, demographic and political processes. Their interpretations therefore require well grounded theories relating to land scarcity, accumulation, supply and demand as well as culture. It is evident from literature that many analysts of land scarcity concentrate on the supply and demand sides. However, these are generally argued to be susceptible to manipulation. This view is supported by Barnet and Morse (1963) and Simon's (1981) early studies, which all see demand and supply of land resources as vulnerable to technological and ethnic/elite manipulation. On the other hand, Verdery (2001:16), arguing from an anthropological position, puts it that scarcity as seen by economists is not real. She contends that it is simply a notion which operates within a system of values and power relations. This view sees scarcity as institution oriented and aimed simply at excluding others. Figure 3.1 below gives a picture of the

complex interactions and linkages that produce and reproduce land conflicts. From the figure alone it is evident that numerous independent and interdependent factors are at play.

It should be appreciated that land related conflicts require to be properly analyzed, if they are to be appropriately explained. Furthermore, despite the difficulties land conflicts need to be subjected to objective and impersonal means of adjudication (Dorner, 1972:18). In this regard, there is need to be wary of discriminatory resolutions that favour the most influential and powerful groups. This, Galbraith (1951:96) contends, is why land tenure reforms on their own are often unable to achieve intended objectives. Galbraith (1951:96) adds that it is due to the revolutionary nature of land reforms that there are many resistances to its reform.

Figure 3.1: The Interactions between factors influencing land conflicts



Source: Author's Own Construction, 2007

It needs to be understood that land reforms often portend passing of power, property and status from one group to another (Midgal, 1988). This invites strong resistance, often difficult to surmount. Indeed, the Egyptian land reform in 1954 under President Nasser is a clear pointer as to how difficult this can be (Midgal, 1988:184). Despite his government's aim of changing the *status quo*, it only succeeded in very limited areas such as the dispossession of big landowners as a powerful class in Egyptian society, imposition of new tenancy rules and low rents, and increased productivity.

The struggles over land, whether in the open market or public allocation, often involve a myriad of forces and institutions. As depicted in figure 3.1 above, the struggle for land resources is often all-embracing and draws from all sectors of the society. Thus the historical development of a country

and/or a region often plays a critical role in influencing management, ownership patterns and governance. This is because it shapes the types of laws and institutions of resource governance that evolve.

3.2.3 Theory of Structure and Agency

Rakodi and Leduka (2003), in dealing with informal land delivery processes in five African cities (Eldoret - Kenya, Kampala - Uganda, Gaborone - Botswana, and Maseru – Lesotho) has identified and used three different theoretical strands to explain the phenomenon. The theories are: structure and agency, institutional analysis and societal non-compliance. Abraham (2006), in explaining the land conflict in Zimbabwe, has adopted a composite theory but with emphasis on elite manipulation theory to explain it.

The theory of structure and agency, which Leduka (2006) uses to partly explain informal land delivery, has been a subject of serious debate among scholars. The approach has been criticized because it is perceived to ignore the radical human contribution in urban changes. It is, therefore, seen as having no usefulness for human struggle and other forms of resistance as those who reject it see it as anti-humanist (Beauregard, 1984:51). Beauregard (1984) further argues that this is because it appears to reject two fundamental tenets of Marxist theories, that is, human consciousness and ideology which should guide it.

Giddens (1987) uses the idea of structure and agency with reference to decision-making, action and power relations between actors who, as Leduka (2006) points out, may appear unequal in their control over societal institutions that might ensure access to resources, such as urban land. Structure, according to Giddens (1987), refers to rules and resources necessary for a social system to exist and function. Giddens (1987) indicates that rules refer to norms and behaviour that society knows and, together with formal rules, habitually follows in restructuring of society in terms of everyday life. On the other hand, agency relates to power and control of the individual, that is, the ability to act and influence actions of others.

Power is perceived to be in constant movement between the dominant and the weak in structuration theory. As such those perceived to be weak may have the resources to influence the movement of power in their direction. Thus there is always a conflict between the powers at various levels. These explain the ability of the poor masses that are perceived to be weak but are able to mobilize themselves and solicit the support of the political class and have the power move in their direction. This is applicable in the case of Nairobi where the poor, with the support of the political and ethnic leaders, have been able to invade properties belonging to powerful individuals.

3.2.4 Institutional and Semi-Autonomous Social Field Theories

Leduka (2006) also uses institutional analysis as a tool for analyzing the actions of informal settlement dwellers. This is because it is evident that tensions related to land in urban areas are often played out in varied sets of institutions. Yet, as Leduka (2006) puts it, there are no precise definitions of institutions, and institutional analysis is neither a unified nor a monolithic body of ideas. Thus institutions are variously defined as complex norms of behaviour that persist over time by serving collectively valued purposes (Nabli and Nugent, 1989:1335) and as the rules of the game in a society or as the humanly constructed constraints that shape human behaviour (North, 1989:1321).

North (1989) further points out that institutions can either be formal or informal. Formal ones tend to have formally created rules of the game and refer to national constitutions, government statutes or common law contracts. In this respect there are clearly articulated rules to be followed in operations and in the fulfillment of activities. On the other hand, informal institutions do not comply with these rules. But Leduka (2006) adds that they are derived from the formal rules and as such do not exist in isolation.

Institutional Analysis as a tool is argued to have evolved to explain market transactions (Leduka, 2006), but it has transcended this and has been used in urban studies in developing countries to explain land disputes in informal settlements, land and housing markets, informal credit finance, and land management systems (Razzaz, 1994; 1998, Kombe, 1998 and Leduka, 2000). This means the method can be used to explain some dimensions of land conflicts such as market transactions and their

effectiveness and efficiencies but like others on its own is incapable of explaining the relationship between land conflicts and inequity.

Furthermore, as Leduka (2006) points out, institutional analysis, when used in explaining urban related phenomena, often concentrates on efficiency and inefficiency of rules in enhancing or constraining the market transactions. In the process institutional analysis remains quiet over issues of equity, distribution and power relations between the actors. Yet power relations are critical to structuration theory. The notion of societal non-compliance moves the structuration theory a step further by attempting to address the gap in the theory, that is, the inability of the theory to explain where power might lie amongst all actors. This is particularly critical when it comes to decisions of access to resources in an economy.

In addition, Leduka (2006) rightly argues in support of the argument of earlier authors like Moore (1973), Scott (1987), Razzaz, (1993, 1994), Tripp, (1997) and Bayart (1997, 2004), which suggests that non-compliance might be a virtual resource that the disadvantaged groups might use to mobilize access to livelihood opportunities that in normal circumstances lie outside their reach. These arguments sit well with Yiftachel and Yakobi (2004) and Soliman (2004).

Moore (1973) indicates that his idea of 'semi-autonomous social fields' can be defined in any fashion. It can thus be defined as a group of individuals, a neighbourhood or a city. This is arguably because what constitutes a social field is not its organizational attribute, but its processual characteristics, that is, the ability to generate rules and coerce or induce compliance to them (Moore, 1973). Moore further argues that it is considered semi autonomous despite its ability to generate rules, because it is at the same time enmeshed in the larger social matrix which can, and does, affect and invade it. However, the results from these interventions are unpredictable.

Moore's work is useful in explaining informal settlements and spontaneous quiet conflicts. Land conflicts are sometimes quiet, a phenomenon that is more evident in conflicts over public land. It is in such cases that individuals move in and occupy land owned by a public body, often feigning ignorance and weakness. Indeed Razzaz (1994) argues that informal settlements form non-compliant semi-autonomous social fields. This is because these settlements form a continuous challenge to state rules and authority, at the same time adhering to some. This view is criticized by Leduka (2006) who sees it as missing key features of non-compliant strategies as it is premised on open confrontation with the state and property owners.

Thus the covert and/or quiet strategies with no clear forms of organization or planning and in which actors avoid open confrontation, are therefore lost. It is these that are referred to as weapons of the weak, often symbolized by foot dragging, dissimulation, false compliance, pilfering, feigned ignorance, slander, arson, and sabotage. These notions are very relevant to a city like Nairobi where there have been quiet resistance by the various classes who despite being aware of the formal rules, often resist and do the opposite; more frequently in relation to land development, access and use.

3.2.5 Elite and Ethnic Manipulation Theories

Identity related political tools such as ethnicity are usually used by elites to help them galvanise their constituents around issues that may be beneficial – either to the constituents or to the elites. In many cases it is used as a criteria to access economic resources such as land and power as the case of Kenya indicates (Kimenyi and Ndungu, 2005; Dafe, 2008; Mueller, 2008). Dafe (2008) in her work on Nairobi identified that there exists enormous evidence that the spatial pattern and spread of poverty, public spending and ethnicity are closely related. She adds that in the case of Kenya, the spatial arrangements and patterns of settlements provide for ethnic targeting and gives the example of allocation for road projects in Kenya. Dafe (2008) points out that under the Kenyatta presidency, 44 per cent of funds for road construction went to Central Kenya, which is predominantly occupied by the Kikuyu, Kenyatta's tribe. Similarly, when Moi became President in 1978 the figure went up for his Kalenjin areas (57 per cent) while there was a reduction in Central Kenya from 44 per cent to 16 per cent. Barkan and Chege (1989), Trovik (2005), Kanyinga (2006), Kiringai (2006 and 2007) and Syagga (2006) have confirmed that since independence there have been tribal considerations in resource allocations, further reinforcing Dafe's (2008) observation on the spatial nature of poverty in Kenya.

It has also emerged that political patronage is found useful by the elites as it is used to target an ethnic group. This is particularly useful during campaigns for political power. Since the relationship is at best reciprocal, the patron who happens to be a politician delivers benefits to the clients and in return obtains political support and loyalty. There are several explanations on how this relationship works in different countries. In Kenya, Thomas-Slayter (1991) and Dafe (2008) seem to concur that the process may not only involve official systems but may be in the form of bribes. Indeed, Thomas-Slayter (1991)

gives the example of Harambee[12] that acquired its own life as the country's main way of mobilising resources for local development and "a clientelist framework" (Dafe, 2008:9). Recent political trends, including the 2002 and 2007 elections and subsequent formation of governments, point towards ethnic coalitions and manipulation for continued political support and loyalty. It is possible to use this explanation in the case of access to land both in the formal and informal sectors in Kenya.

Similarly, Abrahams (2006) in explaining the conflict in Zimbabwe involving white farmers and President Mugabe, uses the idea of elite and ethnic manipulation. It is well understood that ethnic manipulation is often used as a tool for outbidding others in situations of resource and political competition. However, to effectively employ ethnic manipulation certain conditions must be created. The conditions have to appear beneficial to the main ethnic groups whose support is sought.

Thus in the case of Zimbabwe, President Mugabe is argued to have faced three political challenges since assuming leadership of the country about 28 years ago. The challenges, as Abrahams (2006) put them, have been by the Zimbabwe National Liberation Union Party of Joshua Nkomo in the 1980s, by the Zimbabwe War Veterans Association and more recently by Morgan Tsvangirai's Movement for Democratic Change. In all these cases he argues that President Mugabe used ethnic conflict to manipulate the situation in his interest and also used racially infused rhetoric to create a veil of legitimacy for employment of violent and repressive means to eliminate the threat. The situation in Zimbabwe remains fluid as there is virtually no functioning government and Mugabe continues to use the same tactics.

Peters (2004) explains that land conflicts in Africa are a form of class struggle in the face of unequal accumulation. On the other hand, Bayart (1993), Reno (1995:112; 2001:204) and Hardin (2002) explain land conflicts as being motivated by politics of the belly (that is corruption) where elites acquire state resources at the expense of the populace. Indeed, the recent flare-ups in Kenya following a flawed presidential election are argued to have been deeply seated in the land question. It is argued that this dates back to the colonial period and immediately after independence (Leo, 1984; Okoth-Ogendo, 1991; Syagga, 2006). This brings to the fore the issue of historical injustice. Thus Peters's (2004) argument that land conflicts in Africa are related to unequal accumulation is vindicated. This position is further reinforced by Harvey's (2006) arguments on the question of uneven development in the face of

[12] Harambee was a rallying call after independence that the new Government used to push people towards collective action on communal development of facilities such as schools, cattle dips and health centres, among others. However, after NARC came to power in 2003 it had arguably turned out to be a source of corruption within the Public Service and endemic in the Provincial Administration.

acquisition by displacement. Durrand-Lasserve's (2006) study of Kigali – Rwanda where relatively poor people are being displaced by modern and expensive development, illustrates this well.

This position is supported by Bates (1999), who like many other authors on African conflicts, sees a link to competition for resources. He contends that ethnicity is often very important in this process, that is, it assists in capital formation, particularly human capital. But more significant is the relationship between urbanization, structural changes and ethnicity that he contends exists. He justifies this using the Zambian case where ethnic relations have played a significant role in both rural and urban transformations. This is supported by early writings of Wilson (1942), Davis (1997) and Mitchell (1971).

While the role of ethnic manipulation may not be ignored in land conflicts, it appears to have been a very significant factor in rural areas, as Osamba (2001) illustrates in the case of Rift Valley province in Kenya. The same cannot be said of urban areas where security and media personnel are always out to prevent and report such events respectively. This does not mean that ethnic manipulation cannot take place in urban areas and cause land conflicts. This is because there are cases similar to rural land conflicts that have been reported in other countries, for instance the case of Jos city in Nigeria, mentioned in Chapter One, where ethnic associations have always organized themselves to advance their interests but on certain occasions ended up being involved in conflicts (Adetula, 2005). The Rwandan case of ethnic genocide is also a classical one that needs no more explanation as it captured the attention of the international community and continues to do so to date. Thus ethnic manipulation, it appears, often succeeds if it is sponsored by the state; at least this has been the argument in the Kenyan and Rwandan analysis (see Durand-Lasserve, 2007). Indeed, in both cases it is clear that state functionaries used state security to visit atrocities on the people. The more recent case of Zimbabwe is no different.

3.2.6 Interest Group Theory

Interest groups refer to groups that are formed to pursue a common interest. They include such groups as professional sssociations, women groups, neighbourhood associations as well as local Chambers of Commerce. The aim of members is to further particular interests of their groups. Olson (1965) argues that interest groups are formed to help a group lobby the political class to provide services, facilities or access to resources. Dafe (2008) argues that lobbying in these cases involves even the use of bribery, either in the form of payment to the campaign kitty for the party or the bribing of public officials. It is

for this reason that Persson and Tabellini (2000) argue that interest groups with more resources are likely to succeed in lobbying as opposed to the poorer ones.

The fact that poorer groups are unlikely to succeed in lobbying brings to the fore problems of poor community organisation within these groups. It has been argued by authors such as Easterly and Levine (1997) and Alessina *et al.;* (1999) that those other factors, such as ethnic diversity, work against collective action. Dafe (2008) in her study on slums in Nairobi established that slum landlords, to extract rent from the tenants, use ethnic fragmentation or diversity in slums. Similarly, Syagga *et al.* (2001) also established that ethnic tenant mixing is applied in the slums to ensure that individuals pay rent.

Analysis of the slum structure and land ownership in Nairobi by Dafe (2008) has produced mixed results. On the one hand, it indicates that political patronage plays an important role in land allocation in Nairobi and is used largely to supplement the more affluent and politically connected. Dafe (2008) thus concludes that this finding fits well with the interest group interest theory, since, as she contends, landlords in the slums represent diverse ethnic groups. On the other hand, she argues that the fact that there is predominance of particular ethnic groups among landlords in particular settlements indicates that ethnic manipulation and, in particular, ethnic fragmentation theory can also explain the inefficiencies in land allocation processes. However, ethnic fragmentation cannot on its own explain the land allocation processes and consequences as well (Dafe, 2008:19).

It is therefore clear from the argument that although ethnicity plays a crucial role in the land allocation process in Nairobi, other factors such as politics and income combine to help it influence land transactions in Nairobi. The role of other mediating factors is to either to limit the number of beneficiaries in the land allocation process or relate to the economic status of the clients. Thus in conclusion, although ethnicity is important in determining access to land in Nairobi, other factors such as networks also play critical roles.

3.3 The Analytical Framework for Analysis of the Relationship between Land Conflicts and Inequity in Nairobi

In proposing the conceptual framework for explaining interaction between corruption, ethnicity and political patronage that produces land conflicts in Nairobi, I take cognizance of the fact that there are a

myriad of other factors that interact to influence conflicts. Furthermore, the selection of approaches have been undertaken with the knowledge that land conflicts arise out of daily market operations that result from imperfect land markets, weak and/or inappropriate property laws and governance institutions and a host of other social and economic factors such as political interference, corruption and poor management.

In addition, it is also well understood that the land market often has different actors that include individuals and institutions. The actors may include the state, its agents, private institutions and individuals. The interaction between land management processes, corruption and political patronage will also need to be explained. In addition, their links to acquisition by dispossession and the results of their interactions must also be expounded, particularly regarding how they produce tensions and land related conflicts in urban areas. In this respect the role of the state, its laws and its enforcement mechanisms need to be understood.

In explaining the interactions between corruption, ethnicity, and land management processes, their relationship to urban land conflicts and inequity also require to be seriously examined. Several other critical issues that require to be explained include land market operations, actors (individuals and institutions), land commodification processes and land laws and institutional frameworks for efficient operation of the land market. It will be necessary that their contributions to inequity and urban land conflict are isolated and explained.

The case of Nairobi's land conflicts invokes a number of theoretical strands. The theories are both contradictory and complementary to each other. It is clear, however, that land conflict as a phenomenon is both multifaceted and complex as it encompasses several dimensions including social, political, cultural and institutional aspects. Given, this understanding, the tools that appear capable of assisting in analysis and explanation of the phenomenon are institutional analysis, semi-autonomous social field, non-compliance and structure and agency.

While Razzaz (1994) sees these tools as rarely used together, he rightly observes that as land values rise through commodification, so do the number of conflicts (Feeny, 1988; and Barzel, 1988). Ostrom (1990) contends that to control a contested resource, a group needs an institutional arrangement capable of appropriating, using, and exchanging the resource or its products within the group.

However, where the resource is owned by the government and its agents (public resource) and is regulated by laws, non-compliance may become key and a critical characteristic of the institutional arrangement of the contesting group.

Razzaz (1994), borrowing from Moore (1973), adds that neither defiance nor deviances are sufficient conditions for non-compliance. This is particularly clear given the state's near monopoly of force, which as Popsil (1971:193-232) and Weber (1954:15) pointed out decades ago, is often resorted to in order to enforce compliance. But Moore (1973) further argues that despite the near monopoly of force by the state, there exists another body politic, namely the smaller interposed social fields to which an individual belongs. These fields develop their rules and customs and the means of enforcing compliance. This is what Popsil (1971: 97-126) referred to as legal levels and multiplicity of legal systems, and these legal systems and levels have what Weber (1954) referred to as legal order. Weber in the same breath points out that private organizations and groups apply typical means of coercion or inducement against refractory members. These include exclusion from memberships and from enjoying its advantages, while also exerting pressure on outsiders as well as insiders (Weber 1954:18-19).

In addition, Razzaz (1994) points out that groups organizing to protest a certain law or governmental action or policy can be said to be part of a social movement. Their main aim ostensibly is to apply enough pressure to induce the state to introduce, change, or retain some elements of governance. He adds that a non-compliant social field is capable not only of protesting governmental rules and regulations but also of providing relief from the rules and regulations. This aspect facilitates their coercion of members into compliance, as each one is keen to reap the benefits.

In order to explain the dynamics of institutions in the land market (formal and non-formal), and the interactions between different actors, the analytical tool adopted in this study rests on the notion of non-compliance of some actors with government laws and regulations as espoused by Razzaz (1994). He argues that this rests on the creation, maintenance and modification of the semi-autonomous social field. The foundation of this theory can be traced to Moore (1972). She had challenged the notion that a social phenomenon could be changed through legislation. In this respect the law is viewed as a short term remedy for a very complex aggregation of principles, norms, ideas, rules, practices and the activities of the agencies of legislation, administration, adjudication and enforcement backed by political

power and legitimacy. She adds that, the complex is abstracted from the social context where it exists, and is spoken of as if it were an entity capable of controlling that context. Cochrane's (1971:93-4) perception that it is society that controls the law and not *vice versa*, is appropriate in this case.

Institutional Analysis, New Institutional Economics and New Institutionalism arguably emerged as a result of dissatisfaction with basic assumptions of neo-classical economics. The neoclassical assumptions were that economic growth is dependent on rational or economic maximizing behaviour of an individual given the traditional factors of production (land, labour, capital and entrepreneurship). The assumption did not take into account transaction costs which are closely linked to neo-classical economics, which is seen by Stein (1994:1835) as failing in explaining the role of institutions in supporting the existence and operation of the land market. North (1989), however, sees institutions as critical where transaction costs are positive as they are expected to determine the ground rules for economic transactions.

In the perception of Institutional Economists, institutions evolve to reduce transaction costs, and to facilitate efficient and fluid operation of the market as often espoused in the neo-classical model. Thus, as North (1989) argues, to properly understand the development process, it is important that one appreciates the evolution, operation and transformation of institutions. However, one must be wary of what constitutes an institution since there is no consensus as to what is meant by "institution". Generally, institutions are viewed as rules of the game whether formal or informal – there is therefore a need to identify how they can be used for the benefit of society in general.

3.4 Conclusion

A review of existing theoretical literature, confirms that there exist numerous analytical frameworks that could be used in interpretation and explanation of land conflicts in urban areas. However, they have various shortcomings and there is no single theoretical model that can be used on its own. The fact that the phenomenon of land conflicts within this thesis is within an urban setting makes this thesis even more complicated and difficult.

Therefore, after careful evaluation of the numerous theories espoused by various scholars and reflection on the phenomenon under study in this thesis, it became clear that a combination of theoretical tools had to be chosen to assist in analysing and explaining the phenomenon. A review of literature clearly shows that the various tools or theories that should be chosen are seldom used together. Thus the choice of the following tools - institutional analysis, semi-autonomous social-field, structure and agency; non-compliance and resistance theories — was made because each theory explains a different aspect or aspects of land conflicts.

Although these theories are rarely used together there exist a few studies that have used the same theories together, such as Razzaz (1994); Rakodi and Leduka (2003), Leduka (2006), explanations by Moore (1973) coupled with the example of the Ujamaa programme in Tanzania and quiet resistance by the Chagga ethnic group in Tanzania reinforce the belief in the capacity of these theories to be useful lenses in this uncertain area. As such, although Rakodi and Leduka (2004) indicate that these theories are rarely used together, it is clear from literature that they complement each other and help explain the various factors that interact to produce tensions over urban areas and subsequently produce land conflicts and their undesirable effects.

CHAPTER FOUR

RESEARCH DESIGN AND METHODOLOGY

4.1 Introduction

This chapter explains the methods that were adopted for the study. It also explains the study design, data collection processes, analysis and interpretation. It further attempts to debunk the generally held myth in Kenya that a study on land conflicts, inequity and ethnicity is too sensitive and difficult to undertake, due to issues of confidentiality and the need to protect sources of information. This brings to the fore the question of ethics and how it was handled as well as the issue of anonymity, during the field work and after the data analysis. It is in this respect that the approach adopted by this study incorporated and/or integrated ethical considerations.

4.2 Research Strategy and Design

4.2.1 Type of Research

The study is mainly qualitative, where necessary in the data collection process. This is because, as pointed out by Stake (1995), although qualitative and quantitative approaches work differently, they reinforce each other, when planned carefully. In the process Stake (1995) adds that qualitative surveys or methods work with episodes of unique relationships to tell a story or give a unique description of a case. It is clear that the more quantitative the approach, the more inclusive it is of repeated observations to get a representative coverage of the relationships, while a qualitative approach means finding good moments to reveal the unique complexity of the case.

In this study attempts were made to ensure a middle ground so that it could use the best of the qualitative method. This is because the study phenomenon is both cross-cutting and complex. However, the use of the qualitative approach is adequate for obtaining the necessary information. On the whole, I was required to occasionally behave like an "actor" on stage in the selected study

settlements. This involved working closely with the youth for deeper understanding of the events and /or activities taking place within the settlements. It also required that I spend relatively long hours within the settlements, participating in local discussions and debates. This was to help in acquiring deeper insights into the study problems. It was necessary to undertake this due to the suspicions from respondents which inhibited them from divulging information. It is for this reason that I felt it was necessary to become "part" of the "community". However, it was not possible to do this in all the study settlements as for instance in Mathare North, due to suspicions and tensions between the different ethnic groups in the settlement. This was due to the fact that by June 2007 when I started my fieldwork, the settlement was already experiencing serious ethnic and political tensions. This made the place relatively insecure and at times I faced open hostilities. Therefore, I chose to spend less time within this particular study settlement.

4.2.2 Case study approach

It was understood from the onset that the phenomenon being investigated is complex and therefore required an appropriately nuanced approach to help get to the root of the issues. In this respect, it became evident that a case study approach was the most appropriate. In addition, it was apparent that a multiple number of cases would be necessary to help explain the variations of the phenomenon. Thus four settlements were purposively selected, namely Mathare North, Tassia, Embakasi Jua Kali and Pipeline.

A case study approach was adopted mainly because of the need to understand the phenomenon in real life context, the flexibility of the approach to adopt various tools interchangeably and the ability to facilitate investigations into the cause-effect relationships of problems in particular settings. The case study approach earns enormous praise from Flyvbjerg (1991), as cited in Kombe (1995:54), who argues that it has the advantage of emphasizing, "narratology before epistemology, context before theory, cases before samples, dialogue before final answers and questions of how before questions of why".

The case study approach was also chosen because it enabled the necessary systematic and facilitative engagement with the respondents and deeper insights into the phenomenon. Furthermore, its flexibility facilitated gathering information using various techniques depending on particular circumstances. The techniques varied from historical, institutional to anthropological. The study's reliance on historical data as well as evaluation of existing land management practices and institutions enhanced the relevance of the approach to this kind of study. Rodwin (1970), Yahya (1976) and Skerrat

and Midmore (1999) argue that the case study approach is well established in development-oriented studies with particular applications in evaluations. However, Hirschman (1967) argues that they are unpopular with social scientists though useful to planners and policy students. However, the work of Blalock (1984), Horkoff (2003), Lee (2005) and Hanson (2007) reveal that the approach is gaining popularity among academia as well as practitioners. The use of various approaches for collection of data, it has been emphasized, ensures that there were no major gaps in the data collected (Irez, 2007; Skerrat and Midmore, 2007).

In this study I laid emphasis on the use of in-depth and key informant interviews, review of archival documents and other related reports as well as focus group discussions. In addition, quantitative data was used from previous surveys such as CBS (1999) and reports from various bodies, such as the World Bank's (2006) study of informal settlements in Nairobi.

Semi-structured questionnaires were used for data collection from key informants, which were planners and land officers from Nairobi City Council and the Ministry of Lands and Settlement. Property owners and tenants were also interviewed using semi-structured questionnaires. Key informant interviews and focus group discussions were undertaken using guides; these were largely undertaken with the youths. The collection of information from planners and land officers from Nairobi City Council and Ministry of Lands and Settlements respectively was critical to help explain the existing institutional arrangements and their contribution to land conflicts. In addition, interviewing key informants, tenants and landowners facilitated triangulation of results and provided a general picture of the real life situation.

The use of various tools and approaches further facilitated acquisition of detailed and comprehensive data ensuring that there were no obvious gaps in the study results. However, Mabonguje's (1990:168) caution on the so-called "modern urban research techniques based on relatively shallow mass interview and data collection" was taken into consideration.

4.2.2.1 Case Study Sites and Units of Analysis

In case studies it is critical that the study process is properly documented. This enhances the credibility of the study results. Thus the process of selection of study sites, institutions and individual respondents are presented in this chapter. In order to understand how power and patronage interact with land

conflict dynamics, decision-making processes in land management and administration in Nairobi were evaluated. I used key informant interviews to obtain views and opinions of different groups of people.

However, it was also critical that the units of analysis be properly defined and, as Yin (2003) points out, it is important to define a unit of analysis that would facilitate investigation of various aspects of the study phenomena. Thus the main units of analysis for the study were drawn from the propositions and the research questions. The main units of analysis are conflicts, institutions such as City Council, Ministries of Lands and Settlement, selected study settlements.

On the other hand, investigating inequity in ownership and access to land required the use of subunits of analysis namely land allocation processes, decision-making processes, land ownership patterns, incomes of various groups and land ownership regulations. Thus information on these was reviewed in relation to each case study.

4.2.2.2 Determination of Sample Study Sites and Selection of Study Sites

The case study area is Nairobi, but given Nairobi's spatial size, the need to obtain diverse information on the phenomena of land conflicts, a multiple case study design with purposively selected sample study sites were selected using purposively after preliminary field visits in 2006. The selected sites are Mathare North, Tassia II, Pipeline and Embakasi Jua Kali.

The selection of the study sites involved screening in relation to selection criteria, which were based on the theoretical propositions and on the prevalence of the study phenomenon within Nairobi. Patton's (1990:180-183) advice for selection of information rich cases where the phenomena being studied has been experienced was taken into account. The case study selection process required a review of reports, literature and discussions with experts in land management and planning in Nairobi. The approach helped generate a list of cases during the preliminary phase of the study. Four cases were then selected from the list using purposive selection criteria. As Patton (1990:183) indicates, purposive random sampling, "adds credibility to (the) sample when (the) potential purposeful sample is larger than one can handle. It reduces judgment within a purposeful category". The use of the technique therefore ensured that three spontaneous settlements and one settlement planned by Nairobi City Council were selected for the study.

It should be noted that this phase of the study (the case study selection) involved, on the one hand, a review of records from the Department of Social Services, the Ministry of Lands and Settlements, and City Council of Nairobi. On the other hand, it involved discussions with a selected number of civil society organizations dealing with land related issues, staff at the Ministry of Lands and Settlements and the Nairobi City Council, and academics. The exercise also assisted in reshaping the field study approaches and identification of a category of respondents that had not been considered. Those who were included in the study as a result of the preliminary field study were youths, the Department of Provincial Administration in the Office of the President that incorporates local location Chiefs, their assistants and the district officers.

The preliminary survey further identified community-based organisations (CBOs) operating within the administrative divisions where the selected settlements are situated. The CBOs identified were mainly focusing on land and housing issues, in some way might interact with land conflicts or, in turn, may be addressing issues of inequity. The process of identifying relevant CBOs entailed interviewing officials from the Social Services Department and members of the Provincial Administration so that only those CBOs considered active could be interviewed. A total of fifteen CBOs were identified as active. An inactive CBO, it should be understood, is one that is not operational.

However, a visit to the selected study sites indicated that there were CBOs within the settlements, though unknown to the Social Services Department. In addition, some of the CBOs unknown to the Social Services Department, like the Embakasi Jua Kali Association, had been involved in numerous land disputes with institutions such as the National Social Security Fund, the Kenya Airports Authority, the Nairobi City Council and a host of individuals in the Embakasi area. It therefore became obvious that it was neither realistic to rely on the list of CBOs obtained from the Ministry of Social Services for interviews nor to develop a sample frame from the list.

Several civil society organisations dealing with land related issues at national levels were identified and interviewed in the process of case study selection as key informants for the study as a whole. The civil society organisations included Haki Jamii, Pamoja Trust, Mazingira Institute, Kenya Land Alliance, Kituo Cha Sheria, Kenya Human Rights Commissions and Shelter Forum. The representatives of these groups of NGOs were interviewed using a checklist guide to obtain detailed information. The identification of the institutions was mainly through the use of a snowballing approach, where at the

end of an interview the respondent was asked to direct me other organisations where I could conduct an interview.

4.2.3 Research Phases and Processes

The study was undertaken in three interrelated phases, namely preliminary fieldwork, main field survey and the final field survey. In each phase there were distinct activities. However, some activities such as observations cut across all phases of the study and therefore were not restricted to a single phase of the study. In every phase there were unique happenings that required noting and explanations – thus observation remained a continuous process. Similarly, key informant interviews were also undertaken in all the phases of the field study. The main interviews were, however, undertaken in the second phase of the study. The study phases are detailed under 4.2.3.1 – 4.2.3.3 below, whereas detailed explanation of the data collection methods follow later in the chapter.

4.2.3.1 Phase one: Approvals and Preliminary Field Visits

This phase of the research was undertaken in late 2006 and the early part of 2007. It involved a number of activities, namely application for field study permits, ethics committee approvals, preliminary key informant interviews, reconnaissance surveys, selection of study settlements, observations, development of preliminary study instruments and application for research approval from the University of the Witwatersrand Ethics Committee.

i) Application for field study permits

It was necessary to obtain a research permit in Kenya, and authorisation from the various departments of the government to obtain information from their staff and review the departmental records. The respective Permanent Secretaries acceded to the requests, giving the necessary formal authorisation. However, the staff members, when interviewed, were often unwilling to divulge certain information, particularly that touching on corruption. There was also serious reluctance to avail files with information relating to corrupt practices. Separate and additional applications were therefore submitted to various departments of the government, including the Ministry of Lands and Settlements, Ministry of Social Services, Ministry of Housing, Ministry of Local Government, the High Court and the Nairobi City Council, requesting access to relevant records and for specific types of information to be provided.

The High Court requested that specific cases related to corruption be identified for the court to avail the files. However, this was not possible since I did not have prior knowledge at case level to identify specific cases that would have assisted in explaining land conflicts; I was not granted the permission to browse through files to identify those that were relevant. Various ministries and departments of government as well as civil society organisations were, however, able to grant me access to their staff for interviews. In this respect I was able to obtain relevant information for my study and proceed with the study.

ii) Ethics Committee Approval

This was necessary because the study touched on corruption, ethnicity and land conflict issues that are very sensitive in Kenya and which the University Ethics Committee in their wisdom thought could render the university and the researcher vulnerable to court suits if not carefully handled. As already set out in detail in Chapter One, the approval was obtained after a lengthy process, which included a presentation by the researcher to the committee.

iii) Preliminary Interviews

As already mentioned above, this phase involved preliminary interviews with key informants across a range of relevant sectors. The interviews at this stage were aimed at assisting in identifying the most appropriate case study settlements, key issues for detailed investigations and clarifying definitions of concepts such as land and corruption that I felt would be critical during the main study phase. It should be understood that the selection of case study settlements, though started in this phase, was only finalised in the second phase of the study.

iv) Reconnaissance Field Visits

The reconnaissance survey involved a visit to potential study sites before the selection of four study sites. All settlements that were considered as potential for selection were visited and the specific features of each documented as indicated in table 4.1 below. During the visits discussions were undertaken with the residents. The process facilitated the identification of the main gatekeepers and

actors, who included leaders of the groups that forcefully occupied private or public land, youth leaders and party officials on the ground with knowledge regarding land conflicts within the settlements.

The reconnaissance field visits had twin objectives, one, to assist in appreciating the situation on the ground and the other to assist in identifying main issues on the ground that required emphasis and therefore needed to be included in the study tools and /or instruments. The exercise involved conducting conversational interviews with individuals within the settlements, namely landlords, tenants, local administrators (local chiefs, their assistant chiefs and youth leaders).

v) Observations

This was an important component of the data collection process, as the results of land management decisions on the ground could only be clearly understood through keen observation. While Yin (1984:85) emphasizes observations of behaviour, in the context of this study the observations were on the built environment. Those that were relevant were recorded in detail. In this case study, the layout of buildings, plot sizes, and availability of open spaces, provided indications of the developments of the settlements having been based on a clear layout plan. This was an indication that either a relevant authority such as the Nairobi City Council may have been involved in the development of the settlement(s) and/or there was involvement of a professional with a background in the built environment in the planning of the settlements. This further provided the impetus for more focused inquiries.

Given the importance of this approach and the desire to avoid biases and obtain detailed relevant data, a guide was used with key questions focusing primarily on land use within the settlements. The use of a guide objectively focused and facilitated the observation process. As a result, a clear record of the observations was kept in the field notebook. This provided incontestable descriptions of situations for interpretation and analysis of the data as outlined in phase two below. A further requirement was to pay attention to background information that could influence the study results. This was to assist in ensuring that the observations do not prejudice the results.

The observations largely focused on activities relating to existing land uses, especially where these contrasted with planned land uses, thereby assisting in establishing the existence and dimensions of land use conflicts. It also facilitated recording of cases such as encroachment and boundary disputes, and provided the initial information on actual land conflicts and/or disputes on the ground. The results

provided a basis for more detailed enquiry with landlords, tenants, youth and key informants as well as aiding in the interpretation of the study results.

4.2.3.2 Phase Two: Preparation for field work

The second phase of the research involved analysis and interpretation of the preliminary study results, final selection of the study settlements and preparation of field instruments.

i) Preliminary data analysis and interpretation of the results

The data from preliminary interviews conducted in phase one was organised into different themes and patterns and with the help of observation, explanations of preliminary results were sought and general trends identified that included major issues that needed to be investigated further. For instance, I had all along not noticed that the Provincial Administration and civil society organizations were deeply involved in land conflicts. This became clearer during the preliminary field visits and prompted adjustment of the study tools to incorporate them. In addition, ethnicity, corruption, political influence and ownership disputes emerged early in the results. The results of the preliminary field survey were useful in the preparation of the main field study instruments for the selected case studies. The instruments were structured to enquire deeper into the issues that emerged from the preliminary survey.

ii) Final Selection of study settlements

A major task in this phase was the final selection of settlements for detailed and comprehensive surveys.

Table 4.1: Initial List of identified study areas and proposed sites

Location	Name of Settlement	Characteristics of the sample Settlements
Embakasi Division	a) Embakasi Ranching b) Ngondu Farm B1) Kiambu – Dandora Farm c) Pipeline (Embakasi Juakali Association) C1) Tassia	Neo–Customary evolving, intra ethnic conflicts, politics and power play, conflict among officials and between members and officials Political and patronage – multiple claims, conflict between city council and an Association. Politics, intra ethnic conflict Patronage, corruption and neo- customary tenure evolving – Conflicts between official landowners, Government and illegal occupants. Mixed developments both tenements and single storey structures for owner occupation. Pipeline section has many disputes in court. Tassia's case near resolution through both forceful means and political pressure.
Kasarani Division	Zimmerman Githurai Kimbo Dandora, Mathare North and Kariobangi	Neo- Customary and intra ethnic conflicts and conflicts between officials of the Associations and members, Multiple ownership claims. The developments are largely tenements particularly for Zimmerman, while Githurai Kimbo has both tenements and single storey residential structures for owner-occupations. Political, ethnicity, corruption yet planned and allocated by Nairobi City Council.
Starehe Division	Eastleigh Military Majengo – Kikomba	Corruption and Evolving tenure approach. Majengo has a long history with ownership disputes being between the occupants and City Council. It is located in a prime location near the city centre.
Langata Division	Langata Prisons Kibera Slums	Corruption and political patronage. Customary tenure. Kibera case is complicated with a history of about 100 years. Development are largely temporary and for the poor. Has very high density in terms of occupation. Langata Prisons refers to land that was meant for expansion of prison but allocated to an individual and subdivided and sold out to individuals. Developments are of high quality, mainly occupied by upper middle income earners

Source: Preliminary Field Visit Results (August, 2006)

Silverman (1985) indicates that in a case study, the analyst selects certain specific cases because the cases exhibit some general semblance. The selection of cases for this study was based on the criteria that I developed from my conceptual framework as illustrated in chapter three of this thesis. The criteria were selected to answer the key questions in the study listed in section 1.8 (page 19). Thus settlements selected had evidence of land conflicts and inequity. In addition, preliminary investigations in the settlements showed that ethnicity, corruption, political patronage, politics and power had some association with the phenomenon. The four settlements, Mathare North, Embakasi Jua Kali, Pipeline and Tassia fit within Silverman's proposal.

These were followed by key informant interviews in various government departments and in city council offices as pointed out in section 4.4.2 below.

4.2.3.3 Phase Three: Main Field Study and Data Analysis

The main field investigations took place in this phase of the study. This involved interviews with tenants, landlords, and public officials from government departments, Nairobi City Council and civil society organizations. It also involved focus group discussions with youths within each case study settlements. Later a workshop involving academics, policy makers, government officials and civil society representatives was held to discuss and disseminate the study results.

Selected professional elites were interviewed both as key informants as well as respondents within the professional categories. This further helped in refining the understanding on ethnicity, corruption, land conflicts and equity. In addition, a number of key informants formed part of the stakeholders at the final dissemination workshop. The participants invited to the workshop included key informants, academics, civil society representatives, and public officials. These groups formed part of the key informants. This assisted in sharpening the study conclusions as well as formed the first platform for dissemination of the research findings. In addition, it assisted in the verification of my interpretations of the study results.

The workshop, which was sponsored by University of the Witwatersrand, was expected to assist in the identification of the gaps in my data as well as provide the initial opportunity for dissemination of the study results. It was further expected to help sharpen the case study conclusions. Unfortunately, this was not achieved as the discussions were dominated by academics who insisted on debating theoretical points of departure instead of engaging with the case study results as presented. Thus the discussions overwhelmed participants from civil society, community networks, and Nairobi City Council and government departments.

Since I had disseminated a written report at the workshop, I followed up with the other participants particularly from civil society organisations and other public institutions to elicit their feedback. While initially this had not been forthcoming, at least I provided the opportunity for comments and input on my findings. Useful comments were later received from participants from the civil society organisations and Nairobi City Council as well as National Social Security Fund. While I concluded that separate workshops for various sectors would have been relevant, resources were unavailable to host or organize further workshops.

In addition, a final summary of the results and conclusions, but with no recognizable identification of the informants on each case study, will be submitted to the main contact persons within each of the four settlements for dissemination to the community. This will be done on completion of the writing of the thesis to allow me to include the most significant conclusion from the entire study, rather than just case study level conclusions.

4.3 Internal Validity and Generalizations

A critical issue in research is how to ensure that the inferences made from the study depict the actual positions on the ground and that explanations derived from interviews and documentary evidences are not accidental or attributable to other factors, that is to say, those explanations are as much as possible watertight (Kombe, 1994; Yin, 1994). In order to stem the threats to internal validity, I undertook supplementary discussions and assembled additional data as recommended by Presswood (1988). The data collected through various sources were corroborated and triangulated to establish their convergence and enhance internal validity. The data used for triangulation purposes included those from published works as well as those from the field.

There is often demand that research should go beyond the limitations of the case study. It is often argued that case studies cannot be generalized because they are not subjected to rigorous scientific techniques (Stake, 1995). Stake (1995) argues that a case study seems a poor basis for generalization. He suggests that generalizations in case studies should be labelled 'petite generalizations', and argues that in case studies there are no new understandings reached but only refinement of understandings. On the other hand, Yin (1994) argues that the logic of a case study does not lie with the statistical computation. In Yin's (1994) interpretation, an analogy between sample and generalization, as for instance suggested by Stake (1985), is therefore wrong. He further argues that unlike survey research, generalization in case studies rely on the postulated theory. Thus, in terms of general applicability, outputs from one case may only be transformed to other cases if the contexts, which influence those other cases, are replicable.

Interpretations and understanding of the issue being studied is a major problem for researchers using case study approaches. Erickson (1986) has pointed out that this is because of the qualitative nature of the approach. This is particularly so when it comes to issues of interpretation. Therefore, it is important that in a case study of this nature, the researcher continuously examines the meanings in the field and redirects observations to substantiate the meanings or to refine them. It has to be understood that in

this process the initial research questions may be modified or even replaced in mid-study. This facilitates rigorous interpretation, and assists in the drawing up of conclusions on the basis of observations and other data. The conclusions are what Erickson (1986) calls assertions, a form of generalization. Furthermore, different areas were selected for the study to facilitate the application of the results in a wider area.

4.4 Data Collection Methods

4.4.1 Individual Interviews

Individual interviews were conducted in the second phase of the fieldwork with selected property owners, tenants and youth within the settlements. This assisted in obtaining information on land conflicts, tenure types, rents, modes of access to land, income variations, and perceptions on conflicts, corruption and ethnicity. A semi-structured questionnaire was used in undertaking the exercise. The questionnaire was structured into distinct sections dealing with specific variables of land ownership, rents and access to land.

There was difficulty in reaching the landlords for interviews. This is because in most cases the landlords lived away from the settlements just as the preliminary interviews had indicated. In addition, both the tenants and caretakers employed by the landlords are reluctant to give information regarding their landlords (Huchzermeyer, 2006; 2007). Indeed, Huchzermeyer's (2006) study results from fieldwork in Huruma and Umoja Inner Core indicated that this could have been as a result of suspicions between landlords and tenants.

In an attempt to be prepared for the situation encountered by Huchzermeyer (2006/7), I used a snowballing sampling approach for individual interviews. In the case of landlords, some interviews were conducted with estate agents who acted on their behalf and were easily accessible, as also was found by Huchzermeyer (2006). However, the agents were often unable and in some instances unwilling to give detailed information and many appeared ignorant of a number of issues. This is because a number of the agents were not trained in property management and therefore had very limited information on the acquisition, property owners and related issues.

At the beginning of individual interviews, it became clear that it was going to be difficult to obtain detailed information regarding access to land, ownership, disputes and rent levels from the tenants and landlords. As a result, the approach for data collection had to be slightly adjusted so that a few closed questions could be introduced in the instrument. This ensured that certain issues such as incidences and some perceptions that needed responses such as "Yes" and "No" were introduced.

A minimum of 30 interviews using semi-structured questionnaires was proposed to be undertaken per settlement. However, this could not be achieved due to the unforeseen rise in political tensions and pressure in the study settlements, especially in Mathare North, which was near the epicentre of the January 2008 post-election violence. Thus the total numbers of interviews undertaken using semi-structured interviews was 158 and they were distributed based on case studies as shown in table 4.2 below. This is because, as earlier mentioned, the settlements became largely insecure because of elections that were due later in the year. Thus a limited number of interviews were undertaken in a settlement like Mathare North as illustrated in the table below.

Although, the intention was to allocate the number of interviews as per the settlement population, it was difficult to tell exactly what the total population was in several of those settlements except for Mathare North, since the rest were formed after the last census. Indeed, settlements such as Embakasi Jua Kali, Pipeline and Tassia II effectively became settlements after the 1999 population census, and as such it was not possible to obtain information on their population sizes.

Table 4.2 Interviews Using Semi Structured Instruments

Settlement Name	Tenants	Land lords	Total
Tassia	24	23	47
Embakasi Jua Kali	26	16	42
Pipeline	33	19	52
Mathare North	10	7	17
Total	93	65	158

Source: Field Survey 2007

4.4.2 Key Informant Interviews

Key informant interviews were chosen as a suitable approach for obtaining detailed information through relaxed conversational interviews. An open-ended but semi-structured interview tool and the conversational approach were used to obtain information from planning staff at Nairobi City Council, Provincial Administration staff at the Ministry of Lands and Settlements, civil society representatives and property consultants (agents, valuers and physical planners).

The study instrument ensured that the main issues for investigation were addressed. In order not to affect the flow of discussion and for ease of capturing information the use of a tape recorder was planned. However, it became difficult since most respondents declined to be recorded. Thus hand-written notes were taken, although it is recognized that the use of tape recorders would have facilitated free flow of discussions and enhanced probing and triangulation during the interview. This therefore forced me to readjust the field instrument to facilitate efficient and effective recording of interviews.

