INCLUSIVE URBAN PLANNING FOR IMPROVED HEALTH OUTCOMES IN INFORMAL SETTLEMENTS

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This thesis is being submitted in partial fulfilment of the requirements for the degree of PhD.

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Acronyms

ACHR	Asian Coalition on Housing Rights
AMT	Akiba Mashinani Trust
APHRC	African Population and Health Research Center
CA	Capability approach
CAQDAS	Computer Assisted Qualitative Data Analysis Software
CCOCC	Coordination, Community Organisation and Communication Consortium
CHC	Community Health Committees
CHWs	Community Health Workers
COVID-19	Coronavirus disease of 2019
CSDH	Commission on Social Determinants of Health
CSOs	Civil Society Organisations
CU	Community Health Units
GLA	Government Lands Act
HSC	Health Services Consortium
IBEACO	Imperial British East Africa Company
IDP	Integrated Development Plan
JICA	Japan International Cooperation Agency
KANU	Kenya African National Union
KMA	Kenya Medical Association
L.R. NO.	Land Reference Number
LASDAP	Local Authorities Service Delivery Action Plan
MCA	Member of County Assembly
MoNMeD	Ministry of Nairobi Metropolitan Development
NCCG	Nairobi City County Government
NCCPPA	Nairobi City County Public Participation Act
NCWSC	Nairobi City Water and Sewerage Company Ltd
NGO	Non-Governmental Organisation
NHIF	National Hospital Insurance Fund
NISCC	Nairobi Informal Settlements Coordination Committee
NIUPLAN	Nairobi Integrated Urban Development Master Plan
NMS	Nairobi Metropolitan Service
OXFAM	The Oxford Committee for Famine Relief
PM	Particulate Matter
PMO	Principal Medical Officer
RHIA	Rapid Health Impact Assessment
SAPs	Structural Adjustment Programmes
SDGs	Sustainable Development Goals
SEPU	School Equipment Production Unit

SDI	Slum Dwellers International
SPA	Special Planning Area
SPARC	Society For The Promotion of Area Resource Centers
UHC	Universal Health Coverage
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
USD	United States Dollar
VOCs	Volatile Organic Compounds
WASH	Water, Sanitation and Hygiene
WHO	World Health Organisation

Summary

This study undertakes a critical assessment of public participation as employed in the Mukuru Special Planning Area (SPA) within Nairobi County. It examines whether the platforms employed for participation in the SPA process provide opportunities to the inhabitants for genuine and meaningful engagement, and whether this can contribute to realization of improved health outcomes for the inhabitants. The study adopts a socio-legal orientation in attending to how the concept of participation is framed, how its legal character is understood, and how it is actually practiced. Participation as a concept and a legal principle has received extensive treatment in urban studies literature. Its practice has however often been overlooked. This prompts this study's interrogation of 'participation in action' in the SPA process and its potential outcomes.

The Mukuru informal settlements are selected as a case study. This is informed by the fact that their declaration as a SPA marked the first time in the history of urban planning in Nairobi that the insufficiency of conventional planning methods in areas like Mukuru was acknowledged by planning agencies. The declaration also meant that for the first time, the Constitutional provisions on public participation of marginalized groups in spatial planning would be tested. The Mukuru SPA would set precedent on how local physical development plans are to be developed in a participatory manner. The SPA process is here problematized as an attempt by the inhabitants to challenge exclusion and redefine urban citizenship. The study suggests that the SPA process is a fundamentally political project. It provides to the inhabitants opportunities for redefining urban citizenship beyond its traditional limits. Participating in the SPA enables the inhabitants' entry into domains of participation from where they can undo an entrenched regime of discriminatory spatial governance, selective planning, and unequal citizenship.

Through a theoretical and empirical exploration of the Mukuru informal settlements, the study suggests that public participation as employed in the SPA process is an embodiment of the 'right to the city'. The study adopts the 'right to the city' as a theoretical entry point in analysing how alternative urban citizenship forms are firstly reclaimed and subsequently (re)imagined in Mukuru. It concludes that participation as framed in the SPA process can contribute to the realization of improved health outcomes by the inhabitants. Participation expands their ability to identify the key drivers of health inequity and to collectively develop requisite interventions.

Table of Contents

1   Introduction

1.1 Impetus for a paradigm shift in urban planning

Rapid urbanization globally contributes to intractable urban challenges. This has intensified calls to build healthier and more resilient cities.[1] Under the present urbanization conditions, inequality has become a common feature.[2] The spatial components of urban inequality have become more pronounced particularly with regards to health outcomes in cities. Within cities, it has been established that health hazards and outcomes are unevenly distributed, with poor urban inhabitants incurring disproportionate burdens.[3] Researchers have highlighted the rise of structural, environmental and neighborhood factors as predictors of an individual's health outcomes.[4] With the COVID-19 pandemic, the true underbelly of unequal distribution of health resources and outcomes has further been exposed.[5] Disparities in health outcomes have not existed in isolation. On the contrary, they have been identified as part of a reciprocal and complex web of problems that are attributable to inequitable access to basic services.[6] Access to basic services at the city level has in turn been shaped by certain institutional interventions like urban planning. Such interventions have played a key role in determining the patterns of resource distribution and the levels of exposure that individuals have to noxious environments which in turn determines their

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[1] The United Nations in Sustainable Development Goal 11 calls for making cities inclusive, safe, resilient and sustainable. See United Nations, 'Sustainable Development Goals', available at https://sdgs.un.org/goals accessed March 14, 2020.

[2] Samara, T.S. *et al.* 'Locating Right to the City in the Global South', in Samara, T.S. *et al.* (eds) *Locating Right to the City in the Global South* (Routledge, 2012) 3.

[3] Macintyre, S. *et al.,* 'Place Effects on Health: How Can we Conceptualise, Operationalize and Measure Them?', (2002) 55 *Social Science & Medicine,* 127. See also Smith, S. and Easterlow, D. 'The Strange Geography of Health Inequalities', (2005) 30(2) *Transactions of the Institute of British Geographers, New Series,* 174. In this work, use of the "poor" is made in reference to groups which have been impoverished or made poor by 'public decision-making' See Baxi, U., *Law and Poverty: Critical Essays* (NM Tripathi, 1988) viii.

[4] Corburn, J. and Karanja, I. 'Informal Settlements and a Relational View of Health in Nairobi, Kenya: Sanitation, Gender and Dignity', (2014) *Health Promotion International* 1. See also Corburn, J. 'Urban Health Equity in all Policies: A New Science for the City', *The Guardian* 18th March 2013. See also Dachaga, W. & Timo de Vries, W. 'Land Tenure Security and Health Nexus: A Conceptual Framework for Navigating the Connections between Land Tenure Security and Health', (2021) 10(257) *Land,* 2.

[5] See Corburn, J. *et al.* 'Slum Health: Arresting COVID-19 & Improving Well-being in Urban Informal Settlements', (2020) 97 *Journal of Urban Health*, 348-357.

[6] Lopez, N 'Health, Inequities, Social Determinants, and Intersectionality', (2016) National Academy of Medicine Discussion Paper.

health outcomes.[7] With this, a renewed attention has been directed at urban deprivation and inclusion of marginalized groups in proposing interventions to urban challenges.

Urban planning has been identified to be a key determinant of health. This has led to calls to drive planning towards realization of health equity.[8] Urban planning can influence the allocation of health care resources which has an impact on health care utilization and ultimately shapes health outcomes.[9] Reference to health outcomes will in this work be used to describe achieved functionings or an attained state of health.[10] Urban planning is on the other hand used to describe "a specific form of spatial planning that is concerned with the ways in which land, land use, spatial morphologies, resource distribution, and economic and social interactions may be planned and managed."[11]

Health outcomes will often be realized once an intervention or a series of interventions are deployed.[12] Allocation of health resources is one instrumental intervention which can influence health outcomes. Distribution of health resources also plays a role in determining the levels of entrenchment of health inequities.[13] At the same time, urban planning can inform the distribution

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[7] Corburn, J. *et al.,* 'Making Health Equity Planning Work: A Relational Approach in Richmond, California', (2015) 35(3) *Journal of Planning Education and Research,* 265.

[8] Barton, H. and Grant, M. 'Urban Planning for Healthy Cities: A Review of the Progress of the European Healthy Cities Programme', (2011) 90 *Journal of Urban Health,* 139. Equity in health is defined as the absence of systematic disparities in health between social groups who have different levels of social advantage/disadvantage. By adopting this definition, the focus of this study is on the manner in which health resources are distributed and other processes that drive health inequality. See Braveman, P. and Gruskin, S. 'Defining Equity in Health', (2003) 57 *Journal of Epidemiol Community Health,* 254-55. The World Health Organization also takes cognizance of the fact that inequities in the conditions of daily living are shaped by social norms, policies, and practices that tolerate or actually promote unfair distribution of and access to power, wealth, and other necessary resources. See World Health Organization, *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health* (World Health Organization, 2008) 10. Health capability is used to define an individual's ability to be healthy. See Ruger, J.P., 'The Health Capability Paradigm and the Right to Health Care in the United States', (2016) 37(4) *Theor Med Bioeth*, 275-92.

[9] Bissonnette, L. *et al.,* 'Neighborhoods and Potential Access to Health Care: The Role of Spatial and Aspatial Factors', (2012) 18 *Health and Place,* 842.

[10] See Kleine, D. 'Using the Choice Framework to Situate Cases of Collective Action in Capabilities Thinking: The Example of Public Procurement', (2013) 22 *E-Bulletin of the Human Development & Capability Association*, 15.

[11] Huxley, M. & Inch, A. 'Urban Planning', in *International Encyclopedia of Human Geography* (Second Edition) (Elsevier, 2020) 88.

[12] Frommer, M. et al., 'The NSW Health Outcomes Program', 3(12) *Public Health Bulletin*, 135.

[13] Bernard, P. *et al.,* 'Health Inequalities and Place: A Theoretical Conception of Neighborhood', (2007) 65 *Social Science & Medicine*, 1842. Health inequities have been defined as "differences in health that are systematic, socially

of environmental hazards. Research has shown that toxic exposures from hazardous facilities and environments tend to be located in poor neighborhoods which is a consequence of poor planning practices.[14]

In this way, harm is often socially produced through historic patterns of urbanization which are augmented by exclusionary spatial practices that concentrate disadvantages in certain localities. The inhabitants of the neighborhoods excluded from planning processes eventually incur disproportionate health burdens which is detrimental to their health outcomes.[15] Urban planning is an important institutional entry point for the advancement of an urban health agenda.[16] What this means is that urban planning can either provide strategies for addressing urban inequalities or it may further lead to their entrenchment.