The readjustment of the instruments allowed me to measure what proportions of respondents understood basic issues such as ways of accessing land. The tool further facilitated probing into perceptions (opinions) of individuals on various aspects of ethnicity, corruption and resource allocation. Questions relating to ethnicity and corruption in land allocation processes were recognized to be sensitive. Thus the questions were put to the interviewees only towards the end of the interview. At this stage, a rapport had already been achieved between the interviewee and interviewer.

4.4.3 Archival Survey

The study required that historical records on land planning, administration and allocation be reviewed. The exercise involved a review of government records in the Ministries of Land and Settlement, Local Government, the Nairobi City Council and Ministry of Housing. In all these places the information sought was all related to land conflicts. The information was obtained from national archives and comprised of memos, minutes and reports dealing with land from the colonial period. The departments of the government were, however, unwilling to allow me to access their files, making it difficult to obtain information on land conflicts from the files.

Archival information was also sought from historical data stored at the national archives in Nairobi. This was expected to assist in obtaining information from the colonial period to date. In this respect, the information obtained through archival survey was to assist in filling gaps on other information sources. The information obtained from the archives was not available from other sources such as

records existing in the various Government departments. In addition, it was felt that the records at the national archives were sufficient to give more detailed historical information. This information was useful in the interpretation of the results at the analysis stage. For instance, information on past trends and problems of access to land in the earlier years of independence assisted in explaining why certain problems recurred.

Apart from the archival data assisting in cross-checking and triangulation of the information collected through other approaches, it helped in identifying if there were any patterns or trends in land conflicts over the years. This was critical for analysis and interpretation of the field results. In addition, my approach was to give a holistic picture on land conflicts.

4.4.4 Focus Group Discussions

Focus Group Discussions (FGDs) were mainly held with the youth within the settlements. I had intended, also to conduct Focus Group Discussions with tenants and landlords, however, this did not take place. This is because it became impossible to assemble a group of adults. It appeared that FGDs required more serious mobilisation than I could manage due to time and resource constraints. The youth by nature of their activities in the study areas were already mobilised into different groups and in some cases into gangs for protecting the settlements' occupants from eviction by the genuine owners of the land.

However, the FGDs with the youths in Tassia and Embakasi Jua Kali were voluntarily joined by both tenants and landlords who joined in the discussions and enthusiastically participated. It was unsettling when they began to walk into the venue, but when I explained what we were doing they confirmed that they were aware and therefore ready to participate. Although, the participation of tenants and landlords to some extent constrained the openness of the youth, I had to allow the participation of the adults as there was need on my part to be sensitive to the dynamics in the settlements and therefore could not exclude voluntary participation of the non-youth. A checklist guide was used in undertaking the exercise, which focused the discussions to the key issues.

This explains why FGDs were useful in helping establish the existence of conflicts within the settlements, relationships between the Provincial Administration, the local settlement and youth committees, and how undeveloped land is secured within the settlements. The results of the

discussions were recorded and integrated with results of the other approaches in addition to assisting in triangulation as well. Indeed, it emerged that these were among the most important sources of information on land conflict.

While it was difficult to gain the confidence of the rest of the community, the youth, due to their curiosity and interest in what I was doing within the settlements and my openness with them, found it easy to take me into their confidence. Prior to mobilising themselves into groups for FGDs, I had several discussions with them and had the confidence of the youth leaders who are known to each other across the three case study settlements of Embakasi Jua Kali, Tassia and Pipeline.

The relationship with the youth leaders was useful in ensuring that I was informed of the areas that were dangerous either due to ethnic tensions or an ongoing feud. This enabled me to be careful and to avoid such areas. The main difficulty with the youth was gaining their confidence; that I would keep my word and hide their identities. This became a problem in one instance when I mistakenly asked them to record their names on a piece of paper I had circulated. When one of the participants enquired why I recorded the names when I had indicated that I would avoid using their names, I quickly conceded to my mistake and asked for the paper and destroyed it in their presence.

Some of the youths who participated in the discussions had either completed secondary school education, were in college or had completed and were looking for employment and were therefore adults, thus there was no challenge of dealing with them as they were not under age. In addition, due to their level of education they were able to clearly articulate issues that they felt were wrong within the settlements.

It was clear from the preliminary visits to the settlements that members of the Provincial Administration had played significant roles in forceful land occupations and allocation in the study settlements. I had, however, not anticipated that involvement of the Provincial Administration on land transactions went beyond fraudulent land allocation processes and land conflicts. However, it emerged from the FGDs that Provincial Administration staff play even more serious roles within the settlements. For instance, through the local Chiefs and their assistants they established settlement committees. However, in some settlements the local administration established more than one committee. There was a committee in charge of maintenance of law and order, and then there was one in charge of development and another for youth, as was the case with Tassia. In reality it appeared like a completely new structure of the government at that level. The committees levied fees and presided

over approvals for development and establishment of new businesses within the settlements. In effect, they controlled almost all activities within the settlements through their local offices and community networks.

4.4.5 Observations

As pointed out in section 4.2.3.1 subsection (v), observation was undertaken in every phase of the study. I recorded the observations in my field note book and captured some scenes on photos. The results, as already pointed out, were critical in the development of the field instruments as well as selection of settlements cases for the study.

4.5 Data Analysis and Interpretations

This study generated mainly qualitative data. The data was analysed on a case by case basis before a cross-analysis was undertaken. The data analysis was systematic and the process involved ordering and coding the data before entry and analysis using SPSS software for responses captured through the semi structured questionnaires that were administered to tenants and landlords. The key informants interviews, Focus Group Discussions and workshop results were manually analysed. The data collected was enormous, thus as Green (2006:53) points out in such situations, "there is need for systematic data analysis to abstract relevant details that could be applied in data analysis in an orderly manner". Similarly, taking heed of Hart's (1998:110), as cited in Green, (2006) advice that:

> Analysis is the job of systematically breaking down something into its constituent parts and describing how they relate to each other – it is not random dissection but methodological examination. …You can play around with the parts, rearranging them into various configurations to explore possible leads. You should attempt to be systematic, rigorous and consistent.

In an attempt to take advice I systematically organized and coded the data before entry for analysis, using SPSS software. The Focus Group Discussions and key informant interview results were analysed relying on the approaches outlined by Kvale (1996:17), namely; "categorization, condensation, structuring of meaning through narratives, interpretation of meaning and *ad hoc* methods of generating meaning". Marshall and Rossman (1995:113) further reinforce Kvale's (1996) position on organizing the information into different themes and patterns.

In analyzing the data, I therefore adopted the approach that allowed for categorization as well as *ad hoc* methods for generating meaning to the results. This facilitated testing of the emerging hypotheses and searching for alternative explanations of the data. This allowed different themes to emerge apart from the main themes that had been included in the field study instruments, namely corruption, ethnicity, inequity, power and political interference. New themes, namely historical injustices, religious patronage, tensions between policy and law, planning failure, tenure issues and land management institutional arrangement, emerged during the analysis.

Thus each phase of the analysis involved data reduction into manageable chunks and interpretation as new meanings and insights emerged from the study. The reduction of data into manageable chunks reduced the complexity and ambiguity that is often associated with qualitative data analysis. Indeed Straw (1973:108 – 110) indicates that the data is often not easily convertible into standard measurable units.

The emerging patterns, categories and themes were ordered in a logical sequence to help generate new insights for further exploration. This was undertaken using a matrix format for ease of identifying areas where data could be logically uncovered as well as identifying the gaps in the already analyzed data. This was further aided through the use of an analytical matrix as outlined by Choguill (2007). The matrix allows one to relate emerging themes to the approaches, objectives, research questions, theories and finally identification of emerging conclusions. Successful use of the matrix requires keen attention to archival information as well as literature review. For instance, in this study,the literature review facilitated the generation of the themes, patterns and categories. It is the results of this matching of themes, patterns and categories that have had to be interpreted.

In addition, I considered the various analytical techniques outlined by Straw (1973), Miles and Huberman (1984) Trochim (1989), and Marshal and Rossman (1995). The techniques include pattern matching, explanation building and time series analysis. Indeed, Miles and Huberman (1984) further consider alternative analytic techniques of analysis in such situations such as using arrays to display the data, tabulating the frequency of events, ordering of information and other methods. The main caveat is that one must be on the lookout to ensure that the process does not bias/prejudice results. These

were useful particularly when analyzing evidences on incidences of conflicts, perceptions, opinions and experiences of groups of respondents.

The interpretation of data is often regarded as a difficult and mysterious process. Yet, it is one that gives meaning to raw data. Marshall and Rossman (1995:115) have rightly argued that raw data has no meaning. Thus it is important that data be appropriately interpreted so that the actual meaning is obtained.

My interpretation of the results was aided by the reliance on the study propositions and research questions. It is at this stage that attempts to establish the linkages between theory and field results are made. This implied merging theory with reality. In interpreting the data, cognizance was taken of the key research questions and propositions. The conclusions from the study are therefore drawn through the merging of the theory and research questions. As a corollary, the theoretical framework as it relates to real life situations provided clearer insights on the implications of the results on the various linkages. This therefore assisted in the formulation of conclusions from the study results.

The presentation of study results has been done on a case by case basis. Narratives, tables, charts and graphs have been used in this respect to make the thesis more reader friendly. I made attempts to link the results to the conceptual framework, determine how the conceptual issue was translated into researchable questions and/or into a series of questions. Presentation of results in this way is supported by Bachor (2002), Merriam (1988) and Yin (1994). This is because the approach is likely to captivate and arouse the interests of the readers and thus their adoption, in this case.

4.6 Conclusions

The methodology adopted for this study had several limitations and challenges. These became more serious because of the period in which the study was undertaken, which was politically tense coupled with the fact the study is on a resource that is both sensitive and emotive in Kenya. Thus it required that I become sensitive to the community's reactions and feelings and ensure that the study instruments suited these requirements.

In addition, there were challenges related to the conditions on which the ethics committee of the University of the Witwatersrand approved the field survey. The conditions included protection of identity of the respondents, which is understandable for a study of this nature. This posed a problem when reporting on the results as I had to avoid details that may unveil the identity of the respondents.

CHAPTER FIVE

LAND CONFLICTS AND BACKGROUND INFORMATION ON NAIROBI

5.1 Introduction

This chapter presents background on the land question in Kenya and on Nairobi in particular together with the selected study sites. The discussions presented cover the history of land conflicts in Kenya and the roles of various groups. In addition, it presents information on Nairobi covering its origins, history and spatial as well as social and economic profile. In addition, the chapter acts as a bridge between the theoretical sections of this thesis and the analytical sections that cover the interplay between inequity, ethnicity, corruption and political patronage and their contribution to the land conflicts experienced in the city of Nairobi.

5.2 Land Conflicts in Kenya

The problem of land conflicts in Kenya, like other African countries, has its roots in the partitioning of Africa which started at the Berlin conference of 1884. What followed was colonial rule in Africa and conflicts over land among the different ethnic groups (Ogot, 2000). As a consequence, later years and particularly those after independence, Kenya witnessed persistent land conflicts of different shades. Over the years land conflicts acquired new dimensions: ethnic, political, resource, economic and environmental with increasing intensity. The situation is a result of diverse forces including the struggle for political power, capital accumulation, rival for domination and control of strategic resources (Anyang-Nyongo, 1993; Human Rights Watch/Africa 1993; Diouf 1995; Nzongola-Ntalaja 1997). It is for these reasons that land conflicts are viewed appropriately as being synonymous with Kenya's political economy (Musyoka, 2006).

Pre-colonial Kenya had a predominantly communal form of land holding which varied amongst various ethnic communities. This was fundamentally destabilized by the European settlement and rule which turned Kenyans into tenants of the State (Okoth-Ogendo, 1991). This position was further reinforced following promulgamation of several pieces of legislation. It is these pieces of legislation that placed land, taken over by the settlers, under colonial power, land that it deemed wasted and

unoccupied (Syagga, 2006). As the years progressed this applied to more and more land, while movement of different ethnic groups was confined to demarcated areas.

The natives were forced into landlessness. As a result, the living conditions for indigenous people in Central Province, which was most densely populated and therefore most intensely affected. It is these conditions that triggered the outbreak of the Mau Mau struggle for land in the 1950s. The immediate effect of the Mau Mau struggles, however, was further disturbance of the existing land relations among the Kenyan people. Thus the first major conflicts over land in Kenya were experienced during this period (Meek, 1948; Leo, 1984).

Land was held under various customary systems that varied from one community to another. In general, however, there was a common thread, namely the communal nature with some private use rights for those that lived on the land (Kenyatta, 1938). It is therefore not surprising that Kenyatta (1938) in his book *Facing Mount Kenya* contradicted the argument that there was no private ownership of land, arguing that the concept of private ownership had existed among the Africans and particularly the Kikuyu prior to the coming of the colonialist. However, this was not a system of exclusive ownership as the one that was encouraged by the colonialists.

Accounts by Meek (1947), Government of Kenya (1965) and Okoth-Ogendo (1991) seem to contradict this position but only to the extent that that land, although privately used, was still available to the community, even in the case of the Kikuyu. This is further reinforced by the observation by Meek (1947) and Okoth-Ogendo (1991) that the move towards land individualization led to conflicts within the settlements of different ethnic groups, including the Kikuyu.

5.2.1 Land Dispossessions in the Colonial Period

The vicious struggle for land during the colonial period was in part due to displacements of Africans from their land. This led to formation of regionally-based movements, including the Mau Mau and Kavirondo Welfare Association, whose aims were to agitate for land rights on behalf of the different communities. In the process, they threatened the very existence of the Europeans, a situation that prompted the colonial government to appoint a Working Party on Land Tenure in 1957 to examine and recommend the measures necessary for introduction of a system of land tenure applicable to all areas of the Native lands. This was aimed at reducing the pressure and demand for more land by

Africans, more particularly in Central Kenya where there was already congestion and the people were forced to settle in small reserves, leading to numerous conflicts among the people.

In addition, conflicts over land increasingly resulted in administrative problems. This led to the establishment of different committees to help resolve the land problems. One of the early committees produced its report in 1929 (the Maxwell Report). However, implementation of its recommendations did not resolve land problems. This later led to the establishment of the East African Royal Commission in 1953 which undertook a special study of land problems in the three East African countries. The report of the Royal Commission later formed the basis for the Arusha Conference of 1956, which subsequently led to the establishment of the Working Party on Land in 1957.

The report of the Working Party on Land recommended the encouragement of an individualized land tenure system in Kenya. This was to start with Central Province before moving to other parts of the country. The implementation of individual tenure, however, led to further dispossession of a significant number of families, particularly those who were fighting in the forests as Mau Mau. The transformation from communal to individual tenure took place when a large group of people were still in the forests. Their dispossession led to increased landlessness and conflicts over land in the province.

As a consequence, upon independence there were major movements to urban areas by a large proportion of the rural population hoping to find alternative accommodation and employment opportunities. However, Kenya's urban areas were not suited for the huge population increase and could neither provide employment opportunities nor accommodate the increasing population. This was because the urban areas were designed largely as export bases for the European farm produce. In addition, the growth of the urban areas had been controlled to restrict settlement by blacks in the areas. This was the beginning of the continuing land conflicts in Kenya's urban areas (Syagga *et al.*, 2000). The situation has persisted even after independence, creating the first headache for the independent government.

The dispossessions and displacements of people from the land that has been occurring in Kenya, is similar to what is being experienced in China, as espoused by Harvey (2006) and Walker (2006). The only difference is that the displacements in Kenya in the period before independence involved the use of brute force and state power, thus there was hardly any market-oriented forces. It involved the use of dictatorial and draconian laws, which ensured that the best quality land went to the colonial settlers.

The laws were mostly modeled on those of other countries by the colonial government to smoothen the land acquisition processes.

Leo (1984), Okoth-Ogendo (1991), Bruce and Migot-Adhola (1994), Syagga (2006) and Musyoka (2006) have all sought to explain the processes of law making. It is understood that the ordinances were promulgated under the Foreign Jurisdiction Act of 1890. These ordinances empowered the Commissioner in charge of the protectorate to give land to whites on leases of up to 99 years so long as the land was neither occupied nor cultivated by the natives. In addition, it empowered the Commissioner to sell freehold titles for crown lands on the 10 mile coastal strip irrespective of whether native Africans occupied it or not.

In addition, the later years were to see the passing of more substantive laws by the colonial government, which turned Kenyans into 'tenants at will' as all land became 'crown land' (Okoth-Ogendo, 1991 and Syagga, 2006). The laws that turned Kenya into crown land include the 1902, 1908 and 1915 Crown Lands Ordinances (Okoth-Ogendo, 1991). The 1902 Crown Lands Ordinance empowered the Commissioner of the protectorate to sell or rent any land empty and/or vacated by a native to Europeans. It also stated that land had to be developed or forfeited. This Act was the basis for massive land dispossessions that followed.

Thus by 1904 there were dispossessions which were preceded by surveying and alienation of unoccupied land in the southern parts of Kikuyu land. It is the same year that saw the first Masai Agreement being executed by the British Government and Lenana, a Masai chief. This forced the Masai to vacate their land in Suswa, Naivasha, Ol-Joro-Orok, and Ol-Kalau areas to the southern Ngong and Laikipia reserves to be used by the Government for settlement of Europeans. This led to untold suffering by the people as the Masai lost their animals and succumbed to serious malaria attacks (Syagga, 2006).

The 1908 Crown Lands Ordinance, on the other hand, empowered the Commissioner of the protectorate to invite those who had titles to land within the 10 mile coastal strip to present their claims to a Land Registration Court. The Ordinance further outlined that any land for which no claim or claims were received would automatically become crown land. Thus the 1908 Ordinance dealt with

the coastal belt while the 1902 Ordinance dealt with the remainder of the country. The 1902 Ordinance was however repealed in 1915, through the 1915 Ordinance, which declared all land in Kenya crown land. Africans therefore became mere tenants of the state. In effect, Okoth Ogendo (1991) argues, Africans became mere beneficiaries of a trust established by the state to administer the land they occupied.

The colonial land segregation was effected through the Native Trust Bill of 1926, which required that certain areas be for the exclusive use by natives. Thus in 1931 the famous Carter Commission fixed boundaries and evicted natives from European areas. Although the land reserved for African use remained crown land and could be alienated at any time. The effects of these activities led to difficulties on the part of Africans and were the main cause of discontent and demand for land redistribution in later years. Syagga (2006) argues that the fixing of the boundaries completely altered land relations and distribution in Kenya. Syagga (2006) adds that the amendment of the Native Authority Ordinance of 1940 empowered the Provincial Commissioners to order any native found cultivating land outside his native reserve to return to his native reserve (section 3, Ordinance No. 20, 1940). The effect of this was increased fragmentation and subdivision of land into smaller and uneconomic sizes in areas that had serious land pressure, such as Central Province, a situation that is more pronounced today.

Okoth-Ogendo (1991) observes that this process led to disputes between relatives over land in areas with acute land shortage. In addition, the problems led to out-migration from the reserves to European farms for employment opportunities (Leo, 1984). Already in the 1940s, Meek (1947) observed increasing trends towards individualization of land in the reserves in areas that the settlers referred to as Kikuyu country. The trends towards individual land ownership were accompanied with increased, serious and violent agitations for land redistribution. This intensified, as land became a critical economic and political issue. This is clearly demonstrated by the outbreak of the Mau Mau revolt in 1952. This further gave the settlers a rude awakening to the fact that the land issue had to be addressed.

It is therefore not surprising that more committees were later to be established to look into ways of dealing with land issues in the colony. Among the output of the committees was Swynnerton Report of 1954. Among other things it aimed to stem the pressure and demand for land redistribution by the natives, to promote individualization of land ownership through consolidation and registration, and to improve agricultural production. This report was further supported in 1995 by the East African Royal

Commission Report, which in addition to the above recommendations called for the removal of racial barriers in crop production. The implementation of the Swynnerton Report recommendations, namely land consolidation and registration. The settlers had hoped that this process would create landed middle class elite that would act as a buffer against the peasants demanding for land redistribution (Okoth-Ogendo, 1991; Syagga, 2006).

The establishment of the Working Party on African Land Tenure in 1956 was meant to identify and make recommendations on how land tenure reforms could be introduced to all parts of native lands following more intense pressure for land redistribution by Africans. The Native Lands Registration Ordinance of 1959 and the Land Control (Native Lands) Ordinance of 1960 to control land transactions in adjudicated areas. The two pieces of legislation were later named Registered Land Act of 1964 and the Land Control Act of 1964 by the independent parliament. They have been critical in shaping land transactions and management in Kenya.

Wasserman (1976) and Leo (1984) have pointed out that the aim of the colonial government's land reform was to establish and entrench a landed African middle class as a counter insurgency against the radical landless peasant movements. Leo (1984) and Syagga (2006) add that through the land reforms some people from central Kenya (Central Province) as well as some elites were facilitated to buy back land from the colonialists. However, the establishment of a landed middle class was slow in taking root. It was therefore not useful to the colonial government though it worked in later years as a moderating force and at times a stumbling block to land reforms in Kenya. An article by the chairman of the Kenya Land Owners' Association clearly points this out (East African Standard, 2nd September 2008).

5.2.2 Post-Independence Contradictions

Independence brought to the fore the perception of Kenyans as to what constitutes land. It demonstrated a sharp contrast with that of the Europeans. This was presented in a speech by Kenya's first President that is Mzee Jomo Kenyatta to the Nation in 1964, when as already mentioned, he said that land was the greatest asset and a heritage received from the Kenyan forefathers and stressed that salvation and survival of Kenyans lay in land. It was clear from the speech that to the African, land was a gift of nature to be shared by all.

However, two years later, President Kenyatta appeared to have changed his position on land and differed with his Vice President Jaramogi Oginga Odinga. As new political elites, including Kenyatta, took control of the state, they began manipulating the processes of access to land more particularly in favour of their Kikuyu ethnic elites and families at the expense of the majority (Odinga, 1967). This set the stage for later ethnic conflicts over land and government positions. At the same time it set the stage for corruption and abuse of office by public sector officials and politicians.

Thus, although independence had been fought for using land grievances, it did not bring about a significant change in land allocation and the problem of landlessness continued unabated. The new ethnic political elites, their allies and relatives continued to acquire more and more land at the expense of the poor. As a result, institutions of land administration remained the same and inaccessible to the majority of the people. Land conflicts increased rather than reduced. Over the years, as ethnicity, patronage and corruption took control of management of public resource and affairs in Kenya, as a result intensity of struggles over land increased and open hostilities came to the fore more prominently, particularly in parts of the Rift Valley Province in the election years (Osamba, 2000).

5.2.3 Independence Ideals and Land Conflicts

Kenya's independence was meant to usher in a new dawn for all the ethnic groups. However, as authors like Atieno-Odhiambo (2002), Githongo (2006) and Ogude (2009) posit, upon independence the state turned into a "site of eating". And to eat "well" the powerful ethnic elite groups (initially Kikuyu, later Kalenjin and again Kikuyu) ensured that they excluded others. The exclusion of the so-called outsiders ensured that tensions were built from early years of independence.

In addition, the perception of the State as a site of 'eating' or enrichment helped ethnic elites justify their abuse of public resources with ease during Kenyatta's reign. However the increasing population, changing global governance demands, particularly by bodies such as the IMF and the World Bank in the 1980s and 1990s, as well as increased competition for the dwindling resources, the Moi regime (which followed Kenyatta's from 1978) resorted to land as the main resource for corruption and satisfaction of ethnic demands. Thus as Atieno Odhiambo (2002) and Ogude (2009) posit, the state remained a "site of eating".

As Kagwanja (2009) argues in his proposal to World Vision and the IDRC for research funding on "Ethnicity, Land and Conflict in Africa", land and land-based resources have been elevated as a key resource in the development process and thus is perceived as critical to securing livelihoods. It is for these reasons that when state power is abused to exclude others, using ethnicity as a determining factor, ethnic tensions easily rise. Yet, as Kagwanja (2009) admits, ethnicity on its own does not necessarily trigger violent conflicts. Despite this, ethnicity has become a form of universal shorthand that masks a host of much more complex issues such as elite competition for state power (Kagwanja, 2009).

In Kenya, there have been intermittent ethnic conflicts from the introduction of multiparty democracy and/or politics. However, following the contested 2007 presidential election results there was a wave of more widespread and intense ethnic conflicts. Later analysis indicates that there were a number of factors that contributed to the conflict (CIPEV, 2008). The main sources of land related conflicts have links to ethnicity, state power and corruption (Atieno Odhiambo, 2002; Syagga, 2006; Ogude, 2009. Kagwanja, 2009). It is in this category that the fraud case against William Ruto, the Minister for Higher Education can be viewed. The fraud case is related to KANU regime power dynamics and corruption. Interestingly, the case has elicited varied reactions from the political class – with some politicians admitting to have benefitted from the land transaction that is the genesis of the case (see East African Standard and Daily Nation both of 18th October, 2010).

5.3 The Origins and Development of Nairobi.

As mentioned in Chapter One Section 1.2 the city of Nairobi started as a railway station in the late19th century and by 1899 was designated as a town with a population of about 10,000 people. It then occupied about 18 Square Miles. Its rapid growth owes itself to a decision by the Chief Engineer for the Kenya-Uganda railway, Sir George Whitehouse, to move the railway headquarters from Mombasa to Nairobi. This resulted in Nairobi becoming the business hub for the then British East African protectorate (Situma, 1992).

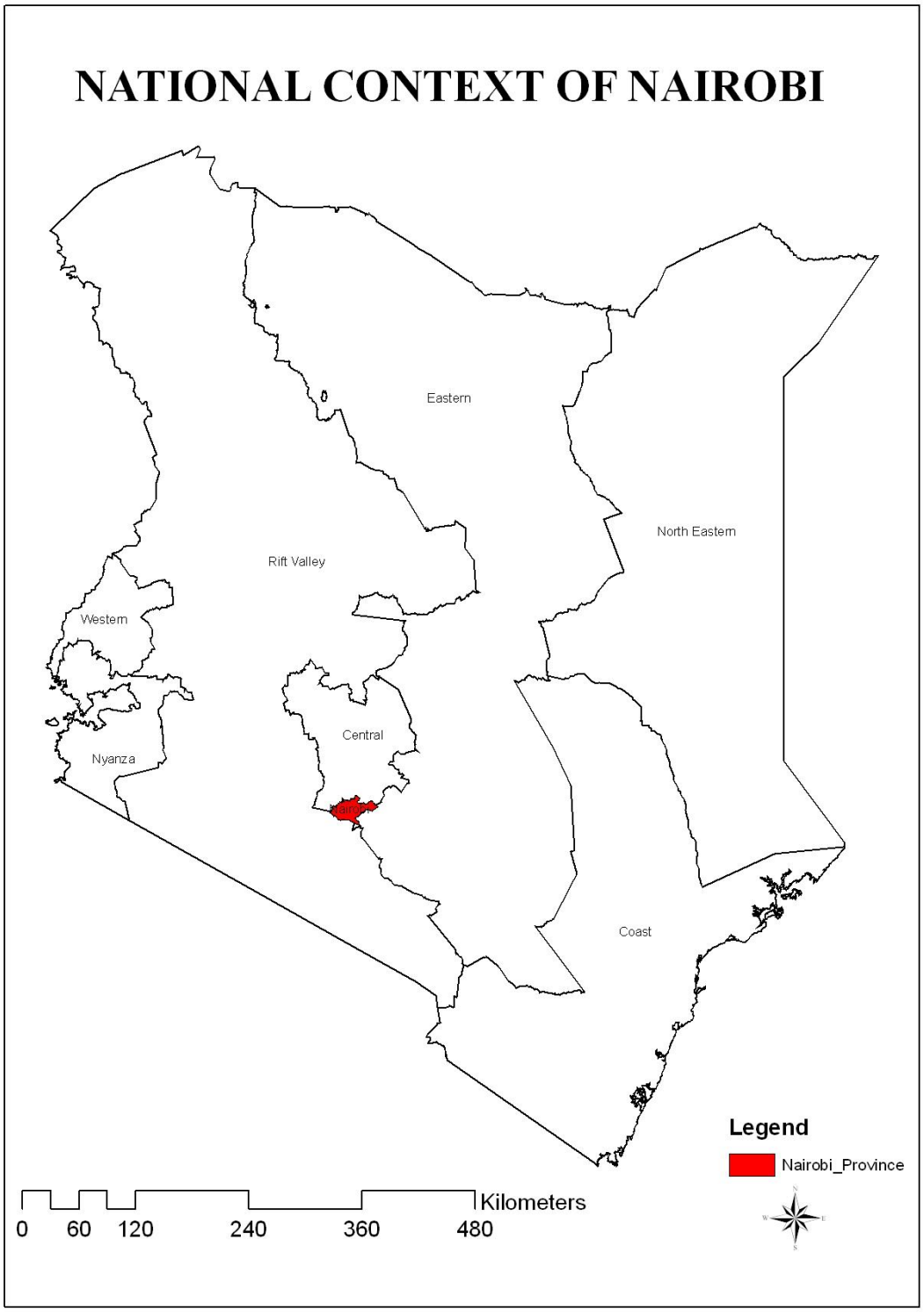
As the growth gathered momentum, there was publication of the Nairobi Municipal regulations by the colonial Government in 1900. The regulations among others defined an urban centre as "the area within the radius of one and a half miles from the offices of the Sub-Commissioner of the then

Ukamba province" (Morgan, 1967:102). By 1900 Nairobi had become a large and flourishing settlement. It then consisted largely of railway buildings and separate residential quarters for Europeans and Indians. The Indians were mainly former railway construction workers (K'Akumu and Olima, 2007).

At this time there was practically no African settlement in Nairobi. However, there were already a number of European settlers, based in the areas such as Lavington, Westlands, Kabete and Bernard Estate. The Catholic Church, through an order of French Missioners, settled on the present day St. Austin's road and acquired large swathes of land in the Lavington area and Bernard Estate. Given the rapid growth and development of Nairobi, it was declared the capital of Kenya by 1907(Kakumu and Olima, 2007).

Nairobi was declared a city in 1950, after its boundaries had been changed twice, that is, in 1927 and 1948 respectively. The extension of the boundaries took place again in 1963 immediately after independence. This was ostensibly driven by the desire to increase the revenue base for the city, accommodate increased population and reward the Kikuyu of Dagoretti areas for their struggles against the colonial government. The 1963 boundary changes brought in such areas as Dagoretti, Karen, Langata, and the National Park, among others, within the city boundaries. This brought the city population to about 266,800 people and the total area of about 266 Square Miles (Syagga *et al.*, 2001).

Figure 5.1: Location of Nairobi in the National Context



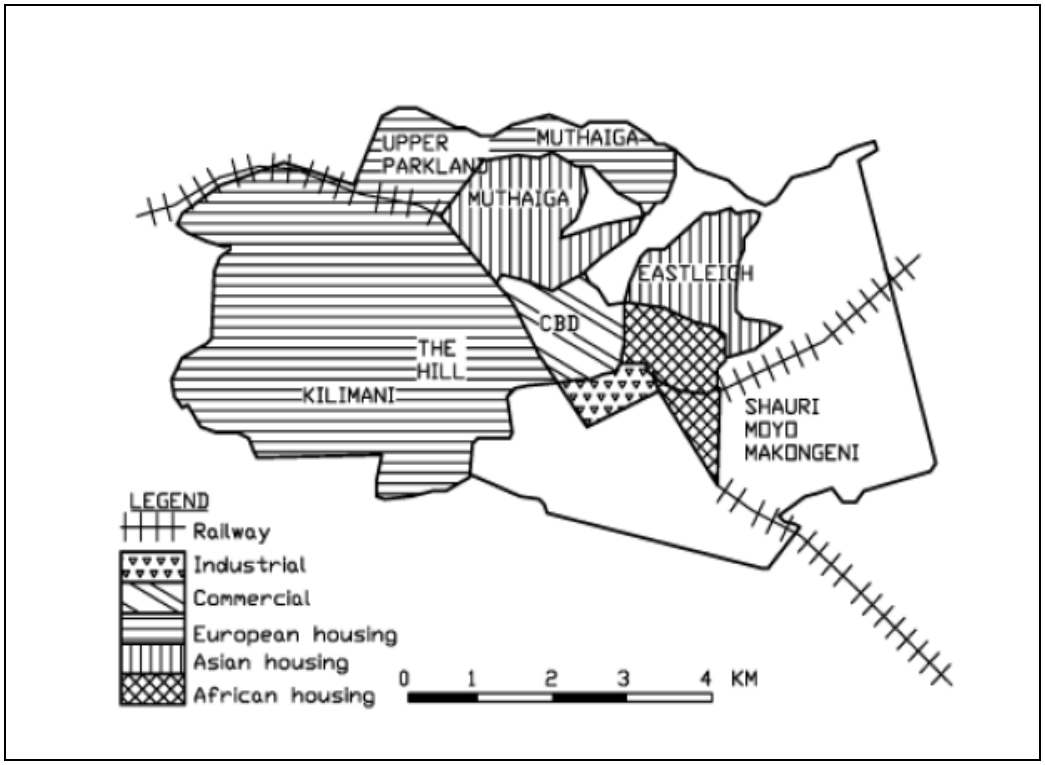
Source: Adapted by the Author from Existing Maps, (2007)

Major plans for Nairobi were drawn up in 1905, 1927, and 1948. Later years have seen several unsuccessful attempts to prepare a new plan for Nairobi, as witnessed in 1973 and in the year 2000. The 1973 Growth Strategy was never implemented. Later attempts to prepare plans for the city have not been fruitful. The sensitization for the preparation of the 2000 plan was very inclusive and extensive. However, discussions with City Council staff revealed that there are numerous factors that have hindered the drafting of the plan and its subsequent implementation.

It was anticipated that implementation of the 1973 Metropolitan Plan would have improved the functioning of the city. However, several factors, including institutional bottlenecks coupled with lack of political good will, militated against the implementation of the plan. Thus the major comprehensive plan to be implemented remained the 1948 Master Plan. As such the growth and development pattern of Nairobi has therefore continued to follow the 1948 master plan. The plan has, however, been subject to criticism from various scholars, among which Olima and Kakumu (2008), arguably for promoting "racial residential segregation". This argument is disputed by Nevanlinna (1996:174); her argument is supported by the 1948 master plan. Indeed, the Master Plan (see page 64) clearly states that the planners were not keen on racial segregation.

In addition, it should be appreciated that the physical development of Nairobi was based on the neighbourhood unit approach which was promoted by the 1948 plan for Nairobi. Due to the nature of the neighbourhood unit concept which emphasized neighborhood limitations the growth of the city has been limited. The most viable option then was to limit the growth of the African population. This was undertaken through a variety of approaches, the main approach being stratification of human settlements based on ethnicity and income. This, Stren (1978) claims, was achieved through the adoption of standards that were initially claimed to be meant to control the spread of diseases.

Figure 5.2: Colonial Residential Segregation in Nairobi



Source: Adapted from Syagga *et al.* (2001)

Answers to questions concerning preparation and implementation of the 1973 Growth Strategy often receive unsatisfactory responses. Indeed, authors such as Syagga *et al.* (2001) simply put it that the council failed to adopt the plan, without giving further explanations. My discussions with key informants and council officers indicate that implementation of the plan would have facilitated a flexible growth, guided infrastructure development and provided a rationalized land use planning, thereby reducing the disparity in distribution of land for various uses and users. It was thus anticipated to arrest the effects of colonial planning which are typified by extreme unequal land distribution, increasing land related problems and conflicts and a divided and an unequal city. It was assumed the 1973 Growth Strategy would address the problem of segregation in Nairobi's settlements, but this still continues more than 40 years after independence.

It is clear that economic segregation is achieved through the adoption of building standards, infrastructural design, and building materials stipulated by local authority by-laws and legislation. The requirements of the legislation, standards and by-laws are beyond the reach of the poor.

This results in the rich exclusively living in 'low-density' areas with decent infrastructural services and facilities. The low to medium income groups continue to suffer from serious land shortages for

housing. Indeed, the finding by Matrix (1993) and Ngau (1995) in their studies that about 55 per cent of the population of Nairobi occupies only 5 per cent of the residential land, demonstrates the spatial inequality in distribution of land for residential use in Nairobi between the different classes. This is further highlighted by the fact that the poor occupy their 5 per cent of Nairobi's land illegally. As a consequence, until recently the settlements never even appeared on the city maps.

The initial plans for Nairobi restricted the growth and development of Nairobi which was further curtailed by the imposition of high development standards by the Nairobi City Council (though implementation of the standards was at times selectively undertaken) has contributed to increased land conflicts. The development conditions imposed by the council that include minimum plot sizes and site coverage (50 per cent for residential development) have resulted in lengthy, costly and bureaucratic approval processes. These have contributed to the avoidance of legal processes of development approval by low to medium income groups. The standards are hardly achievable for the majority of the population.

Given the development conditions required by the Council, increasing population and lack of adequate housing for the people, there has been an upsurge in demand for land for housing development. The demand has been seen as far outstripping the supply particularly in high density, low-income and largely rental neighborhoods. In addition, land prices per square metre unit are higher in low-income than in high-income areas, this being explained by the returns expected and the demand for the same (Dafe, 2008). For instance, a half of an acre of land in Dandora would in the open market be about US$300,000 [13] while a plot of similar size and acreage in the high-income neighborhood of Karen would be about US$100, 000.

Land in the high-density low to medium income neighbourhoods of Nairobi is up to three times more expensive than in low-density high-income areas such as Karen. As a result developers are forced to maximize the use of the land by over developing the land as well as to charge higher rents for the poorly developed units to recoup their investments and make profits. At the same time a large proportion of the urban population is forced to seek accommodation in unplanned and unserviced informal settlements because they cannot afford to pay rent in the formal settlements.

[13] The exchange rate at the time of assessment in 2007: Kenya Shillings, Seventy to the US Dollar.

The Census Report (CBS, 1999) clearly indicates that low-income areas have higher population densities as opposed to high-income areas. Figure 5.2 below illustrates this. While this is a common feature across African cities, Huchzermeyer (2006; 2007) demonstrates extreme densities for Nairobi. Her results of a study in Huruma and Umoja in Nairobi further confirms the density in part of Huruma as more than 5 000 people per hectare and about 1 638 units per hectare in high-rise tenements. Huchzermeyer (2007) used the average household size of 3.2 from the Central Bureau of Statistics (CBS, 2002) to calculate a density of 5,242 people per hectare for her sample area. According to Huchzermeyer (2007) this surpasses the highest density in late 19th Century in New York City that averaged at 1,294 people per hectare (Huchzermeyer, 2006; 2007). Low-income areas suffer due to poor infrastructure and require heavy investment in infrastructural facilities and services. When this is coupled with overcrowding, the people could be said to be facing the tragedy of "human crisis". Korten (1995) argues that the crisis is related to deepening poverty, social disintegration and environmental destruction.

Table 5.1: Population Growth Trends in Nairobi

Year	Population	Intercensal Rate of Urban Growth
1948	128,794	----------
1948 - 62	----------	6.6
1962	343,500	----------
1962 – 69	----------	6.4
1969	509,286	----------
1969 – 79	----------	6.9
1979	827,775	----------
1979 – 89	----------	4.8
1989	1,324,435	----------
1989 – 99	----------	6.2
1999	2,137,000	----------
1999 – 2010	----------	4.7
2010 (projected)	3,750,435	------
2020 (projected)	5,552,305	4.0

Source: UN-Habitat (2001) and Malombe (2000:2)

5.4 Population Growth and the growth of Informal Settlements in Nairobi

There is an increasing debate on the actual population of Nairobi, particularly with regard to the number of people living in informal settlements. This has been exacerbated by the contradiction between the figures provided by different studies. Studies by Ondiege (1989); Nachu (1990); Matrix (1993); Ngau (1995) and the CBS Census report (1999) all give conflicting results. Indeed, all the other studies report higher figures except for CBS results. Recent reviews of the information by other institutions and individuals argue that the CBS have a robust approach in their data collection. On the whole there is inclination to rely on the figures of the report by CBS (World Bank 2006). In addition, the situation calls for studies to clear the contradiction so that later studies can draw appropriate conclusions.

Table 5.2: Population Sizes and Gross Densities in Selected High, Middle and Low Areas

Settlement/Estate	Income	Population	Households	Area in Sq.Km	Density People/ha
Karen	High	9,764	3,381	27.8	3
Muthaiga	High	6,786	1,681	14.1	4
Loresho	High	15,784	5,131	9.5	16
Lavington	High	18,966	5,815	11.0	17
Langata	Middle	16,118	5,051	44.5	3
Highridge	Middle	46,642	13,019	42.3	11
Parklands	Middle	11,456	3,369	4.6	24
Kitisuru	Middle	27,459	8,603	20.9	13
Kibera Silanga	Low	16,518	6,281	0.2	825
Korogocho Gitathuru	Low	22,899	7,415	0.3	763
Mukuru Nyayo	Low	36,232	10,224	2.3	157
Mathare	Low	69,003	24,525	1.5	460

Source: Kenya CBS, Population Census, (1999) and UN-Habitat (2001)

All in all the origin of informal settlements can be traced to the colonial policies that included restricting movement of blacks into urban areas coupled with allocation of limited amounts of land to the low income groups within urban areas. In addition, the emergence of landlordism in early Nairobi as a practice among the low-income Africans before spreading to other income groups may explain why the poor became tenants rather than owning small portions of land, can also be traced back to this.

Majale (2000:4) however sees the practice as having resulted from the displacement of Africans from their lands in Kiambu, Kikuyu, Mbagathi, and Ruiru by the arriving Europeans in 1905. He also argues that it can be seen as a consequence of the outgrowth of capitalism. These coupled with residential segregation were thus the main causes of the then largely rental informal settlements in Nairobi in the early years of its growth.

Thus upon independence and the removal of restrictions imposed on free movements, migration from rural areas to urban areas increased and urban population grew faster. For instance, the abolition of the pass system, which was passed in 1921 restricted movement of Africans from their native areas without

permission,.resulted in an increase in the African population by 174per cent between 1948 and 1962, thus the population of Nairobi grew to 350,000 people. In addition, the population of Nairobi is recorded to have increased exponentially between 1963 and 1965. Proper planning, which could have facilitated absorption of the new immigrants, however, did not follow this. As pointed out by Syagga *et al.* (2001), this has been the main underlying cause of the growth and development of informal settlements in Nairobi. It can also be seen as the initial major cause of land conflicts in the present-day Nairobi.

The World Bank (2006) report on a study of informal settlements in Nairobi indicates that rents in Nairobi's informal settlements vary by division, as illustrated by table 5.4 below. It revealed that the average rent for poor households was about Kshs (US$10). The non-poor on the other hand, pay on average a monthly rent of about Kenya shillings 913. Table 5.4 below illustrates the rental variation by location according to the same study. There is a high level of investment in 'slum' rental housing in informal settlements in Kenya due to high returns and short pay back periods (Dafe, 2008). Amis (1984) and Mwangi (1997) variously reported high tenancy rates in the informal settlements in Nairobi.

Table 5.3: Distribution of Informal Settlements by Division

Division	**No. of Villages**	**No. of structures**	**Approx. No. of Rooms**	**Total Population**
Makadara	7	5013	11,496	68,976
Pumwani	11	3,136	10,418	52,090
Embakasi	14	3,865	14,865	44,495
Kasarani	43	26,530	97,715	390,860
Parklands	7	2,190	9,310	37,240
Dagoretti	34	15,240	97,320	389,280
Langata	17	21,615	180,625	903,125
Total	134	77,598	421,749	1,886,166

Source: Ngau (1995)

Table 5.4: Rents in Informal Settlements in various areas (divisions) of Nairobi

Division	Number of Respondents	Average Monthly Rent Kshs
Dagoretti	295	1090(US$ 109)
Westlands	57	1080(US$ 108)
Pumwani	111	890(US$ 89)
Central	189	860(US$ 86)
Makadara	170	780(US$ 78)
Embakasi	167	670(US$ 67)
Kasarani	182	640(US$ 64)
Kibera	450	620(US$ 62)
Total	1,621	90(US$D 79)

Source: World Bank (2006)

5.5 Inequity in Access to land in the study settlements

Access to land in Kenya remains controversial. This is arguably because land allocation processes have had inbuilt inequities from the colonial period. Land allocation processes, whether market oriented or the disposal of public land; favour those with higher incomes, while factors such as ethnicity also play a role. This limits access by the poor who are easily discriminated against. Both approaches also allow individuals to hoard land for purposes of speculation. The problems of land management that arose during the colonial period have been critical in shaping land administration and transactions even long after the country's independence. Just as the colonial authorities manipulated the processes then, they are today easily manipulated in favour of the rich, well connected and powerful (or the) big men.

In general, as Olima (1998) rightly argues, existing land management approaches are prone to persistent problems, the main one being inability to provide access and security of tenure to the poor. Instead, there exists a bloated bureaucracy, which is woefully corrupt (Wrong, 2009). This situation remains despite many years of frustrated attempts by Kenya (particularly since 2002) to put in a place an elaborate institutional and legal framework to prevent corruption. The persistence of inequity and corrupt practices is due mainly to the failure of the existing pieces of legislation to address critical issues such as landlessness, land conflicts, increasing proliferation of informal settlements, poverty and security of tenure. This failure has contributed to non-compliance with existing laws relating to land ownership by the poor, contributing to forceful occupation of private and public land. Interestingly, as the study results reveal, the poor are often used by the poor to forcefully occupy these parcels of land for political and economic reasons.

The existing land allocation processes are prone to abuse by the powerful and influential in society. This has denied ordinary people access to land through the public land allocation processes especially given that the majority of the population cannot afford to purchase land in the market. This, when coupled with inadequate rental housing for the poor, implies that the poor are left with no option than to forcefully occupy undeveloped land which is within short distance to places of employment, mostly in the informal sector. It is no wonder that every major high income and industrial neighborhoods has an informal settlement neighbouring it.

Similarly, formal land allocation processes have remained inequitable over the years. As my case study results reveal, this has been as a result of a number of factors, including imperfect knowledge about the land allocation, political manipulation, patronage and religious affiliation. Thus it is common knowledge that access, use and ownership of land remains controversial, emotive and a major cause of conflict between ethnic groups and/or individuals. This is partly blamed on the inability of the Government to address the question of inequitable access to land as well as unwillingness to prioritise the resolution of land management problems.

Since the colonial period, the Provincial Administration has continued to play a critical role in land conflicts (Leo, 1984; Syagga, 2006). During the colonial period they had a clear mandate; this was to ensure that tribal boundaries were observed. This was not only in Kenya but also in a host of other settler colonies such as South Africa and Zimbabwe (Leo, 1984; Mamdani; 1996; Ogot, 2000). Over the years the role of the Provincial Administration in land administration has continued to diminish with the democratisation processes in Kenya – although they continue to play an important, though often questionable, role in governance.