In Nairobi, the approaches to urban planning that have historically been adopted have exhibited glaring dissonances when it comes to understanding the urban context and to prescribing solutions.[17] They have particularly failed to take as their principal focus the needs of the excluded urban majority. They have instead acted to entrench exclusion.[18] What is manifest from these approaches is an ambivalent attitude by the planning authorities towards certain urban enclaves. The existence or humanity of the inhabitants of these enclaves has either been denied or called into question with the resulting spatial plans developed for the city rendering them invisible.[19] Urban

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produced (and therefore, modifiable) and unfair." See Whitehead, M. and Dahlgren, G., 'Concepts and Principles for Tackling Social Inequities in Health: Levelling up Part 1', (2006) *World Health Organisation,* 2.

[14] Macintyre, S. and Ellaway, A. 'Neighborhoods and Health: Overview', in Kawachi, I. and Berkman, L. (eds) *Neighborhoods and Health* (Oxford University Press, 2003). See also Corburn, J. 'Urban Planning and Health Disparities: Implications for Research and Practice', (2005) 20(2) *Planning, Practice and Research,* 119.

[15] Muindi, K. *et al.,* '"We Are Used to This": A Qualitative Assessment of the Perceptions of and Attitudes Towards Air Pollution Amongst Slum Residents in Nairobi', (2014) 14 *BMC Public Health,* 2.

[16] Pieterse, E., *City Future: Confronting the Crisis of Urban Development* (UCT Press, 2008) 151.

[17] Urban planning will in this work be interchangeably used with the term spatial planning. The latter is defined under the Physical and Land Use Planning Act (No. 13 of 2019) as "the methodology and approach used to influence the distribution of people and activities to achieve optimal utilization of physical, economic and sociocultural resources." Mazza on the other hand defines it as "the technical knowledge and professional know-how contributing to and supporting spatial governance choices". See Mazza, L., *Planning and Citizenship* (Routledge, 2016) 1. These two definitions essentially recognize the role that is played by various stakeholders, that is, professionals and the public or beneficiaries of spatial planning. Moreover, the Physical and Land Use Planning Act is guided by the national values and principles set out in Articles 10 and 232 of the Constitution which includes public participation.

[18] McAuslan, P. 'The Urban Land Question', (1982) 6(5/6) *Habitat Intl* 549.

[19] Kimari, W. ''We do not Want any More Masters': Ruins, Planning and the "messy labours" of the Urban Poor', (2016) XIV (5) *Mambo!* 4.

planning approaches have also been haunted by the intractable land policy problems bequeathed to us by a racist and exclusionary British colonial rule. This omnipresent colonial legacy in urban land policy is evident in the cities of many African countries.[20] Cities like Nairobi, Lusaka, Lilongwe, among others, which were shaped by British colonialism have a visible hierarchy of spatial order.[21] The spatial dynamics that have emerged in these postcolonial cities are marked by spatial segregation and exclusion of the urban poor.[22]

In Kenya, like many other African countries, the urban land policies, and consequently the urban planning attitudes, fail to acknowledge the realities occasioned by the inequalities and injustices in the way land is distributed, accessed, owned, and controlled.[23] Planning practices have been shaped by exclusionary logics where space is constantly manipulated to exclude certain groups in the city and to entrench feelings of non-belonging. The undemocratic nature of planning creates and sustains what Kimari refers to as 'ecologies of exclusion' which have taken different forms since the colonial period.[24]

In this study, the continuum of exclusion and the long history of neglect in Nairobi will be explored. I will elaborate on how neglect creates spatial differences in Nairobi, and how the outcome has been the entrenchment of differences in health opportunities and outcomes among the city's inhabitants. As will become apparent in this study, planning practices adopted in Nairobi have denied certain groups a platform to assert their 'right to the city',[25] to benefit from the

[20] Chitonge, H. 'The Urban Land Question in Africa: The Case of Urban Land Conflicts in the City of Lusaka, 100 Years after its Founding', (2015) 48 *Habitat International*, 213

[21] Myers, G.A. *Verandahs of Power: Colonialism and Space in Urban Africa* (Syracuse University Press, 2003) 2.

[22] Pieterse, E. *City Futures: Confronting the Crisis of Urban Development* (UCT Press, 2008) 17.

[23] Chitonge, H. 'The Urban Land Question in Africa', 210. See also Weru, J. *et al*. 'Confronting Complexity: Using Action-Research to Build Voice, Accountability and Justice in Nairobi's Mukuru Informal Settlements, (2015) 6 *The World Bank Legal Review*.

[24] Kimari, W. ''Nai-rob-me' 'Nai-beg-me' 'Nai-shanty' Historicizing Space-Subjectivity Connections in Nairobi From its Ruins', PhD Thesis (York University, Toronto, 2017) 52.