5.6 Emergence of Vigilante Groups and Ethnic Conflicts

The origin of land conflicts in Nairobi like in other parts of Kenya is traceable to the period before independence. In the immediate period prior to independence several groups emerged to fight for the rights of the people. The most prominent was the Mau Mau which drew its membership almost exclusively from the Kikuyu, Embu and Meru ethnic groups. Several historians and social commentators have written on this and they include Atieno-Odhiambo (2002) and Rutten and Owuor (2008).

Informal processes of access to land in Nairobi today involve vigilante groups, a feature of Kenyan society which took prominence from 2001, though with roots in the struggle of dispossessed groups, in particular Mungiki in the late 1980s (Anderson, 2002). As already mentioned, the vigilante groups that were later used in conflicts over property in Nairobi, including the case study settlements in this thesis, came into prominence in the 1990s. However, the best-known vigilante group, Mungiki, is reported to have started in Rift Valley province around 1985, before moving to Central province and later on setting up base in Nairobi (Kagwanja, 2003, Ruteere, 2008 and Rasmussen, 2010).

The origin of the group is traced to the failure of the state to protect individuals of the Kikuyu ethnic groups from ethnic clashes. Thus members of Mungiki participated in mobilising the community for self-defence. The following period, particularly the 1990s, saw Kenya face serious economic crisis as the country went through a structural adjustment programme. As a result of privatisation policies, many people were retrenched and had no means of earning a living. In the meantime, a large Kikuyu diaspora from the Rift Valley had been thrown off their farms and could no longer go back. Many had into moved urban slums in Central province and Nairobi – and because of structural adjustment, negative effects of globalisation and corruption the state failed to provide services and employment opportunities to this increasing urban population.

It is during this period that Mungiki grew into a large force as it emerged to collect garbage, control crime, and provide justice and employment to its membership in transport and retail business. As a consequence, slums residents were obliged to pay Mungiki a fixed amount of money for each household, business and motor vehicle. The group that had started as a religious sect was now acquiring state roles and had acquired a reputation for orgy killings. The origin of the group has been described by many as complex, but clearly is seen to stretch back about a hundred years. This is because it has to do with colonialism – which translates to Mau Mau, poverty, oppression and globalisation. This, in simple words, means inequality.

The emergence of the group and subsequent activities and misuse by politicians from the Kikuyu ethnic group led to the emergence of other groups with a largely ethnic agenda. The groups that featured in the case study settlements in this thesis are Mungiki and Kamjesh. Kamjesh was formed in

response to Mungiki attacks on members of the Luo ethnic group in parts of Nairobi (Personal Communication with a lawyer involved in resolving conflicts, August, 2007). Like Mungiki, Kamjesh's initial role was to protect the Luo from attacks and killings by Mungiki. The years that followed saw serious conflicts between these groups, leading to deaths and suffering of many. The other militia groups emerged partly in response to Mungiki and mainly for protection of the various political leaders and the various ethnic groups in Nairobi and other parts of the country. In Nairobi, the Militias have been used by the political classes in mobilisation of political support.

5.7 Corruption and Land Conflicts in Nairobi

A review of literature on Kenya's socio-economic development is incomplete without exposition to corruption. It is instructive that the media and most scholarly works have dedicated a lot of resources to analysing the forceful menace of corruption and its links to state power and governance. In a rare analytical work on the Kenyan state, Ogude (2009) posits that the state is merely seen as a "site for eating". This is further reinforced by the work of Wrong (2006), that draw evidence largely and focuses on corruption during President Kibaki's first time in office, that further reinforces this the analysis of the state being seen as a "site for eating".

Thus, as argued by Ogude (2009), the perception of what the state represents in the eyes of elites makes it difficult to pursue a genuine development agenda. This is because there is always a conflict between the desires of the citizens and the leaders. This coupled with Kenya being stuck in supplication to former colonial master. That the interests of the former colonialists were at variance with the aspirations of the people, made things even worse.

The contradictions of post-independence are more glaring today, resulting mainly from the perception of leaders who see the state more as a resource. As a resource every elite tries as much as possible to loot it, for in the representation of the elite it is ownerless. This is a position I observed in study settlements – in most cases state officials used the poor to help in the grabbing of public land.

In my case studies evidence from the results of corruption permeated all relations and influenced land ownership. Indeed it determined the relationships between the local administration and the forceful land occupants in the study settlements. But as is evident from various works, it is based on the meaning attached to the state by the elites (see Bayart, 1993; Young, 2003 and Gikonyo, 2009). As such, changing this pattern of behaviour would require adoption of new values.

5.8 Nairobi City and Emergence of the Study Settlements

The emergence of the study settlements in this thesis vary. While Mathare North was planned and established with assistance of Nairobi City Council to help in provision of housing for the poor, Tassia, Embakasi Jua Kali and Pipeline settlements emerged from forceful occupation due to scarcity of affordable housing, among other vices. As a result groups were able to mobilise and forcefully occupy land belonging to groups with support of politicians and public servants. Overall, the potential sites for this study are shown in Table 4.2 in the previous chapter. In the following sections, I introduce the four case study sites that were selected for this study, due to their unique features. All included elements of political patronage and corruption and vigilantism.

Case study 1: Embakasi Jua Kali Estate

The settlement came into being around 1991 and is located on a narrow strip on the south eastern edge of the built-up area in Embakasi Division. It neighbours Embakasi village Estate and Embakasi Light Industrial Area to the west and military land to the east. Embakasi Jua Kali can be accessed either through Embakasi Village or Ruai road and has direct access to the large residential tenement area Kayole to the north via an earth road.

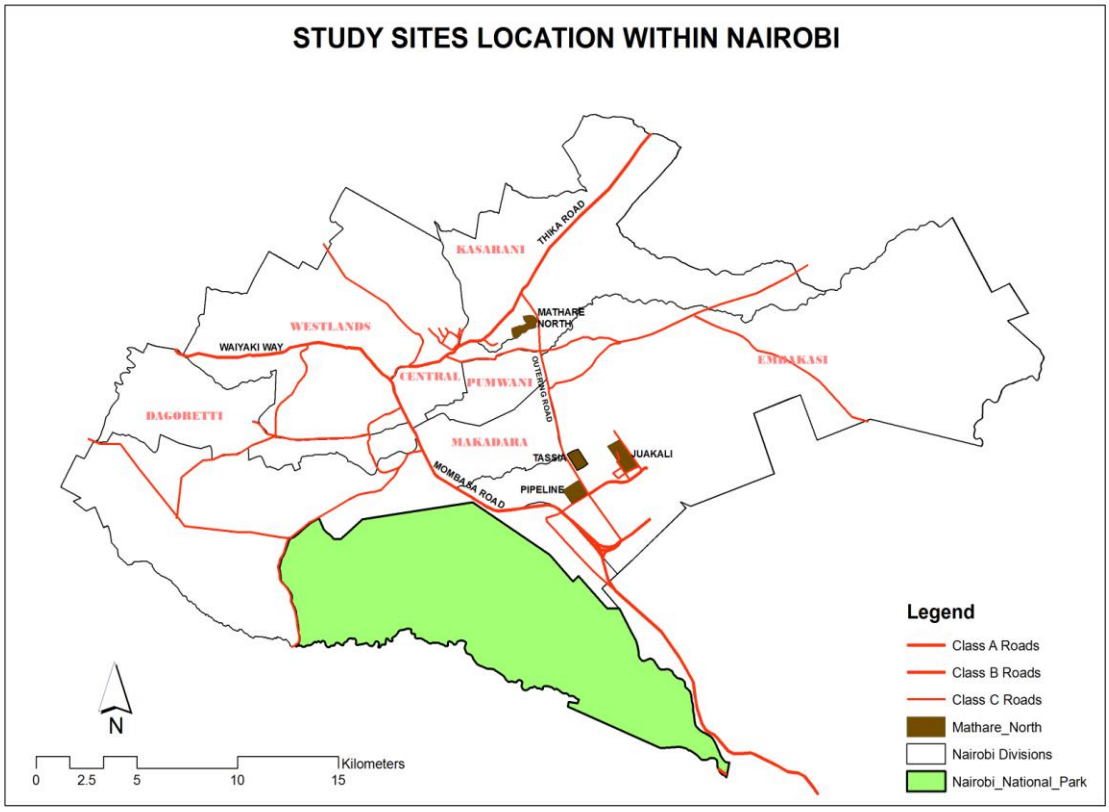
The strip of land on which Embakasi Jua Kali is located remained undeveloped until the early 1990s when individuals began fencing it off. This followed immediately after the National Social Security Fund began developing Embakasi Nyayo Estate, which borders the land now called Embakasi Jua Kali, to the eastern side.

These activities were taking place as the 1992 multiparty elections approached. The ruling party, Kenya African National Union (KANU), under President Moi, feared defeat (Field Interviews, 2006 and 2007). KANU was uncertain because the opposition party Forum for Restoration of Democracy (FORD) appeared headed to win the elections. This was later to change, following a split in FORD shortly before the 1992 elections.

In order to retain power, KANU embarked on an aggressive campaign in local areas to solicit support, using all means available. It is during this period that a group of artisans operating in an informal settlement called Jua Kali that had been developed in an open space within Embakasi Village were approached by the local representatives of the Provincial Administration loyal to KANU to solicit their

support in the pending election (Field Interviews, 2006 and 2007). As a result, the youthful group of artisans came up with an association. The group had desires of owning their own business premises. They felt that this would help reduce their operating costs (Personal Communication with a landlord, 2006 and 2007).

Figure 5.3: Sites Location within Nairobi



Source: Author's compilation from other maps, (2010)

In order to present an application to the Provincial Commissioner for land allocation, the group established a community-based organisation. The Provincial Administration, eager to please potential voters, subsequently illegally allocated [14]the land to the group for temporary occupation. The new allottees were temporarily expected to use the land as an open air market and for their business operations. As they lived nearby, the allottees had no problems accessing the area and relocating their businesses.

The temporary land allocation was made although the Ministry of Lands and Settlement had earlier allocated the same land to different individuals and institutions upon request by the Kenya Airports

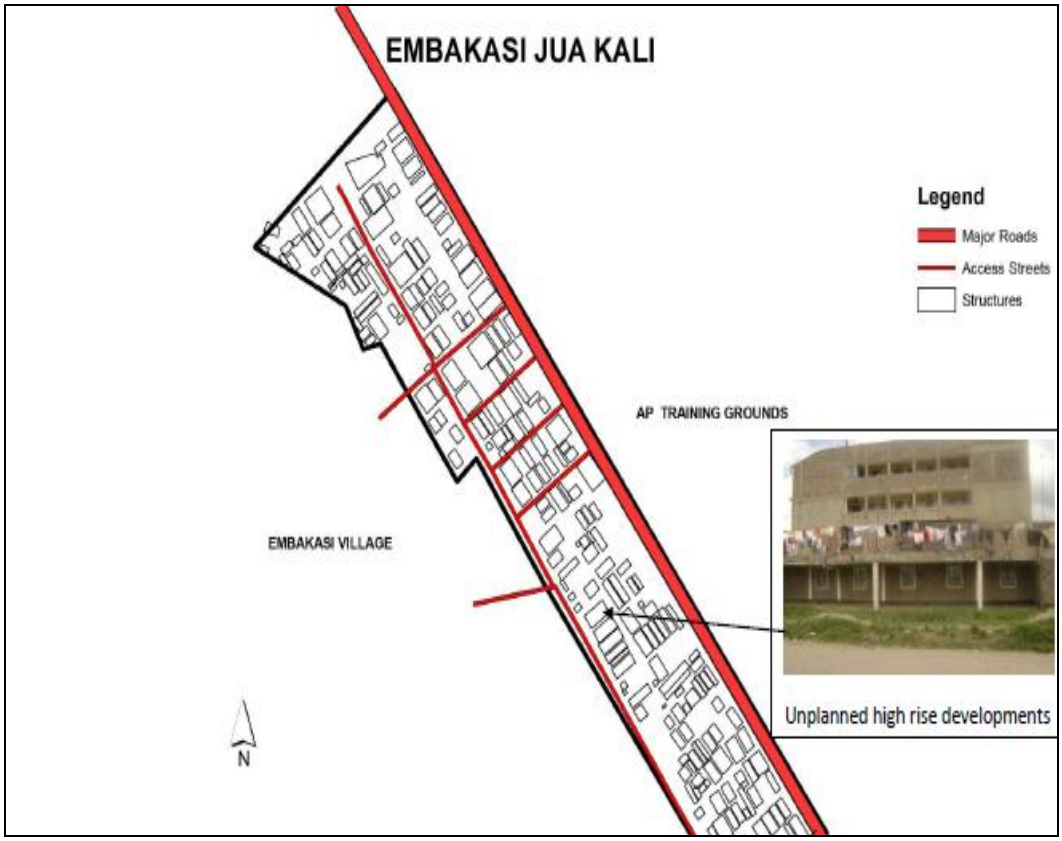
[14] Allocation of land by the Provincial Administration is considered illegal because the existing laws do not empower them to do so.

Authority, as had become common among public bodies in Kenya then. The Ministry of Lands and Settlements and Nairobi City Council were opposed to the temporary land allocation to Embakasi Jua Kali Association, more so because it was undertaken by the Provincial Administration which had neither administrative nor legal mandate to allocate public land. The two former institutions are the only ones empowered to allocate public land within Nairobi (Ministry of Lands, 1989).

On further discussions, it emerged that members of the Provincial Administration were seeking to benefit financially from the land allocation (Personal Communications with an official of the Association, 2006/2007). Officials of the Association were subsequently in early 1992 advised by members of the Provincial Administration to subdivide the land, allocate some portions of land to their members, sell the others to members of the public and finally share the money with members of staff in the provincial administration (personal communications with an official of the Association, 2006 and 2007). The subdivisions were undertaken with the assistance of a Kenya Polytechnic-trained technician paid for by the Association. The "Surveyor" prepared a layout plan for the settlement. The plan provided for access roads connecting to the main roads. The members were also provided with a type plan similar to those issued for Kayole and Dandora settlements[15]. Although the artisans were provided with type plans which anticipated the development of tenements, the artisans had the freedom to use the plans or not.

[15] Dandora and Kayole settlements are site and service schemes with prototype housing plans that predominantly provide for development of multistorey single room tenements.

Figure: 5.4 showing the location and a typical structure in Embakasi Jua Kali study settlement



Source: Author's Compilation from Existing Maps (2010)

Officials of Embakasi Jua Kali Association, assisted by the surveyor, allocated parcels of land to registered members of the Association. The youth leaders were also allocated a parcel each. The youths were expected to safeguard the community from evictions by the genuine landowners (the genuine land owners in this case were mainly those who had been allocated by the Government through Kenya Airports Authority. However, the Provincial Administration officials allocated themselves more parcels of land, which they later sold to individuals who were non-members of the Association. However, they became members upon buying land within the settlement. Each person paid a membership fee and became a member of the Association (personal communications with an official of Embakasi Jua Kali Association, 2006/7).

In addition to Embakasi Jua Kali Association, there was a group called the Salon Self-Help Group. The members of Salon Self-Help Group claim to have occupied the land long before Embakasi Jua Kali Association. Thus the settlement of members of Embakasi Jua Kali Association on the land led to intermittent small conflicts between the members of the two organisations. However, this did not develop into a major conflict. This was largely because

Embakasi Jua Kali Association had more members, was better organised and had the support of both the Provincial Administration and politicians from the constituency (Personal Communications with officials of the two groups and youth, 2007).

Despite the successful forceful acquisition of the land, officials of Embakasi Jua Kali Association had fears that they may be evicted from the land soon after the 1992 elections. The fear made them work overtime to ensure that they permanently occupied the land. It meant that they had to devise creative ways of resisting evictions from the land. Thus the group organized themselves into a force with networks with high-ranking party and government officials. As a result, the group was able to have some degree of certainty, thus officials of the Association were able to sell the extra parcels of land to non-members, thereby swelling the number of members to over 600. In addition, through bribery, the Association officials were always informed of any planned evictions and planned their responses accordingly.

It is even more interesting that the group obtained a letter of allotment through bribery from Nairobi City Council giving them permanent status rather than merely temporary rights. This meant that any attempt to evict them would have to go through the court, as they could claim legal rights to the land based on the letter of allotment. However, further attempts of the officials of the Association to have their land occupation and subdivision regularised did not yield positive results as there appeared to have been a conflict between Nairobi City Council and Kenya Airports Authority as to which organisation could allocate the land.

The Association, borrowing from the practices and principles of cooperative movement and land buying companies (see Chapter two for more information cooperative movement and land buying companies), issued every plot owner with a share certificate. The share certificate contains an individual's name, plot number and size. The Association also maintained a register containing the same information. The register is maintained and kept by the Chairman of the Association. In case one wants to transfer his or her parcel(s) of land, a member must pay a fee of about US$300 (i.e., Kshs 2000/=) as consent fees. This ensures that the register is regularly updated.

The register is well-maintained and reflects, to a large extent, the true position of property ownership within the settlement. This is because it maintains a record of every transaction on the land parcels. However, it does not contain information on the sale figures (that is the amount at which land is sold).

The share certificate, although informal, provides purchasers with a document, which can be used for transactions.

Embakasi Jua Kali today is a well-established settlement where many families and businesses have settled. The youth[16] indicated during a FGD session that in the initial period there was reluctance to develop land but once the Association's leadership began to develop its parcels of land, many others followed suit and it was as if there was competition among the people. The development has been largely for rental units [17]with landlords occupying a room or two within the tenements. This, however, should not be construed to mean that there are no absentee landlords as in other settlements within Nairobi. In the context of rampant land grabbing from 1990s, those who left their plots undeveloped were surprised to find them already developed by others and their attempts to reclaim them have been unsuccessful.

Interestingly, several years after the forceful invasion of the land by the poor landless, today Embakasi Jua Kali resembles a middle-income residential development like Umoja Inner Core[18]. It is comprised of high-rise tenements with a large population[19] of both self-employed and workers in the private and public sectors. There are new challenges emerging from the settlements as the land increasingly becomes scarce. This is contributing to new cases of land conflicts in the settlement. It is the increasing demand and the success of the development of this settlement that in part led to the subsequent invasions of Tassia and Pipeline.

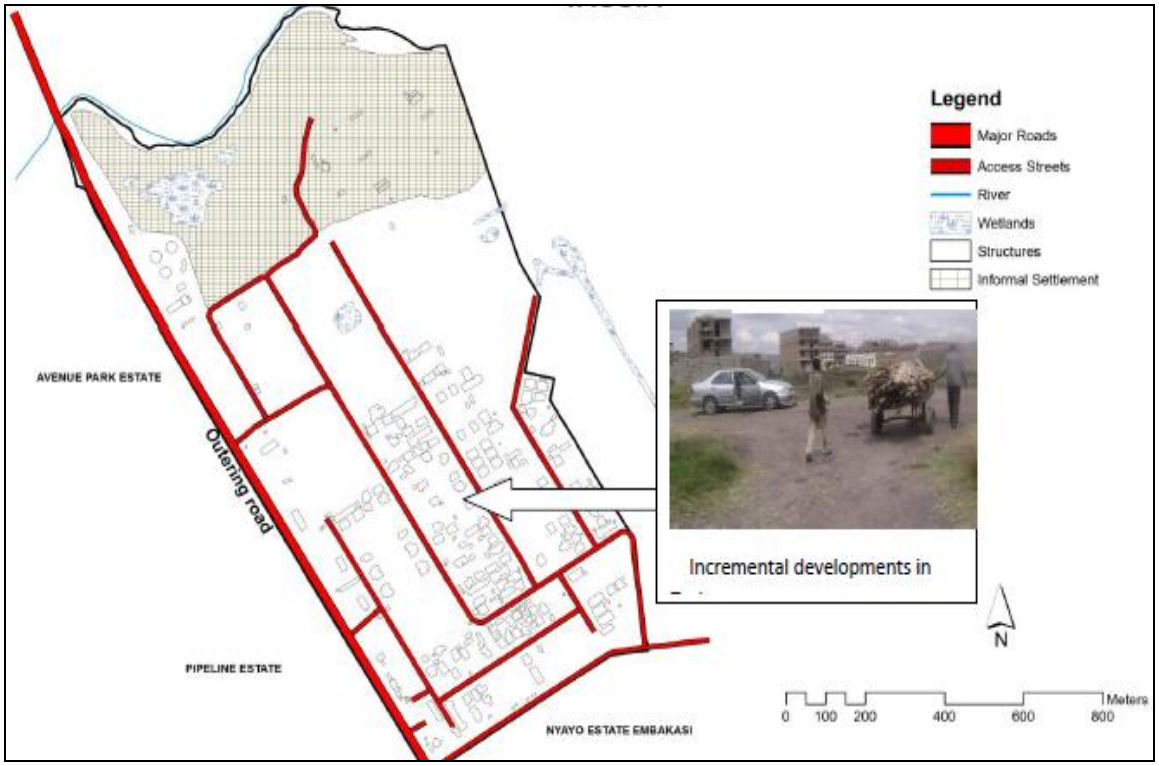
Case study 2: Tassia

Tassia is located north of the Airport and east of Outer Ring road; it is separated from New Green Fields Estate by the Ngong River. On the Northern side it neighbours Fedha Estate, while it is also neighbours Nyayo Embakasi Estate and is bounded by Kayole–Jua Kali access road on the Eastern side. The total land area was about 1 000 acres and had been subdivided into about 4 000 plots by the National Social Security Fund for commercial, residential and public (schools, religious and open

[16] Youth in this case refers to gangs of young men used for security reasons in the settlements.
[17] It should be noted that officials of the Association sold some parcels of land and used the proceeds to develop the rental units
[18] Umoja Inner Core was developed to accommodate the lower middle-income groups on serviced sites but these have since been developed into to high rise middle income tenements. For details see Huchzermeyer (2007).
[19] It should, however, be noted that the precise population of the settlement has not been obtained.

spaces) use. Access to the settlement is mainly via Outer Ring Road. It shares the entry with Fedha Estate. The residents walk long distances to access public transport, making it less attractive to tenants who use public means of transport.

Figure 5.5: Depicting Tassia Settlement and the nature of development



Source: Author's Construction Adopted from Existing maps, (2007).

The study settlement is part of the larger Tassia, which was originally a ranch belonging to a colonial farmer. Upon independence the land along with other neighbouring properties were acquired by one of President Kenyatta's relatives (Key Informant Interviews with an official from the Ministry of Lands, August, 2007). The land was later in the 1990s sold to the National Social Security Fund through KANU. Unfortunately, the National Social Security Fund was unable to develop the parcels of land because their funds were held in non-performing accounts in performing investment portfolios. They therefore subdivided the land into 0.1 hectare parcels of land that were planned for commercial and residential developments. The aim was to sell the parcels and the National Social Security Fund was only able to sell those fronting the main Outer Ring Road before the inner parcels were forcefully occupied by the four different groups.

The four groups that forcefully occupied the land included members of Kwa Ndege Self-Help, a group of Somali ruling party (KANU) operatives in East lands, a group of Masai cattle herders who had used the land since 1995 as a grazing ground and had established a Manyatta[20] within the settlement, and a splinter of the original Embakasi Jua Kali Association, called Mama's, group[21] led by a woman. These groups had separately been planning how to forcefully occupy the land and it appears that they were spying on each other.

The invasion of the land was planned to coincide with the December 2002 elections and, indeed, the land was invaded in 2002. The invasion was planned to coincide with the election year because politicians would tolerate it. The leaders of each group organised the youths to invade the land. Each one of the four groups tried to outdo each other to occupy a larger portion. This resulted in fighting between the hired youths of each group. A youth leader remarked:

> "The fight was very vicious, someone died, and others were seriously injured. We are lucky to have survived unscathed. Some of our friends were badly injured and can no longer work anymore" (Personal Communications with a youth leader, 2007). The youth was later to add that, "in the end our leaders went for a meeting and agreed that we remain in our positions".

Although the four groups agreed to maintain their positions following the meeting between them and the District Officer (Provincial Administration), the area still remained tense. The cease-fire meeting reportedly agreed that the movements of the youths were to be restricted to the portions of land they had secured. This arrangement seems to have favoured Kwa Ndege Self-Help Group as it took about two thirds of the land. It also emerged from the discussions that members of Kwa Ndege Jua Kali Self-Help Group were the most organised and recruited more youths from different ethnic groups, which helped them secure a larger portion than the other groups.

The National Social Security Fund, the legal proprietor of the land, with support from the Ministry of Lands and Settlements, Local Government and Nairobi City Council, negotiated with the groups and took over transactions on the land. The negotiations involved Ministry of Lands and Settlement, Nairobi City Council, the Provincial Administration and the National Social Security Fund on the one side and representatives of the different groups who had forcefully occupied the land on the other side. Finally, as a form of official regularization, it was agreed that the land be paid for by the occupants at

[20] Manyatta is a traditional Masai settlement or village usually found in the rural areas.
[21] Mama's Group refers to a splinter group of Embakasi Jua Kali Association; the other splinter group is called Wanandege Self-Help Group.

market price, thus it had to be valued, be replanned to meet the basic standards, and payment for the land be made by monthly installments for a period of one year.

In addition, the monthly payments for the plots were to be collected by the Chairman of Kwa Ndege Self-Help Group and Embakasi Jua Kali Association on behalf of National Social Security Fund. The buyers were further given a three months grace period before they had to start paying for the land. On the other hand, National Social Security Fund in liaison with different utility provision institutions was tasked with developing roads, sewer lines and providing electricity with assistance of the Kenya Power and Lighting Corporation.

It is evident that through high level political intrigue and coercion the groups that occupied land belonging to the National Social Security Fund were forced by the various Government bodies (lands department, city council and the provincial administration) to accede that they did not own the land. This allowed for the search for a solution in which they remain stakeholders in the development. A compromise was reached where individuals retained their parcels of land but had to pay for the land at market price to the National Social Security Fund.

The forceful occupation and development of the settlement started in earnest just as the 2002 election was approaching. The invaders subdivided the land into parcels measuring between 100 and 180 square metres. The surveyor that had been used in Embakasi Jua Kali undertook the subdivision of plots in Tassia as well. The development that followed has been controlled due to the involvement of the National Social Security Fund, Nairobi City Council and Ministry of Lands and Settlements. The site is, however, more densely developed than had been originally planned for by the National Social Security Fund which had envisaged one dwelling house per every 0.25 acres (0.1hectares). The subdivision by the forceful occupants led to the original plot size being subdivided into 4 subunits and most plots being developed into two family units. There are more plots in Tassia developed specifically for owner occupation than in the other case study settlements.

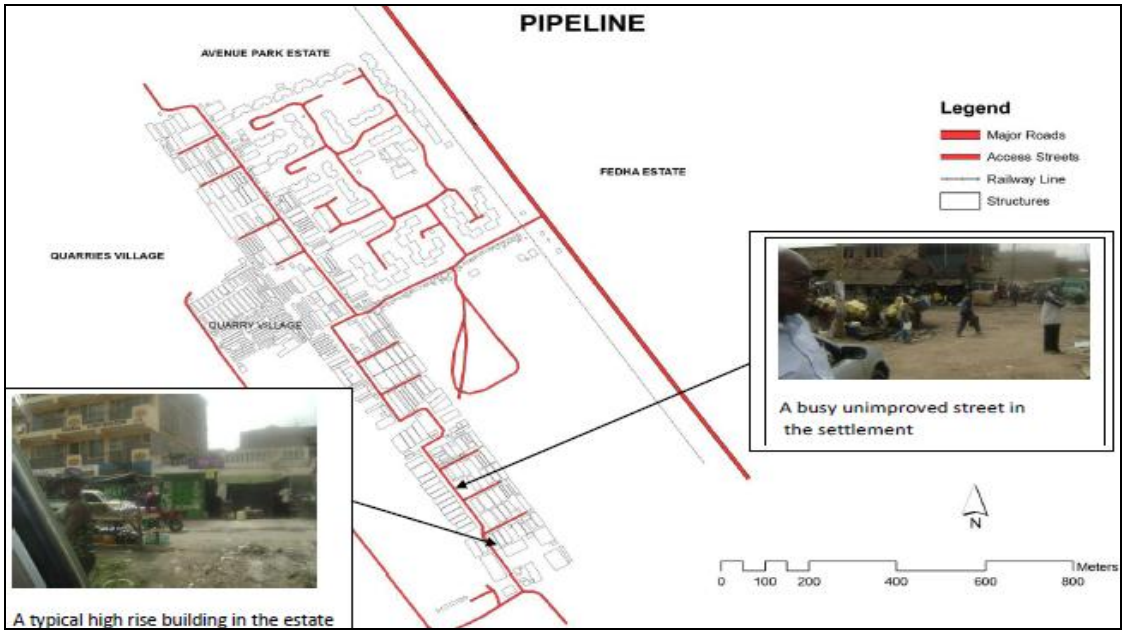
Tassia settlement is today developing into a suburban residential settlement with various facilities and services. The developments in the settlement are of superior quality to the tenements in Embakasi Jua Kali, Mathare and Pipeline. There is, however, likely to be lack of adequate public utilities such as schools and health. This is likely to be a major problem in the future.

Case study 3: Pipeline

Pipeline is larger and older than Embakasi Jua Kali and Tassia settlements. It compares well with Mathare North in terms of age and population. However, the area under investigation refers to a more recent development and particularly to land that is legally owned by Dr. Manu Chandaria, an industrialist of repute, with long standing involvement in Kenya's industrial sector development. It is reported that he bought the land around 1996 through the National Bank of Kenya in a private treaty when the bank had to foreclose due to a non-performing loan by the initial proprietor of the land.

The settlement is located along Airport North Road and about 100 metres from the Nakumatt Supermarket. The area in which Pipeline is located is generally called AA, borrowing from the Automobile Association, which has its headquarters located in the area. Thus the portion under study could be called "Pipeline – AA". The portion of the land stretching towards the quarry is mainly built up with temporary structures and has been in existence for many years.

Figure 5.6 showing location and typical development in Pipeline settlement study



Source: Author's Compilation from Existing Maps (2007).

The Government, under unclear circumstances, stopped registration of the transaction on the land. In the process, the investor was left stranded with documents, which the bank had surrendered to him upon purchase of the land. It is during this period early 1997 that a group of KANU supporters, comprised largely of Kamba[22] and Somali, invaded the land. The group seems to have known that there was no clear ownership and therefore it would be difficult to evict them from the land, as nobody could rightfully claim ownership of the land at that time.

1997 was again an election year. President Moi and the ruling party (KANU) needed support once again to win the elections and would not allow evictions of those who had forcefully occupied land, particularly in Nairobi which was viewed as largely supporting the opposition. The leaders of the groups had strong connections with the party leadership in addition to the Provincial Administration. The group, having learnt (lessons) from forceful occupations in Embakasi Jua Kali and Tassia, subdivided the land with the help of an unregistered surveyor. The group that invaded the land was, unlike the others, unregistered as a self-help group and instead retained a lawyer to deal with ownership issues that were to emerge.

[22] The Kamba and Somali are ethnic groups in Kenya, the Kamba predominantly live in Eastern Province, while the Somali are predominantly settled in North Eastern province.

The subdivided plots were then allocated to individual members of the group and the youth who had assisted in the forceful occupation of the land. It was after the allocation to members and the youth that officials of the group began to sell the balance of the land to non-members. The land was invaded concurrently with neighbouring land belonging to the Uchumi Supermarket. However the Supermarket resisted the invasion of their land and only allowed occupants who paid for the land at the agreed market price to remain on the land. It is during this period that the group of land invaders engaged the services of a firm of lawyers to help them in the negotiations. At the time of my fieldwork in 2006/7 the law firm was involved in negotiations with Dr. Chandaria over his parcel of land on behalf of the occupants.

The developments on the land, as can be seen in Figure 5.4 above, are mainly multistorey rental residential tenements. The structures are of high quality, targeted at middle class tenants, indicating that the developers had the confidence to spend large sums of money. However, there are also temporary structures on the land. These are gradually being replaced with permanent multistorey structures. In the process the holders are being displaced as those with more resources take over the parcels of land for development purposes.

Case study 4: Mathare North

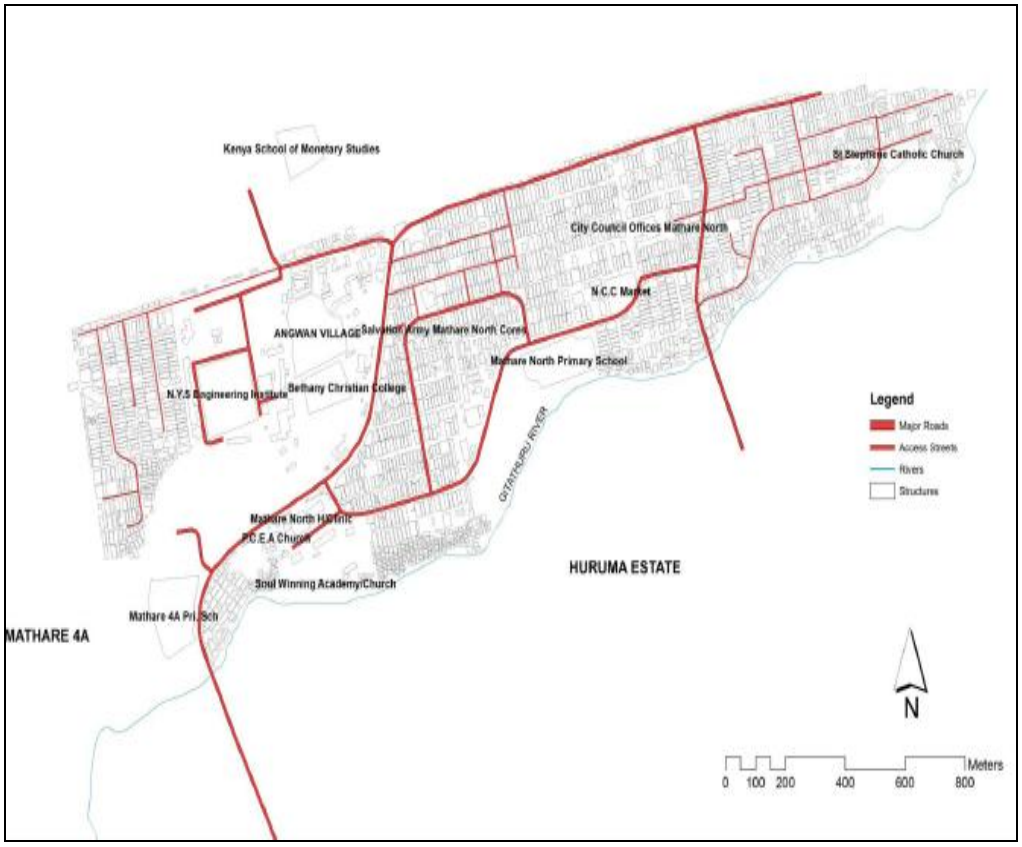
Mathare Valley is located in Kasarani division of Nairobi. It is bounded by Thika road on the southern side, Outer Ring road on the eastern side and Kenya School of Monetary Studies and Huruma on the southern side, beyond Mathare River (which appears as Gitathuru river in some maps). People from various ethnic groups, mainly tenants but also landlords, currently occupy the settlement. Mathare North consists of mainly residential buildings and buildings of mixed and commercial developments. It is easily accessible from the city centre by public transport till late hours, making it more attractive to younger tenants.

Mathare North has a long history dating back to the 1970s when the area currently occupied by the settlement was a quarry belonging to one de'Souza[23]. It was bought by Nairobi City Council around

[23]de'Souza was a white man who remained in Kenya after independence. He was popular with Africans because of his generosity. As such he was named Baba Dogo (small father) which is a street near Mathare North which has been named after him. There are many urban myths about his generosity.

1976. It was planned and allocated as a site and service scheme between 1978 and 1982. The allocations were undertaken around 1978 and continued into the 1980s with City Council staff playing a pivotal role in the processing of applications, short-listing of applicants and recommending qualified applicants to the allocation committees.

Figure 5.7 showing location of Mathare North study settlement



Source: Author's Compilation from Existing Maps (2007).

Local leaders that included councillors and provincial administration or the so-called chiefs in the Provincial Administration, undertook community mobilisation to assist in identification of squatters between 1977 and 1978 who would be eligible for allocation of land in the settlement. The leaders distributed application forms to the identified squatters (it should be understood that Mathare had several squatter villages) upon registration with about US$ then. The people were then allocated land and given a loan equivalent of about US$1000 payable to Nairobi City Council over a period of over 20 years. Most of the initial allottees, however, sold their plots to richer people who ended up developing multistorey tenements (Key Informant Interview, 2007).

The late Andrew Ngumba, who had been the area councillor in the early 1970s and by the time the project was being implemented around 1978 was a member of parliament representing the area, was instrumental in ensuring that his supporters acquired land in the site and service scheme. The supporters were mainly from his Kikuyu ethnic group (Chege, 1978). His support for the group gave them undue advantage over other groups. He was assisted by the then Deputy Mayor (from the same ethnic group as Ngumba) who was a councillor representing a ward within the area. The Deputy Mayor thus played a major role in ensuring that their supporters were allocated plots in the scheme. The key informant, who was allocated a plot in the Ngei area, indicated that there were very few applicants from other ethnic groups. In addition, those from other communities who were allocated plots sold the land to Kikuyus. The limited number of applicants was due to the targeting of community mobilisation (Personal Communications with a tenant, 2007).

In the past years Mathare North has had intermittent conflicts between landlords and tenants, largely over rental payments and multiple plot allocations[24]. The conflicts have ended up taking ethnic overtones although they usually start as disputes related to high rents, rent payment delays and /or multiple claims on one plot. The conflicts are often further complicated by the use of militias by landlords in the events of rental disputes. It is apparent that tenants do not use militias in these conflicts. However, politicians for their own selfish reasons often intervene on behalf of their ethnic groups by mobilising youths to defend either the tenants or landlords.

Individual landlords, however, find it easy to enlist the use of ethnic militias since they are easily found in the settlement. Indeed, the interviews revealed that there are several militias operating in the settlement. The most notorious is Mungiki, who are dreaded by all, including those from the Kikuyu ethnic group from which they originate. Their presence in Mathare North attracted other ethnic militia groups such as Kamjesh and Jeshi la Mzee, who either felt duty bound to protect or were hired to protect their Luo and Luhya ethnic groups. This has led to intermittent conflicts among the different groups.

5.9 Conclusions

[24] Multiple plot allocation refers to a situation where a single plot is fraudulently allocated to more than one person. A similar situation obtains when multiple sales occur, in which case a single parcel of land is sold to more than one person thereby defrauding the buyers.

It is evident from this chapter that the planning of the City of Nairobi was conflictual from the very beginning. The 1948 master plan had great influence on development of Nairobi and had inbuilt social, economic and political aspects. In the second place, the immediate post- independence politics played a critical role in shaping the growth and development of Nairobi. Thus in place of segregation that before independence was between blacks, whites and Asians, new dimensions have emerged and they include socio-economic at the macro level, while at the micro level and particularly in the informal settlements it is ethnicity that determines settlement patterns. In addition, it is observable that the growth and development of Nairobi has lately been influenced by among other factors ethnicity, politics, economic and social factors. For instance various ethnic groups

In conclusion, this chapter set out to present social, economic and physical attributes of Nairobi and how they interact with other processes such as corruption, ethnicity, vigilantism to shape land conflicts and drive inequity in Nairobi. I will present my case study results in the next two chapters. This will be followed by cross-analysis of the results.

CHAPTER SIX

FORCEFUL LAND OCCUPATIONS: EMBAKASI JUA KALI AND PIPELINE CASE STUDY SETTLEMENTS

6.1 Introduction

This chapter presents results from Embakasi Jua Kali and Pipeline study settlements both located in Embakasi location. The two case study settlements resulted from forceful land occupations by a combination of poor landless slum dwellers and a manipulative group of political activists. The political activists in both these cases were able to secure patronage from the Provincial Administration. The ability to bribe the Provincial Administration boosted the morale of the different groups and enhanced their drive to acquire the parcels of land.

The results are presented on each settlement to ensure that unique issues on each case study settlement are not lost by integrating the results at this stage. The cases are therefore presented under broad thematic issues linked to the overall purpose, objectives and research questions as articulated in Chapter 1 of the thesis. The results highlight issues of community organisation, corruption, and ethnicity among others. In addition, political patronage ands institutional arrangements are also gleaned from the results. Attempts are made to identify how these factors contribute to inequity in access to land in the first instance and then resultant land conflicts.

In this respect, the theories of elite manipulation, structure and agency, grounded theories as well as social fields are brought to bear to help facilitate deeper understanding of the factors influencing land relations. Indeed, the grounded theory assists in explaining the emergence of forceful land occupations in Nairobi from the beginning of multi-party democracy needs to be understood against a background of social, economic and political changes and analysed with that in mind.

Similarly, institutional analysis and agency are useful in understanding the institutional responses and

adaptations leading to a careful scrutiny of various modes of access to land and how they have shaped land management and contributed to land conflicts. In the process assumptions that the interactions between land commodification and other forces such as ethnicity, corruption and politics, contribute to inequity in access to land as a result influencing land conflicts in Nairobi.

The various theories discussed in chapter three of this thesis have been useful in guiding the analysis of the field results thereby ensuring that unique features from individual case study settlements are brought to the fore. For instance, the relationship between the Provincial Administration, local political leadership and the forceful land occupation in the settlements is analysed.

6.2 From Slum Tenants to Landlords: The Case of Embakasi Jua KaliSettlement

The settlement, like other informally authorized tenement areas, provides accommodation to the increasing city population. Although better than many informal settlements in terms of access to water and other services, it nevertheless suffers from blocked sewers, water shortages and poor sanitation in several parts of the settlement. In addition, access to the settlement by public transport is further complicated by high transportation costs, making it less attractive to the very poor.

6.2.1 Socio-Economic Features of the settlement

In Embakasi Jua Kali the residents are mainly urban dwellers, who have either lived in other urban areas or in settlements in Nairobi for many years. A number, however, have recently moved to Nairobi from other urban areas. In essence, they have not been forced to settle in Embakasi Jua Kali for lack of alternative accommodation. Indeed, my interviews with residents of Embakasi Jua Kali revealed that the residents prefer the settlement because it is secure, affordable and easily accessible by public transport. It further revealed that a significant proportion of residents feel that the rents are high in comparison to the quality of the

accommodation and their levels of income. The rents at Embakasi Jua Kali settlement were at the time of study on average Kshs 2500 – 3000 (i.e., between US$36 – 43) per single room, inclusive of

electricity and water charges. Rent for a single room in a temporary structures[25] within the settlement varied between Kshs 1000/= (US$ 14) and 1400/= (US$ 20) per month, inclusive of water and electricity. On the other hand, in Umoja Inner Core rent in tenements varied between Kshs 4000/= (US$ 57) and 5000/= (US$ 71). Similarly, rent levels in Mathare North are at similar levels with Umoja Inner Core particularly in the tenements. Rents for single rooms in temporary structures within the settlement compare favorably with those of Mathare North. The rents in similar structures in Embakasi Jua Kali and Umoja Inner Core go for between Kshs 800/= (US$11) and 1400/= (US$ 20). This figure is higher on average than rents in the informal settlements which the World Bank (2006) survey revealed were on average around Kshs 600/= around Embakasi Jua Kali settlement.



Picture 1: A scene in Embakasi Jua Kali Settlement (Author's photograph, 2008).

My interview results reveal that an interesting feature of the Embakasi Jua Kali is that a significant proportion of tenants are originally from towns nearer to Nairobi that include Machakos, Muranga, Meru, and Embu, among others. A large proportion of the residents moved from other informal and /or unauthorized settlements. Tenants from nearby towns such as Machakos, Muranga and Embu occupy a room in the settlement, because they have their families in the nearby towns and join them for weekends and public holidays. In addition, the tenants preferred the area because most of them worked nearby and owing to the existence of a good public transport. My interviews with the tenants further revealed that the room is therefore used more as a dormitory for four days in a week. In

[25]Temporary structures in the settlement are mainly constructed of iron sheets walls, roofs and while the floors are either of cement sand screed or mud finish.

addition, the tenants are either employed or are engaged in small scale business. As such they are not the most poor but relatively better placed in comparison to those who live in the poorest neighborhoods.

Interviews with the landlords reveal that they selected the settlement for a number of reasons, for some it was because land within the settlement was cheap and/or available at the right time and location. There are also those who acquired land in the settlement just because they happened to have been born in the neighbouring estate. Suffice to add that when the land was forcefully occupied, members of the association needed to pay registration fees of about Kshs 2000/= only to be allocated a parcel of land. Even later, as the committee started selling extra plots, the prices were at between Kshs 20,000/= and 50,000/= only. This meant that those from nearby who were ready to take risks obtained land cheaply.

On the other hand, the landlords are not among the wealthiest in Nairobi but are within the lower middle class. However, the landlords are relatively better off than tenants who in many cases appeared younger and recently employed. This may explain why a significant number live within the settlement occupying a room or several rooms within the same block with their tenants. There are also a significant number of landlords who live in the neighbouring settlements such as Donholm, Fedha, Nyayo, Tassia and Kasarani respectively. The group of landlords that bought land from the initial occupants are the ones that live in other settlements and they developed the structures for investment purposes whereas those living in Embakasi Jua Kali acquired the land for their residences. Like the tenants, the landlords are engaged in different occupations: some as public servants, others as private sector employees and some in the civil society sector.

During the study, it emerged from the results of interviews with landlords that they had occasional meetings to discuss, among other issues, the regularization of ownership of the land, provision of services and security.. Further discussions revealed that success
of these meetings depended on the availability of the landlords which was boosted by the fact that some lived within the settlement and neighbouring areas. With the availability of services in the settlements it is evident that the presence of landlords has been beneficial to the settlement. It has led to services such as sewer and water being connected to the structures despite the settlement being illegally authorized. Tenants in the settlement therefore also enjoy better services. A unique feature in the settlement is the relationship between landlords and tenants In some settlements, including legal settlements like Mathare North, landlords were found to be unwilling to have direct contacts with the

tenants and any other persons regarding their properties other than the agents (see Huchzermeyer, 2006; 2007).

6.2.2 Forceful Land Occupation or Self-Help

The study results revealed that planning for forceful occupation of the land involved lobbying with various stakeholders, among them the local politicians and the Provincial Administration. But once this was achieved, the Chairman of the Embakasi Jua Kali Association asserted that:

> We arranged to subdivide the land for residential purposes among the members and one early Saturday morning we gathered at the venue with our youths ready for any eventuality and subdivided the land among ourselves. We had a surveyor and a list of members who were each allocated a parcel. As a committee we were allocated more parcels, which we sold, to non-members (Personal Communication with the Chairman Embakasi Jua Kali Association, July, 2007).

As members moved onto the land, they began by developing it by putting up temporary structures. However, the trend changed as officials of the Association sold more land to non-members. This enabled the officials to interact more with the staff of the Provincial Administration, local politicians and officials of the Nairobi City Council. With these interactions, the Embakasi Jua Kali Association officials gained more confidence and instead of developing the temporary structures started developing permanent structures on their parcels of land. The leadership of Embakasi Jua Kali Association adopted plans similar to the ones found in Kayole, Huruma and Mathare North – largely about 6 single rooms per floor provided with common toilets, bathrooms and a washing area at the extreme end. It is these types of structures that Huchzermeyer (2006, 2007) refers to as tenements.

The transition from temporary structures changed things as it attracted more people and as the Chairman of Embakasi Jua Kali Association remarked:

> The place turned into a massive construction site. People were competing to build, nobody wanted to be left behind. There were, however, fears of demolition of the structures, as the plans were not approved by the City Council. But we went on to build (Personal Communications with Chairman, Embakasi Jua Kali Association, July, 2007).

The construction of permanent structures led to increased demand for the land as well as an increase in land values. In the process, officials of the Association (Embakasi Jua Kali Association) became even

more popular, well sought after by the public and political class as well as Provincial Administration. The Chairman of the Association further proudly explained that due to their good work, they even ended up becoming part of the Divisional Development Committee[26] and were occasionally asked to participate in fund raising activities organized by the Provincial Administration and local politicians.

My field work results further indicate that there were several attempts by those who were initially allocated land by the government and later by Kenya Airports Authority to reclaim their parcels of land from the groups that had forcefully occupied them, that is, Embakasi Jua Kali Association and Salon Welfare Group. In this endeavor, they sought support of the Provincial Administration and Nairobi City Council officials in vain.



Picture 2: A typical commercial cum residential structure in the study settlements (this picture was taken in Pipeline along the main road)

In frustration an owner of a parcel of land to which he had even obtained a title from the government but which had since been forcefully occupied, subdivided into several plots and developed by different people, remarked:

[26] Divisional Development Committees are part of planning structures that deal with local needs and may recommend allocation of land within the local area if it is considered appropriate for local area development. The membership is comprised of public servants, elected leaders and community representatives. Members are therefore generally influential at the local level.

> I see no point pursuing this case for now because attempts to access the land have been viciously fought. I think the group here is working in cahoots with some public officials. This is because every move we make is thwarted and the security is no longer useful. Perhaps we should wait and go to court at a later date, when a proper government is in power (Personal Communication with a former land owner, 2007).

The respondent went on to add:

> I believe there should be a solution to this, so that these individuals can be made to pay for the land ensuring that genuine owners do not completely lose out as it appears likely (Personal Communication with a former land owner, 2007).

Given that the interviewee in this case was a Registered and Practicing Land Surveyor, he must have been aware of the various options that could ensure that those who forcefully occupied their land could be coerced into paying for the land. However, no such action had been forthcoming. This is due to the diverse interests and connections of the groups that now owned the parcels of land.

6.2.3 The Role of Community Based Organisations in Forceful Land Acquisitions

Community organizations remain critical in the mobilization of communities in the achievement of communal goals. In Embakasi Jua Kali two major groups evolved to forcefully lay claim to private and public parcels of land in the area that is today called Embakasi Jua Kali settlement. Neither of the parcels of land in the area was developed then.

Embakasi Jua Kali Association was started for the express purpose of mobilizing the local community from the then sprawling Jua Kali Slums, it remains a settlement within Embakasi Village. It grew on an open space within the settlement within Embakasi Village. It is here that original members of Embakasi Jua Kali Association lived and undertook their business activities.

Although the Chairman of Salon Welfare and its members were reluctant to divulge information on the origins and aims of the organisation, like Embakasi Artisans, Jua Kali Association was formed with the aim of acquiring the land for a community. The community organisations in the settlement were formed for the purpose mobilizing the community towards acquisition of the land.

In this respect they were effective as they were able to mobilize individuals from different ethnic groups. This helped secure the land for the members. It can be argued that the success was due to the fact that there was a common purpose as each one stood to gain. The communities living in the settlement are today organized along various forms of organisations and groupings.

Embakasi Jua Kali Settlement residents are from diverse ethnic, political and religious backgrounds. As such the residents are organized into different groups and associations. The associations may be related to their places of origin, ethnicity, employment and professions. However, these community groupings are not specific to the settlement. This is in contrast to settlement specific groupings such as the youth groups, whose main concerns are mobilisation of

youths for entrepreneurial oriented activities to address the problem of unemployment.

But there are also community organisations in the settlement that deal with the land question, religion, and improvement of the settlement. The religious groupings include the Presbyterian Church of East Africa (PCEA) and other *ad hoc* religious groupings belonging to different evangelical persuasions. The Chairman and other officials of the Embakasi Jua Kali Association were members of one of these evangelical groupings. The PCEA, unlike the two main groups that forcefully occupied land in the settlement, was allocated land by the Government within the settlement. However, it has been in conflict for over a decade with a lady who forcefully occupied a portion of this land. A former (late) Member of Parliament for the area apparently allocated the lady a portion of land, over which the church has claims (Personal communication with a youth group member, July, 2007). This conflict over ownership, as is usually the case, involves politicians and remains unresolved.

In addition, there are two community groups within the settlement concerned with security and another concerned with improvement and/or development of the settlement. The settlement thus has committees established through the local Provincial Administration, largely comprised of landlords. The main aim is to oversee issues relating to administration within the settlement and to report periodically on the same to the Chief (Provincial Administration). On the other hand, the landlords started a committee between 1998 and 2000 to lobby and push for the provision of services from the Nairobi City Council and other service providers to the settlement.

The main community organisations in the settlement that have been instrumental in shaping the land relationships in the settlement remain Salon Welfare Group and Embakasi Jua Kali Association. My interview results revealed that Salon Welfare members were the first people to occupy the land. They claim to have bought the parcels from an agent who promised that titles to the land would be issued at a later date. The group had occupied a portion of the land close to Embakasi Village Estate that was predominantly occupied by staff from Nairobi City Council and Kenya Airports Authority. Members of this group had put up a few temporary structures for their members who numbered about 30.

However, when members of Embakasi Jua Kali Association invaded the land in 1992, they did not appreciate the presence of the Salon Welfare group. This led to tensions and a few skirmishes between the two groups. However the Salon Welfare group were outnumbered and consequently resorted to negotiations with the officials of Embakasi Jua Kali Association to allow them to at least have access to their plots. This was granted, though grudgingly. The suspicion and tensions between the two therefore still continues to exist. Currently, this is further complicated by Salon Welfare's insistence on maintaining a distinct identity from the rest of the groups. The chairman of the group therefore remarked:

> We bought our land as a group from an Agent, who had advertised the land for sale in the newspapers. We are not like those fellows (referring to Embakasi Jua Kali Association) who forcefully invaded the land belonging to others (Personal Communication with the Chairman Salon Welfare Group, 2007).

In addition, Salon Welfare Group had been allocated land by the staff of Provincial Administration, contrary to their claims that they bought the land. Indeed, the interviews with Salon Welfare officials revealed that they were, however, unwilling to give detailed accounts on their origins and why they chose to buy land in the area. This makes their arguments of being cheated by land selling agents hard to believe. It is in, fact, argued that they were disorganized and had reneged on the conditions of the allocation. Indeed, the respondents further stated that;

> Allocation of land to Embakasi Jua Kali Association in the area was in part due to the failure of Salon Welfare Group to meet the expectations of the Provincial Administration staff. (Personal communication with an official of Embakasi Jua Kali Association, July, 2007).

Thus a section of the officials of Embakasi Jua Kali Association claimed that they would have been thrown out of the site altogether had they not been considerate. It is therefore difficult to establish the true position on the matter. It is instructive, however, that members of Salon Welfare confirmed their collection of funds to file a case against the estate agent who they claimed had sold the land to them. In the meantime, officials of Embakasi Jua Kali Association have been keen on having their ownership of the land regularized. The struggle for the pieces of land therefore continues. However, in summary, the main causes of land conflicts in the settlement are fraud, ignorance, corruption, ethnicity, evictions and displacements, among others.

6.2.4 Inequity in access to land

The results of my interviews with the respondents in Embakasi Jua Kali revealed that, access to the land in the settlement was through membership of an association, either Salon Welfare Group or Embakasi Jua Kali Association. On the surface, my field results further reveal, membership was open to all. However, in reality it was restricted to those able to pay approximately Kshs 2,000/= in addition to having a respected referee to introduce one to officials of Embakasi Jua Kali Association. These conditions were in many cases beyond the reach of the many poorer individuals. Those who needed land and were poor were denied access due to these conditions that made access inequitable.

A number of people were also denied access to the land because of their ethnic backgrounds, as ethnic networks was one of the ways individuals connected with each other. Therefore, those who did not have a member of their ethnic group or community in the initial committee found it difficult to join the group. Indeed, a discussion with a land lady within the settlement pointed out that the ethnic groups that were initially denied access included the Luhya and Gusii since they were not represented in the committee. It is in this sense that ethnicity played a role in denying initial access to the needy.

It is evident that there exists a strong perception that independence regimes in Kenya have been unable to appreciate the role of land in national development and cohesion. As such they have been concerned more with satisfying sectarian ethnic interests[27]. This is argued to have led to initiation of land resettlement programmes that have benefited one ethnic group at the expense of the rest. This planted

[27] Sectarian ethnic interests in this case refer to complaints that Kenya's first President's interest in land was only geared towards resettlement of his Kikuyu ethnic group and ethnic cronies (Kikuyu elites) who used the state to enrich themselves and access its resources at the expense of others. Mamdani (1996) sets out this tendency of land allocation by and to ethnic elites in African countries from the colonial period.

the seed for continued inequity in access to land – only replacing white with the tribe in power (Karirah, 1987).

In the early stages of the development of Embakasi Jua Kali settlement there was no obvious evidence of inequities in access to land. However, as time progressed several factors combined to ensure that some groups were excluded from the land acquisition process due to their ethnic backgrounds, inability to meet the financial requirements and through outright fraud. Thus several people lost their money even after applying to be members, thereby losing the opportunity to be allocated land in the settlement.

i) Knowledge on Land Acquisition Processes

In the initial phases of the settlements forceful land occupation were central to accessing land for all the groups. However, as the process evolved with several mediating forces[28] emerging, access to land in the settlement dramatically changed to market oriented approaches. Market oriented land delivery processes are, however, unfavorable to most of the people residing in the settlement. This is because they are mainly poor low-income earners and therefore unable to effectively participate in the market oriented land delivery processes. As illustrated by the advertisements posted on walls as well as boards attached to specific sites for sale, it is evident that the land market is active in the settlement. For these reasons, it is not surprising that most of the tenants interviewed claimed to have knowledge on how land is accessed. The interest in knowing how land is accessed in the settlement was mainly due to the conflicts over ownership in the settlement.

Access to land in the settlement is determined by prevailing local conditions. For instance, access to property in the settlement for rental or purchase is undertaken through estate agents. A significant percentage of the respondents do not have knowledge of how land is accessed in the settlement, more so the tenants. The land transactions are largely undertaken using estate agents since it is demanding and requires specialized knowledge of the processes on the ground, something most landlords do not have. In addition, emerging from discussions with respondents is the fact that in situations where land

[28] The mediating forces are often difficult to isolate but include the three forces of logic – capital; social and political (Yiftachel, 2006).

is brought to the market for sale through agents, ethnic considerations are minimised. Since the estate agent's[29] objective remain to sell within the shortest period so as to earn their commissions.

In the settlement, documentation of land transactions is undertaken through the use of sale agreements and share certificates. In both cases the sale transfers are witnessed either by a lawyer or the Chief's office (Provincial Administration). The local 'Chief' witnesses most of the sale agreements. The details are then recorded in the settlement register, which is maintained by the Association. Embakasi Jua Kali Association, however, charges fees for confirmation of records of ownership to both the sellers and buyers. The payment of fees to the Association automatically makes one a member of the group. In most of the transactions both the sellers and the buyers are taken care of by the estate agent who makes payment on their behalf.

Land transactions in the settlement come about in two ways. They are either facilitated through the market (often witnessed and arranged by an estate agent) or through the CBO (Embakasi Jua Kali Association). Transactions over land in the settlement were active between 1990 and 2005 with a peak period being 1997(this emerged from the interview results with landlords). This was due to a rise in demand for land in the settlement as a result of increasing construction within the settlement. Many small scale investors in low-income structures were attracted to the settlement since there was no immediate place nearby where they could purchase land.

ii) Ethnicity and land conflicts

The issue of land conflicts and inequity brings into focus the issues of ethnicity, power and political patronage. These have been present in Kenya for many years and have been perfected by the top leadership, starting with the late President Kenyatta who, as Karimi and Ochieng (2008) indicate, favoured his ethnic group and more specifically a limited group that were named the Family[30]. Ethnicity, because of its influence on human interactions, has been a subject of many investigations due to its contribution to corruption, conflicts and access to resources. As I have pointed out in

[29] An Agent in this case refers to an estate agent involved in property management, which includes rent collection and land sales as opposed to caretakers who are work within building as representatives to landlords and also collect rent. Caretakers are paid wages or provided with accommodation whereas estate agents are paid commissions as per Estate Agents Act Cap 534.

[30]The 'Family', as Karimi and Ochieng (2008:2) explain, extends beyond the immediate family but included a group of people with extended relationships with the President.

chapter two of this thesis, Osamba's (2000) argument on the role of ethnicity and conflicts in relation to resources is appropriate in this case. Similarly, Adetula's (2005) discussion of ethnicity with respect to corruption and conflicts in the city of Jos in Nigeria further reinforces and helps explain the results emanating from the case study.

In Embakasi Jua Kali there were perceptions that individuals from the same ethnic group as that of the leaders in the CBO that forcefully occupied the land benefited from the land allocation more so than those whose ethnic groups which were not represented in the leadership of the group. However, the leadership of the main organisation, that is Embakasi Jua Kali Association, cut across different ethnic groups, including Kikuyu, Luo, and Kamba. This meant that in the initial phases of the settlement, ethnicity was not a major issue.

Salon Welfare Group, however, was predominantly Kikuyu in both leadership and membership. This appears to have been a major limitation of the group when it came to mobilising and recruiting more members. The group therefore could not enjoy the benefits of large numbers but inadvertently benefited from the actions of members of Embakasi Jua Kali Association who were able to organise youths during the initial phases of the development. This ensured that landowners were unable to evict occupants from the land, including the Salon Welfare group occupants.

As the settlement grew with permanent structures being developed all over and more people settling, vacant land became scarcer within the settlement and ethnicity became central influencing land transactions as individuals used it as a basis for selecting who to sell land to. It is evident from discussions with respondents that land for sale was not advertised, with more reliance on word of mouth. Thus individual owners found it easy to reach their ethnic groups. This gained prominence after the land was secured and people felt confident about ownership of the land parcels. It is at this stage that ethnicity became a critical tool in land transactions within the settlement.

Discussions with a group of artisans operating a business within the settlement, some of who double up as local estate agents, intimated that individuals not using estate agents tend to sell to their tribesmen due to inadequate networks across the ethnic groups and lack of trust between the various groups.

As demand for land in the settlement intensified, it became apparent that even brokers[31] began to sell land largely to people from their own ethnic groups. This trend, it was argued, led some ethnic groups to acquire more parcels of land within the settlement. In the process particular ethnic groups dominated ownership of land within the settlement, hence leading to rising tensions due to ethnic polarisation.

The situation is worsened by the perception that dominant ethnic groups that included Kikuyu and Luo encroach on land belonging to other ethnic groups as well as enjoying better treatment from the local administration. These perceptions and feelings fuel conflicts over land. This is enhanced by the belief that the dominant ethnic groups in the settlement terrorises the ethnic minorities within the settlements. Therefore the relationships within the settlement have been affected by the prevailing mistrust and suspicions among the various ethnic groups. This situation was more serious around 1999 when land conflicts in the settlement led to the death of one person.

Further discussions with a landlord in the settlement indicated that selling land to one's tribesman was occurring due to the ease with which people trusted their tribesmen, which was attributed to common language, values and networks. Indeed, a key informant argued that this contributed to officials mobilising their tribesmen to participate in the land invasion in the first place, thereby giving them the upper hand in accessing the same.

In conclusion, ethnicity has been playing a critical role in land transactions in the settlement and to some extent contributed to conflicts within the settlement. This is because the main conflict has been between original landowners and occupiers of the land. The conflict appears to be more of a class struggle. It transcends ethnic considerations, although ethnicity has been partly used to mobilise support.

6.2.5 Searching for Patronage or Genuine Land Allocations

[31] Land brokers specifically deal with land transactions, whereas estate agents would be managing tenants as well as sell properties they are however in a similar fashion.

Kenya Airports Authority [32] was until 1990 the owner of the land on which today stands Embakasi Jua Kali settlement. The land was meant for future expansion and use by the organisation. However, the administration of Kenya Airports Authority in 1991 corruptly requested the Commissioner of Lands to facilitate the planning and subsequent allocation [33]of the land to a group of six individuals and institutions. The Commissioner of Lands obliged, but the land was planned for allocation for residential purposes and more than ten plots of varying sizes had been allocated to people, some of whom did not even know that they were allocated land in the area.

One of the allottees was a member of the Presidential Press Service team. He was allocated the land but was not informed. A number of people who were allocated land in the scheme. However, owing to their positions within the different departments they were not keen to get involved in disputes over the land. This was for fear of the publicity it was likely to attract. Both staff of the Provincial Administration and officials of Embakasi Jua Kali Association were aware of this.

According to my respondents among staff from the Ministry of Lands and Settlements, Nairobi City Council and an allottee of Kenya Airports Authority, the forceful occupation of the land in 1992 was due to the failure to allocate a senior member of the Provincial Administration land in the area. They added that it was because of this that the Provincial Administration organized the artisans and youths[34] to invade and subdivide the land among their membership. One of the respondents indicated that an official from the Provincial Administration had approached Kenya Airports Authority to be included in the list of those to be allocated land but this was in vain. Respondents argued that this was because there was a feeling that the proposed allottees were well-connected to the powerful in government who were able to provide the political patronage needed for the allocation to go through unchallenged in Government departments.

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[32] Kenya Airports Authority is a parastatal in charge of management of the country's airports, airfields and related facilities.

[33] The Commissioner of Lands, according to the existing laws, is the only person empowered to allocate public land on behalf of the President. It is for this reason that Kenya Airports Authority asked the Commissioner to plan and allocate the land on behalf to the various individuals.

[34] There is a distinction between the youth and militias as used in this thesis. Youth refers to innocent young men and women not known for any criminal activities and who were recruited by leaders of the groups that forcefully occupied land with a promise of a reward either monetary or in the form of a parcel of land. On the other hand militias refer to a group young men and women whose way of living is of a criminal nature, at times being hired to do kill on behalf of their tribesmen and often committing such crimes as robbery and rape. The motivating factor is often unclear.

In addition, given that the land allocations were done under unclear circumstances, most of the allottees, that happened to be public servants, could not follow up on the land after the forceful occupation for fear of the publicity it was likely to attract. At the same time, some of the allottees, particularly those who had processed their titles, had used the same to secure bank loans. It is this group that continuously attempted unsuccessfully to have the groups evicted from the land.

6.2.6 The Role of Youth in Forceful Land Occupation

The youths have from the beginning played a critical role in the settlement by ensuring that individual land owners do not evict those who had forcefully occupied their parcels of land. The youth have been diverse ethnic groups and were used during the forceful occupation of the land and later as security for the settlement. In a focus group discussion with the youth in 2007, it emerged that they have no ethnic biases and displayed general surprise at the happenings within the settlement. Most of the youths were relatives of the forceful occupants of the land and were therefore protecting a place they now saw as their homes.

However, by the time of the field study most of the youth interviewed were already having misgivings with the way the settlement was being managed. In particular they were not impressed by the power abuses and display by the committee. Indeed, during the focus group discussions they pointed out the impunity with which the Chairman of Embakasi Jua Kali Association and settlement committee appointed by the local Chief were able to exert draconian authority over the residents. Interestingly, this is undertaken with the assistance of a section of the youth. The respondent youths, however, denied being part of the group.

Interviews with a carpenter in the neighbour confirmed that youths are willing to undertake the dirty jobs for several reasons – payment and at times being rewarded with a plot. In any case, most of the

youth in the settlement are jobless with secondary school education and no other training. They are easily accessible from the "jobless corners"[35] they have designated within the settlement.

It is clear from my interviews with the youth that their involvement in land conflicts and other activities within the settlement were not influenced by their ethnic backgrounds. Thus, although ethnicity was initially critical in influencing access to land in the settlement, it nevertheless had no influence on the youth. Thus the youth appeared focussed on overcoming problems of unemployment and injustice given their perceptions on the local administration.

6.2.7 Institutional Questions

i) Provincial Administration and the local development committees

The changing role of the Provincial Administration notwithstanding, this is one of the bureaucracies that remained a strong and influential wing of the state until the adoption of the new Constitution in 2010 which is expected to radically transform it (Government of Kenya, 2010). The anticipated transformation of the institution has been the subject of media debate for some time now (East African Standard Newspaper and Daily Nation Newspaper of 3rd September, 2010). As Leo, (1984), Mamdani, (1996) and Ogot, (2000) have all pointed out, the provincial administration remains influential in the management of public resources in Kenya. This is very evident in the case of Embakasi Jua Kali settlement.

As my field survey results further indicate, corruption and the overbearing influence of the Provincial Administration is evident in the settlement. Its officials were critical in having the settlement come to being in the first instance. This was through their use of the artisans, guiding them to register an association and subsequently ensuring that they were not evicted until there were permanent developments. In this respect, they protected the forceful occupants from evictions from the actual land owners. In addition, they acted as a linkage with the political class on behalf of the association.

[35] Jobless corners are nick names of places that the youth in Embakasi Jua Kali have given to the places they wait in the mornings for those looking for casual labourers within the settlement. This is unique to Embakasi Jua Kali settlement.

The poor administration staff benefited by being allocated parcels or being paid part of the money from protection fees.

As the settlement grew and attracted more people the Provincial Administration exerted its influence through its many structures that include the local offices of the Assistant Chief and Chief. These offices ensure day-to-day activities within the settlement were under their control and thus continued to levy fees through coercion, using settlement committees ostensibly appointed to oversee maintenance of law and order within the settlement. The settlement committees under normal circumstances would be a positive development. However, in the case of Embakasi Jua Kali my field work results revealed that they are viewed as a source of problems to both landowners and kiosk operators.

The so called "development committees" within the settlements are seen as being a law unto themselves, determining levies on their own and punishing without mercy those unwilling or unable to meet their demands. The punishments the respondents revealed include destruction of the businesses and premises. It is for these reasons that most respondents see the involvement of the Provincial Administration in the settlement as fuelling land conflicts. For instance, although my sample is not statistically representative, it is interesting that out of 16 landlords interviewed, 12 felt that activities of the Provincial Administration contributed to land conflicts, while 18 out of 20 tenants had similar perceptions on the role of the Provincial Administration.

Further discussions with respondents in the settlement indicated that the Provincial Administration, through the local representatives, have been acting like a planning authority which licenses any development, repairs and maintenance and business activities. As already stated in the preceding paragraph, one must pay fees to the committee to be permitted to develop his or her plot. Interestingly, this is a role lawfully assigned to local authorities and through the Local Government Act, Cap 265 and the Physical Planning Act of 1996. It is therefore not surprising that out of 39 interviews an overwhelming 30 of the respondents were of the perception that the Provincial Administration interfered with land administration and contributed to land conflicts in the settlement. While three of the respondents felt that the Provincial Administration did not interfere, another six however indicated that they did not know whether the Provincial Administration interfered with land administration or not.

As I have already alluded, the above discussions with the youth in the settlement revealed that the settlement committee, established by the Provincial Administration, enlisted the services of a section of the youth that helped enforce its orders[36]. This ensured that individuals comply with the orders, however, unpopular they may be. Indeed, the youth confirmed that in some cases buildings had been demolished and businesses closed down and at times the proprietors publicly flogged and humiliated. It is these actions that terrify individuals and forces them to comply without questioning. Compliance is further enhanced because people are aware that the Provincial Administration is part and parcel of this group. Thus the Settlement Committee is able to use coercion to ensure adherence to the conditions they have put in place within the settlements.

The youth narrated a story where the committee ensured that a grocery kiosk that had been established by a resident of the settlement was demolished. The kiosk was demolished ostensibly because the owner had not sought permission or consent to develop land from the committee. It was clear from my discussions with the respondents in the settlement that permission or consent must be paid for, and the committee determines the amount payable. Further discussions with the respondents revealed that the fear of harassment and violence made "land owners and business owners" pay the money without question. In process enhancing fraud and corruption, however, this rule does not apply to all, as individuals who are highly placed in Government are not charged these fees since committee members are aware that they are well-connected and could cause trouble for them. Thus it is the poor groups and individuals that are further exploited.

Securing land in this case implies laying a foundation and a slab, which is about 20 to 25 per cent of the construction cost of a building (Personal Communication with a Quantity Surveyor on 11/2/2009). In addition, the landowner is expected to hire the services of a local youth or someone within the settlement who would occasionally report to him in the event of people either 'eyeing' the land or attempting any form of development on the land.

[36] Orders issued by the settlement committee are mainly demands for payment of levies, closure of the business for failure to pay and destruction of the business premises. Most of the orders are unpopular as they are unjustified and have no basis in law.

Although blamed for being responsible for land conflicts in the settlement, members of staff from the Provincial Administration are perceived as most suited in resolving land conflicts in the settlement. However, discussions with a key informant revealed that this is because professionals working in the Departments of lands, planning and surveying in the Ministry of Lands and Settlement who should lead in resolving land conflicts have been reluctant to do play this role. This emerged clearly when a senior officer in the Ministry of Lands and Settlement remarked:

> Our work is to plan according to the law. We do not deal with conflicts. That should be work of the Provincial Administration (Personal Communication with a senior planning officer, 2007).

It is further intriguing that even the Ministry of Lands and Settlements that is lawfully mandated to handle land issues is not held in high esteem in the settlement, particularly when it comes to resolving land conflicts. Thus out of 28 respondents only 12 felt that the Ministry of Lands and Settlement is the most suited to resolve cases of land conflicts. It is surprisingly followed by the Provincial Administration that is perceived by 10 of the respondents as the most suitable. These results reflect the perception of the public of the various institutions and performance of their roles as the views were obtained from across section of respondents including key informants, tenants, landlords; government officials and city council staff.

6.2.8 Corruption

The case study results revealed that corruption has been a major contributing factor to land conflicts within Embakasi Jua Kali. Corruption featured strongly in the interviews, with 13 out of 15 landlords and 20 out of 25 five tenants indicating that due to the prevalence of corrupt practices within the settlement they often discuss the phenomenon. Further discussions with both landlords and tenants revealed that corruption contributes significantly to inequitable access to land and land conflicts in the settlement.

The interaction between corruption and ethnicity contribute to unfair access to land leading to tensions and conflicts over land. Indeed, an interview with a carpenter *cum* building caretaker who operates a small carpentry workshop within the settlement revealed that corruption was partly responsible for land conflicts that peaked in 1999. He remarked:

> The local administration[37] in collusion with politicians and leaders of the community groups allocated and sold land to their friends even if the same had been allocated or sold before. The main aims were to get more money for bribing the big people (Personal Communication with a carpenter in Embakasi Jua Kali settlement, July and October, 2007).

It is apparent that fraudulent land allocation (including double and multiple allocation of the same portion of land) within the settlement contributes to land conflicts. The fraudulent allocations are as a result of corruption and greed. For instance, the Chairman of Embakasi Jua Kali Association, in collusion with the local administration, took over land whose owners had not completed payments, and developed tenement blocks. The other party had no way to seek justice, since the Chairman, as the respondents intimated, is a:

> law unto himself; even the area chief cannot contradict his position. He is close to politicians and senior officers from the Provincial Administration. He is feared and no one dares cross his path (Focus Group Discussions with the Youth, 2007).

Further discussions indicated that corruption is rife within the settlement, with the local administration always looking for ways to obtain money from individuals operating within the settlement. Thus, although the local Chief (Provincial Administration) established a committee to oversee settlement cleanliness and security, the same committee instead has been busy insisting on payments from individuals operating businesses and those building new structures within the settlement. A person building a house is expected to pay Kshs 5 000/= (US$ 71), while a person repairing a house expected to pay Kshs 2 000/= (US$ 29) whereas those opening a business are expected to pay Kshs 5 000/= (US$ 71). The demands for fees by the settlement committee when property owners are repairing or developing their property, enhances tensions and chances of conflicts in the settlement. It is in this respect that the Provincial Administration continues to influence the settlement and contribute to land conflicts. The influence of the Provincial Administration in these cases is seen the fact that committee members owe their loyalty to the appointing authority who as one of the Embakasi Jua Association officials indicated often seek direction from the senior officials in the Provincial Administration.

6.2.9 Land Grabbing and Abuse of Political Power

The study results indicate that the dominant political class has been using its position to influence the decision-making processes within the main institutions managing land. The decisions, it emerged, revolved mainly around plot allocation and plan approvals. For instance, discussions with the

[37] Local administration in this case refers to representatives of the Provincial Administration at the divisional and locational levels.

respondent officers revealed that the procedures are ignored in situations where there are no convincing reasons for land to be allocated to individuals (land allocated for speculation purposes). This also occurs when political pressure is exerted, and presidential approvals[38], special projects, official fraud and administrative urgency are used variously to approve and sanction illegal allocations.

In the case of Embakasi Jua Kali, although the land belonged to a public institution and should have been reserved for future use by that body, the political appointees who were managing the institution chose to allocate the land to private individuals. The list of those who were allocated the land reveals that the intention was to reward political loyalty and to condone grabbing of public land. The records indicate that officials, claiming to act on delegated powers from above, allocated the land to themselves, to relatives and to politicians,

The Commissioner of Lands, therefore, upon receiving the letter asking him to facilitate preparation of Part Development Plan [39](PDP) for the land and allocate parcels thereof to individuals in a list attached to the letter, did not bother to seek clarification. Instead, the Commissioner of Lands added to the list a few more names from his staff and relatives. He then had the land subdivision planned and the parcels allocated to these individuals. This meant that access to this land was to a select group of wealthy and politically well connected individuals, in the process denying those who most needed the land access.

As was the norm from the early 1990s corruption in land allocation was an open secret in Kenya and almost all land allocations to individuals were treated as such. It is not surprising that the poor individuals from the tin houses in the Jua Kali slums forcefully occupied the land. This was a situation where the poor have dispossessed the rich and politically well-connected individuals albeit for a short period.

It is also curious that the forceful occupation of the land was with the tacit support of local politicians and senior public officials of the Provincial Administration. The public officials apparently supported these activities because they felt that it could shore up support for the then ruling party and that they themselves could benefit from the forceful occupation through payments from the leadership of the invading groups. The groups invading land had tacit support of politicians as well as government

[38] Presidential approvals are popularly known as 'direct allocations' within the Ministry of Lands and Settlements. They are a form of fraud as there is no way the President is able to establish his directives were carried out diligently and in good faith.

[39] Part Development Plan refers a detailed plan of parcels of land planned for immediate use, allocation or special use by the Director of Physical Planning.

officials. Land, in other words, has become a political tool used to buy political support by politicians at all levels.

6.2.10 Summary

The case of Embakasi Jua Kali reveals that land conflicts acquire their own dynamics once an initial forceful occupation is over. Conflicts are influenced by among other factors increasing property values, corruption, and social forces such as increasing demand for rental accommodation. In addition, it emerges that security of tenure even in this type of settlement remains an issue, and 'land owners' have to actively secure their parcels of land on an ongoing basis.

6.3 From Unclear land Ownership to Chaos: The Forceful Occupation of Pipeline Settlement

KANU activists resident in Nairobi but who trace their rural homes to North Eastern and Eastern provinces, established Pipeline settlement following forceful occupation of the land between 1999 and 2000. The settlement neighbours Mukuru Kwa Njenga in the industrial area and is off Airport North Road. The portion called Pipeline is the latest addition to Mukuru Kwa Njenga. As already mentioned, the land was jointly invaded with a neighbouring plot belonging to Uchumi Supermarkets.

The directors of Uchumi Supermarkets obtained the support of Nairobi City Council Askaris[40] and police[41] and evicted the land invaders before they (invaders) had a chance to develop the land. The neighbouring plot that had also been invaded, however, had a case in court. As such the land invaders had time to develop housing units on that land before the court case was concluded.

It is understood from the key informants that by the time of forceful occupation of the land, there was already a transfer to a buyer who had bought the land from a bank in an auction. But registration was delayed as the Registrar wanted to ascertain certain information. It is during this period that the groups invaded the land and quickly started developing blocks of tenements as well as temporary structures. It is apparent from the respondents that the group that invaded the land had information related to the surrounding parcels of land. The invaders were also aware that in the prevailing circumstances it was

[40] Council Askari's refers to Nairobi City Council security offices that in other cities would be called city police or metro police.
[41] 'Police' in Kenya refers to the national police as there is no metropolitan police.

not possible for any party to intervene in the land conflict except for the government. Since the group had contacts with government officials they knew that they, too, could not intervene. Thus the land was forcefully occupied [42]without contestation and by the time the new proprietor came to take possession it was already a settlement with hundreds of families and businesses.

In the process a number of poorer occupants of the land were able to sell their parcels of land to richer persons, who have developed better quality blocks of flats and tenements[43]. The groups that forcefully occupied the parcel of land were apparently well connected to local political leadership as well as the Provincial Administration. The group having learnt from successful forceful occupations in Embakasi Jua Kali and Tassia settlements subdivided the land with the help of a quack surveyor and allocated the parcels to individual members. The youth were also allocated plots in return for their support during the forceful occupation of the land. The youth quickly sold these plots. The remaining plots were sold to non-members. The developments on the land are mixed – temporary structures and multi-storey tenements. The temporary structures are quickly being replaced with permanent multistorey tenements and flats.

Attempts by the Government from the year 2003 to streamline land management, ownership and access in the country, the genuine proprietor of the parcel of land on which these developments has taken the matter to court seeking to have the groups evicted from the land. In response to this, the group approached a law firm to represent them on the matter, claiming legitimate interest in the land. The main prayer of the group is that the court compels the government to issue them with titles. Both parties have enjoined the Government through the Commission of Lands and the Attorney General in the suit.

At the time of this study's fieldwork, it emerged from the forceful occupants of the land that their lawyers and those of the rightful owners of the land were close to having a deal on the way forward. The deal, they added, would lead to the land being subdivided according to existing laws and regulations and the allottees paying a market rate for the land to the original owners.

[42] Although there was no force at the time of occupation of the land, they had nevertheless anticipated confrontation.

[43] For better understanding of tenements see Huchzermeyer, M. (2006 and 2007) on Huruma and Umoja Inner Core, Nairobi.



Picture 3: Depicting a structure and scene in Pipeline Settlement

6.3.1 Characteristics of the Settlement

Pipeline as a settlement is well-located in close proximity to Mombasa Road and Jomo Kenyatta International Airport. It is off Airport North Road and about 100 metres from the large Nakumatt supermarket in Embakasi. It neighbours good educational and commercial developments and is therefore ideal for residential use. In addition, those who have developed tenements and flats on the plots acquired the land at far less than the market prices. This means that they would have shorter pay-back periods. In the case of the occupants of these parcels of land, individuals were asked to pay Kshs 30,000/= (that is about US$400 at the time of the forceful occupation of the land) for membership and allocation of a plot by the group. But the same size of land was selling for between Kenya Shillings Five Hundred and Seven Hundred Thousand in the neighbouring Uchumi land where a number of the groups had been evicted.

It is due to the low prices paid for the land that rental charges are reasonable, thus the perception voiced by tenant respondents that rents were affordable. The other driving force to the area has been ease of access by public transport. However, the inner plots suffer from poor roads and insecurity as

the area neighbours Mukuru Kwa Njenga slums that house some of the poorest people[44] in the Nairobi (see World Bank, 2006). Pipeline also suffers from poor sanitation and poor water supply. Tables 1 and 2 below illustrate the results.

Since the settlement is located close to the airport and industrial area, it has been able to attract formally employed workers from these areas who previously lived in different parts of Nairobi. The tenants are not new to Nairobi. Most have lived in the city for more than two years. The selection of the settlement as a residential area is therefore out of choice and not out of desperation as is the case in most informal settlements.

My interviews with tenants in the settlement revealed that they preferred Pipeline over other settlements due to ease of access and affordable rent. While other tenants indicated that they prefer the settlement due to its access to good services. Similarly, out of 19 landlord respondents an overwhelming 12 preferred the settlement due to affordability with seven preferring the settlement due to ease of access. In this respect the critical factors influencing selection of settlements are affordability of land and ease of access.

It is interesting however, that although the overwhelming majority of landlords interviewed prefer the settlements due to affordability of the land and ease of access, less than half the landlords interviewed lived within the settlements. Most of the landlords lived in the neighbouring settlements namely Umoja, South C, Donholm, Buruburu, Plains View and Tena estates.

[44] Residents of slums are not necessarily criminals but the areas due to their density and lack of clear records on the neighbours act as hide-outs for criminals.



Picture 4: Typical housing development in the case study settlements, this block is in Pipeline

6.3.2 Land Transactions

Land transactions in the settlement began in earnest in 1999 after the forceful occupation by the group of KANU activists. Indeed, evidence from the respondents indicate that after the subdivision and allocation to members of the group, the leaders and members all started to sell the plots to members of the public. The results further revealed that the land market was active when the settlement started reaching its peak in 2002.

This was interesting, given that property ownership was still in dispute and by all accounts illegal and informal. After some time, however, there was a decline in transactions from 2003 with hardly any transactions by 2005. Uncertainty over ownership set in following the filing of a case in court by the rightful land owner over the land. This led to the lull in transactions. It was clear from discussions that demand for property in the settlement is likely to increase dramatically once the ownership dispute is resolved. Similarly, it is also likely to affect the property values negatively.

The rental market is fairly active, as there are low levels of vacancies in the tenements in the settlement. The rental units remain in high demand despite the court case filed by the rightful land owner. In addition, it is emerging that the property transactions in the market are well-documented. Thus, in case

of tenancies there are lease agreements, while in the case of sales there are sale agreements. Either the local Chief (Provincial Administration) or a lawyer witnesses property sales. This is despite the fact that it is technically an informal or illegal settlement.

There is a general perception that the rents are reasonable as the rents in the settlement range between Kshs 2000/= (US$29) and 3000/= (US$43) per room in a tenement. This is generally high, compared to many areas. Thus the fact that the rents are perceived as reasonable confirms the observation by a caretaker in the settlement that, "tenants in this place are not poor" (Personal Communication with a caretaker of one of the structures within the settlement, 2007).

In addition, most landlords live in nearby formal settlements, thus collect rents directly from the tenants inspite of the perceived insecurity. Thus there is less use of estate agents for rent collection than in Embakasi Jua Kali. Indeed, my discussions with the few estate agents in the area revealed that they are mainly involved in sales but not rent collections.



Picture 5: Researcher in one of the study settlements, Embakasi District



Picture 6: Depiction of the state of roads infrastructure in the study settlements

6.3.3 The Role of Community Organisations in illegal settlement development

A distinctive feature of the settlement is that those who forcefully occupied were not organized into an association, a community network or a community-based organisation as was the case in Tassia and Embakasi Jua Kali study settlements. The group that led the forceful occupation of the land was comprised of Kamba and Somalis who were also members of Kenya African National Union (KANU). The group had a leader who happened to have been the most connected and had both a retail shop and a supermarket in addition to being connected to the political establishment. The rallying point for the group was the KANU connection. The group had strong links with staff from the Ministry of Lands and Settlements. Therefore its leadership was able to obtain information on the status of the land parcels which was useful in helping the group decide which parcels of land to target and when. Interestingly, a part of the group was involved in the forceful land occupation in Tassia with three other groups.

Indeed, discussions during my fieldwork with a local administrator who is part of the Provincial Administration revealed that the group that invaded the land, though not organized into a CBO, had a clear leadership structure with Chairman, Secretary and Treasurer. There were no wrangles as there was

clear order. He added that "leaders of the group are well-organized and must have had long relationships" (Personal Communication with a local administrator, August, 2007).

It further emerged from the survey results that the leaders of the group, mainly businessmen with diverse interests in commodity trading, real estate and transport, are likely to be clear on their intentions. The leadership ranks did not include poor people but were instead comprised of shrewd business people. This enabled them to seek support and be able to identify and exploit the loopholes in the laws.

However, due to the filing of the legal case by the genuine land owner, the new group of "land owners" (that is the group that bought or forcefully occupied the land) came together as owners and contracted a lawyer to represent them in the ownership dispute. The legal case has forced the landlords to organize themselves to confront the issue as a group. Although the forceful occupants of the land did not register an organisation to help them in forceful occupation of the land, the study revealed that land conflicts in the settlement are not as intense as in the case of Tassia in the next chapter. The main causes of land conflicts in the settlement are increasing demand, rising land values, corruption and fraudulent land allocations and transactions. It is apparent from the study that multiple sales of a single plot occur, due to corruption.

6.3.4 Inequity and Access to land

Due to the favorable location of Pipeline there is high demand for land in the settlement. This is despite the uncertainty resulting from insecure tenure and the filing of a case as already mentioned above. Interestingly, most of the tenant respondents indicated that they were still willing to buy land within the settlement but a large proportion confessed that they do not know how land is acquired within the settlement despite their interest in this aspect.

In the settlement land is acquired through several approaches. For instance, in the case of those who forcefully occupied the land it is clear that after forceful occupation of the land, officials were helped to

subdivide the land among the members. The members included the youth who participated in the demarcation of the land when it was invaded and acted as security for the leaders. The balance of the land was distributed among officials. It is after this that both officials and the youth began selling to the public.

A worker in a nearby office said that they went to work one morning just to find the area a beehive of activities. There were people building, lorries ferrying building materials and youths looking menacingly all over the place. His colleague added:

> We arrived and found the whole place looking like a battleground. Security forces were on one side of the road and youths dancing battle dirges on the other. We were later told that one portion of land belonged to Uchumi Supermarkets and that they were being assisted to evict people from their land (Personal Communication with a respondent, 2007)

In the process, buildings, some of which were near completion, were later brought down. This is because Uchumi insisted on proper subdivision of their land and selling at market value. Thus most of those who had occupied the land but could not afford this were forced out. Interestingly, those who could afford the market value and paid for the land have not been in a hurry to develop the land.

On the contrary, on the neighboring plot where there was no eviction (that is, the case study settlement), there was quick and rapid development – almost as if in competition. In reality there was competition against time so that the owner of the land would have no choice than to negotiate with the occupants. An interview with a hardware operator in the settlement indicated that the rush in construction, that was witnessed in the early phase of the settlement, was aimed at securing the land. The group knew that once they had completed buildings and people were settled on the land it would not be easy to evict them from the site, even though buildings near completion had been demolished on the neighbouring land.

Access to land in the settlement was upon payment of membership fees. I was informed that there were over 300 plots (the informant could not give the exact number). More than half the total number of plots was sold to members of the public. The plots, a youth remarked, "were selling like hot cake". In part, this was because the plots were affordable and close to high quality facilities and services.

i) Knowledge of Land Acquisition Processes

Access to land in the settlement was through forceful occupation in the first phase, in which membership to the group mattered. Thus allocation was to individuals willing to pay the initial Kshs 30,000/= (US$429) and Kshs 2000/= (US$29) for membership registration. This was, however, for a short period and mainly to those who had participated in the forceful land occupation.

In general a majority of the respondent tenants indicated that they were interested in purchasing

land within the settlement. Their interest was particularly aroused due to the low price the parcels were selling at and the good location of the settlement. Interestingly, most of the respondent tenants were ignorant of the land transaction processes within the settlement which, as emerged from the study results, are undertaken through estate agents.

A limited number of land transactions are undertaken through the land owners with the local provincial administration (chief) acting as a witness to sale agreements between parties to a sale. In addition, like in many other informal settlements, the proprietors were expected to secure their plots by laying the foundation. In some instances, they were expected to hire the services of a youth within the settlement to watch over the land and report any encroachment to it.

Further discussions revealed that fraudulent land transactions are rampant in the settlement mainly due to ignorance of the purchasers and lack of clear verification processes, thereby inability of the purchasers to verify information regarding particular parcels of land. It is due to this that fraudulent individuals find it possible to defraud purchasers. Fraud in land transactions are partly due to ignorance on the part of purchasers and partly due to a lack of standardised land transaction processes. Land transaction processes are largely settlement specific. Thus knowledge of processes from another settlement does not help in another. This makes it easy for individuals to be confused with the processes. Indeed, it is clear that even tenants within the settlement were ignorant of the land transaction processes.

i) Ethnicity

The battle for land in Pipeline, unlike in other settlements, had no ethnic overtones. Even though the invading officials were from Somali and Kamba ethnic groups they were able to mobilise people from other ethnic groups without resorting to infighting. This level of solidarity may have been enhanced by the intervention by Uchumi Supermarkets who evicted the group from the land that was neighbouring the study settlement.

The majority of the tenants in the settlement are Kamba, which can be explained by the fact that area is suitably located for those who travel to the villages most weekends, as Kamba land starts about 5 Kilometres from the settlement. Indeed, residents in the settlement have been clear that ethnicity is not an important factor in the settlement. Further discussions with the respondents indicated that land transactions in the settlement were not tribal and individuals had equal opportunities of acquiring land in the settlement.

In addition, an issue that is closely related to ethnicity is 'political utterance' which is a parlance commonly used to refer to statements by local politicians which often appear to be inflammatory or inciting to other ethnic groups and supporters during political rallies. In general these 'utterances' began to gain a special place in land conflicts. As such, some respondents saw land conflicts in the settlement as being politically motivated and resulting from political statements (utterances) by the political class. Despite the significant role played by 'political utterances' in land conflicts, in the case of Pipeline settlement the results indicate that 'political utterances' had limited effects on land conflicts.

ii) Corruption

Corruption remains a problem in the land acquisition processes in Pipeline as in similar settlements in Nairobi's fast growing list of forcefully occupied settlements. Most respondents in Pipeline indicated that corrupt practices had affected access to land within the settlement and led to multiple claims to a parcel of land thereby contributing to land conflicts. This, in essence, explains why most respondents discuss corruption as it is witnessed within their neighbourhood on a daily basis. In the opinion of the residents, corruption interacts with various forces to affect access and ownership of land in the settlement. Furthermore it interacts with ethnicity, politics and power to deny less well-connected access to land. Due to this respondent residents contribute in great measure to land conflicts. Indeed, unlike several other similar settlements, corruption and inequity are viewed as the main causes of land conflicts. Thus it is not surprising that several respondent landlords indicated that they have been required to pay bribes over their plots in the settlement.

In the perception of the respondents the various ministries and government departments concerned with land management and administration are corrupt. They include Lands and Settlement, Nairobi City Council, Ministry of Housing and Provincial Administration. The respondents perceive Nairobi City Council and Provincial Administration as leading in fuelling corruption in the settlement. Interestingly, a study commissioned by the Kenya Anti-Corruption Commission (2006) came up with similar findings. This indicates that corruption remains a major problem in land administration and management in Kenya and not just in the study settlement.