[25] The definition of "The Right to the City" used in this work borrows from that propounded by David Harvey to mean "the exercise of collective power to shape the process of urbanization". See Harvey, D. 'The Right to the City', (2008) 53 *New Left Review*. This means that individuals are enabled "...to claim some kind of shaping power over the process of urbanization, over the ways in which our cities are made and remade, and to do so in a fundamental and radical way". See Harvey, D. *Rebel Cities: From the Right to the City to the Urban Revolution* (Verso, 2012) 5. I use quotation marks here to denote that the right to the city is not a normative right in Kenya. I will drop the use of these quotations in subsequent references to 'the right to the city'.

resources and opportunities in the city, and to collectively participate in the betterment of the city.[26] Paradoxically, it is upon the labors and exclusion of these groups that the so-called 'global city' is built. For the excluded, tenure insecurity has habitually been deployed in a well-calculated and deliberate scheme of social exclusion by state functionaries and political elites.[27] The net effect of this has been their rendering as ineligible to participate in formulation of spatial plans and even in the implementation.

Tenure insecurity has thus rendered the groups voiceless in the face of injustices occasioned by the exclusionary planning practices.[28] The excluded have in turn transgressed into spaces where their presence is unwanted. They have countered persistent attempts at their erasure from the cityscape by carrying out formidable acts of transgression within a context now underwritten by a transformative constitutional framework. Their acts of transgression have been oriented at subverting the hegemonic conceptions of urban citizenship and expanding it beyond its traditional limits.[29]

In summary, spatial differences emerge where policies and practices that foster unfair distribution of and access to power and other necessary resources exist. Ultimately, unequal health outcomes and opportunities result because of the systematic exclusion of certain groups from participating in the decision-making processes.[30] These health outcomes are also the upshot of cities structured

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[26] Participation is in this work understood as the full involvement of individuals in decision-making processes in matters which affect their lives, including in the social policy arena which is designed to inform and influence larger institutions and policies. See Cornwall, A. and Gaventa, J., 'From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy', (2000) 31(4) *IDS Bulletin.* 52. See also Gaventa, J., 'Introduction: Exploring Citizenship, Participation and Accountability', (2002) 33(2) *IDS Bulletin*.

[27] Reference to "state" in this work denotes a multiplicity of government institutions, government functionaries (including in the ruling party) and processes. Political elites are the 'top political leaders in an incumbent regime'. See Goodfellow, T. 'Seeing Political Settlements through the City: A Framework for Comparative Analysis of Urban Transformation', (2017) 49(1) *Development and Change*, 204.

[28] Muindi, K. *et al.,* '"We Are Used to This": A Qualitative Assessment of the Perceptions of and Attitudes Towards Air Pollution Amongst Slum Residents in Nairobi', 8.

[29] Citizenship is in this work used in reference to a status and 'a set of practices (juridical, political, economic or cultural) that define a person as a competent member of society, and which as a consequence shape the flow of resources to persons and social groups.' See Turner, B.S. 'Contemporary Problems in the Theory of Citizenship', in Turner, B.S. (ed) *Citizenship and Social Theory* (Sage, 1993) 2. See also Oldfield, A. *Citizenship and Community, Civic Republicanism and the Modern World* (Routledge, 1990).

[30] Byrne posits that when it comes to dealing with issues of power, it is process which matters most. See Byrne, D. *Social Exclusion* (Open University Press, 1999) 123.

to normalize the decay of certain neighborhoods through schemes of social exclusion.[31] The denial of these groups to assert their right to the city by participating in spatial governance processes has the consequence of denying them agency to realize their right to health.[32] Such denial renders them powerless in the face of injustices especially where there are no structures to enable them to voice concerns on the manner in which resources and outcomes are distributed. The interaction of exclusionary urban planning processes coupled with the already manifest disadvantages within these localities such as inadequate access to basic services entrenches health inequalities.[33]

1.2 Rescaling spatial governance through community-led initiatives: A Synopsis on The Mukuru Special Planning Area (SPA)

To understand contemporary approaches to urban planning in Nairobi, Kenya's capital city, it is important to appreciate the history of planning in the city and the legacy that colonialism has had on it. The planning ideologies that have shaped the growth of Nairobi cannot also be examined in isolation from history of urbanization in Kenya.[34] This history, which is elaborately examined in the chapter two has been imbued with controversies and contestation as a result of deprivation and discontent amongst various groups. Contestations have particularly been rife when it comes to access to and control of space in the city.[35]

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[31] See Madanipour, A., *et al*. (eds) *Social exclusion in European cities* (Jessica Kingsley, 1998) 22. In this study, exclusion is examined in its two-pronged manifestation, that is, *distributional,* where exclusion has taken the form of denial of certain groups of access to valued resources in the society such as land and social services, and *relational* where the aforementioned groups have further been excluded from power and participation. See Veit-Wilson, J. *Setting adequacy standards* (Policy Press, 1998) 44.

[32] Agency, as discussed by Sen is quintessential in promoting the well-being of individuals and groups. See Sen A., *Development as Freedom* (Anchor Books, 1999) 191. Spatial governance is understood in this work as "the political processes that articulate and legitimate urban and territorial changes". Mazza distinguishes spatial governance from spatial planning and defines the latter as "the technical knowledge and professional know-how contributing to and supporting spatial governance choices". See Mazza, L., *Planning and Citizenship* (Routledge, 2016) 1. Spatial justice is on the other hand concerned with the fair and equitable distribution in space of socially valued resources and the opportunities to use them. See Soja, E.W. 'The city and spatial justice', Paper prepared for presentation at the conference *Spatial Justice,* Nanterre, Paris, March 12-14, 2008.