According to the perception of the respondents in the Pipeline case, the most corrupt institution when it comes to land issues in their settlement is the Provincial Administration, closely followed by Nairobi City Council, then Ministry of Lands and Settlements, while, the least corrupt is Ministry of Housing . Given that corruption is perceived to significantly contribute to multiple sales and allocation of land within the settlement it follows that it leads to inequitable access to land. Thus those with higher incomes are able to access land at the expense of those less endowed. Thus as corruption interacts with ethnicity it works to influence human land relationships within the study settlement and significantly contributes to land conflicts.

6.3.5 Institutional Questions

There are several institutions involved in land management and administration in Nairobi. These include Nairobi City Council and Ministry of Lands and Settlements, where a host of departments are housed including departments of Physical Planning, Lands and Surveys. Each department has a specific role to play in land administration and management. In addition there are other units and departments of the government that have to be continuously consulted on technical issues such as the environment.

It emerged from my interviews with staff from Nairobi City Council and Ministry of Lands and Settlements that most of these departments are involved in handling technical issues and hardly deal with issues on the ground directly. Thus they seldom approach communities on their own except through the Provincial Administration. Thus they are rarely aware of land conflicts on the ground unless informed by the Provincial Administration.

In addition, discussions with officials from these departments indicated unwillingness to become involved in land conflicts, more so when the said parcels of land are not even registered. Thus

the Provincial Administration is often forced to handle land conflicts as part of general administration and maintenance of law and order. It is thus not surprising that residents in the settlement confirm involvement with staff of the Provincial Administration on land matters. The involvement has mainly been to do with resolving land conflicts within informal settlements. This has, however, led to claims of interference in land management and administration as well as claims of corrupt practices. These claims have led to the perception that the involvement of staff members of the provincial administration has been a source of land conflicts.

Most respondents see the involvement of the Provincial Administration in land administration as a major source of land conflicts in the settlements. It emerged in further discussions with residents of Pipeline that the Provincial Administration's involvement leads to conflicts because of the lack of transparency in decision-making processes. In the settlement, landowners see the involvement of the Provincial Administration as meddling in land administration, which is a source of land conflicts.

Interviews with tenants further pointed out that the local administration's involvement in land administration has been through the settlement committee. Interestingly, most of the complaints are against the local administration (the committees). They are seen as agents of the provincial administration and thus viewed as interfering in land management. This perception was reinforced by the involvement in corruption in the settlement by the Provincial Administration. This, the respondents argued, led the provincial administration to be biased in the discharge of their duties within the settlement. Thus they evict others and allocate the same to those who have bribed them, thereby fuelling more land conflicts.

However, there is a lack of consensus on the most suitable department of the government to handle land conflicts. Most respondents from Ministry of Lands and Settlements felt that the most suitable department of the government for resolving land conflicts was Ministry of Lands and Settlements. Yet, in discussions with other government departments there was a feeling that disputes over land should be

left to the Provincial Administration. In this settlement as opposed to others the respondents felt that the Ministry of Lands and Settlements was the most suited to resolve land conflicts.

Study results, however, indicated that the Ministry of Lands and Settlements was the most suited, followed by the Provincial Administration and courts of law respectively. The perceptions, although appearing innocent, may have been influenced by the continued portrayal of the various institutions as being corrupt and inefficient.

6.4 Conclusions

The two settlements were born out of forceful occupation of the land. The groups that occupied them in both cases had well-organized leadership and linkages with officials in the provincial administration, Nairobi City Council and Ministry of Lands and Settlements. The intentions in both cases were to make money from the forceful land occupations. In the case of Embakasi Jua Kali, the role of the provincial administration came up prominently early in the process. This is because the provincial administration was indirectly involved in the setting up of Embakasi Artisans Jua Kali Association which ended up acquiring the land forcefully with help of its members. In Pipeline, the leadership had a long association with provincial administration as well.

Later years saw the influence of the local administration become more prominent. The committees formed to oversee issues relating to law and order in the settlements began to insist on approving any development, thus focusing on land administration instead of the original mandate. The "landowners" were unable to stop this because of the feeling that the land was illegally occupied in the first place. Consequently, although the "landowners" paid neither rates nor rents to the local authority, they paid heavily through informal channels; more particularly if one wanted to develop or redevelop one's land. In reality there appears to be no distinction between formal leaseholds and informal leaseholds except for higher uncertainty levels.

In the circumstances, it is realistic to conclude that the role of the Provincial Administration in land management remains at best controversial. But as the main witnesses to the sales in the settlement, they should be able to take part in controlling land related conflicts resulting from multiple sales.

CHAPTER SEVEN

CORRUPTION AND ETHNICITY: TASSIA AND MATHARE NORTH CASE STUDY SETTTLEMENTS

7.1 Introduction

This chapter is a continuation of the discussion of the study results. The results presented here are on the Tassia and Mathare North case study settlements located in Embakasi and Kasarani Divisions respectively. Tassia settlement resulted in part from forceful land occupation and intervention by the National Social Security Fund respectively. Tassia is discussed in this chapter, because it shares a strong ethnic dimension with Mathare North. On the other hand, Mathare North was born out of a genuine desire by the state to improve living conditions of the poor in urban areas. It was expected to alleviate housing shortage for low-income earners. The two settlements, although born under different circumstances, have similar attributes, including what, for lack of a better term, I call being engulfed in the primitive web of ethnicity and corruption. Such vices, which became the normal way of life in Kenya, have in part resulted in the conflicts of various shades in the settlements.

In discussing the study results from the two settlements I have highlighted common characteristics as well as attributes unique to each settlement. This is to ensure that the study gains from the richness of the results from each case study settlement. Similarly, as in the previous chapter, the results from two cases are presented under broad themes linked to the overall purpose, objectives and research questions as articulated in Chapter 1 of the thesis. However, in this chapter new themes such as historical injustices and the role of ethnic militias emerge, their influence and contribution to inequitable access to land and consequently to land conflicts are therefore highlighted because they have particular relevance for understanding land conflicts and inequity in these case studies.

It should be understood that the presentation of the results on a case by case basis is aimed at facilitating a deeper appreciation of the uniqueness of each case; commonalities across the cases are brought to the fore in chapter 8. More importantly, the emergence of forceful land occupations in Nairobi from the beginning of

multi-party democracy needs to be understood against a background of social, economic and political changes. The conflictual land acquisition processes characterised by forceful occupation, ethnic rivalry and/or conflicts and use of militias has exposed the limitations of the existing institutional responses and adaptations and led past governments through various land commissions and task forces to re-examine the various modes of access to land and how they have shaped land management and contributed to land conflicts as well as institutional failures.

Land conflicts in Tassia and Mathare North as opposed to the two cases I discussed in Chapter Six are driven more by corruption and ethnicity than in Embakasi Jua Kali and Pipeline settlements. Ethnicity is, however, more pronounced than corruption in Mathare North and Tassia settlements and is related to what has become known as historical injustices. Thus the actions and management of the forceful land occupation in Embakasi Jua Kali influenced the level of ethnic rivalry and conflicts in the case of Tassia settlement. In case of Mathare North, the ethnic rivalry and conflicts are related to the land allocation about three decades ago. Corruption in both cases is linked to public servants within government and City Council offices. It is these facts that make conflicts in the two settlements unique.

7.2 Tassia Settlement: Planned or spontaneous settlement?

Tassia settlement resulted from forceful occupation of land originally owned by the National Social Security Fund (NSSF). Before forceful occupation of the land there were no significant developments on the land except for the areas neighbouring Outer Ring Road and the portion on which NSSF developed an Estate named Nyayo Embakasi. The other notable feature was the presence of Masai herders, who had occupied the land for several years. The herders had developed traditional Masai Manyatta[45] for their accommodation.

Several years earlier, the National Social Security Fund had subdivided the land into plots of about 500 square metres each for sale to members of the public. Following the development of plots fronting Outer Ring Road many people were attracted, including the so-called 'land grabbers'. In 1992, the Commissioner of Lands requested the Director of Physical Planning to

[45] A Manyatta refers to a traditional settlement set up by the Masai. The settlement was set up by Masai herdsmen who were grazing on the open ground since the land had no occupants.

prepare Part Development Plans (PDPs) for land that had been surrendered to the government for public utilities such as play grounds, churches and schools. The purposes of the PDPs were to facilitate allocation of this land to private individuals for development. In many cases, it is not because the facilities are not needed but rather were for rewarding political loyalty.

In 1997, there were renewed attempts to forcefully occupy the land by different groups. The groups comprised residents of Mukuru Kwa Njenga in Industrial Area, Soweto in Kayole, Jua Kali[46] in Embakasi Village and Embakasi Jua Kali respectively. The forceful occupation was organised by the late area Member of Parliament in liaison with the local youth leaders. However, this invasion was unsuccessful.

In 1999, four different groups forcefully occupied the land. Two of the groups were led by people who had been members of one of the groups - Embakasi Jua Kali Association. They had split into two groups, Mama Group and Kwa Ndege Self-Help. The other two were Masai Herdsmen and the Somali Group. The main fight, however, was between the two groups that were part of Embakasi Jua Kali Association. In the fight they solicited the support of youths from the same ethnic groups with the leaders of the particular groups.

In the end, each group acquired a portion of the land with Kwa Ndege Self-Help group obtaining the largest chunk. Mama's group also acquired a large chunk of land, followed by the Masai herdsmen and the Somali. Each of the groups subdivided the land and allocated some to their members and sold the rest to members of the public. By 2001, as the country approached another general election, there was a rush to develop the parcels of land as the individuals were aware that the new government would be reluctant to demolish their structures. Thus there was serious construction work in progress within the settlement. Many more people were struggling to purchase land in the settlement and develop. It was as if there was a rush by the new 'landowners'.

However, despite protests by NSSF over forceful occupation of its land, it was unable to obtain support from the Government and the local administration to evict the occupants. This is understood to have been due to the fact that elections were approaching and the Government was unwilling to

[46] Jua Kali in Embakasi Village is a slum settlement within Embakasi Village which used to be the home of most officials of Kwa Ndege Group before they forcefully occupied Embakasi Jua Kali. Thus the name of Embakasi Jua Kali came from the Jua Kali in Embakasi Village.

antagonise the voters. This explains why the groups continued to build on the land unabated and with speed. However, when the National Rainbow Coalition (NARC) came to power with a promise to tackle corruption head on in 2003 and reorganise land ownership, NSSF got emboldened and sought to reclaim their land.

Thus in 2003/4, with the combined assistance of Nairobi City Council, Ministry of Lands and NSSF the occupants of the land were forced into meetings with the groups who had forcefully occupied the land. As a result the groups were convinced and agreed to stop all construction works. After lengthy negotiations and discussions, there was an agreement to replan the settlement. The planning was to take into account the realities on the ground.

At the same time new conditions were put in place by NSSF and Nairobi City Council which included the number of floors one could construct on the land, thereby restricting individuals from developing tenements. In addition, a consolidated register was prepared jointly by NSSF with the help of the local committee which included all those who had land in the settlement; a general price per plot was also agreed upon as well as the mode of payment. Those who could not afford the agreed price were given a chance to informally sell to others.

7.2.1 Characteristics of the Settlement

Although Tassia started as an informal settlement, interventions by the NSSF with help of Nairobi City Council dramatically changed the development within the settlement. At first the investments were largely in the form of rooming tenement blocks but the invaders were forced by NSSF and Nairobi City Council to abandon these types of development and proceed to build better structures approved by the Nairobi City Council. In some cases individuals remodeled their structures to include one, two and three bed-roomed flats with structures of not more than two floors above the ground.

My interviews and discussions with respondents further indicated that the settlement is perceived as secure by most residents, including tenants. The interview results further revealed that many tenants found the rents affordable and the settlement easily accessible and therefore attractive to the residents. Indeed, from the study results rental levels in the settlement range between Kshs 8

000/= (US$114) and 15 000 (US$214) per one-bedroomed flat and in comparison to other settlements, the rents are
evidently higher. However, the tenants in the settlement are from different backgrounds, from diverse parts of the country with about two of those interviewed owning properties in Nairobi. Rent payments are made mostly through agents. In addition, a large number of the tenants interviewed have tenancy agreements and regularly meet landlords. This is because a large number of the landlords also live within the settlement.

Results from the respondent revealed that a significant number of residents in the settlement previously lived in informal settlements[47]such as Kibera. There are also those who previously lived in formal settlements as tenants but are now owner-occupiers in the settlement. This group has benefited immensely from the forceful occupation. While on the one hand affordable rents, good security and ease of access influenced the selection of the settlements by residents, on the other hand, landlords bought land in the settlement because of availability of the land, affordability, accessibility as well as ease of purchase. Thus out of 21 respondent landowners nine had bought land in the settlement simply because it was easily available, seven because the settlement is easily accessible, four due to affordability of the land while one person acquired land due to ease of purchase. Indeed, many landlords indicated that accessible land in the area with infrastructural facilities such as sewer, water and electricity mains is problem. This made Tassia attractive to landlords.

Furthermore the results indicated that most landlords interviewed were owner-occupiers within the settlement. Others live in the neighbouring residential estates including Donholm, Fedha, Nyayo, Tassia and Kasarani settlements. My interviews indicated that most of the landlords who live in other settlements bought land from those who forcefully occupied the land. For this group the development was like any other investment and/or business venture.

In the initial stage of the formation of Tassia settlement, most landowners were unemployed and were living in the neighbouring slums of Soweto in Kayole, Jua Kali in Embakasi Village and Mukuru Kwa Njenga in industrial area. It is this group of poor "landowners" that sold their plots to individuals with better incomes and returned to the shacks. A few of them developed temporary structures that are increasingly being replaced with permanent buildings as they come under persistent pressure to sell.

[47] Informal settlement refers to a settlement that is illegal as it does not conform to any planning laws and regulations laid down the planning authority.

Therefore, very few of those who occupied the land during the forceful occupation still own their parcels of land.

7.2.2 Land Conflicts

The settlement started with an invasion which was marked by clashes between different groups that eventually occupied the land forcefully. The clashes were very vicious, leading to death, serious injuries and long-standing hatred and mistrust. It also led to fear. The situation worsened due to the involvement of militias in the clashes. Further discussions with residents revealed that conflicts over land in the settlement persist due to unresolved ownership issues, political interference, and multiple sales of plots, ignorance, evictions, fraud, corruption and ethnicity. These problems result from a multiplicity of factors. For instance, corruption and fraud are mainly a result of lack of proper documentation and unclear transaction processes. Thus even the presence of NSSF has not improved the transaction processes.

Although the settlement is relatively new, the interviews with the respondents revealed it was ethnically polarised from the beginning, more so than the other case study settlements. It is therefore not surprising that ethnicity still plays a role in land transactions. This situation obtained in the initial phases of the settlement when ethnicity appeared to have influenced the entire process. It is at this stage that ethnicity played a key role in the mobilisation of the youths who fought for the land against each other. The use of youths from particular ethnic groups, mainly from the tribes the leaders of those invading the land, came from to fight for the land and was followed by the involvement of militias.

The involvement of the militias saw Mungiki and its rival Kamjesh in the fight over the land before the local administration intervened to stop the clashes. The youth fought along with militia groups against the opposing side. However, it appears that the suspicions and tensions against various groups remain despite the lull in the settlement since the return of NSSF in the management of the land. This came out clearly when a lady I was interviewing at her Grocery Kiosk within the settlement had to force me to change the subject of our discussion whenever young men appeared, and she exhibited great fear. The action revealed that there persist suspicions and mistrust between residents. Indeed, some live in fear as revealed in her case. The respondent informed me that they would question her later if they found out that she was discussing land issues. “They are Mungiki, you know,” she quipped.

The entry of Mungiki into the settlement to fight for land was informed by ethnic considerations and led to a fall out between Kikuyu who were in the Mama Group and a group made up of people from other tribes, as one informant claimed. For instance, the surveyor had to leave the group for fear that those from his Luo ethnic group were keen to harm him since they viewed him as having betrayed them. The informant added that the Mama's Group were seeking to recruit a few people from other ethnic communities but this could not happen because of the fear of the Mungiki.

Although the Tassia settlement started informally it is acquiring formality. It is being provided with roads, sewer and electricity. However, it is likely to face major problems in the future due to lack of social facilities and amenities such as public schools and health facilities. Provision of such services within the settlement including the churches is currently being undertaken privately.

In summary, the main causes of land conflicts in the study settlement include fraudulent land transactions, corruption, evictions, ethnicity, multiple land allocations, political interference, boundary disputes, ignorance and land grabbing.

7.2.3 Forceful Land Occupation

Four different groups forcefully occupied Tassia between 1999 and 2000. The forceful occupation saw groups fight each other to secure larger portions of the land for either group. The clashes over the land were very serious and prompted one youth leader to remark:

> The fight for this land was bad. It could not stop until the District Officer organized a meeting between the leaders. It is only then that the leaders called for a cease fire (Personal Communications, August, 2007).

The meeting between the District Officer and the leaders of the four groups was held at the nearby National Petrol Station Restaurant along Outer Ring Road. They were coerced into an agreement on how to partition the land. It is only after this meeting that peace returned. However, tension remained high within the settlement. In addition, conflicts over ownership and boundaries due to fraud in some parts of the settlement still persist. Indeed, this was demonstrated during my field study

exercise when a youth leader was reluctant to accompany me to a different section of the settlement due to the prevailing tensions.

Despite, forceful occupations, the new "landowners" were quick to develop permanent structures. This is arguably because they were informed about successful forceful occupation of Embakasi Jua Kali village. This information motivated these individuals to develop permanent structures on land whose ownership they knew was in dispute. Consequently, upon allocation and/or purchase of land in the settlement, people immediately began developing their portions of land in earnest. This development ensured that officials' of the four groups could sell more parcels of land. Interestingly, no government department attempted to stop forceful occupation and subsequent development of the land until NSSF lobbied the various departments in addition to using the media to highlight the forceful occupation of land bought with workers money.

It is clear that each of the four groups (of forceful occupants of the land) had connections with different institutions and powerful individuals that could not intervene in the conflicts as they were compromised. Indeed, it emerged that even the police left security of the settlement residents in the hands of the youth within the settlement. A youth leader proudly claimed during the interview:

> The police have no business coming here as we are doing a good job. In any case the problems here are small [and] we are able to resolve [them] with the committee. The Chief, police and their teams recognize us and appreciate what we are doing (Personal Communication with a youth leader, interviewed in Embakasi Jua Kali Settlement in August, 2007).

It is clear from discussions that youth within the settlement collaborate with the local officials that include police and the Provincial Administration in providing security to property owners and tenants within the settlements. In many other cases the youth act as discrete emissaries between the leaders of the four groups and the local administration.

7.2.4 Community-Based Organizations: Militias or Community Networks?

In Tassia there were four community groups whose aims were to occupy the whole parcel of land forcefully. It is apparent from the results of my interviews with the respondents that prior to invasion of the land they were sharing information. It is understood that this helped the

groups obtain information on land ownership status among others. Thus they were able to obtain complete records on every parcel of land in the settlement. For instance, Kwa Ndege Welfare group was in constant communication with the Somali and Masai Herders. Each of the groups had their unique characteristics and features.

The unique characteristics of the groups from the field interviews are as I have outlined below:

Masai Herders: This is a group comprised of Masai Herdsmen. They began living on the land in early 1990s. Some of them worked as security guards in peoples' residential homes during the night, while others took care of the animals during the day. Their lives consisted of a clear routine until the three other groups came to forcefully occupy the land. The Masai group had to fight for a portion of the land, in order to maintain the *Manyatta* and secure grazing land for their cattle. Before NSSF reclaimed the land, the Masai had forceful acquired a large portion during the struggle for the land by other groups including Mama Group, Somali and Kwa Ndege Group and sold most of it to others. In the process their animals disappeared and so did the Manyatta and the Masai became tenants.

The group has since transformed from herdsmen into land agents/brokers for this area. In 2007 during a field survey, I found the former herders busy in a local bar. They were playing pool, discussing local politics and generally content with their situation. One member of the group acted as a "surveyor", helping people identify their portions of land, which he was able to do due to general knowledge of the ground acquired after along stay in the settlement.

Mama Group: The leadership of this group, like Kwa Ndege Self Help Group, was made up of members of Embakasi Jua Kali Association.[48] The leader of the group is a local businesswoman owning several tenement blocks in Kayole and Embakasi Jua Kali. She split from her colleagues at Embakasi Jua Kali Association and founded her own group. Her colleagues also started a new organisation called Kwa Ndege Self Help with whom her group had a violent fight over the land. The membership was predominantly Kikuyu and it was easy for her to enlist the support of Mungiki. Militias to help fight for the land. It is this group's activities and attitude that made the struggle for land very intense.

[48] Details on Embakasi Jua Kali can be found in chapter 6 of this thesis.

Like Kwa Ndege Group, Mama's Group also acquired a large chunk of the land which it subdivided into smaller parcels and allocated the same to its members and to some youths. The group sold the remaining land to members of the public. It was difficult to obtain information on the group, as none of the members was willing to grant an interview.

Somalia Group: This group comprised mainly of Somali and Kamba ethnic groups. The leadership of the group worked in collaboration with those of Kwa Ndege Welfare and provided them with useful information regarding ownership of different parcels of land in the area. This information was obtained from the Ministry of Lands and Settlements. They have contacts with Planning and Land Officers from the Ministry who provided them with information. The group acquired the smallest portion of land in the area. Its members were mixed, although predominantly Somali, and had a strong affiliation with KANU. The same group was involved in forceful occupations of two other parcels of land in Pipeline area.

The main strength of the group was in its connection with KANU. The group used this to gather information on land parcels from the government departments. This information was promptly shared with members of Kwa Ndege Self Help Group. Thus during the fight over land the group was sheltered by Kwa Ndege Self Help Group.

Kwa Ndege Self Help Group: The officials of this CBO are the same as those of Embakasi Jua Kali Association and although their stated objective is to improve the welfare of their members, the actual objective was to use this organisation to camouflage personal identities, as my discussions with the Chairman of the group revealed. This was important particularly during forceful land acquisition. This ensured that individuals were not made to take personal responsibility.

The membership of the group is spread among different ethnic groups, as also reflected in the composition of its officials. It was the best organized group and had a large number of youths aligned to it. When the clashes between Kwa Ndege Self Help Group and Mama's Group became more intense the former sought the support of *Kamjesh* after the arrival of *Mungiki*. This was ostensibly to counteract Mama's Group who was being helped by *Mungiki* members.

All groups except the Masai Herders had sought support from the local administration. In addition, some officials from Ministry of Lands and Settlement, Nairobi City Council and Provincial Administration discretely provided them with information on the status of the land. The leaders of these groups were comparatively wealthy individuals in the transport business, commodity trading, and Real Estate.

The Youth Group and Settlement Committee: The role of the youth in the settlement was exemplified by the requirement that developers make payments to a youth fund. This was ostensibly in recognition of the role they played in forceful occupation and maintenance of security within the settlement. In discussions with the youth leader, he revealed that payments to them were also in return for the security the youth organisation provided for the settlement. He pointed out that landowners were expected to pay towards this. However, the landowners were unwilling to make these payments. Most of youth worked on the construction sites while also ensuring that plots whose owners were away remained secure.

Indeed most of the landlords interviewed saw the youth group's demands as a form of exploitation. They argued that like other Kenyans they pay taxes and should enjoy state security. Many argued that the same youths were the source of insecurity in the settlement. Thus a lady landowner remarked:

> It is these same boys called 'security' who are a source of trouble here. They are the thieves yet they claim to protect us. I have no money to waste on them (Personal Communication with a landowner, 2007).

On the other hand, there are a number of landowners who see the youth groups positively. This group includes those who are yet to develop their parcels of land. The youth members provide security for their plots. This ensures that no one encroaches onto their plots. Further discussions with respondent youth and officials of Kwa Ndege Self Help revealed that because of the role in acquisition of the land, officials of Kwa Ndege Jua Kali felt that those developing land within the settlement should pay a levy that would be used to reward the youth. The group had intended this payment as a reward to the youths for their work during the struggle to acquire the land forcefully.

7.2.5 Knowledge on Land Acquisition Processes

In the initial phases of the occupation, access to land in Tassia was through membership of one of the groups. A further condition was payment of Kshs 10,000/= (USD 143) to the officials of the respective groups. However, this was only for a short period. As the demand for land increased there were moves towards market allocations through sale of the land to unaffiliated individuals.

Most landowners in the settlement claimed to have bought the plots from individuals who had invaded the land. There were cases of those who obtained land through allocation either by the government or one of the four groups that had forcefully occupied the land. In reality, a respondent claimed that most of the people within the settlement accessed their plots through the four groups that had forcefully occupied the land. Interestingly, only 13 out of 24 respondents had knowledge of how land is accessed within the settlement. The remaining respondents claimed to be unaware of the procedures. This is because access to land in the settlement was through an informal process with complexities related to ethnicity and corruption.

Officials of the various groups that invaded the land, however, variously attempted to simplify land transactions in the settlement. The groups issued individuals with share certificates, which confirmed ownership of a plot, the size and number. The details were according to the plans the groups prepared for their portions. This approach was later adopted by the NSSF. Thus, individuals were issued with a card with details of the plot and payment status. They were expected to retain the cards for all transactions until completion of payment and issuance of titles. A chairman to Kwa Ndege Self Help Group collects payments to NSSF are collected on their behalf. He therefore keeps a combined register of land ownership in the settlement as well.

Transactions in land in the settlement are undertaken mainly through Estate Agents who bring buyers and sellers together. The Estate Agents are from different groups and are different from the Masai. It is also emerging that the land market remained active despite the uncertainty following an announcement by the NSSF that they were to repossess the land. It later emerged that officials of the four groups that had forcefully occupied the land were involved behind the scenes in negotiations with the NSSF on the way forward and had requested that the plots be sold to their members at reasonable prices. Thus the officials continuously updated residents and/or landowners on the progress of their negotiations. This ensured that the property market remained active at a time of uncertainty. It also confirms the level of trust the group members had in their leaders.

Although the occupants of the land trusted their leaders, they still harbored some fears. There was general uncertainty. Thus a landowner remarked that:

> When NSSF started compiling the list many of us were scared. Others did not even want to appear in the list. But the officials advised us that this was a better way of acquiring the land. So we all registered, giving all the required details including the plots we owned (Personal Communication with landowner, July, 2007interviewed within Tassia settlement).

The re-entry of the NSSF in the claims over land in Tassia followed immediately after the establishment of the Commission of Inquiry into Illegal and Irregular land Allocations by the Government in February, 2003. This led to a slump in new land purchases as the plot prices went up and many people could therefore not afford the land. There was real fear of being prosecuted among the perceived land owners. Many were giving up their plots out of fear to those who could afford small fees. This prevalence of fear eased the re-entry for the NSSF. Many would-be buyers also realized that they could purchase the land directly from the NSSF, a process that had limited risks. Re – entry by NSSF would have been very difficult as the case of Embakasi Jua Kali indicates.

The re-entry to the settlement by NSSF further complicated access to land and it is thus not surprising that a significant number of people remained ignorant of land acquisitions processes. Residents gave conflicting responses on how land is accessed, further corroborates the argument by civil society groups in Nairobi that access to land even in informal settlements remains unclear particularly to the poor (Pamoja Trust,2005).

Despite, the lack of knowledge and lack of clarity on how land was accessed in the settlement by a significant number of the respondents, the land market in the settlement was active and reached its peak between 2003 and 2004. However, this slumped with re-entry onto the land by the NSSF. It is only after that that transactions picked up again. The claims over land by NSSF were amicably resolved through representatives and provided for each person to enter into individual agreements with NSSF on payment for land parcel

7.2.6 Ethnicity and land conflicts in Tassia

In Tassia, ethnicity arguably played a central role in land conflicts. Interviews with respondents who witnessed the situation reveal that the land conflicts became more serious when a group secured support from Mungiki militias. As already mentioned, this had prompted another group to seek the support of the rival militia group Kamjesh. The clashes were brought to an end through the intervention of the Provincial Administration.

The interview results further revealed that because different ethnic groups came together and formed Kwa Ndege Jua Kali Self-Help Group, they were able to mobilise a bigger population and to acquire the largest portion of land. Similarly, the group was also able to mobilise more people to buy the land from them within a short period, as opposed to the rest. The group therefore benefited from the mixture in membership and leadership.

The different groups that had formed to forcefully access to land in Tassia were from different ethnic groups. Indeed, my discussions with respondents revealed that groups that were ethnically exclusive (such as Somali and Mama Groups) were unable to mobilise people from other ethnic groups for the sale of the land to individuals within a short period. This became a problem when time was critical in selling and distribution of the invaded land. A further discussion with an official of one of the groups revealed that having a large membership proved important because the larger the number of people committed, the more effective the resistance to evictions by the Government, and with this resistance, more and more people get to know about the land being available for purchase. This ensured that a group was able to sell more parcels of land.

The leadership of the four groups were therefore able to make quick money from the sale of plots to members. The sale was for Kshs 10,000/= (that is US$142) only per plot. It is this money that was partly used for bribery. One of the officials confided that they were under pressure to sell as much land as possible to pay off the bribe; otherwise they were likely to be harassed. The money from the plot sales was thus shared out between the leaders of a group (Mama Group, Kwa Ndege Self-Help, Masai Group and Somali Group), the police and Provincial Administration staff.

My further interviews with respondents from Tassia settlement revealed that a significant number of landowners were happy when the NSSF re-entered the land and began to reorganise its allocation, planning and development (particularly of basic infrastructure). This gave them freedom from the Provincial Administration, as its officials could no longer harass them. It also provided some leaders with different opportunities, as they took up different roles. For instance, the Chairman of Kwa Ndege Self-Help was appointed the overall agent for NSSF. He therefore collects funds on behalf of the NSSF from all landowners in the settlement. Another official has taken the role of a surveyor and as such assists people to identify their plots and boundaries. Although those acting as surveyors are not officially recognised, they nevertheless assist individuals with identification of their plots at lower costs.

Interesting further discussions with respondents reveal that ethnicity continues to play an important role in determining access to land in the settlement. This is because the land is now administered by the NSSF, yet transfers remain informal and individuals still use their ethnic networks in accessing buyers. Thus the networks established during the initial phases of forceful occupation remain important in influencing access to land. Indeed, during my fieldwork a youth indicated that tensions between groups were worryingas youths from different parts of Tassia rarely mixed since the settlement was ethnically differentiated. This further indicated that the tensions and levels of mistrust were still high in the settlement and that fighting between the groups over land at the time of the initial forceful occupation had a lasting impact on their relationships.

Table 7.1: Groups that forcefully occupied the land

Name of Group	**Key Characteristics**
Mama's Group	Predominantly ethnic (Kikuyu), relied on ethnic support from youths and politicians. Introduced Mungiki to the land conflict and led to other militias joining the fight. The leadership predominantly Kikuyu and still occupying a particular section of the settlement. The Chairperson has had long experience dealing with land invasions, is relatively well to do, own several blocks of tenements and has stakes in the transport business.
Kwa Ndege and Jua Kali	Mixture of ethnic groups, the group had successfully occupied different parcels of land in the neighbourhood. The leadership was also mixed. Use of religious and political patronage. The group leaders are also preachers in a local church. This was just one of their projects. The Secretary of the group now doubles as a surveyor helping people identify their parcels of land.

Masai Herders	The group were up to the time of forceful occupation of the settlement innocent herders. Transformed from herdsmen to land invaders and agents. One of them uses his knowledge of the ground/land to help people identify their parcels of land.
Somalis	The leaders of this group are well connected to political class and public servants. A relatively well to do group, trading in commodities.

Source: Author's Field Survey, 2007

However, further discussions with the respondents living within the settlement indicated that as time progressed, more people begun selling to people from other ethnic groups thereby leading ethnic mixing in the settlement - this contributes to reduction of ethnic polarisation. Discussions with different respondents revealed that this is due in part to the use of estate agents when selling land. Since the aims of estate agents remains to sell in order to earn their commissions, they are enthusiastic to sell to anybody irrespective of his or her ethnic background. As the NSSF had introduced estate agents, discussions with various landowners also revealed that involvement of NSSF in the land transactions reduced the ethnic tensions. This had made it possible to sell to people from other ethnic communities in any part of the settlement. This is because one could now trust the NSSF rather than rely on ethnic trust as was necessary before.

In conclusion, ethnicity has been critical in shaping land transactions in Tassia. However, the re-entry by NSSF has led to increased use of estate agents due to increased urgency in selling of the plots. The estate agents reduced the influence of ethnicity on land transactions and consequently access in the settlement to land. It has not, however, completely eroded the impact of ethnically-defined inequity in access that resulted from the land invasion at the beginning of the settlement. Thus ethnicity has long-term consequences on land distribution and ownership among the different ethnic groups within the settlement.

7.2.7 The Provincial Administration and land conflicts

The involvement of the staff of the Provincial Administration has generally been perceived as contributing to land conflicts in the settlement. This is arguably due to their corrupt interference in land administration and management. The involvement of the staff from Provincial Administration

has largely been with regard to land allocation and evictions. It is interesting that the Provincial Administration is also perceived by both landlords and tenants interviewed as being useful in resolving land conflicts. Further discussions with respondents resident in the settlement indicated that they viewed the role of the Provincial Administration positively, particularly in resolving a potentially explosive conflict between the four groups who had invaded the settlement.

Indeed, further interviews with residents indicated that yhe competence of the Provincial Administration in resolving conflicts within the settlement further enhanced the Provincial Administration's credibility as being critical in the relationships in the settlement. However, 24 out of 44 respondents representing both landlords and tenants indicated that the role of the Provincial Administration contributes to land conflicts. However, ten respondents did not agree that the Provincial Administration's role contribute to land conflicts in the settlement while another ten indicated that they did not have an idea on what happened.

Further discussions with the youth coupled with a visit in the company of a youth leader to the offices of the Provincial Administration revealed that the youth have close links with them. The visit was even more revealing as I also met women land brokers in the company of the Provincial Administration, indicating that they kept close contacts. This revealed the existence of delicate links between the forceful land occupants, the local administration and their agents on the other. This further confirmed a common public perception that the Provincial Administration and politicians were always party to the forceful land occupations. Driven by personal interests, they are commonly believed to have quietly supported forceful land occupations for personal benefit. My finding was that this perception was probably not far from the truth. In my interviews, the leadership of groups that had forcefully occupied the land admitted to being in touch with the Provincial Administration and politicians.

Several activities of the Provincial Administration staff in relation to Tassia confirm the notion that they were out to benefit from land transactions in this area. For instance, a leader of one of the groups cited a situation where the group leadership was asked by Provincial Administration staff to pay for permanent fencing of land, ostensibly because it belonged to the President. In reality, a Kenyan President has never owned the land. The group leadership proceeded to collect money from its members and handed this to the Provincial Administration staff, but the land was never fenced. These were simply ways of the Provincial Administration staff, in collaboration with the group leadership, of exploiting the poor group members who had occupied the land forcefully.

The perception of the respondents on the most suitable institution for conflict resolution is similar to the previous case study settlements. In this respect, the Ministry of Lands and Settlements is perceived as the most suitable institution for resolving the land related conflicts within Tassia. In the event of failure, respondents felt that Courts of Law would be most appropriate. However, senior officials in the Ministry of Lands and Settlements, particularly the Department of Physical Planning, felt land conflicts in the field should be resolved by the Provincial Administration. This position is at variance with positions held by the civil society organisations who perceive Provincial Administration to be the most relevant institution for this purpose.

Corruption is commonly seen as a sad reality that the poor and well meaning citizens are forced to live with as it pervades almost all sectors of the Kenyan economy and more particularly land management and administration. Thus it is not surprising that about nine out of 22 respondents indicated that they had been required to pay bribes over land issues. Furthermore, a significant (17 out of 22 respondents) proportion of the respondents in Tassia indicated that due to the prevalence of corruption and its linkage to land conflicts they often discuss corruption among themselves.

According to some of the respondents, even forceful occupation of the land was only possible due to corruption since the groups had to compromise the police and the Provincial Administration to ignore the illegal and irregular occupation of private land. Thus a respondent remarked:

> The Chairman is like a king when he visits the offices of the local [Provincial Administration] Chief. The Officers salute him and you actually see that he is held in very high esteem (Personal Communication with a youth, August, 2007 interview held within settlement).

The youth in this case was referring to one of the leaders of the Kwa Ndege group and Embakasi Jua Kali Association, one of the four groups that forcefully occupied Tassia. It is also apparent from the activities of the groups that they are able to buy patronage from public servants. Also referring to the groups that had forcefully occupied land in Tassia, a lady remarked:

> Our leaders are smart; I think they have the local officials on their payrolls. I believe nobody will ever arrest them (Personal Communication with a lady landowner, 2007)

It is clear from the discussions that corruption and political and religious patronage, when combined, led to inequitable access to land, consequently increasing levels of mistrust and conflicts. In addition, corruption contributes to land conflicts by influencing the occurrence of such problems as double, multiple and fraudulent allocation and access to land within the settlement.

Most respondents saw land conflicts as resulting from several factors, the main one being corruption. They argued that land conflicts resulting from problems of double, multiple and fraudulent sales are rooted in corrupt practices. Indeed, respondents argued that such allocations result from bribery and abuse of offices. Further, despite the settlement coming under control of NSSF, there are still corrupt tendencies aimed at exploiting the residents.

7.2.8 Abuse of Political Power and Land Grabbing

In a clear sign of abuse of power elected politicians as well as officials in the Provincial Administration supported the forceful occupation of the land in Tassia when it was public knowledge that the land was private, owned by a workers' pension fund (NSSF). It is clear that they were not bothered about the forceful occupants' abuse of property and planning laws. There were strong indications that public officials connived with the groups to obtain information that helped them invade the land.

Similarly, discussions with various key informants, including lawyers, planners and land economists, indicated that the Commissioner of Lands and Director of Physical Planning, without any pretence to respecting existing planning and land laws, allocated portions of land that had been surrendered for public utilities during subdivision of the land by the NSSF. The replanned sub plots were for staff of the Ministry of Lands and Settlements and relatives of the politicians and senior public officials. The new allottees were speculators and were soon scouting for buyers. Records of the Ministry of Lands and Settlements as well as discussions with a section of staff at the ministry confirmed that the parcels of land had been allocated to well-connected Kalenjin KANU operatives and a few senior members of staff at the Ministry of Lands and Settlement.

Further, key informant interviews indicated that these groups were known largely to be land speculators and therefore once allocated the land they were busy looking for buyers. This process attracted the attention of the invaders. It is, however, clear that forceful occupation of the settlement

was with the support of politicians and public officials, mainly to benefit monetarily from the forceful occupation through bribery by the invading groups.

7.2.9 Key Features of Tassia Settlement

It is clear from the results that social, economic, political and spatial factors combined to influence inequity in access to land leading to land conflicts in the settlement. Access to land from a historical perspective had long been constrained by the structures established in the colonial period that privileged the rich at the expense of the poor. This is where land was allocated in response to one being qualified to undertake profitable development as opposed responding to needs and/or demands from the poor.

Thus the results from case study indicate that the poor are finding new ways of accessing the land in the urban areas. However, inability to organise themselves into a forceful group without external support has ensured that they are continuously exploited. For instance, although they forcefully invaded the land, they have been slowly displaced – first through the purchase of their portions of land cheaply by well to do members of the society and finally through the negotiation with the NSSF, which led to introduction of conditions they could not meet and therefore finally displacing them. The beneficiaries in this process have eventually been upper income groups. It is therefore clear that forceful land occupation is a temporary option for access to land by the poor in an urban setting like Nairobi.

7.3 Corruption and Ethnicity: The Case of Mathare North Settlement

The origins of Mathare North are traced back to the quarry land that was once owned by de'Souza otherwise known as Baba Dogo (which would be translated to mean uncle) for his generosity and support to the local community causes and people who worked for him. The Nairobi City Council purchased the quarry land in 1976 for the development of the site and service scheme partly in response to the failure of Dandora site and service scheme to target the beneficiaries and the genuine desire to provide decent accommodation for the rising population. However, as Shihembesha (1989; 1991) demonstrates, socio-economic factors led to the failure of the scheme to benefit the target population. The beneficiaries were expected to develop the plots, repay city council loan while still paying rent where they were living - this was impossible given that their incomes were low. Besides, as Gatabaki–Kamau (2000) adds, due to increasing

inflation, there was erosion in income levels further making it difficult for the poor to develop their plots.

The site and service scheme (Mathare North) comprised of 1 497 plots measuring 7 x 21 and 12 x 19 metres respectively. The infrastructure for the scheme was developed between 1980 and 1982 (Shihembesha, 1989). In addition, the Nairobi City Council, in an attempt to ensure that there was no repeat of the mistakes experienced in Dandora where owners developed several floors haphazardly, prepared type plans for multistorey tenements. However, like Dandora most of the beneficiaries were unable to develop their plots and instead sold them to the relatively well to do (Shihembesha, 1989). Further, the new purchasers did not adhere to the four floors limit but instead produced housing of more than four floors.

The Mathare North and Kayole schemes feature among the later categories of land distribution in Nairobi. As Huchzermeyer (2007) points, initially there was land invasion by squatters in Mathare Valley. This evolved through the formation of a cooperative which was to assist in acquiring land. However, the cooperatives did not last long following incorporation of richer people who quickly transformed them into limited liability companies. However, according to Etherton (1971), this was mainly in the south of Mathare Valley.

The site and service schemes, though meant to help in provision of housing to the increasing urban population, nevertheless also acted as a land distribution mechanism after independence, as they helped a number of relatively poorer members of the society to access urban land. In rural areas, however, land distribution was through resettlement schemes in rural areas (Leo, 1984). In this respect the Dandora site and service scheme that comprised over 6000 plots measuring between 100 and 160 square metres became the second. Mathare North and Kayole immediately followed after Dandora (Shihembesha, 1989 and 1999). In these cases basic infrastructure was developed. In addition, every plot was provided with a wet core. Mathare North and Kayole were started in response to the failure of Dandora to target the poor as well as to eliminate informal settlements.

However, like Dandora, plots in Mathare North ended up in the hands of well-off investors. Shihembesha (1989 and 1991) points out that most of the poor allottees could not afford to develop the structures that Nairobi City Council had envisaged. Thus they were forced to sell their plots instead. The new owners of the plots did not adhere to the plans that Nairobi City

Council had provided, instead most of the allottees developed structures higher than storeys. The aim in this case was to benefit from the demand for rental housing by the low to medium income groups that have been increasing in population.

7.3.1 Characteristics of the settlement

Like many other tenement settlements in Nairobi, Mathare North suffers from deteriorated road conditions, water shortages, unreliable power supply, insecurity, poor sanitation and overcrowding. In addition, residents of the settlement pay high transport costs and high rents in comparison to their incomes. However, as already mentioned in chapter five, there is 24-hour matatu[49] transport from the city centre to the settlement, making it attractive to younger people.

The overall infrastructure in the settlement has quickly deteriorated since the early 1980s due to lack of maintenance. Roads that once had tarmac have either been washed away or are covered with construction material. They are generally water logged. A newcomer to the settlement would be left wondering if there were ever roads constructed in the settlement in the first place. Despite the settlement being connected to the main sewer, there are open drains with waste flowing freely between buildings. This is arguably due to overstretching of the facilities beyond their capacity as the infrastructural facilities were not designed for the kind of density they serve today.

It is probably true that the physical development plan for Mathare North was never officially sanctioned and enforced, thus the poor construction of buildings. The corridors in buildings are narrow, unlit and without fire exits. Given the poor state of the settlement, it was surprising that a number of my tenant respondents still preferred Mathare North over other settlements. They are in particular attracted to the fact that there is reliable public transport from the city centre. The landlords I interviewed valued Mathare North as it was easy to obtain land from the City Council, and because the plots were cheaper when compared to other areas. Ease of access to the land remains the main factor that made most landlords choose the settlement.

A feature in the Mathare North that is common to other settlements is that the residents are from different parts of the country and come from diverse ethnic groups. However, a large number of

[49] Matatu refers to privately but informally run mini-bus transport which is prevalent in Kenya

tenants in Mathare North are from the Luo ethnic group while landlords are from the Kikuyu tribe. The two ethnic groups have had conflicts following political differences by politicians from the two ethnic groups. The majority of the tenants interviewed indicated that they have tenancy agreements. In addition, most of the tenants in the settlement are not new to the urban areas. Many have been living in other settlements within Nairobi with a few having arrived directly from outside.

Another interesting result is the use of estate agents in rent collection in the low-income settlements. Some of the tenants indicated that a number of people referred to as 'landlords' in the settlement are actually caretakers of the buildings on behalf of the owners. This is explained by the fact that most caretakers and agents have managed the building for many years and the tenants have never met the landlords. Indeed, the few authors in this area such as Shihembesha (1989 and 1991); Gatabaki (2000) and Huchzermeyer (2007 and 2008) have indicated that most of the landlords developed the structures to earn profits and live in other areas. Huchzermeyer (2006) recounts experiences of elusive landlords who were unwilling to be known and this could be the most appropriate description of these landlords.

Mathare North is home to many Community-Based Organisations that are dealing with diverse issues. However, I was unable to identify CBOs established within the settlement concerned with land and rent related conflicts. But there were numerous CBOs concerned with HIV and AIDS and related issues like Orphans and Vulnerable Children, People Living with HIV/AIDS, domestic violence and child abuse. In the neighbouring Huruma and Kenya Survey Area there are NGOs such as Pamoja Trust and the Catholic Church's development wing, which are concerned with land and shelter related issues. These organisations were, however, not specifically targeting Mathare North residents but rather those living in the 'slums' along Mathare River. This is because tenants in the rooming market of Mathare North are better off than those in the 'slums' or informal settlements.

The tenants in Mathare North are not organized for any specific community action, a situation that Huchzermeyer (2007) also established for parts of Huruma, directly to the south of Mathare Valley. One difficulty for community organisation is the mistrust between the various ethnic groups in the settlement. It emerged from my field work results that the ethnic mistrust is largely political and based on negative perceptions perpetuated by the political class. This has made it difficult for tenants to organize themselves into associations to negotiate for improvement of building conditions, infrastructure and reasonable rents.

7.3.2 Land Conflicts and Ownership

Both tenants and landlords interviewed indicated at the time that they were generally satisfied with their contractual relationships. For the tenants the documents were the lease agreements, while the landlords the documents were from Nairobi City Council. However, Mathare North is well known in Nairobi due to numerous ethnic conflicts and conflicts over land ownership. The area has also had many serious conflicts between tenants and landlords. Conflicts in Mathare North start as rental disputes. However, my discussions with residents revealed that the conflicts have mostly been fuelled by politics; as such the outbreaks of conflicts as well as intensity are blamed on politicians.

Indeed the study results confirmed that incidences of land conflicts are high in Mathare North and that they result from diverse issues – political, economic and social. Suffice to add, however, that at the time of the interviews in 2007 there were serious tensions within the settlement due to the pending elections. More importantly, my field results revealed that most land conflicts in Mathare North are linked to rental disputes and subsequent evictions.

Discussions with my respondents further revealed that land conflicts in the settlement are also the result of fraudulent and multiple plot sales, land grabbing, corruption and ethnicity. The other causes that respondents mentioned were historical wrongs, abuse of political power and tensions between the rich and the poor[50]. Further explanations on the role of ethnicity, corruption, historical injustices and abuse of political power will follow in later sections of this chapter.