[33] Bernard, P. *et al,* 'Health Inequalities and Place: A Theoretical Conception of Neighborhood', (2007) 65 *Social Science & Medicine,* 1842.

[34] Akatch, S. 'Evaluative Review of Urban Planning Practice and Experiences in the African Region', in Mosha, A.C. (ed), *A Reappraisal of the Urban Planning Process* (UN Habitat, 1995) 39.

[35] Lonsdale argues that in order to understand urban life, historians need to pay close attention to three key issues, that is, economic and political relations between *town* and *country*, the control of urban *property,* and the nature of *work* in town. See Lonsdale, J., 'Town Life in Colonial Kenya', in Chaton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 7.

Urban planning in Nairobi has been approached from two ideological standpoints: a colonial segregationist approach which later morphed into a scheme of social exclusion; and functional planning model.[36] In chapter two, I will elaborate on how a segragatory approach to planning was effected by the British colonial administration. A functional approach to planning, adopts an elitist and technical orientation (what Cornwall refers to as "closed spaces" of participation).[37] It foregrounds the experience of external experts while paying little to no attention to the lived realities of the intended beneficiaries of the planning processes. The result has been the development of spatial plans that rest on shaky foundations making them non-responsive to local needs. In Nairobi, the glaring gaps in provision of and access to basic services in Mukuru and other informal settlements are clear manifestations of failed approaches to urban land use planning in the city.

In the following section, I will trace the growth of the informal settlements of Mukuru kwa Njenga, Mukuru kwa Reuben and Viwandani which are in this study collectively referred to as Mukuru or the Mukuru Special Planning Area (SPA). I will enumerate the obstinate challenges in the settlements which prompted their declaration as a SPA. I will also elaborate on how the tradition of dissent and subversion that was sustained by the inhabitants' demands for a more equitable urban space unsettled the hegemonic approaches to planning and accelerated the SPA declaration. The declaration was aimed at generating an Integrated Development Plan (IDP) for the settlements and effecting the proposals that would be enumerated in the IDP. I argue that the SPA process, whose public participation framework remains the focus of this study, creates a representative community mandate which incorporates voices from the 'grassroots'. It advances the inhabitants' claims to urban citizenship through its radical vision and approach to public participation.

I will in this work argue that the approaches adopted by the SPA process provide opportunities for citizenship claims as they provide a space for the negotiation of a new form of urban citizenship that will ultimately be critical in enabling realization of other rights by the inhabitants of Mukuru. Hence this study elevates participation as a citizenship and justiciable constitutional right with an emphasis on its place in advancing the citizenship project and enabling access to opportunities by

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[36] Claire, M. 'City Planning in Nairobi: The Stakes, the People, the Sidetracking', in Charton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 27.
[37] Cornwall, A. 'Locating citizen participation', (2002) 33(2) *IDS Bulletin.*

individuals and groups. The study adopts the SPA as an important discursive site for investigation and problematizes participation within the platforms provided by the SPA.

1.2.1 The Mukuru informal settlements

The Mukuru informal settlements are located in the eastern parts of Nairobi County and are situated within Embakasi South Constituency. The settlements are densely populated and span 689 acres with an estimated population of approximately 0.5 million in a city of 4.3 million people.[38] The areas occupied by the slums were, prior to the attainment of independence, in the possession of European settlers who used the land for various purposes including the plantation of sisal and operation of a quarry. The European settlers also employed African workers in the farms and the quarries. The African workers, together with their families, lived on their employers' properties near their working place.[39] Mzee Njenga was one of the earliest Africans to settle at Mukuru and he later established the "Kwa Njenga" (Njenga's place) village which was located on one of the sisal farms.[40]

Upon the attainment of independence, the land in Mukuru converted to unalienated government land. The Government Land Act (GLA)[41] was the substantive law dealing with dispositions relating to government land. It defined "unalienated Government land" as 'Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment'.[42] The Act vested in the President the power to make grants or disposition of any estates, interests or rights in or over unalienated government land.[43] To this end, the President could allocate government land through grants following the processes stipulated in the Act. The Act further established the office of the Commissioner of Lands who was tasked with the administration of the Act and was responsible for overseeing any sale, letting, disposal and occupation of Government land.[44] It required that the Commissioner executes any general or

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[38] Weru, J. *et al.*, 'Confronting Complexity: Using Action Research to Build Voice, Accountability and Justice in Nairobi's Mukuru Informal Settlements', 233. See also Kenya National Bureau of Statistics, *2019 Kenya Population and Housing Census Vol. 1* (KNBS, 2019) 7.

[39] Lamba, A., 'Land Tenure Management Systems in Informal Settlements: A Case Study in Nairobi', MSc Thesis (International institute for Geo-information Science and Earth Observation, 2005) 59.

[40] Ibid.

[41] Chapter 280, Laws of Kenya (Repealed).

[42] Ibid, s.2.

[43] Ibid, s. 3(a).

[44] Ibid, s.5.

special directions from the President regarding any conveyance, lease or licence of or for the occupation of Government lands.[45] It further outlined the procedural requirements that were to be followed in the allocation of government land.