In addition, my field work results revealed that land ownership conflicts in Mathare North result from corruption within the City Council. Corrupt practices by City council staff and connivance with unethical estate agents have in the opinion of most key informants such as professional valuers, planners and lawyers been the main cause of fraudulent plot sales and allocations. Indeed, a leading land lawyer practicing in Nairobi contended:

> Individuals are cheated to buy plots with fake numbers, only to discover that they had been cheated after another person with the correct papers has emerged, claiming ownership of the same parcel of land". Similarly, "multiple land sales take place due to collusion between

[50] The rich and poor here refer to landlords and their tenants – implying a class struggle that often transforms into ethnic conflicts.

> landowners, estate agents and city council officials" (Personal Communication with a key informant, 2007 interview conducted in Nairobi).

It is these fraudulent activities that lead to high incidences of land conflicts within the settlement. This is arguably one of the main causes of land conflicts in the settlement. The study results indicated that the fraudulent activities are perpetrated mainly by professionals working in the Ministry of Lands and others working in City Council, often in connivance with unprofessional lawyers and estate agents. Interestingly, a council staff lamented that:

> "Fraudulent land transactions within the council are linked to corruption and ethnic networks within the council. He added thus, "when I was employed by Nairobi City Council, I found that there already existed a complete tribal web and all cases from ones community that require special treatment were channeled to a tribesman to assist. In such circumstances, the right procedures were not meant to be followed" (Personal Communication, an interview with a Planner working with Nairobi City Council, October, 2007).

The study further revealed, however, that most landowners interviewed were satisfied with the land ownership documents from Nairobi City Council. The irony is that this is in the midst of high incidences of fraudulent land transactions within the settlement, particularly over access to land. Indeed, corruption over land within the council was arguably so rampant that letters of allotment issued by the Town Clerk were always cancelled and new one issued to one who gave a bigger bribe. Indeed, as a lawyer sarcastically put it:

> "The Town Clerk is often misled or bribed by either a member of the public or other public servants into issuing the allotment letters even where there has been one already. He then pleads innocence, yet all are aware that he has been bribed" (Personal Communications, interview with a Planner working with Nairobi City Council, October, 2007).

Although individuals indicated that they were satisfied with the documents issued by the city council, on the ground there were, however, serious concerns over security of tenure. This is because unless one secured his or her land by laying a foundation and retaining someone nearby to report on any activity on his or her plot, then he or she risked losing the plot to a land grabber. Indeed, the study revealed that one would easily find the same plot already fraudulently allocated by City Council officials to another person – at times even with a completely new development on it. Further discussions with residents indicated that it is not uncommon in the settlement and has in the past been a cause of serious conflicts between parties in the settlement.

A discussion with a lawyer involved in conveyance practice further reinforced this. However, the lawyer added that all land allocations by Nairobi City Council have problems of fraud. The fraudulent dealings, he added, emanate from the various departments of the Council. The lawyer's argument was that it was not uncommon for the Nairobi City Council to allocate a parcel of land to more than one person. He said: "I have several cases in court of clients whose plots have been invaded by others. This is common with the Nairobi City Council allocated land" (Personal Communication with a key informant, interview with a lawyer in Nairobi, October, 2007).

The responses from staff of Nairobi City Council that due to political pressure they are often forced to abandon laid down procedures in their work to allow for allocation of land under unclear circumstances. This result reinforces the argument that the Nairobi City Council often escalates land conflicts. It is thus not surprising that letters of allotment are issued to individuals even in situations where another individual already owns the land and the council has no control over the land. It is under these circumstances that fraud is committed and individuals lose their hard-earned money when conniving with Nairobi City Council officials.

7.3.3 Corruption and Ethnicity

Corruption and problems related to ethnicity in the settlement started as early as the initial allocation phase of the scheme. Some respondents argued that during allocation, local politicians were given a chance to assist in the process, and largely mobilised their ethnic groups and supporters. The politicians were mostly from one ethnic group, the Kikuyu. The actions of the politicians led to the plots being allocated largely to the Kikuyu who arguably were only about 25 per cent of the population of Nairobi (Chege, 1981).

Opinions among the respondents are however, divergent on this matter. There are many who argue that the allocation was undertaken fairly. Others however think that the involvement of politicians led to problems, while some felt that the fact that Nairobi City Council officials were largely from one ethnic community was responsible for inequitable land allocation and later caused of rental and land conflicts in the settlement. Furthermore, in the perception of respondents, corruption and ethnicity often combine to fuel conflicts over land.

The majority of the land owners interviewed felt that in comparison to ethnicity, corruption over land allocation has been the main cause of land conflicts in the settlement. Similarly, a majority of tenants saw corruption as the main cause of land conflicts in the settlement. The interviews also revealed the perception that it is due to corruption that there are malpractices in land allocation processes at Nairobi City Council offices.

Interestingly, the propositions for the study argued that the main cause of conflicts in the settlements has been ethnic rivalry over land. However, my discussions with different respondents in Mathare North suggested that although this is one of the factors, it is not as significant as corruption and historical injustices. Ethnicity however, has been important in intensifying and escalating conflicts in the settlement due to other factors. For instance, a respondent posited "we sometimes have disputes over rent with people from our home. It is not always with other tribes" (Personal Communication with a building caretaker, 2007).

Conflicts in Mathare Valley, therefore, are not always between different ethnic groups. Land conflicts in the settlement start as rental disputes which are not always between different tribes. A caretaker remarked while another respondent chipped in during a discussion: "I have no idea where tribalism and rent problems started in this building" (Personal Communication with a respondent, 2007). The two respondents indicated that most disputes in the settlement are rental. They further pointed out that these quickly turn ethnic due to existing tensions between ethnic groups and the prevalence of ethnic stereotyping.

In the opinion of many respondents, stereotyping contributes to ganging up of ethnic groups over an issue, transforming simple differences over rent into wide scale conflicts in the settlement. This was confirmed through my experience when during the fieldwork I joined a group of residents who were seated on a wooden bench where they were sunbathing. My intentions were clear, I wanted to acquaint myself with them and interview at least one person. But after I ordered a bottle of soda an old man in the group feigning drunkenessconfronted me and enquired why I was in the area. My attempts to ignore him notwithstanding, he declared that I had been sent to identify whose land will be confiscated if one of the Presidential candidates won the elections that year. I was being accused because the Presidential candidate came from a similar ethnic background as I, namely Luo.

The incident, though it appeared at first to be an isolated case, was later repeated in several interviews and pointed to ethnic-political tensions present in Mathare North. In other instances, individuals simply walked away and did not respond to my questions once my ethnic background was established. These experiences further established that there was serious ethnic mistrust and suspicion within the settlement. The clashes that took place in the settlement following flawed presidential elections later that year (Mueller, 2008; CIPEV, 2008) further confirmed the level of ethnic mistrust and suspicions among the various ethnic groups.

An interview with an advocate who has been representing groups of tenants from Mathare North in their rental disputes also confirmed that that there are deep-seated historical and ethnic grievances between various ethnic groups in the settlement. These are political, social as well as economic. This came out clearly when the Advocate, in the presence of one tenant in his office, remarked:

> These people (referring to the Kikuyu) are exploiting our people (referring to the Luo). When they complain they bring thugs to kill them. Yet they were given the land for free by their clansmen at the City Council. This is unfair and must be stopped (Personal Communication with a Key Informant, August, 2007interview took place in the respondents offices in Nairobi).

This meeting with the lawyer together with the representative of a group of tenants revealed that the tenants seldom initiate the physical clashes. The conflicts are often started by landlords who may bring lorry loads of vigilantes to chase away or evict tenants whenever disputes over rents arise. It becomes tribal, the Advocate explained, because the landlords are mostly Kikuyu while tenants are from different ethnic groups, with the majority being Luo and Luhya.

As the discussions continued, the lawyer sprung up and declared:

> Conflicts in Mathare North are disguised as rental disputes but are in reality political and ethnic abuses. The conflicts are about civic and parliamentary elections. It is about power. These people must rise up and defend themselves (Personal Communications with a key informant, 2007).

It is clear that despite the problems tenants face, they are not organised into any proper groupings to help them challenge the *status quo*. However, whenever problems arise they become mobilised through their respective ethnic networks. Thus groupings that appear are only *ad hoc*. It is therefore not surprising that a local community organisation network representative of tenants remarked:

> Most of our colleagues (tenants) are unwilling to participate in these initiatives. They only run around when affected and solicit support of our people after they are affected (Personal Communications with a tenant, October, 2007).

It emerged that those who follow up on rental issues are mainly political activists belonging to the Liberal Democratic Party (LDP) and later the Orange Democratic Movement Party (ODM). The activists are from different ethnic groups. They are driven by different interests – ethnic, political and in most cases economic. The conflicts in the settlement are worsened by the ethnic profiling and stereotyping that depicts, for instance, Luos as those who want to live for free on other peoples' properties, while the Kikuyu are seen as exploiters. Others perceive the Luhya, as dirty and Kalenjin as primitive. However, discussions with a retired Provincial Administration Chief in the Congo[51] area of Mathare North provided some hope.

The discussions with the 'Chief' revealed that there are differing opinions on the influence of ethnicity in determining access to land in the settlement. The retired Chief claimed that he was involved in the mobilisation of squatters to apply for plots in the new scheme (Mathare North). The local councillors and the area Member of Parliament were also involved in mobilising the community members to participate in the exercise. The interesting point is that all public officials who were involved in the mobilisation were from one ethnic community, the Kikuyu, and the majority of the applicants ended up being Kikuyu.

The retired Chief narrated the story of the settlement as follows: The land was acquired from city council with assistance of the World Bank as a site and service scheme. It was then planned and allocated to individuals after payment of minimal fees. The application fee was Kshs 100/= (about US$1.4) and purchasers were further granted loans to develop the land. The allocation was largely to Kikuyu. According to the former Chief there was no ethnic, tribalism or favoritism in the allocation process. He added:

> The Kikuyu, for reasons that are largely historical, were keen to acquire land and applied for allocation ensuring that they met all the conditions that had been set. Besides, the then Minister for Local Government the late Mudamba Mudavadi was deeply involved in the exercise and could not have favoured the Kikuyu (Personal Communication with a retired chief, 2007).

The retired Chief claimed that once the plots were allocated those from other ethnic groups sold their plots immediately thereafter. Other key informant interviews and discussions confirmed that the allocations were not restricted to one ethnic group and that many people sold their plots after the initial allocation. As also evident from the literature (Shihembesha, 1989, 1991), there was also consensus among

[51] Congo area refers to a section within Mathare North settlement where many people of Congolese origin settled, mainly as tenants with a few of them as landlords.

my respondents that the sales were by the poorer allottees to wealthier people who ended up developing high-rise tenements.

In addition, there was consensus that land conflicts in Mathare North revolve around double and multiple allocation of land by city council officials. As such, rental conflicts are arguably a more recent phenomenon. The rental conflicts are born out, first due to the hard economic situation and secondly the feeling of exploitation fueled by political interferences. The contentions have been that the landlords acquired parcels of land for free but are exploiting poor tenants. This has been a major contributor to serious confrontations and conflicts over rent payment.

Later discussions with Pamoja Trust's team revealed that rental conflicts in the settlements could be one of the unintended results of the work of the NGO in settlements like Ngomongo in Nairobi. This is because their capacity-building activities led the tenants to understand their rights and thereby demand that they are charged reasonable rents. This is in addition to the fact that tenants were now organized into groups. The conflict over rents in Ngomongo was serious and spread to Dandora, Kariobangi, Mathare North and Kibera slums more or less around early 1990s. The seriousness of the conflict forced the then President Moi to visit the settlements and tell the structure owners to reduce the rents they charged. It is interesting that by this time the conflicts had already acquired an ethnic dimension. It was now Kikuyu versus Luo. The fighting was thus no longer directly between landlords and tenants. Instead, the Mungiki militia group was now assisting landlords, leading to the entry of other militia groups such as Kamjesh on the side of the tenants (East African Standard, 2001).

It is clear that rental conflicts in Mathare North are not isolated or spontaneous but are ongoing even when all seems quiet. The recent flare-ups in Nairobi following the discredited December 2007 presidential poll confirmed deep-seated ethnic tensions that had been bedeviling the country. The resulting conflicts in the settlement led to a temporary reorganization of control over land with certain areas being declared no-go zones for particular ethnic groups. Thus although on the surface land conflicts in Mathare North are largely blamed on corrupt practices of city council officials, it should be recognized that there are also undertones that include ethnic bitterness, political and economic factors.

Indeed, discussions with representatives of civil society organizations dealing with evictions and shelter in low-income areas revealed that some of the major causes of conflicts in settlements like Mathare North are unclear ownership of land and too much respect for the title by the State, arguably so even when the title has been fraudulently obtained. Thus civil society organizations' representatives from Haki Jamii, Umande Trust, Pamoja Trust, Shelter Forum, Action Aid, Oxfam and Kenya Land Alliance interviewed contend that even in situations where an individual has been occupying a parcel of land for many years he is often evicted in favour of the individual who emerges with the title. It is argued that this respect for the title is a major cause of land conflicts.

In general, it is clear that causes of land conflicts in Mathare North include multiple sale and /or allocation of single plots, corruption, fraud, tribalism, unclear ownership (lack of titles), and greed, evictions and ignorance. The other causes include tensions between the rich and the poor, fraud and land grabbing. Key informants argued that inheritance is also a major cause of land conflicts. However, public officials saw land conflicts as largely due to an inappropriate land tenure system, increasing population and land values, high returns on investments on urban land, irregular public land allocation, historical injustice (colonial and independent governments), and lack of security of tenure and ownership problems.

7.3.4 Access to land in the settlement

Access to land in Mathare North was initially through a public land allocation process targeting poor squatters in Nairobi. This was in part to fulfill independence desires of Kenyans that included increased access to urban housing, something that the colonial government had denied them access to. Thus Mathare North was part of the drive to ensure the poor who were not well catered for in housing provision had access to decent accommodation.

It should be understood that public land allocation processes are relatively clear and straight forward, as outlined in *The Hand Book on Land Administration in Kenya* (Government of Kenya, 1991). However, factors such as ethnicity, politics and power mediate to interfere with the smooth implementation of the processes. The interference ensured that the rules established are either bent or ignored, particularly if they do not favour the rich and politically well connected. In the process certain groups benefit at the expense of others. In the case of Mathare North, although the processes were well-articulated, mobilisation was left to

the politicians and bureaucrats with economic and ethnic interests. This worked to ensure that one ethnic group acquired more than the rest of the population.

Further discussions with officials from Nairobi City Council confirmed that ethnicity influences decision-making processes within the department of Development Planning. There was emphasis by the respondents that land allocations in the Council attracts diverse interests, making it a very difficult exercise and often fraught with undesirable deals. Examples were given of recent land allocations by the Nairobi City Council in areas such as Jamhuri Phase II, which has numerous conflicts as a result of the failure to observe the allocation procedures, in turn it results in interferences by the political class.

In the case of Mathare North, access to land was mainly through public land allocation processes and purchase through the open market. Most landlords do not occupy their structures and bought the properties for investment purposes. It also emerged that landlords tend to live in the up-market residential areas. In addition, contrary to the general perception, they are from different ethnic communities, although the majority are Kikuyu. This is not unusual since the majority of those who acquired land in the initial allocation were Kikuyu and given that the land market is imperfect, sellers find it easier to sell to those from their ethnic communities. This may explain the continued dominance in property ownership by one ethnic group.

Land transactions in Mathare North settlement have remained stable since its inception in the early 1980s. Since then the demand for land in the settlement has remained steady despite price increases over the period. Indeed, the land market was very active in the early years of the settlement development but stabilized after some time and has been affected by a number of factors, including ethnic animosity and conflicts.

7.3.5 Knowledge on Land Acquisition Processes

Access to land in the settlement has evolved from the public land allocation to an imperfect market oriented system that followed soon after individuals began to develop their houses. At this stage, those who could not develop their plots began to sell (Shihembesha, 1989). While the initial public land allocation process was based on need and targeted the poor, settlement development has since been determined by the market.

The majority of the tenants interviewed are keen to purchase land (land in this case refers to both developed and undeveloped parcels) within the settlement. Knowledge of the tenants on how land is accessed in the settlement, however, remains scanty and poor. Thus just under half of the tenants I interviewed indicated that they knew how land is accessed within the settlement. This indicates that a significant proportion of the residents could be defrauded if they were to attempt purchasing land in the settlement. This makes the land market even more imperfect.

It is clear that to access land in the settlement one has to go through the steps outlined by the respondents as follows:

1. Contact an estate agent – The estate agent is expected to give information on available plots for sale and prices. He or she will also show one the sites and provide ownership documentation if one is keen.
2. Interested purchaser with the help of estate agents undertake searches at Nairobi City Council offices and obtain information on the ownership, outstanding repayments and any special conditions that may have been on the property.
3. Negotiate on the price if satisfied with the information so far provided.
4. Engage the services of a lawyer to prepare transfer papers and ensure observance of conditions of sale; and
5. Pay the agreed purchase price and take over the property after signing transfer documents by both parties and change of records by Nairobi City Council staff.

Despite the elaborate process that purchasers go through to ensure that the plots they purchase are without encumbrances and that they are buying from the actual owner, there are still fraudulent sales. Indeed, discussions with land management professionals confirmed that there is connivance between some estate agents and Nairobi City Council officials to defraud purchasers.

The steps a buyer needs to go through to purchase land in the settlement to avoid defrauding are generally long, tedious and costly. In addition, it requires a knowledgeable and well-resourced individual. This is because of the related legal and other ancillary transaction costs. Therefore, market oriented land delivery processes are unfavorable to most of the people residing in the settlement. This is because they are low-income earners, and therefore cannot effectively participate in the land market. It is, however, clear that the market is active as the advertisements pinned on walls' boards attached to specific sites indicate.

Estate agents play an important role in the settlement by ensuring that tenants and landlords interact in the market. They also ensure that buyers and sellers of property access one another by acting as the intermediaries in the transactions. The advertisements pasted on walls (the advertisements included rental rooms and properties for sale, including undeveloped land) in strategic locations within the settlement and in newspapers further work to ensure that a wider market has knowledge of the properties available for sale or rental purposes.

Sale and lease agreements are used in most transactions in the settlement both rental and land purchases. In the case of sales, the agreements are prepared and witnessed by lawyers. In the case of tenancy, the lease agreements are standard forms, which are signed by landlords and tenants but without special witnessing. Property sale transaction processes are lengthy, tedious and costly. This is due to the nature of the existing institutional framework. This makes the land inaccessible to the poor. In addition, information on vacant parcels of land owned by the Nairobi City Council is obtained through insider networks. Similarly, the sales or allocations are limited to the network members. This further leads to tensions and conflicts.

7.3.6 Institutional Issues and Land Conflicts

There are several institutions involved in land management and administration in Kenya. In the case of Mathare North the main institutions are Nairobi City Council, Ministry of Lands and Settlements and the Provincial Administration. The roles of these institutions are supposed to be complementary. However, there are instances when they overlap. Such instances include times when staff abuse their positions.

Nairobi City Council is expected to allocate land in the settlement after approval by the Council. The Council's role then is to ensure that the Council's approval is respected (thus to allocate the land), to ensure that appropriate payments are made, and to liaise with the Ministry of Lands and Settlement to ensure that requisite documentation is prepared for the parcel of land. There is, however, evidence that the staff from the Ministry of Lands and Settlement and Nairobi City Council as well as the Provincial Administration meddle unnecessarily in land issues in Mathare North. This, coupled with fraudulent activities by Nairobi City Council, combine to cause more land conflicts.

Evidence from my case study indicate that staff of the Provincial Administration is involved in land management and administration in most settlements in Nairobi including Mathare North. The Provincial Administration interferes in land allocations with poor results as it undermines efficiency and equity in land allocation processes. Indeed, discussions with the retired Provincial Administration Chief in Mathare North confirmed that the Administration's role has been critical from the inception of the settlement. This is because it was involved in mobilisation of would-be owners through the Provincial Administration. The presence at the local level makes them more influential and works to ensure that they understand the local problems. Land issues are generally local as they are spatially related. Therefore local persons often understand the problems and needs.

It is then not surprising that in many communities the Provincial Administration is seen as capable of resolving the land conflicts. However, the Provincial Administration through the local representatives has

been acting like a planning authority, which licenses any development, repairs and any business activities. However, it is due to this that its actions are perceived to contribute to land conflicts. It is apparent from discussions that the Provincial Administration staff find themselves entangled in land disputes.

7.4 Conclusion

In this chapter the results presented have been on two settlements with unique features. Mathare North was one of the early cases where the state in liaison with Nairobi City Council aimed at facilitating access to decent housing. Thus the settlement was planned and allocated by a public body. On the other hand, Tassia was born both through a public body that is NSSF and forceful occupation.

In both settlements, ethnicity has been central in determining land transactions, particularly with regard to access to land. Land conflicts in these settlements have been serious and results from deep-seated feelings of betrayal. Due to these conflicts, serious mistrust has developed among the people of different ethnic groups. In both cases, the problems between the groups have been manipulated by the elites, including both the political and religious. Generally, conflicts in the two settlements demonstrate

the impact of feelings of historical wrongs at a small scale. The chaos that followed the disputed presidential elections in 2007 further indicates the seriousness of feelings of historical wrongs.

The post-election violence that followed the disputed presidential election seems to have vindicated the officials of local Non-Governmental Organisations who had argued that most of the land conflicts in the settlements emanate from feelings of historical wrongs. This view was echoed by the African Union's eminent persons, thereby concurring with the perceptions of the NGO officials. The African Union, Eminent Persons' mediation team that came to help Kenya out of its election debacle identified among other issues to be addressed to avoid future clashes to include land and historical injustices (see Daily Nation and East African Standard for January and February, 2008 and the Commission of Inquiry into Post-Election Violence, 2008 popularly known as the Waki Report). Suffice to add this is not the first time that the issue has been identified as being critical to unlocking tensions in Kenya. Kenya Land Alliance had since 2003 argued for it, although less articulately as the African Union Eminent Persons have done.

The African Union group of Eminent Persons felt that to achieve long term peaceful coexistence among the various ethnic groups in Kenya, land issues must be exhaustively addressed. They stressed that it must be
addressed in tandem with the historical injustices. The import of this is that failure to do that would leave the people vulnerable to more conflicts in the future. This position further reinforces the perception of land officials as to what ails the land and its management in Kenya.

In general, it is clear from interviews, reviews of reports and discussions with planners, land administrators and surveyors that the main drivers of land conflicts in Kenya's urban areas are clear. In the perceptions of the NGOs the land conflicts result from a lack of proper land policy which has led to abuse of the land allocation processes, land grabbing, existence of multiple conflicting interests on land, existence of inappropriate land laws, political interference in land transactions and poor land management and administration. The two case studies in this chapter indicate that there existed different types of land conflicts.

CHAPTER EIGHT

URBAN LAND CONFLICTS AND INEQUITY IN NAIROBI FROM CASE STUDIES – CROSS-ANALYSIS

8.1 Introduction

In the two preceding chapters I presented findings from the selected case studies. In this chapter I present a summary and conceptual discussion of the study revolving around the emerging themes. In addition, comparisons of results from the four sites are made to show the unique trends that emerge, which should not be taken as generalisations of the results of the study. In addition, the results are further interpreted to establish the consistency of the patterns of issues emerging from the study. This has been done in relationship with the study propositions and key questions with a focus on the theoretical framework.

The themes I have used for presentation of the study results are maintained from the earlier chapters for consistency purposes. In addition, recurring and emerging themes such as militias, religious and political patronage are highlighted. The main themes revolve around the main study objective – that is, establishing the linkage between urban land conflicts and inequity. The chapter further highlights the roles of land markets, corruption, ethnicity and politics in land conflicts and inequity interactions.

8.2 The Case Study Settlements and Results

The results presented in this study are from four selected case study settlements in Nairobi but like Peters (2004) argues that the value of the case studies does not only lie in the rich results but also in the interpretations of the ethnographies. In these cases, the interpretations of the observations and interview data are central as they help unravel the linkages between various dynamic factors that mediate land interactions in an urban setting of this nature. It should, however, not be lost to us that the study settlements are all located in the area popularly known as East Lands and comprise of Embakasi Jua Kali, Tassia and Pipeline and Mathare North located in Embakasi and Kasarani districts

respectively. During colonial times this was the only area where blacks were tolerated, as already indicated in chapter 5.

Emerging from the case studies is the increasing competition for land and housing in the settlements resulting from a combination of factors. This is similar to a situation that one witnesses in the formal settlements in Nairobi and is therefore considered as "normal property markets" but more evident in emerging and transition economies, as Haila (2007) points out. In addition, it brings to mind cases witnessed in such places as Kigali, Rwanda (Durrand-Lasserve, 2006) and China (Walker, 2004; Harvey, 2006). In these cases, as in the case study settlements, several factors interact to influence land allocation, just as Peters (2004) has argued. It is the interactions that shape the pervasive and uncertain dynamism of the conflicts and tensions. The factors are social, economic and political in nature. Thus, as Durand-Lasserve (2006) indicates in the cases of Kigali and Phnom Pen respectively, economic and political forces interact to influence land use, access and ownership. Interestingly, the narratives from the respondents in my case studies privilege ethnicity as opposed to other factors such as politics. Yet as Peters (2004) posits, the main issues could nevertheless be economic, political or cultural.

Results from across the case study settlements reveal that it is rare to find vacant units in these settlements, contrary to the situation that obtains in the high-income areas. This makes sense, given that a large proportion of the population in Nairobi is poor. In addition, results from across the case studies reveal that tenants in these settlements are largely long-term urban dwellers, some of whom had been living in other towns. This is contrary to literature on informal and slum settlements reviewed in Obala and Njambi (2003) that claims that most residents of informal settlements in Nairobi are new to urban areas, unemployed and live with relatives.

Similarly, the results across the case study settlements confirmed that the settlements are attractive to landlords due to quick returns on rental investment due to the short payback period and the high demand for such accommodation. The investment in the structures (even if multistorey) is low in comparison to the high returns. Discussions with valuers and urban planners confirmed that the normal payback period for buildings in regulated planned areas varies between nine and 15 years. Investments in residential structures in settlements similar to the case study settlements normally have a payback period of about 5 years. The payback period is shortened to only one year when the

structures are built of temporary materials. It is due to the quick return on investment and therefore high incomes that investors earn from these settlements that landlords encourage the youth to forcefully occupy more public and /or private land.

Another interesting feature of the settlements is that a large proportion of the respondent landlords, with the exception of those in Pipeline, live within the settlements occupying rooms within their own buildings and/ or structures. This indicates that the owners of structures are not only investors but are were also more needy individuals whose investment may just be circumstantial.

The study results established that landowners within the study settlements are as rational as investors in formal areas would be. It emerged that their decisions on which settlement to invest in are based on expected returns on their investments and profits. The selection is further determined by such factors as the ease of transactions (ease of access), affordability, ease of transactions and spatial attributes of the settlements. It is these attributes that influence individual choices of the settlement and the nature of the investments.

Although ethnic enclaves exist in some of the settlements such as Embakasi Jua Kali, Mathare North and Tassia, on the whole landlords and residents of the settlements are generally from diverse ethnic, educational and professional backgrounds. For instance, landlords include government officials, professionals from the private sector, civil society and a host of others engaged in small-scale enterprises. The initial allottees of land in the settlements were identified through individual networks. It should, however, be acknowledged that initial allocations in the settlements had ethnic orientations. The sale of plots somehow corrected this situation to a limited degree.

Most of the original occupiers of land in the case study settlements were displaced soon after allocation through market forces as wealthier people bought their parcels of land. This is similar to what is obtainable in the formal land market. The case Durand Lasserve (2006) discusses relating to Kigali, Rwanda has similarities with these cases. A similar case is cited of the process of dispossession in China by Walker (2006). The two cases are similar in many respects to what takes place in the settlements after the people have settled and they appear stable.

In the forcefully occupied settlements of Tassia, Embakasi Jua Kali and Pipeline the youths play a critical role in the land acquisitions and occupations and acted as security in the initial phases of the

development of the settlements. However, in Embakasi Jua Kali, Tassia and Pipeline the youth were displaced once there was a semblance of stability within the new settlements. In the cases of Tassia and Embakasi Jua Kali the youth acted as vigilantes protecting the settlements from those claiming the land. But in Mathare North and Tassia the youth acted as militias fighting on behalf of their ethnic groups in seemingly ongoing conflicts.

The displacements of the poor [52]are as a result of competition for land in the settlements as a result of high demand for rental rooms and lower construction costs in comparison to high income areas where the quality of finishes escalates the rents. The competition coupled with uncertainty over tenure has forced ethnic groups to make land transactions with those from their ethnic communities. It is therefore not surprising that the study results revealed that land transactions in the settlements remain largely ethnic. Indeed, some landowners were unwilling to sell land to people from other ethnic communities and when they do they demand higher prices. This is unusual in the formal land market in Nairobi, although they do exist for areas with racial clustering such as Parklands and Ngara. This demonstrates how the land market is imperfect and facilitates inequity in access to land both in the formal and informal land markets. Yet as the African Development Bank (2007) stresses, land plays a critical role in poverty reduction, economic growth and private sector investment, particularly when individuals are capable of access to it, and exchange of the same is critical to poverty alleviation.

However, it is increasingly becoming difficult to reap the benefits of a vibrant land market. This is because it requires certain basic attributes of good governance to be met, such as transparency and certainty (Magel and Wehrmann, 2004); although good governance is often viewed to be overly ambitious and include numerous policy objectives that are difficult to achieve (Hyden, 1998 and Kinuthia-Njenga, 1999). There is need for a few attributes to be incorporated to enable a larger population benefit from the land market (formal or informal).

8.3 Community Organization and Collective Action

The role of community organisations in mobilising communities towards achievement of collective aspirations has been outlined in Chapters Six and Seven of this thesis. There are several community organisations operating in the case study settlements concerned with diverse issues. Those that were

[52] The poor in this respect refers to a special group of individuals who could neither afford land nor permanent development on it even when freely acquired. It is this group that was continuously displaced by the relatively well to do.

founded to facilitate forceful land occupations are found in the Tassia, Embakasi Jua Kali and Pipeline settlements but do not apply in the case of Mathare North since this was a formally planned settlement.

It is apparent that the individuals who started community organisations were largely mimicking the cooperative societies and land buying companies. Community-Based Organizations were used immediately after independence to help poor groups mobilize funds to purchase farms in the white highlands. Cooperatives societies were also used in a similar way. In general, they helped a large pool of mainly displaced and/or dispossessed people to access land after the end of colonial rule. In addition, employees of different organisations in Kenya continue to mobilize themselves into cooperative societies and land buying companies and jointly purchase land among others (Gitau, 1987). It is these happenings that must have influenced the groups that forcefully occupied the land parcels to start community-based organisations.

An interesting result from the case studies is the kind of collective action which is directly related to the organizational nature of land conflicts. Except for Mathare North, the rest of the case study settlements were forcefully acquired through organised invasions by groups with elite and ethnic networks. In all the cases the forceful land invaders were driven by both self- and group interests. However, in later stages the individual interests came to the fore although there were attempts to disguise them as group interests.

The collective action and the organisation of land conflicts emerging from the study results can be explained partly by the structure and agency theory more particularly as set out by Giddens (1987). The theory has been used by Leduka (2006) to explain informal land delivery processes in Kenya, Uganda, Botswana and Lesotho. In these cases it was used to explain informal land delivery processes particularly in relation to customary land – which in many respects are similar to the phenomena being studied in this case.

The lens of structure and agency helps explain the ability of the poor masses that are generally perceived to be weak to mobilize themselves and influence the political class to support their actions, thus acting as agents with a certain power to move in their direction, that is, support the cause of the less powerful. In three of my case study settlements in Nairobi the poor, with the support of the political and ethnic leaders, have been able to invade properties belonging to powerful individuals and

public institutions. However, this was a short-lived gain with ultimate displacement from these settlements for most of these original 'agents'. This brings the structural constraints of theory to the fore.

8.4 Perceptions and Definition of Land Conflicts

From the outset of this study many questions appeared difficult to answer; one of those was what the meaning of land conflicts is. In attempting to answer the question one must appreciate that land conflicts are central in the study and therefore a clear understanding of the meaning, nature and dynamics of land conflicts is critical to appreciating the factors that influence land conflicts as well as the theories that attempt to explain the same. This is particularly critical given the arguments espoused by authors such as Pons-Vignon and Lecomte (2004) and Gausset (2005) and a host of others who all see land conflicts as complex. Indeed, Brockett (1992) even goes further to warn that it is hazardous to measure and categorise conflicts.

These authors argue that the difficulties of coming to a single definition of conflict are due to the fact that it embraces many facets with social, historical, political and cultural dimensions. Brockett (1992) even warns that at times data relating to land conflicts end up being unreliable due to manipulation as well as difficulties in data collection. In addition, the difficulty of coming up with a precise definition of land conflicts from the case study results explains and further enhances the argument posited in Chapter One of this thesis that land conflicts is a multifaceted concept with diverse meanings and therefore difficult to explain.

Despite the difficulties of coming to a consensus on the definition of land conflicts as espoused in Chapter One, Section 1.3, I adopted an embracing definition of land conflicts viewed as interactions between two or more forces over land resources. The forces include social, economic, cultural and environmental factors. In addition, they include struggles to maximize an individual or group's land use related benefits. The struggle between the market and the state in the state's intervention process is also taken as a conflict in this process. This definition has been borrowed from the works of Mandel (1984), Horrowitz (1985), Johnson (2000) and Nasongo (2000). Thus, in conclusion, it is clear that land conflicts remain contentious in terms of

definition, causes, and dynamics and dimensions because it is influenced by numerous factors – political, economic, social, cultural and environmental.

The study results and the definition I adopted for the study brings to the fore the fact that there are inherent conflicts between the various forces and interests that interact in an urban setting. This definition is thus aligned with the emerging conflicts in the case study settlements that are institutional, legal, ethnic and political in nature and fuelled by corruption and greed. As outlined in the case studies, the main causes of conflicts range from ethnic biases and patronage to fraudulent land allocation processes, indicating institutional failure. In this respect the adopted definition was useful in helping explore the various shades of land conflicts.

It further emerged from the study and media reports that land conflicts are on the increase in some of the study settlements. This is because after forceful occupation in Tassia, Pipeline and Embakasi Jua Kali a stable situation emerged and market forces began to help displace the less powerful players from the market. The market displacement process in itself is conflictual. In Embakasi Jua Kali, as in Mathare North, conflicts among land owners have been on the increase as land values appreciate amidst increasing land scarcity and competition. The land conflicts, however, differ in intensity between the settlements. Similarly, the causes of conflicts differ between the study settlements, as do their nature, dynamics and intensity.

It is apparent from the study results that there were incidences of land conflicts in Mathare North, Tassia, Embakasi Jua Kali and Pipeline respectively with varied intensity. The variation in intensity and seriousness of land conflicts is due to the increased levels of ethnic polarization, fraudulent plot sales, multiple ownership claims, and multiple sales, political and ethnic manipulation within the different settlements. Pipeline had the least incidences of land conflicts, which is partly explained by the fact that at the time of forceful occupation of the settlement there was only one group. This meant that there were no tensions as there was no competition between different groups as was the case in Embakasi Jua Kali and Tassia.

The lack of serious tensions in Pipeline is partly explained by the fact that most of the initial forceful occupants of the settlements sold their portions of land and left the settlement. Second, the buyers were from diverse ethnic and economic backgrounds. Third, given their economic status, ethnic

diversity, affluence and uncertainty over ownership due to the influence of the landowner, the groups organized themselves to protect their interests through legal representation, retaining a law firm to handle legal issues regarding the land.

The other interesting case is that of Embakasi Jua Kali which had less serious incidences of land conflicts in the initial phases of settlement. The settlement was forcefully occupied, although with the assistance of the Provincial Administration and City Council officials. Unlike Tassia, at the time of occupation of the settlement there was only one major group comprised of individuals from different ethnic groups. Interestingly, the collective action was mainly through manipulation of the individuals by the local elites with intentions of benefiting from the collective action. This was achieved by the group through the members' belief that their fate was tied together. Similar approaches have been used by politicians, for instance in the case of Zimbabwe for which Abrahams (2006) explains how President Mugabe and his party ZANU have successfully used elite manipulation strategies to wade through political chaos, each time manipulating his ethnic group to believe it is their interest under attack.

Similarly, the incidences of land conflicts in Mathare North that emanate from the tensions emerging from perceived favoritism that accompanied the land allocation, corruption by the City Council officials can to a large extent be explained by political and ethnic manipulation. These have arguably led to persistent intermittent conflicts – many times starting as rental conflicts. This is because conflicts in the settlement have largely followed political tensions as also evident from the chaos following the 2007 presidential elections; conflicts in the settlement have been ethnic as groups are organized around ethnic agendas.

As already stated in Chapter Three, there are no precise theories that can help explain the role of ethnicity in an urban setting like Nairobi. This is because different theories explain different parts of the phenomenon. As argued by Mingione (1981), Smith (1984) and Homer-Dixon (1991), urban land conflicts encompass issues of political manipulation, culture, scarcity and ethnicity, with the state playing some part as well. Analysis of the phenomenon thus requires, as I argued in Chapter Three, various theoretical strands. This has been reinforced by the arguments espoused by among others AlSayyad (1996); Castells (1999); and Yiftachel and Yacobi (2004) who have also posited that urban

land conflicts cannot be explained using a single theoretical strand.

The emergence of new forms of land conflicts, including multiple claims to land and fraud among individuals, can easily be explained as resulting from the nature of the urban setting and perception of land. As Midgal (1988) argued in the case of land reform in Egypt, passing of property from one group to another often invites resistance: similarly, although the transfer of land within Embakasi Jua Kali settlement does not constitute land reform it nevertheless involves empowering a particular group and movement of land from one group to the other. It is for these reasons that one can argue that new land conflicts are emerging between individuals and mainly over multiple claims and fraudulent transactions. A similar situation is being observed in Mathare North.

For instance, the conflicts that characterize initial land invasions in Embakasi Jua Kali, Tassia and Pipeline typify what Walker (2006) has explained in the Chinese land reform process as "Gangster capitalism". This is because, as in the Chinese case, individuals have forcefully taken over property that belong to either a public body or other private individuals and claimed their ownership successfully.

But Moore's (1973) idea of semi-autonomous social-field still seems to be more appropriate as it looks at the processual characteristics of the land invasions and the ability of the groups to generate rules and coerce compliance. The theory as argued by Moore (1973) is enmeshed in the social matrix as social relations such as ethnic relationships are critical in these processes and often mediates to influence the results. For instance, in the case studies a number of social factors such as political patronage, corruption and ethnicity have been able to intervene and influence the results of forceful land occupations. This was the case in Embakasi Jua Kai, Tassia and Pipeline settlements.

Indeed, Moore's (1973) argument as espoused in Chapter Three is therefore useful in explaining the land conflicts in the informal settlements. It needs to be appreciated that conflicts over land are sometimes quiet. This is more evident in conflicts over public land. Razzaz's (1994) used semi-autonomous field as a theory to explain land conflicts in Jordan. This is where individuals invaded land, subdivided and developed as the state fought to stop them. Both More (1973) and Razzaz (1994) refer to non-open resistance to the state. In the case of Jordan which Razzaz (1994) uses to illustrate the quiet resistance, he depicts a situation where individuals move in and occupy land owned by a public

body, feigning ignorance and weakness. He therefore concluded that informal settlements form non-compliant semi autonomous social fields.

In the case of Embakasi Jua Kali, Tassia and Pipeline settlements, although the forceful occupants feigned ignorance, they were aware that the parcels of land belonged to either a public body or individuals. This is evident from the results in Chapters Six and Seven. However, as in the case of Jordan, there were strong mediating social and economic forces which, as stated earlier in this chapter, include ethnicity and corruption. Similarly, the resultant settlements remain a challenge to state rules and authority.

The explanation offered by Razzaz (1994) is criticized by Leduka (2006) as missing out key features of non-compliant strategies. This, Leduka (2006) argues, is because the argument is premised on open confrontation with the state and property owners. Leduka (2006) therefore adds that the covert and/or quiet strategies with no clear forms of organization or planning and in which actors avoid open confrontation, are lost. It is these that were referred to in Chapter Three as weapons of the weak, often symbolized by foot dragging, dissimulation, false compliance, pilfering, feigned ignorance and slander. The case studies display these features, reinforcing the argument by Leduka (2006) that quiet resistance is appropriate for explaining land conflict processes in these settlements.

In all these cases, it is evident that different factors have been influential in determining the nature of collective action of the various groups. The leaderships of the groups effectively used it to lobby government officials and politicians to support their forceful occupations of public and private parcels of land. As Dafe (2008) points out, the support from the public officials was not without expectations. There were payments in almost all cases. It is the form of payments that differed. In some cases, they were paid through political support, while in other cases there were cash payments. In certain instances, groups were expected to do both, as the case study results reveal.

In summary, land conflicts in the case study settlements can be explained by various forces (social, economic, environmental, and political as well as cultural). In addition, it is clear from the results that local institutions such as Nairobi City Council are incapable of managing urban land. Indeed, Yahya (1985) had observed a similar situation in the case of Kenya and Larbi (1995) in the case of Ghana.

8.5 The Drivers of Land Conflicts

Land conflicts emerge from interrelated causes including increasing population, land values, irregular public land allocation, historical injustices, lack of security and ownership problems. The main causes of land conflicts can be classified as social, economic, political and institutional. There are those factors that are cross cutting such as tenure, ethnicity, corruption and historical factors. For instance, land tenure is arguably a major cause of land conflicts in Nairobi as it facilitates uncertainty over ownership, boundary disputes, unclear modes of access to land and fraud prone transaction processes. Thus it cuts across all issues.

Furthermore, it is evident from the study results that inappropriate land tenure is susceptible to manipulation particularly during land allocation processes. This would facilitate inequitable land allocation processes. The allocation processes thus favour the well connected and rich individuals at the expense of the needy who happen to be the majority.

In cases such as Embakasi Jua Kali it emerged that land conflicts emerging after forceful occupation of the land mainly result from inappropriate land tenure. Thus it emerged that the settlement committee has been demolishing structures within the settlement ostensibly due to inappropriate tenure arrangements. Similarly, inappropriate tenure systems were mentioned as contributing to fraudulent land transactions leading to multiple claims and ownerships thereby contributing to land disputes as is the case in Tassia and Pipeline respectively. Indeed, case study results further confirm that land tenure is a critical determinant of land conflicts in urban areas. This confirms Deinninger and Castagnini's (2004) assertion that many land conflicts result from the failure of the prevailing land tenure systems to respond to changes in demand and traditions of the various communities. This further corroborates assertions by Yahya (2001) and Obala and Njambih (2003) that there is need for the land tenure to evolve into a system capable of resolving evolving land conflicts.

The various positions espoused by different authors on the role of land tenure on land conflicts demonstrate the difficulty of explaining tenure related land conflicts using a single theoretical strand.

This is further complicated by the fact that most of the existing laws guiding land use planning and land allocation in many countries in Africa, Kenya included, remain colonial (Mamdani, 1996). The laws were at times borrowed from other colonies, including India and South Africa, and therefore in many cases were inappropriate to the needs and aspirations of the people.

It is therefore not surprising that despite numerous "attempts" by the Government of Kenya to facilitate access to land by the majority of the population, the policies have not had any legal support and have instead contradicted each other. Indeed, key informants and civil society respondents explained that attempts to allocate land to occupiers with the backing of the Government have failed in the past due to the prevailing legal provisions that strongly privilege the protection of private ownership even when the land is idle, as is often the case in Kenya.

The contradictions between existing laws and policies are clearly exhibited in cases of squatter settlements upgrading in urban areas. In such cases, failure of the Government to settle squatters on land they occupy is but one case. Existing pieces of legislation that were mainly inherited from the colonial period favour holders of the titles, regardless of whether the person is utilizing the land or not. There has not been the political goodwill to reverse this situation.

The laws governing land relations in Kenya were meant to protect the interest of the colonialists and settlers; come independence the settlers were replaced by black elites who now controlled the Government and its policies. The post-colonial elite have been reluctant to facilitate changing of laws and since they control both the Legislative Assembly and Executive through lobby groups and networks it is unlikely that land laws will be meaningfully changed to address persistent urban land management problems such as fraudulent processes and abuse of land allocation. This is because existing laws have served the rich well.

Yet, as Farvacque and McAuslan (1995) have pointed out, most of the existing land laws in developing countries, including Kenya, have problems. Among them are their formulation and use. In Kenya land laws are colonial and continue to encourage bureaucratic structures and gate-keeping. Furthermore, attempts at reforming land laws and management have been by the same elites and at the elite levels, with individuals with vested interests always forming the committees and commissions. Thus the results of these commissions have largely been the promotion of the status quo under other disguises

largely promoting their social and economic interests. The interests of ordinary citizens are often not taken into account. It is due to these intrigues that it seems title to land is sanctified and squatters genuine or otherwise are often evicted without recourse.

The positions presented by Benda-Beckman (2001), Houtzager (2001) and Rakodi and Leduka (2003) who have all posited that laws should emerge as a result of interactions between different agents of the state and actors in society, can be used to explain the contradictions between policy intentions and laws in Kenya. The argument clearly implies that although state law should emerge from interactions between the people and the agents of the state, this was not the case. Instead, as Mamdani (1996) argues, colonialists imposed "two legal systems: one modern, the other customary". The application of these laws was varied – the so-called modern law was universal, while the customary law was applicable in tribal areas. In urban areas it was modern laws which privileged private ownership of land and provided the rules and processes of access to land (Mamdani, 1996).

However, others like Syagga (2006) and Kanyinga (2006) point out that the persistent contradictions between laws and policy have been due to the first independent Government's desire to continue with the colonial policy. Kanyinga (2006), like Mamdani (1996), has further argued that the post-colonial state did not reform the state but instead redefined the existing structures to suit the form of control it wanted. It is thus the interests of the elites that the state served and therefore reforming land laws was not privileged.

It is these problems, coupled with increasing landlessness, that have contributed to more intense land conflicts. Given the conflicts that followed the flawed 2007 Presidential elections and which were largely seen to have been driven by deeply seated historical grievances, attempts to review land relations in Kenya have now entered a different stage. This is because it has become an African Union problem and, as the actions of African Union [53]reveal, it is likely that post- colonial Kenya will for the first time be able to address the land question. It is also possible that the big man syndrome[54] is likely to hold sway and halt all reforms in laws relating to land.

[53] The African Union in an Extraordinary meeting of the Forum of the Heads of State and Government of African Peer Review Mechanism held in Cotonou, Benin between 24th – 26th October, 2008 discussed the Kenyan land question, which has also forms Agenda Four in the negotiations by Eminent African Elders chaired by H.E. Koffi Annan who brokered a peace deal in Kenya early in 2008.

[54] This was first discussed by Leo, C (1984). Syagga, P.M (2006) has used the term in reference to land grabbing and corruption in Kenya

It is apparent that problems of land management and conflicts can be partly explained by the existing contradictions in laws and policy, failure to reform the state and capture of the state by the elites and corrupt individuals. But it can also be explained as being the result of the failure by the majority to force the state to reform. This was until the flawed Presidential polls when the masses decided to reclaim the state, although it lasted for a very short period. It nevertheless pointed out to the political elites that they must address issues affecting citizens as the power of the state resides in the people.

8.5.1 Absentee landlordism and Landlessness

Absentee landlordism is central in the debate on land in Kenya, more particularly given the experiences of the coastal population who continue paying rent to absentee landlords living outside Kenya. In this respect absentee landlordism has been a source of tensions and has further contributed to intermittent land conflicts over land in the Coast Province. In the case study settlements absentee landlordism of a different dimension has also contributed significantly to land conflicts.

The contribution of absentee landlordism to land conflicts is due to its linkage with insecure land tenure and speculation. Land speculation, although limited within the study settlements, arguably led to land scarcity in the first place. It is the main cause of landlessness, which happens to be a major cause of land conflicts. When land is left undeveloped by an absentee owner for long it attracts the attention of both the genuine landless and squatters who in their attempt to occupy the land organise for forceful occupation, often with assistance of an administrator or a politician.

In other parts of the country absentee landlordism that emerged from historical events have affected relationships. It is therefore not surprising that key informants from the civil society groups emphasized it, arguing that it is a critical contributory factor in land conflicts. A similar situation was found in the study settlements. Indeed, land left lying idle within the settlements attracted land grabbers and fraudulent land allocations, as the case of Mathare North reveals. The finding confirmed that potentials for land conflicts are thus increased through land speculation and absentee landlordism. It is because of this that it was pointed out that landowners had either to fence their parcels of land or lay foundations. Alternatively, one was expected to hire security or pay protection fees to individuals to guard the land from external persons.

It is apparent that the three parcels of land that were forcefully occupied had been left lying idle for many years. In the process, landless groups got attracted to the parcels of land and forcefully settled on them. The owners then attempted to reclaim them and conflicts ensued as a result. Such cases are not uncommon in Kenya. For instance, in February 2008 there was an attempted forceful occupation of private land in Kilifi district, Coast Province (The East African Standard, 28th February 2008). The paper reported that more than 1000 squatters armed with pangas[55], hoes and other crude weapons invaded privately owned land and subdivided it among themselves. The group of invaders argued that the land had been idle for long. A spokesman of the group added:

> Our ancestors were evicted from this land in unclear circumstances; we do not see why the current holder should be left to sell it to outsiders (East African Standard Newspaper, 28th February, 2008).

The attempted forceful occupation attracted the attention of the police and officials of the Provincial Administration, leading to a confrontation. The confrontations clearly pointed to the fact that land relations in the country need to be re-examined. It should also be noted that the invaders were largely poor landless people and squatters and that cases of forceful land occupations are not uncommon in other parts of the country, particularly urban areas.

Similarly, land left idle within any of the study settlements attracted attention of the landless and grabbers. In the case of Embakasi Jua Kali, for instance, there has been an increase in demand for land for commercial and residential development. This has led to a situation where undeveloped parcels of land are being grabbed, leading to increased land conflicts. In the process even the committee members, who over the years were in charge of the settlement's land allocation, are arguably compromised. This has rendered what had existed as a conflict resolution structure and mechanisms within the settlement ineffectual and indicates that increasing competition for land contributes to land conflicts. It further confirms that competition for resources affects communal values. Thus transformation occurs from communal ownership to individualistic which contributes to more intense competition. As a result, more conflicts emerge from the community.

Similarly, in Mathare North land left idle by allottees is often fraudulently allocated by Nairobi City Council officials in spite of earlier official allocations. Fraudulent land allocations by council officials are mainly as a result of the increased demand for land. Similar occurrences are evident in Embakasi

[55] A panga is a Kiswahili word for a machete, which is sometimes used as a crude weapon by ordinary villagers.

Jua Kali where there is increased demand for land, with prices exponentially increasing. A similar situation was observed in Tassia until the reclaiming of the land by National Social Security Fund (NSSF). In all these cases increased demand for land led to increased incidences of land conflicts.

The results bring to the fore the question of security of tenure. In this respect property owners had to identify innovative ways to secure their properties. As earlier stated, among the new ways were the laying of foundations, tightly fencing and hiring someone to continuously check out that the land is secure. It is instructive that a holder of a large track of land in the neighbourhood had in addition to fencing have his land protected by twenty-four hour security personnel. The security team was further advised to allow the neighbours access through the land to the neighbouring parcels that had been forcefully occupied. In this way they were sure their land would not be forcefully occupied.

The results resonate well with the explanations offered by the Government of Kenya (1970), Olima (1993) and Omunga (1997) that land conflicts at times result from competing interests of landowners and residents. Similarly, in the study settlements the main cause of land conflicts is increased demand for land and the main players are landowners in the settlements. In addition, Mandel's (1986:15) argument that land conflicts result from scarcity and in turn disrupt relationships, equitable distribution and development processes, also offer explanations. This is because one of the main reasons for land conflicts within the settlements is the fact that demand for land is far outstripping supply of land for sale.

Campel *et al.* (2000) further explain the causes of land conflicts by outlining the main drivers of land conflicts - competition for resources – in arid and semi-arid areas of Kenya, which although rural, can also explain land conflicts in urban areas and are appropriate in the case of the study settlements. Thus the findings and conclusion by Campel and Migot-Adhola (1981), Western (1982, 1989, 1994) and Campel *et al.* (2000) that economic, political, policy, institutional and cultural factors contribute to land conflicts in any location is applicable also in the case of the study settlements.

It is clear that landlessness and scarcity embrace political, economic, social, institutional and environmental factors to contribute to land conflicts in any location. However, the intensity of the conflicts is mediated by economic activities in particular locations. Thus the intensity of land conflicts is directly related to economic activities in a particular location.

8.5.2 Rising Land Values and Ownership Disputes

As the demand for land increases, so do land values. Evidence from the study indicates that prevailing land conflicts are closely linked to rising land values. The situation is found in Embakasi Jua Kali where a group of artisans identified that escalation of land conflicts within the settlement is related to increases in land prices. It was argued that land conflicts result from increasing demand and multiple ownership claims. For instance, increasing incidences of land conflicts in the Embakasi Jua Kali are clearly related to increasing land values and prices. In 1992, when the land was forcefully occupied, the value of about 0.0625 hectares land parcels were selling at about Kshs 20,000/= (US$286). However, a similar parcel of land the study revealed was by 1998 worth Kshs 150,000/= (US$2 500). Several factors contributed to the increase in land values and they include improvement of access roads, development of modern up-market housing units nearby and general opening up of the area. Over the years with improved access and general development in the neighborhood the land values have increased sevenfold from the 1998 values.

In the cases of Mathare North, Tassia and Pipeline study settlements, land values have been rising rapidly despite persistent conflicts in the settlements. The rising land values have partly contributed to access to land in Mathare North by relatively richer individuals although it was originally targeted at low income groups. The low income groups that obtained access are also being displaced through purchases by the well to do. The trajectory is similar in the cases of Tassia and Pipeline settlements. However, overall ownership problems of land in these settlements remain unresolved. This situation was observed in all the study settlements except Mathare North. The three other study settlements had to deal with disputes over ownership with the genuine land owners.

The other major issue is that increasing land values in the settlements led to increased uncertainty over tenure. This forced landowners to identify innovative ways of securing their parcels of land. Interestingly, securing tenure of land in the study settlements is at times more expensive than the initial cost of acquisition of the land. However, experienced squatters, who one respondent called "professional squatters",[56] are able to secure their parcels more cheaply due to their connections and networks within the settlements. Indeed, certainty of tenure is further complicated by multiple ownership claims, fraudulent transactions, multiple sales and boundary disputes. Indeed, these

[56] The term 'professional squatter' in this case refers to those people who are continuously squatting on land and selling the same to others.

problems are common in all study settlements. This reveals that the land allocation processes were flawed and the records tampered with to facilitate fraud. However, multiple sales[57] were found to be more common in Mathare North than in any other settlement. Interestingly, the public officials conducted the sales. This reveals a systemic failure in the city council – implying inability to stamp out corruption.

In addition, in settlements with hitherto fewer conflicts, such as Embakasi Jua Kali, new conflicts with diverse dimensions are emerging. Interestingly, the literature indicates that conflicts in the study settlements are not unique but similar to what occurs in other cities. It is argued that the situation is worse in cities where demand for housing far outstrips supply as in the case of Luanda in Angola (Development Workshop, 2005). Indeed, Development Workshop (2005) points out that land conflicts in Angola's capital revolve around the rights of use, boundaries, and disposal. The report further argued that while such conflicts are unlikely to lead to widespread social unrest, the lack of definition of adequate land rights for individuals and public interest can lead to situations of violence as observable also in my study settlements in Nairobi.

As I discussed in Chapter Three, the study results corroborate arguments espoused by Yiftachel and Yacobi (2005) on causes of land conflicts in urban settings. Similarly, it is in agreement with the observation by Development Workshop (2005) that land is a scarce resource in urban areas and is critical to the underpinning of urban development and poverty alleviation, yet the urban poor can only benefit when they have secure tenure. The observation and findings by Durand-Lasserve (2006) in the city of Kigali, Rwanda and Phnom Penh city in Cambodia, demonstrate that as the land values rise, the poor are displaced and dispossessed with the help of public bodies and this brings into focus the theories of uneven development, elite manipulation and structure and agency as posited by Brian (2006) and Leduka (2006) respectively.

Similarly, findings by Campel and Migot-Adhola (1981), Western (1982, 1989 and 1994), Campel *et al.* (2000) and Mwangi (2005) can assist in explaining land conflicts resulting from increased land values. Indeed, the results of the study confirm that as land values increase, those with power and institutional

[57] Multiple sales refer to a situation where a single plot is sold to more than one person leading to multiple claims and disputes over ownership. In many respects it is similar to the case of multiple allocations that also lead to land disputes as a result of multiple claims of ownership

mandates intervene to manipulate the land allocation processes. This is similar to Campel *et al.'s* (2000) finding on land conflicts in arid and semi-arid areas of Kenya.

In addition, my case study findings confirm the general perception that urban land conflicts results from numerous and diverse causes. Due to this, a single theory is neither capable of fully explaining nor adequately deepening understanding of the phenomenon. This perception is reinforced by the results that indicate that urban land conflicts result from a host of factors, including ethnicity, historical injustices and corruption and are subject to various dimensions. It further points to the need to address issues of good governance. This is important, particularly when it comes to governance of spontaneous settlements. Good governance in urban areas, as argued by Magel and Wehrmann (2004), when applied would lead to certainty of ownership, thereby leading to a reduction of land conflicts. Other benefits such as equitable distribution of land resources may also result in the process.

It is therefore reasonable to conclude that land conflicts in the study settlements area are a result of lack of appropriate land management approaches and institutions. In this case, Kreibich and Olima's (2002) argument for the need for appropriate models in land management are appropriate and partly explain the phenomenon of land conflicts. It is obvious from the study that land management as currently practiced in Kenya facilitates inequitable distribution of land. This is generally argued is due to the fact that the current land management approach is based on western culture which does not privilege local needs and is therefore inappropriate.

The above argument is further reinforced by arguments espoused by Mabogunje (1990) and Syagga (1991) that unprecedented population increase partly explains the land conflict phenomenon observed in the study settlements. Similarly, inability of the majority of the urban population to afford rent in the formal sector further leads to increased demand for housing experienced in the study settlements and the resultant land conflicts. The high demand for housing in the informal settlements results from high levels of unemployment as the World Bank, (2006) and Herman and Khan (2008) contend. These results further add to the uncertainty, which has become a feature of most African cities, thereby confirming Pieterse's (2008) perception of urban areas in the developing world as uncertain and unpredictable – thus dreams and desires remain just that.

8.5.3 Historical Injustices

It emerged from the study that land conflicts in Mathare North and Tassia result from historical wrongs committed during land allocations. In the case of Tassia, it is more vexing that the wrongs are argued to have been committed in Embakasi Jua Kali – a separate settlement. However, it would appear that ethnic egos were bruised, resulting in the fierce land conflicts that pitted former comrades against each other in a struggle to secure a larger parcel of land in Tassia. In the case of Mathare North, ethnicity and politics are perceived to have contributed to the initial perception that the land allocation process was not transparent and was tailored to benefit a particular ethnic group due to the influence of the group in the city council during the period of land allocation. Such feelings have led to tensions and contributed to land conflicts in the study settlements.

The results indicate that perceptions of historical injustices are powerful, although largely from civil society, and can arguably contribute to land conflicts in short and long term periods. It also vindicates the campaign by Kenya Land Alliance, urging the Government of Kenya to resolve historical injustices relating to land as a way of resolving land conflicts. Similarly, it indicates that the land policy proposals are realistic and grounded on information from the people. This is because the land policy document has among others proposed that the Government must address historical injustices relating to land that, "stretch to colonial land policies and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved".

Similarly, the findings support proposals by civil society organisations that have also added their voice to the same. Thus through Inter Press Service News Agency (November 24, 2007) reporting at a forum presented by the civil society organisations on their position on the draft land policy, they stated that with a land policy in place issues of historical injustices must be addressed.

Indeed, the fact that conflicts in Mathare North on a number of occasions have had devastating effects, such as disruption of economic activities, leading to loss of incomes and sometimes to deaths, confirms that historical land grievances when manipulated by the political class can cause lasting conflicts with devastating effects over a long period. This is particularly so because these grievances interact with ethnicity to produce powerful identity related associations that are used to ferment conflicts. This was the case in Tassia as well.

8.5.4 Land Grabbing, Abuse of Political Power and Corruption

In Kenya access to land remains important as the demand for the same is ever on the rise. This is amidst dwindling land resource. It is therefore not surprising that the study confirmed that the political class has been using their positions to influence the decision-making processes in the main institutions managing land. The decisions revolved around land allocation and plan approvals. For instance, public officials indicated that land management procedures are often ignored. This is particularly when political pressure is exerted. Presidential approvals of special projects, official fraud and administrative urgency often are an excuse for wrong-doing by public officials.

In the context of continued abuse of power and land grabbing, public officials allocated land to individuals, to themselves, to relatives and to politicians, claiming to act on delegated powers from the President. In this category of public officials is the Commissioner of Lands who allocated public land to the political class and cronies. In these circumstances statutory procedures in land use planning that require stakeholder participation and building of consensus and circulation of plans for comments are not followed. Land for public institutions has been re-allocated in this manner, as in the case of Embakasi Jua Kali.

The abuse of the political power does not end with land allocation, but extends to lease extensions as well as development extensions. It is in regard to these cases that senior public officials and politicians use their influence and ensure that conditions for extension of leases are ignored. For instance, Nairobi City Council and Ministry of Lands and Settlements no longer inspect plots upon submission of redevelopment plans and application for extension of leases before lease extension is approved.

In these circumstances, officers holding key positions directly approve applications without following the procedures. Indeed, a discussion with a land broker revealed that there are agents collecting money from clients to facilitate such processes. For instance, approval for lease extensions and changes of use require that comments are made to respective District Land Officers; Plans are put in daily papers and people are invited to give comments within 30 days before a plan can be considered for approval. However, as respondent officials from Nairobi City Council indicated, in many cases these requirements are ignored due to the position of the person following the matter.

The involvement of members of the Provincial Administration worsens an already bad situation. This

is arguably because the most notable feature of the Provincial Administration has been involvement in fraudulent and corrupt land transactions, as my case study results revealed. The study results further reveals that fraudulent and corrupt land transactions militate against the poor. It is therefore clear that involvement of the Provincial Administration would lead to more inequity in access to land, particularly with regard to the poor. This is because in such circumstances land is largely allocated to the well to do as opposed to the poor. Thus it is clear that land transactions in a market fraught with office abuse, fraud and corruption perpetuate inequity in accessing land.

8.5.5 Corruption and Ethnicity in Land Conflicts

i) Corruption and Land Conflicts

Corruption embraces diverse meanings, both conventional and contextual. The meanings are influenced by the surrounding environment and a myriad of factors with political, economic and social dimensions. On the whole, there is a convergence with respect to the definition of corruption, irrespective of the environment.

Like its definition there are various forms of corruption including: Giving and taking bribes, acquiring money or property through dishonest means, engaging in illegal acts, mismanagement and misappropriation of public resources. Interestingly, a survey by the Kenya Anti-Corruption Survey Report (2007) identified similar forms of corruption. The survey identified dishonest acquisition of property, engaging in illegal acts, mismanagement and misappropriation, as well as land grabbing as existing forms of corrupt practices in Kenya.

These results are critical in deepening understanding as to what constitutes corruption. More so because corruption influences access to and ownership of resources such as land. As such a better understanding of corruption is useful in assisting anti-corruption crusaders to appropriately confront it. This is important because corruption influences access particularly of public land (Government of Kenya, 2003). The origins of this can be traced to the colonial period. As pointed out by Halliman and Morgan (1967), there were already corrupt and unauthorised practices during colonial period.

At independence in 1963, Kenya inherited land laws that had inbuilt corrupt tendencies. This further helped in skewed allocation and access to land. In addition, the fact that the inherited laws gave the President "absolute powers" further contributed to exiting persistent land conflicts. This was worsened by President Kenyatta's decision to allocate land to close relatives, family, supporters and ministers. As

Ndungu (2006) posits, this remains illegal as under a republic the President is merely a trustee of land on behalf of the people.

It is not surprising that organizers and/or planners of forceful land occupations and invasions have a good understanding of land management processes (apart from how they ought to work) that they have knowledge of exactly who to bribe, by how much to achieve what. As the case of Tassia and Embakasi Jua Kali confirm fraudulent transactions took place with tacit support of the local administration. It is due to the support from the Provincial Administration that youths were allegedly coerced into paying membership fees to be allocated plots in the two settlements. This, however, did not come to fruition.

The study established that corruption in land allocation and management is not limited or unique to unauthorized or land invasions. It is apparent from the study that corruption is a major problem in formal settlements; this is evident from the results on Mathare North. It is in Mathare North that abuse of powers and office by city council staff were observed particularly with regard to double allocation of land. Indeed as results of interviews with planners, land managers and valuers working within public institutions confirm, corruption is more the norm rather than exception in the public sector. Most public officials interviewed admitted that corruption is a major problem in the management of land. They further indicated that they know colleagues who have been involved in corruption.

There is consensus among residents of the study settlements that corruption exacerbates land conflicts. Indeed a significant proportion reported that they have individually been required to pay bribes over land related issues. This is because decisions on issues regarding land are at the discretion of individual office holders - that is the Commissioner of Lands, Director of Planning and Town Clerks. As public officials there have been claims that they are vulnerable to corrupt actions. This position is tenable as a former Commissioner of Lands has been charged in court over abuse of office.

In the Nairobi City Council, the Town Clerk is expected to sign allocation letters on behalf of the council after approval of plot allocation committee. But there is evidence of plots allocated without Nairobi City Council approval, as the case of Embakasi Jua Kali settlement demonstrates. This has been an important contributing factor to corruption over land, as these offices have been variously

accused, and one former Town Clerk for Nairobi City Council has even appeared in court on corruption charges relating to irregular and illegal land allocations.

It is also clear from the results that corruption in land allocation has been responsible for inequitable land allocation between persons from different ethnic groups. Thus it has contributed to ethnic tensions due to past abuses and works to trigger conflicts more easily. It is these perceptions that have been critical in influencing land conflicts in Kenya. The case of Mathare North clearly demonstrates this as perceptions of corruption in land allocation continue to contribute to tensions and easily trigger conflicts between ethnic groups.

ii) Ethnicity and Land Conflicts

Conflicts over land in the study settlements are rooted in ethnic intolerance with economic, political and social dimensions. For instance, in Mathare North conflicts often mutate from rental disputes into political and ethnic tensions and conflicts. It is this that led a former Provincial Administration Chief in the settlement to assert that while in the past conflicts in the settlement have merely been rental disputes, in the past few years they have been tinged with political connotations and quickly turned ethnic.

From the conflicts in Mathare North and Tassia it is evident that feelings of ethnic exploitation have caused tensions and mistrust between different ethnic groups and contributed significantly to the land conflicts. The charged political environment further fuelled these feelings and also contributed to the conflicts. Generally, land conflicts acquire ethnic dimensions when local politicians struggling to win the support of their ethnic groups get involved. The hiring of militias to evict tenants (as in Mathare North) was according to respondents largely facilitated by local politicians struggling to outdo each other in protecting community wealth.

Perceptions of ethnic favouritism in land allocations in the study settlements have among other issues contributed to tensions and ethnic clustering with particular ethnic groups preferring to live in specific locations due to distrust and fear of conflicts among different ethnic groups. As a result transactions over land are then restricted to particular ethnic groups. The cases in which land access had progressed to a situation where the sellers use an agent, ethnic clustering was less pronounced. But even there, trust contributed to the restriction of land transactions to certain ethnic groups. This is the general consensus among respondents, that dealing with ones own ethnic group would ensure that transactions

were completed without conflicts. As such 'arranged' transactions do not necessarily rely on established bureaucratic processes they are cheaper and perceived to be stress free.

Although there were ethnic tensions in Embakasi Jua Kali at the beginning of the settlement, the tensions did not erupt into conflicts between the groups. This was partly because one group was very dominant and therefore subdued the other. However, in Tassia and Mathare North the tensions were such that at one stage residents feared living among those from other ethnic communities. The tensions and fears are a result of mistrust between different ethnic groups, in turn restricting land transactions to particular ethnic groups in these settlements.

A similar trend was observable in Embakasi Jua Kali, although to a more limited extent. There, particular ethnic groups attempted to sell within their own ethnic group and to block those from other ethnic groups from buying land near to them. In the case of Tassia the serious ethnic tensions and discriminations that persisted were carried over from the struggle over the forceful occupation of the land. Since this determined how land was accessed in the settlement, it also created ethnic spatial enclaves; though sales to third parties by the allottees later reduced this.

In Tassia the initial forceful land occupation and resulting allocations were largely within an ethnic group, except in the cases of the Masai and Somali Groups. This trend was, however, interrupted with the National Social Security Fund (NSSF) which replanned the plots and insisted on payment of a market price for these parcels over a period of one year. This sorted out those who could not afford to pay for the land at once as they were easily displaced. In addition, it reduced the element of ethnicity in the land allocation, in turn reducing ethnic tensions. The other notable result is that the real poor were immediately displaced and dispossessed. The beneficiaries in the process were relatively rich and happened to be the leaders of the groups that forcefully occupied the parcels of land with help of the poor.

iii) Ethnic Patronage

As evident from the section above, ethnicity continues to play a role in land allocation in Nairobi. My key informants among Nairobi City Council and Ministry of Lands staff claimed that although ethnicity is not openly practiced it is a major issue in the land delivery process within the settlements. Indeed, public servants are confronted very early in their careers with problems of ethnicity. It remains

a daily experience in the work place within the institutions that plan for land uses; facilitate land allocation processes and administration.

As a result of ethnic preferences and hostility in the work place, public officials find themselves easily compromised by ethnic appeals and patronage offers. Thus most respondents in public office indicated that they overlook both statutory and practical procedures in land use planning, allocation, management and administration to assist a member of their own ethnic group. The ethnic patronage-based relationships are enhanced through ethnic associations that individuals join to deal with ethnic hostilities and isolation in the work place. As such, ethnic associations act as networks of ethnic groups, perpetuating strong ethnic identity and a sense of belonging. This is similar to a situation that Adetula (2006) observed as obtaining in Jos City, in Nigeria.

Interestingly, land conflicts within the settlements appear to be class-based. However, they progress and acquire new dimensions evolving into new and unique forms, in many cases acquiring ethnic dimensions. When shaping conflicts, these have numerous negative effects on the land market, transactions and relationships within the settlements. Thus the majority of my key informant respondents from the Ministry of Lands and Settlement and Nairobi City Council agreed that ethnicity directly contributes to land conflicts. However, a limited number disagree with the perception that ethnicity contributes to land conflicts and, therefore, to inequity in access to land. But it is not contestable that ethnic land conflicts result in mistrust, development of ethnic enclaves and limits land transactions to specific ethnic groups.

In summary, it is clear that ethnicity is a major contributor to land conflicts. Several authors, including Osamba (2000), Oucho (2000), Adetula (2006) and Mamdani (1996), have indicated how ethnicity contributes to land conflicts in Kenya and elsewhere. My study has also established the processes how land conflicts starts and transforms. It has also outlined the factors that influence its dynamism. This is corroborated to a limited extent by Dafe (2008), who observed that ethnicity interacts with politics in situations of competition for resources, thereby leading to ethnic conflicts. On the other hand, the results from my case study settlements point that changing spatial, economic and social factors continuously influence interactions over land in these settlements, thereby influencing conflicts.

8.5.6 The Interaction between Ethnicity and Politics, Provincial Administration and Militias in Land Conflicts

i) Politicians and Militias in Land Conflicts

Politics has been critical in influencing land conflicts in the study settlements. Organizers of forceful land occupations included the elected and those aspiring to electoral positions, indicating that it is due to the political stakes that land conflicts arose in these settlements. Further, the forceful land occupiers had links with political party officials and the Provincial Administration who also supported their activities.

Politicians supported the groups that forcefully occupied land in the settlements to ensure that their political positions were secured and they would win their support in future elections. Staff of the Provincial Administration supported the groups of forceful land occupants to ensure or guarantee their bribes. Due to proximity to the politicians and senior bureaucrats leaders of the groups operated without regard to the existing laws.

In addition, leaders of the groups that forcefully occupied land were further manipulated by the Provincial Administration to help solicit support for the ruling party. This explains why forceful land occupations in Tassia, Embakasi Jua Kali and Pipeline were all organized around election periods. Thus Embakasi Jua Kali was occupied in 1992 as the country approached the first multiparty elections. Tassia and Pipeline followed in 1997 in the second multiparty elections. In these situations it was difficult to evict the forceful occupants as they received immediate support from established as well as aspiring politicians.

In the case of Embakasi Jua Kali the Provincial Administration encouraged the forceful occupants to permanently settle on land. The local politicians also joined the fray and supported the occupants. This gave birth to Embakasi Jua Kali which is today home to thousands of families, mainly tenants. Similarly, the staff of the Provincial Administration, despite being aware that land in Tassia belonged to a public body, supported its forceful occupation. Indeed, they even supported occupation of Pipeline despite knowledge that it was a privately owned property. The rider is that in all these cases the support was not for free. The leaders of these groups were expected to give bribes.

To varying degrees across the case study settlements, ethnically inflammatory statements by politicians contributed to land conflicts. Politics, coupled with interference in land administration, impacted on the land conflicts in the case studies Ignoring statutory and procedural requirements in land use planning, allocation and management further fueled the land conflicts, including those resulting from double or triple allocations, leading to land conflicts.

In addition, the incidences of land conflicts increased as politicians competed for support from the landless during the clamor for multiparty democracy in the 1990s. To buy support politicians with the support of the then ruling party KANU helped groups organize forceful land occupations. At the same time they recruited militias who helped provide security to the forceful land occupants. Therefore serious land conflicts in parts of Nairobi, including the Tassia and Mathare North cases, are traced back to the emergence of the militias and multiparty politics in the early 1990s.

Most militias are tribal in composition, for instance Mungiki, the first militia group to emerge, originally was a purely Kikuyu outfit. The desire to counter their influence and protect tribal interests led to the birth of several militia groups, including Taliban, which was largely a Luo militia, Kamjesh that is a mixture of various tribal groupings, Jeshi la Mzee, largely Luhya but claimed to be supported by then President. The various militias were used to anchor tribal support as well as secure forcefully occupied parcels land.

Among the study settlements Mathare North and Tassia are the ones in which militias were or are involved in the conflicts. In both cases, ethnicity has been central in the recruitment of the militias. In Mathare North, the militias were hired to fight dissenting tenants on behalf of Kikuyu landlords. The results have been devastating and led to ethnic clustering and formation of tribal vigilantes. In Tassia, it was the struggle to secure a larger portion of lands for particular groupings and so the Kwa Ndege Group and Mama Group set themselves against each other. This is despite the fact that groups are led by individuals who are officials of Embakasi Jua Kali that organized the invasion of the land. It is also evident that the initial land conflicts in these settlements have had influence on land transactions, thus individuals only sold land to their ethnic groups, leading to formation of ethnic enclaves, further contributing to inequity in access to land.

Opinions on these Militia groupings have been mixed. Some scholars like Kagwanja (2003) see them as anchoring movements for social justice and human rights. Others like Anderson (2002) interpret Mungiki's descent to political tribalism as having accentuated insecurity, violated human rights and disrupted public order. The influence of Mungiki militia on land access, ownership and transactions, though interacting with several other factors, does not seem to be fully explained by any of the theories identified in this study.

It is also clear from the study that the linkages between land conflicts and inequity cannot be explained by a single theory. This is because although the conflicts on the face of it appear to be political, they are also ethnic, class and economic at the same time. This also makes it difficult to explain the conflict transformation processes. Yet from the case studies it is clear that the conflicts keep transforming from being economic to social to political and, at times, to confused.

The study results further revealed that land transactions in the case study settlements are based on local networks and trust. Thus outsiders have to be inducted and introduced by someone known and trusted by the locals. This is arguably the most appropriate approach in these settlements. Indeed, as a practice the idea of witnessing in transactions is important in the transactions in the settlements. Thus a stranger must of necessity be introduced by a person known to the seller and buyer – and the person must be willing to guarantee the transaction for either party. This is not withstanding the fact that the local chief is still expected to witness the transactions.

It also emerged that due to uncertainty many potential buyers of plots in new settlements such as Tassia and Pipeline that were forcefully occupied after Embakasi Jua Kali, sought reassurance that they would not be evicted. Thus the successful sale, development and settlement at Embakasi Jua Kali were used to market the new settlements. Thus the concept of trust became so critical in the transactions in the new settlements that the leadership committees put in place mechanisms for dealing with untrustworthy individuals within the leaderships of the groups.

Although there are differences of opinions on the contribution of ethnicity to land conflicts. It remains powerful in shaping land and political relations. Thus Yiftachel's (2006) observation on the ability of ethnicity to foster powerful links between identities and space is reinforced and is therefore useful in

explaining the study results. Similarly, Leys's (1975) summary of the Kenyan situation under Kenyatta's (a Kikuyu) rule, that the country was dominated by Kikuyu nationalism along with the political and economic control of all spheres of life under Kenyatta's watch, further explains and demonstrates how powerful ethnicity is, in addition to reinforcing Yiftachel (2006) observation.

Although ethnicity has traditionally played a critical role in shaping access and ownership of land in Nairobi from independence there has been reluctance to acknowledge this. This is uniquely Kenyan, as Wood (2008) observes in a media comment in 2008:

> In other places such as Ireland it is impossible to cover troubles without using words protestant and catholic, while in Iraq it is impossible to do so without using the words Sunnis and Shites. In Kenya, it is muted. Nobody calls the other by his ethnic background (The East African Standard, 10th April, 2008).

The comment by Michael Wood was prompted by the reluctance of Kenyans to discuss ethnicity and its contributions to conflicts in the country. This was particularly evident following disputed Presidential Elections in 2007. Thus even the contribution of ethnicity in determining access to national resources such as public land is rarely discussed. Osamba (2001: 43) observed that the Kikuyu, with the support of government, managed to appropriate, either individually or through the land buying companies, nearly all former white-owned plantations in the Rift Valley. Only a limited number of Luos, Luhya and Kisii bought some of the land. When President Moi took over the leadership after President Kenyatta's demise in 1978, like Kenyatta, he promoted appropriation by his kinsmen, the Kalenjin (Osamba, 2001). This further explains the interaction between ethnicity and politics in determining access and ownership of land in Kenya over the years.

ii) The Provincial Administration and Land Conflicts

In general, the case study results pointed to the fact that the Provincial Administration should not be allowed to participate in land allocation. This is because, as the case study results indicate, their involvement in land administration and management is akin to meddling as the obvious result from the case studies have been land conflicts. This is largely because the Provincial Administration's lack of expertise in land management and their involvement is often driven by self-interest (corruption) and largely being used by the political class.

However, the case study results also revealed that the involvement of the Provincial Administration in

land management and administration is traced to the failure of land management institutions to address land conflicts issues. This is confirmed by the study results that indicate that both tenants and landlord respondents in the settlements saw staff of the Provincial Administration as providing an essential service – mainly on conflict resolution. However, the involvement of the Provincial Administration in land management and administration remains at best controversial. However, due to representation of the Provincial Administration up to community or lowest (village) level, it is able to deal with issues in every part of the country – land conflicts not excluded.

In summary, land conflicts are a result of diverse but interrelated causes. However, the main factors include ethnicity, corruption, poor land management and political interference. It is also evident that the main causes are similar across the settlements. It is also evident from the results that some conflicts are settlement specific, thereby bringing to the fore the uniqueness of different study settlements. In the main, however, most causes of land conflicts are similar among the four study settlements. In Embakasi division where Tassia, Embakasi Jua Kali and Pipeline falls they are said to include multiple sale and /or allocation of a single plot, corruption, fraud, tribalism, unclear ownership (lack of titles), greed for land, evictions and ignorance.

These factors interact variously to produce land conflicts in the various settlements. For instance, in Embakasi Jua Kali and Pipeline, corruption and political interference interacted to ensure that private and public land parcels were forcefully occupied, leading to conflicts between individual land owners and the forceful occupants. In Tassia and Mathare North, ethnicity, corruption and politics continuously interacted to ensure that there were conflicts between diverse ethnic groups over land and rent respectively.

Gausset and Whyte (2005) caution against easily explaining land conflicts as resulting from simple trends like population increase and scarcity, which can be seen as contributors of land conflicts in the study settlements. However, Gausset and Whyte (2005:3) note that conflicts over resources such as land often "reflect on the reality which embodies social, historical and geographic diversity, as well as real dilemmas for policy and planning at different levels." They add that "answers to questions of resources and scarcity will always be partial, context dependent and remain part of continuing process of discovery and collaboration" (Gausset and Whyte, 2005:3). In this respect, it is clear that sources of land conflicts cannot be reduced to population pressure and scarcity alone. The position reflects the

Malthusian and Neo Malthusian contentions that are arguably popular with policy makers, keen on figures owing to their ease in explaining population increase, scarcity and environmental stress among other factors that affect land relations.

Similar to Gausset and Whyte's (2005) argument, the case studies reveal that land conflicts in Nairobi result from interrelated forces with varying influences that cannot be explained by a demographic factor alone, although the land conflicts often reflect the reality of demand for land on the ground. My case study results further indicate that the emergence of these settlements does not only respond to demand for accommodation but also investment opportunity for those who see the demand and are able to exploit it. The situation is but a reflection of the problems of the country and the results can be partly explained by Harvey's (2006) theory of uneven development. This is because it refers to the situation where market forces ensure that the poor do not access land through the market transactions. In addition, existing policy makes no provision for their survival as the state only acts to provide an enabling environment.

8.6 Understanding Displacements and Forceful Land Occupations

In all the study settlements, land relations have variously been characterized by displacements and forceful occupations. The processes of displacement have either been through forceful occupation or through market forces. Thus, on the face of it, it may appear that the informal land market owing to its flexibility is able to facilitate poverty reduction, economic development and growth as well as promote small-scale private sector investment. However, the results instead confirm that the informal land market, like the formal land market, in later stages facilitates dispossession and displacements of the poor by the richer groups. This brings into focus the argument that critical norms of good governance necessary for a well-functioning land market do not apply in the study cases. Thus arguments by a variety of authors that posit the difficulty of finding a perfect land market in other parts of the world apply in this case (Haila, 2008; Harvey, 2006 and Walker, 2006). Although these authors are largely from the western world, their arguments strongly echo the realities in the third world and in particular the study settlements.

The displacements and dispossession processes of the poor within the study settlements are predictable and often ongoing. Similar happenings have been observed in other cities such as Kigali in

Rwanda and Phnom Penh in Cambodia. In both places Durand-Lasserve (2006) found that municipal authorities and private investors evicted the poor in a process that ensured that they were displaced from prime land without compensation. This is because in many cases most of the poor have no proper ownership documents. In the study settlements the poor are forced by the prevailing circumstances to sell their parcels of land to richer groups because they are often unable to develop structures as per required standards. In Kenya this has been an ongoing process over many years, starting in the colonial period.

The dispossessions and displacements in the study settlements are predicable. In initial phases forceful occupation of land involves a large numbers of the poor and of youths. The groups are often well-organized with leadership structures and connections to the political class and senior public servants. In some cases they operate under a committee, while in others they operate as Community Based Organizations. In the initial phases of land occupations the youth and the poor are treated as part of the process and are allocated token parcels but members of the committee obtain more parcels for sale. The relationship changes immediately when the land is secured and construction begins. The poor find themselves unable to develop the parcels and are often forced to sell as they become manual labourers on construction sites. The lucky ones get recruited as caretakers on behalf of the new and richer landowners.

The evidence from the case study settlements of Tassia and Embakasi Jua Kali reveal that the poor, landless and the youth are manipulated to assist in forcefully occupying the land. They are assisted to remain part of the process for as long as they are needed to protect the land against forceful occupation. Leaders of the forceful land occupation groups and the political class are more often aware of the need to use the dispossessed. In order to be able appeal to the dispossessed, the leaders appeal to ethnic egos and fears, thereby making the leaders appear ethnic. In the process they are able to convince large groups mainly composed of their respective ethnic groups to participate in forceful land occupations. Politicians and members of the Provincial Administration are often involved in land conflicts within the study settlements. In certain cases, they instigated forceful land occupations.

As a remark by a respondent from Embakasi Jua Kali settlement revealed, there is a period when there were fights daily over land in many parts of Nairobi and for several years in Embakasi. The then area Member of Parliament, the late Daniel Mwenje, was often in the forefront, illegally allocating public

and private land to the so-called "squatters". In a short period, this phenomenon engulfed most parts of Nairobi as politicians in other areas of Nairobi began to do the same, thus Westlands and other areas were not spared (Klopp, 1999). Thus those aspiring to become Members of Parliament and councilors realized this; they too started organizing their supporters to identify idle land and facilitated forceful occupations, in many cases leading to confrontations and conflicts between these groups of supporters

Evidence from the case study results clearly indicate that groups or individuals that forcefully occupy land have close association with members of the Provincial Administration and other public officials. In the three cases of forceful land occupation (Embakasi Jua Kali, Pipeline and Tassia) there was tacit support by the politicians, Provincial Administration as well as officials from public land management institutions. Many informants cite the fact leaders of the groups were frequently seen in private meetings with the Provincial Administration as evidence. Indeed, others have argued that meetings were held mainly at National Petrol Station along Outer Ring road. It is in this place that the District Officer would be seen at least once a week in discussion with some of the people involved in forceful occupation of land.

While forceful land occupation reveals the involvement or support of the Provincial Administration, it also points to the fact that corruption and support for forceful land occupation are directly linked. Bayart's (1990) finding was that as corruption increases, so do conflicts over resources. This is reflected in land conflicts in Nairobi, suggesting that corruption and involvement of members of Provincial Administration in forceful land occupations are directly related to these conflicts. This is because land conflicts as a phenomenon is not an end in itself but implies land acquisition, which depends on corruption. Increased inequity coupled with corruption, ethnicity and political interference interact to ensure that land is accessed by a particular group which thereby becomes richer. In the process, curiosity from and animosity by other groups results in land conflicts.

It is also clear that the politicians through ethnically inflammatory utterances also contributed to land conflicts, in particular in the case of Mathare North. This is often to manipulate their ethnic groups to support them. As Abrams (2006) argues in the case of Zimbabwe where President Mugabe has over the years used ethnicity to obtain support whenever it is waning and have rallying calls against white

minority as well against the Ndebele ethnic group in 1981 in what is still considered as genocide against the community. A similar situation finds itself playing out in Kenya. Indeed, as Osamba (2001) points out, this is not limited to Nairobi.

8.6.1 Land Management Institutions and land conflicts

Institutions are critical for efficient management of resources such as land, more so in a country where land remains a sensitive and emotive resource, like Kenya. Land management institutions thus acquire even more importance. It is due to this that the study sought to establish the role of institutions in land management and land conflicts in particular. There are several institutions involved in land management in Kenya. The Ministries include Lands and Settlements, Local Government, Water and Irrigation, Wildlife and Environmental Conservation, Public Works, Roads, Local Government and Office of the President.

However, the case study results indicate that officials within the various institutions of land management are hampered by different factors in the discharge of their duties, making them less responsive and therefore ineffectual. The factors include increased demand for land, corruption, ethnicity and political interference in land management decision-making processes. This position was further illustrated by a discussion with a member of staff in the Department of Lands who had been seconded to a pilot information-gathering unit within the Department of Lands within the same Ministry of Lands and Settlements. There is staff disdain for research related work. In the opinion of staff, being posted to a research division is not as "rewarding" as working on actual problems and to directly deal with members of the public who often bribe members of staff.

It further emerged from the study results that new staff at the Nairobi City Council are initiated into ethnic blocks soon on recruitment to the Council and immediately identify with the appropriate ethnic groupings for survival. Indeed, a number of respondents indicated that at times promotions are based on ethnic considerations and are influenced by the politicians. In the circumstances, decisions regarding access to land are often influenced by ethnic, political and individual interests.

Given the poor attitudes of staff at the Ministry of Lands and Settlements and in the Nairobi City Council, decision-making processes are often hampered, rendering departments ineffectual in facilitating the land market to operate efficiently. As a result, the land market is unable to equitably allocate land to the various land uses, individuals and institutions. The end result is a distorted land market that contributes to inequitable land distribution and, as a consequence, an increase in land conflicts. The case of Mathare North goes a long way in demonstrating this. The role of the Mayor at the time of allocation of the land and Councilors in influencing the process is still being blamed for persistent conflicts over land.

i) Institutional arrangements for land management

In order to make appropriate decisions there is need for proper institutional arrangement, more so over a critical resource such as land. But the study revealed that decision-making processes are based on conservative and outdated bureaucratic practices that privilege individual discretions rather than relevant laws. This has contributed to wrong decisions that are influenced by ethnicity, corruption and politics. This is quite evident in the case of Mathare North and partly explains conflicts between landlords and tenants on the one hand, and conflicts between land owners on the other.

Another confusion that the case studies have revealed as contributing to land conflicts is the unclear demarcation of roles between the various departments of the government dealing with land related issues. Thus it is difficult to point out which department should be responsible for resolving the conflicts. Land conflicts in many cases result from actions or negligence of the staff of the various departments. This is further complicated by the fact that most land management institutions are unwilling to take up certain roles, such as resolution of conflicts. Indeed, the case study results revealed that most departments are keen to deal with professional issues as outlined in their mandates and issues like land conflicts are better left to the public administration department. Suffice it to add that conflict resolution is, however, not a mandate of one specific institution.

Thus it is clear that except for the Provincial Administration, the rest of the government departments are unwilling to deal with land conflicts since the Provincial Administration often takes up issues of conflict resolution over land in their areas of jurisdiction. Even though evidence from my case study indicates that the Provincial Administration's involvement in land management contributes to persistent land conflicts. This is due to their incompetence in land administration which is an

independent profession with its own rules and ethos. Interestingly, institutions responsible for land management, namely the Department of Physical Planning, the Department of Surveys and the Department of Lands are generally reluctant to become involved in land conflicts resolution and are happy to have the Provincial Administration handle issues of land conflict.

ii) Planning Failure

Planning is critical to resolving and reduction land conflicts; its failure has thus been seen as contributing significantly to land conflicts in the settlements. This is even more serious in places where there is no pro-active planning, which is necessary if problems associated with increasing rural-urban migration, poverty, unemployment and landlessness are to be appropriately addressed. In the case of Nairobi, this is lacking due to interference in the planning process, corruption, and politics, overlapping functions, inadequate resources and personnel problems. Coupled with these problems is lack of adequate budgetary allocation to the Department of Physical Planning and associated units in the local authorities. These problems have made it more difficult for the department to reduce incidences of land conflicts.

Planning, however, needs to incorporate a factor like ethnicity which has been immensely influential in modern politics as it fosters powerful links between identities and space (Yiftachel, 2006:216). In Kenya, ethnicity is a fundamental factor with various dimensions and powerful linkages, which need to be acknowledged in the planning processes. However, discussions with planners and land officers revealed that they were ill prepared to handle land conflicts resulting from the influence of such factors as ethnicity.

This is further compounded by the application of western oriented planning models without proper domestication for these to be appropriate. Thus despite the fact that surveys precede actual plan design and detailing to obtain prevailing situations, the information that is usually collected often ignores indicators with greater impact on the local situation. Such indicators include ethnicity, corruption and political and religious patronage. While these factors have limited application in the western world, in the south and in Kenya in particular, they influence access to land, ownership and relationships.

It is thus important to appreciate Kunzman's (2005) observation that although planning theory is not region specific; planners need to adopt different approaches to apply similar principles in different

settings. This was the import of Kreibich and Olima's (2003) argument, namely that there is need for local solutions to persisting urban land management problems. Indeed, the persistent land conflicts in the study areas result from lack of appropriate strategies, planning failure, poor decision-making processes and inappropriate institutional arrangements.

As Larson (1997) argues, land management decisions should be based on appropriate information that reflects needs and aspirations of the person, that reflects the reality of the economy and that is founded on the principles and values of the country. Larson (1997) adds that there must be feedback mechanisms so that the impacts of the various decisions can be assessed and alternatives identified. As Musambayi (2005) and Walker (2006) posit, in gangster-like economies, public officials benefit from the chaotic situations appropriating public resources to themselves and relatives. Musambayi (2005) argues that this is more evident when the state is withering, as is the case in Kenya due to globalisation and other factors.

Institutional failures have mainly been due to data limitations, inadequate regulatory principles and inefficient regulatory procedures. This is clearly supported by Somevi's (2001) results on the case of Ghanaian institutions' effectiveness in land registration and is further reinforced by Gerrard (1995:310). To limit the shortcomings and be pro-active on land conflicts requires cross-sector cooperation with its numerous benefits, including information sharing. As O'Riordan (1995:3) and Somevi (2001:11) assert, it would facilitate participation by those likely to be affected, thereby their values and aspirations would be incorporated and the information gathered will be "a function of knowledge, experience and power" (Somevi, 2001).

As my case study results indicate, land management in Kenya is undertaken through institutions that lack transparency, are non-responsive to public desires and whose decisions are based on perceived benefits of the elites which are often at variance with the aspirations of the citizenry. It further reveals that critical units such as research are ignored as management of land resources is propelled by corrupt practices. In addition, institutions expected to cooperate for efficient land management, rarely do. This is because there are no clear laws and regulations requiring them to do so - cooperation depends on the

relationships between particular officials.