In the early 1980s, the Government of Kenya, embarked on a process to issue leasehold grants on Mukuru land to various individuals and companies. This followed the adoption of Structural Adjustment Programs (SAPs) in the 1980's which saw the liberalization of the economy with the government yielding its stake in key areas of the economy, including in landholding. This period also saw the intensification of initiatives by the government to industrialize the country with incentives being placed to attract investments. Land in the city became a key focal point for the industrialization initiatives. Its importance was also elevated by the rapid urbanization that was unfolding.[46] The grants issued by the government were over land that either had individuals already in occupation (which consisted of either African workers who had stayed on in the farms upon the departure of the European settlers) or new migrants into the area with the growth of the city. Grants were also issued over other parcels that were unoccupied at the time.

Much of the land allocated during this period was public land that had been targeted for conversion into private use by individuals that were friendly to the regime. What followed was the illegal privatization of public land which drew its backing from state complicity.[47] Mutunga C.J (as he then was) noted that the Government during this period treated public land as its "private property" and made allocations without due regard to public interest and in excess of the authority granted to the responsible public officials.[48] At the same time, Nairobi saw a rise in its population with massive migration from the rural areas into the city by individuals who were attracted to the city for various reasons, key being the search for employment. The industrial zones in the city were particularly attractive to these individuals who established settlements in areas surrounding the industries where a majority were employed. Consequently, informal settlements started emerging

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[45] Ibid, s. 7.

[46] Lamba, A., 'Land Tenure Management Systems in Informal Settlements: A Case Study in Nairobi', 59.

[47] Katumanga, M., 'A City under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', 507.

[48] See Mutunga C.J. in *In the Matter of the National Land Commission* Supreme Court Advisory Reference no. 2 of 2014, Para. 147

and the land in Mukuru fell prey to the growth of these settlements given its proximity to the industrial area to which workers could easily commute.[49]

Allocation of land through 99-year leaseholds continued in the 1990's with a number of individuals and companies being beneficiaries.[50] The procedures for allocation through grants were stipulated in the GLA. The Act gave the Commissioner powers to set conditions upon which the grantees would hold the land. In all these grants, the grant holders were required to hold and use the land in accordance with certain special conditions that were outlined on the grant documents. One common condition stipulated in the grants was the requirement that the grantee develops the land allocated to them within two years of being issued with the grant. As will be discussed in more details in chapter three, most of the grantees failed to meet the special conditions attached to the land allocated to them which was a *prima facie* breach of the grant terms. Many of the grants issued were used as collateral to secure credit from financial institutions while other grant-holders used the land for speculative purposes. Among these breaches, failure to develop the land within two years of allocation of the grants was most rampant.[51] An immediate consequence of this was an influx of more individuals into the settlements to occupy any vacant spaces.

Allocations through grants were also done without taking consideration of the fact that there was already human occupation of some of the areas that were being allocated for development. This set the basis for conflicts that soon resulted between the grantees and the occupants of the land. In belatedly acknowledging the realities that were now manifest in Mukuru, the government in 1998 appointed a chief (under the then provincial administration structure) for Mukuru location as part of the provincial administration structure for the then Nairobi Province. Numerous attempts over the years to evict the inhabitants of the settlement from the land have failed despite the violence employed by the government during the evictions.[52] These evictions have also been met with rife

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[49] Lamba, A., 'Land Tenure Management Systems in Informal Settlements: A Case Study in Nairobi'. These settlements took an informal character because many of the occupants were aware of the fact that they were not the registered owners of the land hence could not invest in permanent structures on the land.

[50] Nairobi City County Government, 'Sector Brief on Leaseholds in the Mukuru Special Planning Area', (unpublished) 15.

[51] Weru, J., 'Slums and the New Land Laws', A Paper Prepared for the County Government of Nairobi and the Task Force on Community Land, Evictions and Resettlement (September 2013) 19.

[52] The term 'violence' is in this work used in the broad sense to include both coercive acts or threats of violence, and actual or real violence. See Tilly, C. *The Politics of Collective Violence* (Cambridge University Press, 2003).

opposition from the residents who have claimed that they have rights over the land based on their long occupation of it and also based on the fact that they need access to land for the purpose of establishing their settlements and practicing their economic activities.[53] The numerous overlapping and competing claims to land in Mukuru have also made it practically impossible to evict individuals occupying the land who continue to establish permanent footholds within the settlements.

1.2.2 Land tenure contestations as a foundation to attendant marginality

Like with many informal settlements globally, the land tenure question in Mukuru is highly complex and problematic. This situation arises from the layered claims and the resulting contestations among the various stakeholders within and outside the settlements. The notable stakeholders when it comes to land ownership in the settlements are: tenants (inhabitants) structure owners, and grant holders (grantees). Each of these persons lay some claim to rights to the land in Mukuru. As a result, questions on legality (legal title to land) illegality, and legitimacy of their varied claims are bound to arise.[54] While one group (the grantees) has to a large extent enjoyed legal protection of their title to the land, the other group consisting of the inhabitants has been denied recognition of any entitlements that may accrue to them based on their physical and at times extended occupation of the land. The latter group largely operates on the fringes of the law and has been forced to devise mechanisms to facilitate access to land as they have been excluded from the formal processes of land allocation.[55] This group has additionally been the victim of periodic forced evictions and incessant threats of evictions by law enforcement authorities.[56] Violence has

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[53] Kubwa, C., '2,200 Mukuru Kwa Njenga Residents Sue for Title Deeds to Sh. 900 million land', *The Star* January 27, 2018.