The study further reveals that there exists overlapping of functions between the different departments. This has negative affects on land management as it provides fertile ground for competition, mistrust and contributes to inappropriate decisions and increased land conflicts. The problems of land management institutions in Kenya are further exacerbated by ethnic considerations in appointments and decision-making with regard to land. This further lowers staff morale, thereby ensuring that there is no creativeness and innovation, particularly in dealings with complex challenges such as the land conflicts. At the same time, the case study results revealed that institutions do matter when it comes to land conflicts. Thus each land management institution needs to have its own form of organization, administrative control and territorial jurisdiction.

8.6.2 Public Land Management Processes

It is clear from the case study results that questions regarding access to and ownership of land are increasingly becoming sensitive. This is due to a number of factors that include increasing uncertainty over land ownership, demand coupled with inappropriate use as well as questionable processes of gaining access to land. The situation is worsened by the fact that land allocation, planning and administration are vulnerable to manipulation by the rich and corrupt. This leads to tensions and, eventually, to land conflicts.

The case study results further indicate that land allocation processes are manipulated in favour of the economic and political elites and their supporters, thereby fuelling persistent conflicts over land. As a key informant respondent asserted; manipulation of land management processes is a threat to urban development as it affects access to land for infrastructural development. More critical is the fact that it makes it more difficult for the ordinary person to access land.

However, there is need to understand that the group that has so far been loosely referred to in this study as economic and political elites refer to a group that is continuously reproduced. Politicians and the wealthy influence access to resources such as land through patronage based on loyalty and ethnicity for individuals who eventually accumulate resources and power and join their ranks. This is seemingly a continuous process that is influenced by the prevailing economic and political situation at
any time and space, as the study results indicate. This is why in the case of the study settlements a number of formerly poor slum dwellers have become landlords with diversified investments, able to

interact with those with legitimate businesses across different sectors. Indeed a close assessment of Embakasi Jua Kali Association, Mama's Group and Kwa Ndege would reveal this clearly.

The situation is further complicated by the existing land allocation process which is long, cumbersome, costly and too complex for the ordinary people to follow. However, as my respondents among planners, valuers, land officers and administrators working in the public sector revealed, the land allocation process is shortened for the rich. As such important procedures in land management are often deliberately ignored or overlooked. This is to ensure that the elite gain access to public land without delays with regard to procedures. The ignored procedures are both technical and legal, and critical to ensuring orderly urban growth and development. It should be appreciated that the often ignored procedures are themselves outdated and unnecessarily cumbersome.

8.7 Conclusions

It is clear that land conflicts result from diverse but related causes although the contribution of each cause varies between settlements. For instance, in Mathare North the land conflicts are mainly as a result of double, multiple allocations and sales, and fraudulent land sales. The underlying causes of these conflicts are similar and remain economic, social, political and institutional. Thus conflicts in Mathare North, which start as rental soon acquire ethnic overtones emanate from the nature of a city which, they claim, is where ethnic communities tend to congregate and generate intellectual, political, and economic elites.

The attributes of factors that contribute to land conflicts are in every place and are neither region specific nor related to the type of conflict. Similarly, the contribution of each factor is limited but varies according to the attributes that influenced the phenomena in the particular areas. Thus different factors play significant roles in different settlements, further explaining the variations in intensity, nature and cause of conflicts in the settlements.

The study findings have also led to the realization that the theories we privilege and use in studies of urbanization, land management and planning, although robust in their explanations, are not able to explain emerging urban and resource conflicts, particularly in Africa. Thus combinations of

complimentary factors have to be used. Indeed, various scholars from the West have been quick in realizing the inappropriateness of these theories. It is even more difficult to identify a single theory that can be used to explain urban land conflicts.

It is clear from the study results that one of the major underlying causes of land conflicts is rooted in the enforcement of corruption and ethnicity, driven by Kenyatta after independence and later facilitated by the Moi regime in addition to inability to service land and release it into the market by the government. This led to the inequitable distribution of land. This ensures that access to land resources is restricted to the rich and well-connected at the expense of the poor, whose situation worsens, thereby frustrating poverty reduction efforts.

Inequity is a factor with political, historical and economic dimensions. It is rooted in the colonial era but also in the economic management of independent Kenya. It can be used to explain land conflicts in both urban and rural areas. However, it is also influenced by a host of factors and presents problems when attempts are made to explain it in urban areas. This is because land conflicts in urban areas cannot be explained using a single factor or theory. For instance, it is difficult to explain abuse of political power and dispossession of the poor. Yet, ethnic fragmentation may help explain this as it is able to with political power and ethnicity and, consequently, dispossessions.

It is also apparent from the study that land displacements continuously occur and in some instances the state ends up transferring resources from the poor to the rich. This is where the poor are evicted with limited compensation. In the case studies the displacements seem to follow a natural process. The poor, though used at the initial phases of forceful land occupations, find themselves pushed out due to limited funds. Indeed, they have access to funds from many other sources, including financial institutions, that would rather fund those in formal employments.

Forceful land occupations and corruption are influenced by economic, social and political forces. In many cases the forces are both local and international and relate to prevailing situations, both local and external. The situations may include the changing economic situation, weakening of the state and

globalization that have left state institutions more vulnerable to manipulation. The forces, including corruption, politics and ethnicity ,have therefore led to poor land management systems, inequity and have been responsible for forceful land occupations and conflicts.

It is interesting to note from the results that corruption and forceful land occupations lead to the convergence of informal and formal land markets. This brings to the fore the fact that the markets have similar characteristics and are influenced by similar factors. On the whole, it is difficult to predict the results of these forces on the land market, except that it invariably reproduces inequity as forces that reinforce inequity continuously acquire diverse and different dimensions. There is a consensus that their negative influences on land management mutate and enhance land speculation, resulting in inequity in access and ownership of land, thus fuelling land conflicts. Thus it is clear that corruption itself is a product of several forces that further interact with it to produce land conflicts.

In conclusion, the case studies reveal that gaining legal access to public land in Nairobi is generally impossible for the poor. This is because most public land has been pilfered in addition to the interference by both the political class and the elites for their own interests. In addition, it is clear that that most of the landless do not know how land is accessed either in the open market or through public land allocation. These factors, coupled with the conclusion that public land allocation processes are subject to numerous imperfections and intermediating issues such as corruption, political patronage, and ethnic biases that militate against objective and efficient land allocation processes, makes it difficult for the poor to access public land.

CHAPTER NINE

SUMMARY AND CONCLUSIONS

9.1 Introduction

In this chapter I present the summary and conclusions of the study that revolve around the main themes emerging from the study. The aim of this project from the outset was to address the key research questions from both epistemological and ontological levels. In all cases I have made attempts to meet the objective of contributing to new knowledge and reflect on the land question as well as related issue of land conflicts. It is for these reasons that discussions in this chapter focus on the land question and the problem of urban land conflicts, methodological issues, concepts and theories.

In addition, the chapter discusses the linkages between the concepts, theories and field results. In the process it brings into focus conclusions on the interplay between commodification of land, ethnicity, corruption, institutions and power. In addition, the relevance of the conceptual and theoretical approaches applied, challenges and limitations encountered in the research, are also presented.

9.2 The Land Question and problem of land conflicts

The aim of this thesis from an ontological level has been to analyse the linkage between urban land conflicts and inequity. In analysing the linkage, the project established the role of land commodification on land ownership, access and inequity. It is this process that generated the key questions stated in Chapter One. Prosecuting the key questions has been critical in contributing to both epistemological and ontological contributions of the project.

One of the key results of the study is that land remains an important resource with diverse meanings. The meaning of land varies from community to community and is influenced by a multitude of factors embodying social and economic factors. It is these factors that influence use, access and ownership of land. Significantly, land gave people a sense of belonging in traditional societies and continues to do so

in the modern society. Traditional communities had well-established ways of access and ownership which was influenced by the perceptions of specific ethnic groups.

The traditional perception of land among the Kenyan communities was significantly influenced by colonialism. Indeed, a review of existing literature reveals that colonialism transformed land from being predominantly a social *cum* communal good to a commodity largely perceived as an economic good – with value that can be traded in the market. This transformation led to the evolution of new land tenure systems that have continued to define modes of access to land particularly in urban areas. Indeed, the laws that were introduced by the colonialists fundamentally changed the way land was owned and ensured that its value rose with infrastructural development. It is the emergence of new land tenure systems that have created inequitable processes due to the ease with which they are manipulated by economic and political elites. It is clear from this study that land conflicts can be traced to these processes.

In addition, the colonial administration in their desire to control Africans (blacks) sowed the seeds of ethnicity (see Leo, 1984 and Syagga, 2006). Ethnicity was prioritized by colonialists to ensure that land ownership in one place was for a specific ethnic group and to prevent ethnic mixing. This had several effects, including segregation of African communities into tribal chieftaincies and the promotion of negative perceptions between ethnic groups. This later led to unnecessary rivalry between ethnic groups, thus being a major source of conflicts over land.

The study thus established that to address the land question and problem of land conflicts requires more than facilitating access. It needs a complete overhaul of the economic, social and political system. In this respect, the passing of a new Constitution in 2010 was a critical step, but still depends on its effective implementation.

9.3 Land Commodification

The study set out to answer questions on the role of land commodification, dynamics and relationship with inequity and, consequently, urban land conflicts. The four case studies of land conflicts in Nairobi

confirmed the proposition as outlined in Chapter One that there is a strong link between urban land conflicts, land commodification and inequity and that this is mediated by several factors such as ethnicity and corruption. As emphasized in the study, the economically and politically powerful as well as well-connected individuals influence access to land to themselves and cronies due to the value attached to the land as a commodity. In this process, the same powerful groups have been quick to support their ethnic groups in both legal and illegal acquisition of land. The study further established that the land conflicts being experienced in urban areas result from the interactions between these factors as was postulated in Chapter One.

The process of land commodification contributed in no mean way to adoption of foreign land and property laws in Kenya. In their attempt to ensure smooth access to land to white farmers and administrators in the colonial Kenya, the colonial administration with the assistance of the colonial office in England imported laws from other jurisdictions including South Africa and India, although mainly from Britain (see Leo, 1984; Okoth Ogendo, 1985; Syagga, 2006). The imported laws worked well in facilitating land market development for whites but did not take into account the evolving needs of Africans. In this respect, the laws that remain to date have not been responsive to the local needs, particularly of the majority of the population – largely because they are foreign and inappropriate. Thus, as stated in Chapter One of this thesis, even as the situation of Africans deteriorated as a result of confinement in small and delimited areas which called for a different approach to land governance, the colonial system was not able to respond (Meek, 1946).

The effects of the colonial administration and land commodification have been far-reaching and have continued to influence societal relationships over land. It is these that have partly contributed to land conflicts witnessed in Kenya's urban areas. This is because the laws that have continued to guide land markets, planning and management of land limit opportunities for the poor and those without access to political patronage. The processes provided by the laws remain open to abuse and manipulation as they were even during the colonial period (see Halliman and Morgan, 1967). It is therefore clear that the existing laws privilege the few rich and condemn the majority of the population to the periphery, both spatially and figuratively, as they can neither access land through the public land allocation systems nor through the market.

It needs to be appreciated that the market is both too expensive and imperfect, while the public land allocation process is prone to manipulation by public officials and political elites as has happened in the last two regimes - Kenyatta and Moi. Indeed, these have contributed to endemic corruption in the land allocation processes, rendering the process ineffective and inefficient. As a result land has continued to become more expensive as it is used as a reward for political loyalty and ethnic constituency. Thus the poor who cannot afford to pay rent or to build their own houses are forced to look for alternatives. The obvious alternative has been to join groups forcefully occupying land that does not belong to them. In many cases this leads to conflicts between such groups and the state and/or with private landowners. In effect the existing land laws have been responsible for the creation of conflictual land relations.

In addition, land has over the years been associated with politics and power. As it is, this explains why the most powerful set the rules and/or laws governing land relations. Thus although colonialists found Africans already having customary land laws, they had to impose new laws that favoured the European settlers. The association of land with power and politics can be traced to early Abyssinia, medieval Europe and continues in Africa today. As it is today, land conflicts in Kenya are largely traced to power relations and other emerging intervening forces such as ethnicity and corruption.

This thesis established that power, corruption and ethnicity contribute significantly to land conflicts in Kenya's urban areas. The results from all four of the case study settlements reveal that land conflicts have strong links to power and ethnic relations. Suffice to add that in the case of Mathare North the desire to retain power by leaders from the Kikuyu ethnic group led them to manipulate land allocation in the settlement. In later years, conflicts in the settlement, although disguised as resulting from rental disputes, can be traced to the initial land allocations in the settlement.

Land commodification, although often initially viewed positively by enthusiasts of capitalism in transforming the Kenyan economy from communal to market economy, has been a critical contributor to inequity, land scarcity and land speculation, among other ills. Given that the existing laws allowed for manipulation of land allocation processes, the powerful groups found it easy to influence access to land, unfortunately with detrimental results for the economy, environment and social life. Thus the study has further confirmed that land conflicts being experienced in urban areas result from the

interaction between these factors.

In three of the study settlements (Tassia, Pipeline and Embakasi Jua Kali) associations were formed to forcefully acquire land with the support of corrupt senior public servants and politicians. The support was obtained through political and ethnic networks. In this respect, the study results further confirmed the project's assumption that corruption and ethnicity mediate to contribute to inequitable land ownership and conflicts. One clear fact that emerges from this is that ethnicity, corruption and politics are critical in determining property relationships in a city. It is this kind of situation that Mingione (1981:9) alluded to when arguing that there is need to use other theories as opposed to the traditional ones that emphasize the role of physical factors and privilege their contribution to land conflicts.

Interestingly, it is the existing linkages and relationships that are ethnic and political in nature that shape daily operations of individuals, businesses and, consequently, livelihood. It is also clear that negative manipulation of these processes in favour of a particular ethnic group or otherwise produces unintended results and often leads to conflicts. Indeed, it is important to remember that ethnic favouritism and political patronage often assist in producing inequitable access to resources. This results in tensions that are hard to quell even in later years. It is this kind of evidence that is found in the case of Mathare North and to some extent in the conflict in Tassia settlement which can be traced to the relations at Embakasi Jua Kali.

In addition, the thesis from the outset argued that a lack of coherent and appropriate land policy has contributed to chaotic situation witnessed in the land market. The lack of a land policy led to existence in appropriate institutional arrangements for land management thereby contributing to corruption, inefficiency in land allocation, management and encouraging corruption. This is because the lack of a land policy allowed the vesting of powers in an individual who abused his discretions in land administration and allocation.

However, the adoption of a new land policy in 2009 was expected to herald a new ethic in land management. It was realized rather belatedly that implementation of the new land policy was going to be rather difficult given the diverse elite interests. This came to the fore more clearly during the debate on the new Constitution with such major groups as the churches, political elites from the Kalenjin

ethnic group and large land owners campaigning viciously against the proposals on land that were largely borrowed from the land policy document. It is then that it came to light more clearly to various groups that a successful implementation of the land policy would require a new Constitution – which was approved by the citizenry through a referendum vote on 4th August, 2010.

The study proposed that there is need for a complete transformation or reform, for the market to be responsive to the majority of the population. The adoption of a new land policy and the new Constitution has heralded, it remains to be seen if these developments will help stabilize the land market, thereby making it responsive to both the poor and the rich. It had been anticipated that implementing the new policies and Constitution would help reduce land speculation, reform the land market, improve public land allocation, planning and management, and thereby reduce the multiplication of informal settlements and unauthorized settlements such as those examined as case studies in this thesis.

Land speculation has partly been responsible for land conflicts as it leads to the perpetuation of corruption and abuse of the land allocation and planning procedures. Further consequences are that land becomes scarcer and speculation on it increases. The long term effect in the city is that there is increased competition, leading to further displacement of the poor towards so-called 'slums' or informal settlements. Land speculation is therefore a major contributor to forceful land occupations and conflicts. In the case studies the land that is forcefully occupied or invaded was owned – either publicly or privately – and remained undeveloped for many years. The owners, at least in some cases, were waiting for the property values to rise, so as to then make profits from the land.

On the whole, a review of existing literature on land conflicts and inequity indicated that there are numerous factors influencing the relationships between land and humans. The factors range from institutional, social, political to economic issues among others. It became evident from my study that there has not been any serious examination of the factors affecting land ownership and conflicts in African urban areas. Most studies have focused on rural areas. There are, however, few general or country-wide cases, which are, as a result, less focused.

Suffice to add that there are no serious studies on the relationships between urban poverty, ethnicity, corruption, politics and land conflicts. The work of Peters (2004) and Kassanga and Kottey (2005) make useful contributions with Peters (2004), providing an in-depth review of literature touching on various aspects of land management in Africa. Kassanga and Kottey (2005) on the other hand, focus on a rural district of Ghana. Although these are serious studies, they are limited in that they give no attention to urban land issues. My study has in this case established that indeed land conflicts are a product of a multiplicity of factors. Indeed, it is clear that the factors are not limited to administrative and/or institutional issues, but go beyond that and are influenced by overall economic dynamics.

As illustrated by existing literature, land tenure plays a critical role in the planning of urban areas (Olima and Obala, 1998; Olima 2002; Obala and Kimani, 2002; Majale, 2002; Yahya; 2004; Payne, 2002). Yet there are limited studies on the role of customary tenure in poverty reduction, equitable distribution of land, urban planning and land conflicts, among others. As stated in Chapter Three, it is increasingly becoming clear that major urban land questions require the analysis of these issues if they are to be answered. This thesis finds that there is an urgent need to establish the linkages between existing tenure systems and potentials for urban development. It is this linkage that may provide answers to the questions of poverty reduction, urban planning and land conflicts that remain problematic in the urban areas.

The contribution of this study can be assessed against a background that past studies largely focused on countries where there had been civil wars (Yamano and Deinninger, 2005). In addition, the studies faced several methodological problems and limitations of being largely anecdotal. This has meant that there is very limited knowledge, if any, on the role of the three contributors (political patronage, ethnicity and corruption) to land conflicts.

This study tried to overcome the methodological problems that others have faced in their attempt to study emotive issues such as land conflicts. This was further assisted by the University of Witwatersrand's ethics committee's insistence on methodological adjustment and adherence to strict ethical procedures before giving clearance for the research. The study thus proceeded from a very controlled position and although it dealt with a much contested issue, care was taken to ensure that no legal suits arose from its results.

They achieved this through the adoption of a methodology that minimizes the biases and emotions that often influence such studies. This ensured that both the beneficiaries (elites and bureaucrats) and the poor, who are often ignored by other studies, were incorporated and as Feagin, Orum and Sjoberg (1991) would argue, their voices are louder and provide some insights for future studies. Indeed, their views are often obtained from the viewpoint of the elites (Feagin, Orum and Sjoberg, 1991). This implies that reality on the ground is often not captured, analysed and understood.

9.4 Relevance of Theories Applied

It is understood that urban land conflicts are influenced by a plethora of factors and processes. As argued in Chapter Three, existing theoretical frameworks can only explain part of the processes. This is because most of these theories are limited by their inability to transcend their traditional realms. But the traditional theories that offer partial explanations to phenomena, as Peters (2004:271) argues, have been overtaken by emerging theories. Given this situation, several theories were adopted to help analyze the relationships between land conflicts and inequity.

The adopted theories have been useful in helping explain the linkages, although certain limitations exist. The limitations also vary but mainly depend on the circumstances that contributed to development of a theory. In general, the theories revolve around elite manipulation, state capacity and inability as well as power, corruption and ethnicity. And as already mentioned in Chapter Three, there are several theories critical to satisfactory analysis of the relationships between urban land conflicts and inequity. In this group are structure and agency, institutional analysis, societal compliance, semi-autonomous social fields and Harvey's (2006) emerging theory of uneven development.

The study benefited from the clarification of the meaning of concepts such as land, land conflicts, inequity, commodification, corruption, ethnicity, ethics, discretion, competition and scarcity. These concepts have been discussed by various authors, including Peters (2004), Haila (2007), Povinelli (2002), de Copper (1995), Yamano and Deinninger (2004, 2005), Larsson (1997), (Farvacque/McAuslan, Dowall 1991), (Zaghoul, 1994), (Leaf 1992), Badiane, (1997), Owor and Bartle (1997), Durand-Lasserve (2001), McAuslan (1992), Leo (1984),Kanyinga (2006) and Syagga (2006). These authors have discussed land management from different perspectives, with some like Peters

(2004) striding across different themes and methodological questions. There are also those like Syagga (2006), Kanyinga (2006), Leo (1994) and Moore (1988) who focus on the transformation of the Kenyan economy. They analyse the contribution of land on the emerging land relations and conflicts. In addition, inbuilt in the discussions are questions of equity and inequity in access and ownership of land.

The theory of uneven development and displacement as discussed by Harvey in his works since the early 1970s (see Harvey, 2006) explains the socio-economic dynamics that are continuously witnessed in land markets more so in emerging markets like that of Kenya. It clearly assists in explaining the historical process from the colonial period to the present, while Durand Lasserve (2006) also reinforces the explanation by incorporating the argument of economic forces being mediated by state power to displace the poor in the name of development. The theory of uneven development and displacements was therefore appropriate in assisting deepen our understanding of the dynamics in the land market – both formal and informal.

Furthermore, the use of Harvey's(2006) theory of uneven development and displacements was critical in illuminating the 'gangster' nature of the property market in Nairobi (Musambayi, 2006) which in many respects is similar to Walker's (2006) description of the Chinese economy and land market. The land markets in the case study settlements exhibited 'gangster' tendencies where corruption, vigilantism and ethnicity reign high and influence land transactions, particularly in Mathare North. However, it also revealed that 'gangster' economics is promoted by the failure of state institutions to play their rightful roles. This is observable in the case of Tassia settlement where involvement of the central and local government significantly changed land transactions and relations within the settlement.

It should be appreciated that the theory of uneven development is further aided in explaining the situation that leads to land conflicts through grounded theories that relate to land scarcity, accumulation, supply and demand as well as culture. These are illuminated through the works of Yahya (2001), Barnet and Morse (1963), Simon (1981), Verdery (2001) and Galbraith (1951), among others. The work of Midgal (1988) brings to the fore a clear African case and helps in explaining the difficulties that beaureaucrats face in their attempts at reforming access and ownership of land in African countries. In all, the theories as discussed by these authors, among others, assist in explaining the complex interactions that produce land conflicts.

In analyzing the interactions that produce land conflicts and inequity the study benefited from the use of theories of Structure and Agency; Institutional Analysis, Semi-Autonomous Social Field, Elite and Ethnic Manipulation and Interest Group theories. The various theories have been useful in explaining that land conflicts are a product of interactions of many factors. Furthermore, the theories assisted in analyzing how interactions between market forces, property laws, governance institutions and other socio-economic factors contribute to inequity in access to land and, consequently, land conflicts.

The use of institutional analysis, for instance, assisted in helping appreciating the role of existing institutions and actors in provision of access to land in an urban environment. In using institutional analysis questions related to transaction costs, efficiency and appropriateness of the institutional framework were assessed and their contribution to land conflicts established. The use of social fields was critical in that it further helped understand how reactions of those who appear vulnerable, particularly forceful or illegal occupants of land, may actually be manipulative and hoodwink the powerful in the face of a conflict over a resource such as land.

It further emerged from the study that social fields and structure and agency theories were critical in helping appreciate the different roles played by actors in the land market and land management processes. It assisted, for instance, in appreciating how, although some groups may look weak and vulnerable in the face of a challenge, in reality are capable of manipulating the powerful to move in their directions. This helped explain, for instance, how the groups that forcefully occupied land belonging to individuals and institutions were able to get support from the public administration.

In addition, it became clear from the study that the various theories used in the analysis complement each other as well as facilitate a deeper understanding of the linkage between land conflicts and inequity. For instance, the interest group analysis assists in understanding the reasons that bring groups together and how they operate to achieve their main objectives. In the case of group interest theory various approaches are used, including lobbying and even bribery, to achieve the group's desired objectives. On the other hand, social field groups appear to be vulnerable, yet focused on the achievement of their goals. At the end of the day, the interests of the group converges.

The elites on the other hand attempt to manipulate the groups that on the face of it are vulnerable. They are somehow satisfied as they also achieve their goals to some extent. But on the whole the poor who appeared vulnerable and therefore as a target for manipulation, also gain immensely. This is the case in Embakasi Jua Kali.

The theories are relevant to the Kenyan situation given the nature, the decision-making processes and how the decisions are influenced, particularly with regard to access and ownership of land. As such the theory of structure and agency, institutional analysis and group interest theories are useful in the analysis of the decision-making, power relations in the processes of these decisions. On the other hand, the semi-autonomous social field works well with the structure and agency theory in assisting analysis of power along the social fields. This theory is particularly applicable in the case Embakasi Jua Kali, where poor artisans were able to manipulate access to land for themselves by influencing the powerful Provincial Administration. The theories have in this respect assisted in understanding how poor groups are able to influence the powerful to be on their side and support their actions.

The case studies benefited from the use of these theories as they helped explain how powerful groups supported the activities of the vulnerable groups. This was further assisted by the use of interest group theory which explain how the interests of the groups converged and consequently influenced the resulting situations. Similarly, theories of uneven development and displacements used together with the theory of semi-autonomous social fields and institutional analysis have been useful in helping analyse how land markets (formal and informal) work in different circumstances and with different actors. In the process, they helped explain the linkage between market and land management processes, corruption and political patronage.

The theories used in this project have been able to help analyse complex relations, including interactions between corruption, ethnicity, and land management processes, their relationship to urban land conflicts and inequity. In addition, they have been useful in the analysis of the land market operations, actors (individuals and institutions), land commodification processes, land laws and institutional frameworks.

It should, however, be appreciated that most of the theories used in the study are based on experiences from other parts of the world and, on the main, from developing countries, economies in transition and those that were once colonized. However, some of the theories also evolved as a result of experiences in North and Latin America as well as in the United Kingdom. Nairobi, in turn, is located in a country that was once a British colony. Kenya today is considered capitalist, as are the countries from which theories evolved, and increasingly China is being considered among capitalist countries. The experiences of America and United Kingdom with inequalities could be said to be legendary. The results of inequitable access to resources and incomes produced similar tensions experienced in Kenya. In the United States of America, too, there existed similar circumstances in that stage of development (see de Soto, 2000) and produced worse conflicts than that being witnessed in Nairobi today (de Soto, 2000). As such the theories adopted are relevant to the existing situation and appropriate for the study.

9.5 The Methods Applied in the Study

Several methods were applied in this project, from the data collection to analysis. The choice of the methods was guided mainly by the demands of each phase of the study. The project required mainly qualitative data. It was felt that the most appropriate approach would be a case study. In the end this approach was adopted due to its flexibility, which saw it help facilitate the use of different techniques of data collection. This was important as the study project required the use different types of data – historical, social, economic and institutional. The approaches adopted were therefore useful in ensuring that there were no gaps in the data collected. This is because the approaches adopted in the study facilitated triangulation of the collected data. The use of different techniques further ensured that more comprehensive information was obtained without resorting to mass interviews, the types of interviews that Mabogunje (1990) cautions against.

Similar to data collection, various approaches were used in data analysis. The choice of the data analysis approaches was to ensure that relevant information is not lost in the process. The organization, categorization and facilitation of *ad hoc* methods were useful in facilitating the generation of new meanings regarding the results. In addition, it was appropriate because it facilitated testing of the emerging hypotheses and searching for alternative explanations of the data. The use of the approach was thus useful in ensuring that themes different from the main ones, such as corruption, ethnicity, inequity, power and political interference, emerged.

In addition, the process ensured that data was reduced into manageable chunks, thereby facilitating the emergence of new meanings and insights from the study. Thus the approach helped reduce the complexity and ambiguity associated with qualitative data analysis. Furthermore, the analytical approaches were relevant as they allowed for interpretation. I was, therefore, able to give meaning to the raw data and obtained the actual meanings from the data. The analytical approach was further relevant for it facilitated the use of propositions and research questions, thereby ensuring that interpretation of the results was relevant to the project. In addition, the use of relevant methods ensured that conclusions emerged from the merging of the theories and research questions. Thus the approach facilitated the formulation of conclusions from the study results.

9.6 Implications of the study Results for Policy

The study project dealt with land, land conflicts and equity, issues that are critical in an agrarian economy such as that of Kenya. Furthermore, land is an emotive issue and equitable access to it considered elusive as several factors militate against it. It is for this reason that retired Professor Saad Yahya called this study project brave (Personal Communication, 2008).

Since the start of this study a new land policy has been adopted and a new and more progressive Constitution has been adopted. Together, they embrace key issues that this study has addressed, such as questions of equity in access to land and ethnicity in the management of the country's affairs, among others. However, enabling pieces of legislation have not been dealt with and are still to be prepared. There is therefore likely to be more intensive debate on land issues in the coming period and this study's results may assist experts in making relevant contributions to the policy debates. In this respect, the study remains relevant and appropriate to the prevailing Kenyan situation. However, given the sensitivity of the issues discussed in the case study interviews, a commitment had to be made ensuring the research was only for academic purposes. The intention therefore is to draw policy recommendations from the thesis in a form that can be disseminated without in any way jeopardizing the respondents who shared sensitive information.

In addition, urban land issues are increasingly becoming complex and require more incisive and focused research. Although this study cannot be said to offer the solutions, it none the less addresses issues that are likely to demand answers for a long time and will require focused policy responses and analysis, for which this study already provides a basis. In this respect, the study is relevant to the changing policy, institutional and legal frameworks following the adoption of a new Constitution.

9.7 Areas for further research

For emphasis it is appropriate to restate that the study focused on three main issues - land, conflicts and equity. It established the linkages between the issues and the economy in general. It further identified the various methods that are relevant to the study. In the process, it emerged that the issues and the study phenomenon are dynamic. As such there will be need for further studies to further deepen our understanding of the dynamics that produce land conflicts. In this regard, I propose for a start a number of areas for further research as follows:

i) Ethnicity and Land Ownership in Kenya's Urban Areas;

ii) Corruption, Politics and Landlordism in Nairobi;

iii) Land Markets and Conflicts in urban areas;

iv) Development of appropriate models for urban land management; and

v) The Links between Land Tenure and Conflicts over land in urban areas.

The areas I have proposed for further research are not exhaustive. However; they should be able to help provide deeper understanding of the relationships between society and land. This would help in building appropriate models for controlling land conflicts and facilitating access to land in developing countries, including Kenya.

9.8 Conclusions

While conducting the research which started with a review of existing theoretical literature, undertaking field work, analyzing data and interpretation of the same, it emerged that research of this nature is relatively complex and requires various theoretical frameworks for interpretation and explanation of

land conflicts in urban areas. But even then it emerged that each of these has its shortcomings and none of the theoretical models could be used on its own. Interestingly, land conflicts as a phenomenon in this thesis has unique and unpredictable dynamics that keep changing with diverse circumstances. This is further complicated by the study being set within an urban area like Nairobi with the one of the fastest population growths. The study results therefore confirm the postulation at the inception of the thesis that urban land conflicts are dynamic and keep changing with varying circumstances. Similarly, land conflicts are influenced by numerous factors which are social, political and economic. Thus it is realistic to conclude that to address land conflicts requires a complete overhaul of the social, political as well as economic systems.

Indeed, it emerged that it is appropriate to choose different tools even though they rarely work together. Thus the choice of tools such as institutional analysis, semi-autonomous social field, structure and agency; non-compliance and resistance theories was made because each theory explains a different aspect or aspects of land conflicts. In this case, the theories were complementary to each other. This is however, not without precedence as Razzaz (1994), Rakodi and Leduka (2004) and Leduka (2006) have variously pointed out. This view is reinforced by Moore's (1973) on Ujamaa in Tanzania.

In undertaking the study, I therefore adopted a mixed approach, although the main approach remained qualitative. The study required a clearly thought out approach because it involved a study of a subject that is sensitive and emotive. In addition, because of issues such as ethnicity and corruption, there were fears of legal suits coming up in case individuals were negatively affected by the study results. In addition, there were fears of further traumatizing those who were violently affected by the land conflicts. In the end, it can be concluded that a study of this nature required a well-thought out approach which minimizes emotions, in addition to the researcher being independent and unbiased.

This study, though it appears 'brave', to use the words of Prof Saad Yahya, as it is on an immensely sensitive and emotive topic, should be treated as the beginning. Thus, if the questions relating to land conflicts and inequity are to be properly understood, there will be need for further research on the links between ethnicity and the market, corruption and land conflicts, poverty and land conflicts. In addition, there is need for understanding the shifting ground, that land conflicts in Nairobi in 5 years' time might look quite different as in some of my case studies. The situation prior to the formulation of land policy, tensions of the 2007 election campaigns and the clashes thereafter as well as the adoption

of a new Constitution have significantly shifted the ground. Thus the impact of these changes will need to be studied to help undertake appropriate policy reviews and implementation.

Furthermore, the study established that there is a continuous shifting of the ground when it comes to land conflicts. Thus land conflicts in Nairobi in five (5) years might look different than they do in the four case study settlements. In the circumstances, the unique contribution lies in the situation that pertained in the settlements in 2007, in the tensions building up (or with the very high stakes) prior to the December 2007 general elections and during the struggle for a new land policy and constitution.

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APPENDICES

APPENDIX 1: Interview Guide for Tenants in Selected Settlements

Interview Guide for Tenants in Selected Settlements

Interview Guide

Name of Institution	
Interviewee Code	
Date of the Interview	
Start Time	End Time

Introduction

Hello! Good morning/ Afternoon! My name is Luke Obala, Iam undertaking a study on "The Relationship between Urban Land Conflicts and Inequity: The Case of Nairobi". The study results will be used towards academic purposes only and will be treated with utmost confidentiality. The Government of Kenya has given me permission to undertake field survey and you are one of the people I have selected for interview.

Your participation in this research is voluntary. You may refuse to participate, discontinue participation, or skip any questions you do not wish to answer at any time without any penalty or loss. You may not receive any direct benefits from participating in this research. Only, I Luke Obala, the Principal researcher, will have access to research results associated with you're your identity. In the event of publication of this research, no personally identifying information will be disclosed. In addition, I also undertake to prepare a summary of my interview with you for your retention and further use.

Please note that any questions regarding this research should be directed to me. I can be reached at the University of the Witwatersrand, Johannesburg, School of Architecture and Planning, John Moffat Building, East Campus, Braamfontein, South Africa. Email: lobala@uonbi.ac.ke. May I kindly request you to sign this Consent Form and participate in this interview.

I certify that I have read and understood the contents of this form and hereby agree to participate in this study.

Code	Signature and Date

1. For how long have you been living in this area and where were you living before moving into this area?

a) Do you like this estate? Explain

b) What problems do you encounter in this estate?

c) Which services are provided to the settlement by city council?

2. Do you have a tenancy agreement with your landlord and /or lady? (Probe for details).

a) How do you pay your monthly rents? Kindly explain
b) In comparison to other settlements are the rents high or affordable? Kindly explain

3. Many people move from different parts of Kenya and settle in Nairobi

a) Which part of Kenya do you come from?

b) Do you still have a rural home/house? Probe on details of land ownership in the rural

4. Do you own any property in Nairobi and/or in any other place? Kindly explain

5. Given a chance, would buy land in this settlement? (Probe on details of accessing land).
6. I am informed that there have conflicts over land in this settlement

a) In your experience, what have been the main causes?

b) In your opinion, are these conflicts likely to subside?

c) Would you still acquire a property here despite the conflicts? Probe for explanation.

7. The Provincial Administration is blamed for meddling in land administration and management resulting in land conflicts in some parts of Nairobi city.

a) During your stay in this settlement, would you say that the provincial administration has been involved in land conflicts within the settlement? (Probe for explanation on the role of chiefs and District officers).

b) What role have City Council officials been playing?

8. Issues of equity, corruption and ethnicity are becoming commonly used terms in Kenya more especially with regard to access to land and other resources.

a) Does it happen sometimes, that you and your colleagues discuss these terms? Explain

b) What is your personal understanding of the terms equity, corruption and ethnicity? Kindly explain

9. a) In your opinion, are there times you would say that land conflicts here have been fuelled by political utterances? Explain.

b) Have you or any of your colleagues witnessed any confrontation over land in this place?

APPENDIX 2: Interview Guide for Youths involved in Land Conflicts

Interview Guide for Youths involved in Land Conflicts

Tassia, Embakasi Village and Embakasi Ranching Settlements

Focus Group Discussion Guide

Name of Institution	
Name of Interviewee	
Position	
Date of the interview	
Start Time	End Time

Introduction

Hello/ Good morning/ Afternoon! My name is ---------- Iam undertaking a study on "The Relationship between Urban Land Conflicts and Inequity", The Case of Nairobi. The study results will be used towards academic purposes only and will be treated with utmost confidentiality. The Government of Kenya has given me permission to undertake field survey and you are one of the people I have selected for interview. It would be most useful if you would kindly respond to my questions however, it is important to note that you are free to stop and end this interview at any time.

Do I have your permission to continue with the interview?

Yes	No

1. What are your activities on a normal working day? Probe for specific tasks and from the group; facilitate them to develop a daily calendar for a week.

2. How many of you live within this settlement? For how long have lived here, and where do the others live? Probe: If they are recognized by the property owners and how the recognition came about.

3. I am informed that there is a youth development levy to be paid by land owners in this settlement.

a.) When and why was this levy introduced and by who? How much is paid and how regularly?

b.) Who decided on the amount and how is the collected money used?

c.) What happens if one does not pay?

4. Iam also informed that there have conflicts over the parcel(s) of land these are living on today. Please give me the history of the conflict – probe: how it started, when, who are the antagonists, the role of the youth, their relationship with the settlement committee and Provincial Administration and Security?

5. On what occasion(s) does your group meet the local administration such as the assistant chief and local chief? How regularly does this happen?

6. Can you trace the ownership of the land, conflicts and your experiences? Probe – for involvement of city council officials, provincial administration, and ward councilor, police and area member of parliament.

7. What has been the groups' role in the conflict over the land parcel? Probe - further for experiences and obtain details of their actual role.

APPENDIX 3: Interview Questionnaire for Land Owners in Selected Settlements

Interview Questionnaire for Land Owners in Selected Settlements

Interview Guide

Name of Institution	
Interviewee Code	
Date of the Interview	
Start Time	End Time

Introduction

Hello! Good morning/ Afternoon! My name is Luke Obala, Iam undertaking a study on "The Relationship between Urban Land Conflicts and Inequity", The Case of Nairobi. The study results will be used towards academic purposes only and will be treated with utmost confidentiality. The Government of Kenya has given me permission to undertake field survey and you are one of the people I have selected for interview.

Your participation in this research is voluntary. You may refuse to participate, discontinue participation, or skip any questions you do not wish to answer at any time without any penalty or loss. You may not receive any direct benefits from participating in this research. Only, I Luke Obala, the Principal researcher, will have access to research results associated with you're your identity. In the event of publication of this research, no personally identifying information will be disclosed. In addition, I also undertake to prepare a summary of my interview with you for your retention and further use.

Please note that any questions regarding this research should be directed to me. I can be reached at the University of the Witwatersrand, Johannesburg, School of Architecture and Planning, John Moffat Building, East Campus, Braamfontein, South Africa. Email: lobala@uonbi.ac.ke. May I kindly request you to sign this Consent Form and participate in this interview.

I certify that I have read and understood the contents of this form and hereby agree to participate in this study.

Code	Signature and Date

Section A. Background Information

1.1 How long have you been living in Nairobi? _____ Years

1.2 In which settlements/ estates have you been living in?

1.3 Do you own the property you occupy? A) Yes B) No

1.4 If yes, explain how you acquired it?

1.5 Explain the land acquisition process in this settlement?

Section B. Access, Acquisition and Ownership of Land

2.1 When did you acquire this land and why did you choose this settlement?

2.2 Do you occupy the property? A) Yes B) No

2.3 If No, where do you live?

2.4 Do you have ownership documents for this property? A) Yes B) No

2.5 If yes, which documents and where did you obtain them from?

	Type of Document	Obtained from which who and/or organisation.	When (Year)
1			
2			
3			
4			
5			

2.6 Are you satisfied with the ownership documents? A) Yes B) No

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Section C. Land Conflicts and Its Dynamics

3.1 "Past media reports have indicated that there have been serious land conflicts in this settlement". Do you agree with this statement?

A) Yes B) No

3.2 Have you been a victim of land conflicts in this settlement?

A) Yes B) No

3.3 If yes, what was the nature of the land conflict and how was it resolved?

	Types of conflict (nature)	How it was resolved	Resolved by
1			
2			

3			
4			
5			

3.4 What are the main causes of land conflicts in this settlement? List 5 main ones in order of seriousness.

3.5 Do you know of a colleague or a neighbour in this settlement who has been involved in land conflicts? A) Yes B) No

3.6 If yes, what was the nature of the land conflict and how was it resolved?

	Types of conflict (nature)	How it was resolved	Resolved by whom
1			
2			
3			
4			
5			

3.7 What are the main causes of these conflicts? List Five main ones

3.8 How do the land conflicts start?

3.9 In your opinion, has ethnicity been a contributor to land conflicts in your settlement? A) Yes B) No

3.10 If yes, please explain how it contributes.

3.11 In your opinion, is there a particular ethnic group that mainly occupies this estate? A) Yes B) No

3.12 Which ethnic group?

3.13 In your opinion, which ethnic group are the majority owners of properties in this settlement?

3.13 Do you agree with the widely held view that the provincial administration has been a major contributor to land conflicts in Nairobi?

A) Yes B) No

3.14 If yes, explain how they contribute?

3.15 In your opinion, who are most suited for resolving land conflicts?

Section D. Ethnicity, Corruption and Inequity

"Issues relating to corruption, ethnicity and equity are increasingly becoming common terms and are being used by numerous people, especially in relation to access and ownership of land"

4.1 Does it happen sometimes that you and your colleagues discuss these issues?

	Issue	**Yes**	**No**
1	Corruption		
2	Ethnicity		
3	Inequity		

4.2 If response to any is yes, then indicate under what circumstances they discuss any of the issues.
4.3 In your opinion, which of these three issues has been a major cause of conflicts and tensions over land in Nairobi?

A) Corruption B) Ethnicity C) Inequity

4.4 Have you, a colleague or a relative been a victim of land conflicts in Nairobi?
A) Yes B) No

4.5 If yes, have these conflicts been related to ethnicity, corruption or inequity?

	Issue	Yes	No
1	Corruption		
2	Ethnicity		
3	Inequity		

4.6 Have you or any of your colleagues and/or relative been required to bribe over land issues? A) Yes B) No

4.7 Which Government departments would say has been most involved in corruption over land issues? List a maximum of three.

Section E: Networks and Relationships

5.1 Have you or any of your colleagues and /or relatives been involved with local administration like chief, Assistant and D.O on land issues in this area?
A) Yes B) No

5.2 What were the issues?

5.3 And were the issues resolved satisfactorily?
A) Yes B) No

5.4 Are there other groups a part from city council and government officials that deal with land issues in your settlement?
A) Yes B) No

5.5 List a maximum of four of the groups.

5.6 In your opinion, what should be done to reduce conflicts over land in Nairobi?

5.7 In your opinion, who would be most effective in resolving land conflicts?
A) Ministry of lands B) Provincial Administration C) City Council D) Court
E) Elders F) others (specify).

5.8 Why do you think this is the best placed organisation to resolve land conflicts?

5.9 Do you know the councillor and /or MP for this area? A) Yes B) No

5.10 Have you or your colleagues interacted with the councillor and or MP?
A) Yes B) No

5.11 What issues have you or your colleagues interacted with the councillor and/or MP over?

5.12 Were the issues resolved? A) Yes B) No

5.13 Were you satisfied with the solution? Yes B) No

5.4 If no, what did you or your colleague do to have the matter satisfactorily resolved?

APPENDIX 4: Interview Questionnaire for Provincial Administration in Selected Areas

Interview Questionnaire for Administration in Selected Areas

Interview Questionnaire (Members of Provincial Administration)

Name of Institution	
Interviewee Code	
Date of the Interview	
Start Time	End Time

Introduction

Hello! Good morning/ Afternoon! My name is Luke Obala, I am undertaking a study on "The Relationship between Urban Land Conflicts and Inequity", The Case of Nairobi. The study results will be used towards academic purposes only and will be treated with utmost confidentiality. The Government of Kenya has given me permission to undertake field survey and you are one of the people I have selected for interview.

Your participation in this research is voluntary. You may refuse to participate, discontinue participation, or skip any questions you do not wish to answer at any time without any penalty or loss. You may not receive any direct benefits from participating in this research. Only, I Luke Obala, the Principal researcher, will have access to research results associated with you're your identity. In the event of publication of this research, no personally identifying information will be disclosed. In addition, I also undertake to prepare a summary of my interview with you for your retention and further use.

Please note that any questions regarding this research should be directed to me. I can be reached at the University of the Witwatersrand, Johannesburg, School of Architecture and Planning, John Moffat Building, East Campus, Braamfontein, South Africa. Email: lobala@uonbi.ac.ke. May I kindly request you to sign this Consent Form and participate in this interview.

I certify that I have read and understood the contents of this form and hereby agree to participate in this study.

Code	Signature and Date

SECTION A: INTRODUCTION

1.1 For how long have you worked in this location/division?

1.2 Where were you working before coming into this location/division?

1.3 What does your work entail on a normal day?

Section B: Land Conflicts and Dynamics

2.1 "Your location and/or division is said to have settlements with a lot of land conflicts in Nairobi". What would you say have been the main causes of land conflicts?

2.2 In your experience, how do these conflicts start?

2.3 What has been the role of your office in dealing with these conflicts?

2.4 In which settlement, would you say there are more land conflicts and why?

2.5 How did settlements like Embakasi Juakali, Tassia and Pipeline start?

Section C: Relationships and Linkages

3.1 "I am informed that within each settlement there are several groups (CBOs) dealing with land and constructions issues". Do you know about this? A) Yes B) No

3.2 Do you interact with these committees? A) Yes B) No

3.3 If yes, how regularly?

3.4 On what issues do you interact?

3.5 If no, explain why?

3.6 In your experience, do you find these committees useful? A) Yes B) No

3.7 If yes, in what areas?

3.8 In your experience, what would you say about the relationship of these groups with politicians?

Section D: Ethnicity and Corruption

4.1 "It has been argued that one of the most serious problems in Kenya are tribalism and corruption". Do you agree? A) Yes B) No

4.2 Would you say there have been certain land conflicts here that are mainly ethnic related? A) Yes B) No

4.3 Is there a particular ethnic group that own most of the land in this settlement?
A) Yes B) No

4.4 Which ethnic group?

4.5 In your opinion, why is this so?

4.6 "Corruption is said to lead to delays in resolving land conflicts." Do you agree?
A) Yes B) No

4.7 In your experience, are there land conflicts that have been largely fuelled by political utterances? A) Yes B) No

4.8 How do politicians involve themselves in land conflicts?

4.9 In your opinion, how can land conflicts be reduced in these areas?

4.10 You Know that most the land here are privately owned while some belong public corporations. How did these people mange to build without being stopped?

4.11 In your experience, what role has been played by the following in dealing with land cases in this settlement?

i) City Council staff
ii) Lands Office staff

iii) Planning staff

4.12 Would you agree with the argument that the provincial administration has been a major contributor to land conflicts in these settlements? A) Yes B) No