[54] UN-HABITAT, *Urban Land for All* (UN-HABITAT,2004) 5. Bhan and Revi examine some of these distinctions. They define legal spatial claims as those brought by individuals who possess some kind of title or ownership that is recognized by local authorities or the government and who inhabit settlements that are recognized by the Master Plan. They define spatial illegality as "all forms of inhabitation and the production of space by urban residents that do not confer upon them a de jure property right." See Bhan, G. & Revi, A. 'The Intent to Reside: Spatial Illegality, Inclusive Planning, and Urban Social Security', in *Inclusive Urban Planning: State of the Urban Poverty Report* (Oxford University Press, 2013) 86.

[55] Omwoma, R., 'Land Tenure Systems in the Slum Settlements of Nairobi: Implications for Slum Upgrading', available at http://land.igad.int/index.php/documents-1/countries/uganda/gender-7/1239-finalworldbankpaperforpresentation/file 11.

[56] The UN Committee on Economic, Social and Cultural Rights in General Comment No. 7 of 1997 defines forced eviction as 'the permanent or temporary removal against their will of individuals, families and/or communities from

been employed and is systematically produced within institutional contexts that deny humanity to the urban poor and makes them ineligible to derive the benefits of urban citizenship.

Fig 1: *Land use in the Mukuru SPA.* (Source: Slum Dwellers International**)**

Mukuru also forms an important case study on the close interlinkages between security of tenure and access to basic services.[57] This correlation is firstly attributed to the fact that as a result of the contested tenure relationships, the Nairobi City County Government (NCCG) and other government utility providers supply next to no basic services and social amenities to the inhabitants of the SPA.[58] Consequently, there are stark sanitation challenges within the settlements with women and children bearing the greatest brunt as a result of this.[59] A Situational Analysis

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the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection'. See General Comment No. 7 (1997), adopted by the Committee on Economic, Social and Cultural Rights. HRI/GEN/1/Rev.3. See Muungano wa Wanavijiji, 'The ugly side of forced evictions in Mukuru Kwa Njenga', available at https://www.muungano.net/browseblogs/2012/01/30/the-ugly-side-of-forced-evictions-in-mukuru-kwa-njenga accessed October 25, 2018.

[57] Weru, J. *et al*. 'Confronting Complexity: Using Action Research to Build Voice, Accountability and Justice in Nairobi's Mukuru Informal Settlements', 235.

[58] Ibid, 236.

[59] See Anderson, M., 'Nairobi's Female Slum Dwellers March for Sanitation and Land Rights', *The Guardian* October 29 2014.

conducted by a number of stakeholders in 2017 indicated that only 1% of residents in Mukuru had access to private or individual water source; only 1% of residents had access to private, in home toilet; over 85% of electricity connections are informal and illegal; with the settlements having almost no solid waste collection leaving the work to be done by youth groups.[60]

Fig 2: *A pay per use latrine in Mukuru* (Source: Author)

The inhabitants are often forced to access these services from cartels and other informal providers at costs that exceed ordinary rates. This imposes a poverty penalty on them.[61] As illustrated by the image above, amenities like toilets can only be accessed upon payment of a set fee to the providers. Proliferation of informal providers is also visible in health care provision. Until 2021, no public health facility existed in Mukuru kwa Njenga out of the 85 private and informal facilities that exist in the settlement.[62] This explains why 72% of households in the settlements accessed healthcare by making out of pocket payments which is widely characteristic where informal/unlicensed providers are involved.[63] Additionally, poor planning in the area has rendered most roads, which are mostly narrow unpaved pathways, impassible especially during the rainy seasons. This can similarly be witnessed in Kwa Reuben and Viwandani.

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[60] UC Berkeley *et al*., '2017 Situational Analysis: Mukuru Kwa Njenga, Kwa Reuben & Viwandani', (2017).

[61] Mutinda, M. and Otieno, S., 'Unlocking Financing for Slum Redevelopment: The Case of Mukuru', (2016) *Harvard Africa Policy Journal*.

[62] Corburn, J., *et al.,* 'Mukuru special Planning Area Rapid Health Impact Assessment', (University of California Berkeley, 2018). See also Minutes of the Health consortium. (On file with author).

[63] Ibid, 12.

Fig 3: *A section of a road in Mukuru kwa Reuben with unlicensed 'spaghetti water connections' running through* (Source: Author)

The situational analysis further indicated that the surrounding industrial activities around the settlements contributed to toxic pollution with local particulate matter (PM) in the air exceeding the World Health Organisation (WHO) guidelines.[64] These levels also exceed the average levels of air pollution in Nairobi.[65] It was established that there are over 300 different industries within 1,500 metres of Mukuru's population and these industries are a major source of toxic air, surface water and soil pollution.[66] Hazardous pollutants in the settlements include Particulate Matter (PM), Volatile Organic Compounds (VOCs), and heavy metals, including lead.[67] A survey conducted by Corburn *et al.* further established that at least one third of the residents interviewed reported foul smelling odors, eye and throat irritation, and coughing or other respiratory illnesses at least once in the month before the survey was conducted.[68] Lack of access to clean energy for cooking also contributes to the high air pollution rates which ultimately has adverse impacts on the health of the

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[64] UC Berkeley *et al.*, '2017 Situational Analysis: Mukuru Kwa Njenga, Kwa Reuben & Viwandani', 45. See also Thaddaeus, E. *et al.*, 'Community Perceptions of Air Pollution and Related Health Risks in Nairobi Slums', (2013) 10 *Int. J. Environ. Res. Public Health,* 4859. See also Muindi, K. *et al.,* 'Household Air Pollution: Sources and Exposure Levels to Fine Particulate Matter in Nairobi Slums', (2016) 4(12) *Toxics*.

[65] Thaddaeus, E. *et al.*, 'Community Perceptions of Air Pollution and Related Health Risks in Nairobi Slums', 4859.

[66] UC Berkeley, *et al*., '2017 Situational Analysis: Mukuru Kwa Njenga, Kwa Reuben & Viwandani', (2017), 46.

[67] Corburn, J., *et al.,* 'Mukuru special Planning Area Rapid Health Impact Assessment', 5.

[68] Ibid, 47.

inhabitants.[69] Air pollution is one manifestation of toxic stressors that individuals within Mukuru are exposed to on a daily basis which has a detrimental impact on their health.

The narrative is the same when it comes to the provision of health care services to the inhabitants of Mukuru. Available evidence indicates prevalence of ailments like diarrhea (13.7%), cough (19.0%), fever (12.2%), chest problems (5.4%) among others.[70] Poor infrastructure within the settlements also makes it nearly impossible to attend to any health emergencies that may arise. This means that it would be nearly impossible for an ambulance to reach an emergency and even for persons with disability to safely navigate the settlements. Additionally, public parks and green spaces are non-existent within the settlements as most of the areas are built-up and occupied by the residents and industries.

Fig 4: *State of drainage in Mukuru (Source: Author)*

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[69] Ibid, 48. This study borrows from the definition of health in the World Health Organization's Constitution to mean "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". See The Constitution of the World Health Organization, adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States and entered into force on 7 April 1948. Amendments adopted by the Twenty-sixth, Twenty-ninth, Thirty-ninth and Fifty-first World Health Assemblies.

[70] Presentation by the Health Services Consortium of the Mukuru Special Planning Area in Mombasa on June 25-26, 2017.

1.3 An Integrated Development Plan (IDP) for the Mukuru Special Planning Area

Persistent agitation by the inhabitants of Mukuru as a result of the numerous unaddressed problems experienced in the settlements saw them mobilize and petition the relevant government authorities to address the identified challenges in the settlements.[71] These campaigns had in the past mainly taken the form of resistance to evictions carried out by the government and some of the entities that held grants on the Mukuru land.[72] In 1996, slum communities in Nairobi, including the inhabitants of Mukuru, formed a social movement, Muungano wa Wanavijiji (Swahili for 'united slum dwellers'). A key objective of Muungano wa Wanavijiji was to resist the brutal evictions and the organized plunder of public land that were prevalent in the 1990s.[73] The focus of these struggles by the poor was on conservation of living spaces and the assertion of their right to belong in the city.[74] These struggles by the poor were often met by state actors who always attempted to re-impose control.[75] I will, in chapter three and four discuss how communities have resisted their sidelining in spatial governance processes and how organisations like Muungano have aided their actions.

Women living in Mukuru have been most vocal on the issues as they are often on the receiving end and bear the greatest brunt of the injustices occasioned on the inhabitants of the slums. For instance, it is mostly women who have to endure the long lines at water collection points and they simultaneously have to deal with the consequences occasioned by poor sanitation within their households. They have mobilized and petitioned for the improvement of health, sanitation, and personal security within the settlements with their resilience and determination leading to the attainment of several milestones.[76] The leadership that has been provided by women in shaping the resistance is also exemplification of the gendered nature of urban protests with women

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[71] Dodman, D., 'A Special Approach to Slum Upgrading: The Special Planning Area in Mukuru, Nairobi', available at https://www.iied.org/special-approach-slum-upgrading-special-planning-area-mukuru-nairobi 2.

[72] Horn, P. *et al.,* 'Towards Citywide Participatory Planning: Emerging Community-led Practices in Three African Cities', (2018) 2018-034 *Global Development Institute Working Paper Series,* 21.

[73] See Muungano wa Wanavijiji, 'Muungano's History, Told by Those Who Were There', available at https://www.muungano.net/browseblogs/2019/1/18/muunganos-history-told-by-muungano accessed 25th April 25, 2019.

[74] Rodriguez-Torres, D., 'Public Authorities and Urban Upgrading Policies in Eastlands', in Charton-Bigot, H. & Rodriguez-Torress, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 92.

[75] Klopp, J.M. 'Remembering the Destruction of Muoroto: Slum Demolitions, Land and Democratisation in Kenya', (2008) 67(3) *African Studies,* 296.

[76] See Anderson, M. 'Nairobi's Female Slum Dwellers March for Sanitation and Land Rights', *The Guardian* October 29, 2014.

constantly asserting their place in the face of deprivation, violence, and relegation from the frontlines of development.[77]

Through Muungano, the inhabitants of various informal settlements have undertaken slum upgrading initiatives and joined saving groups as a way of facilitating collective action to address the challenges within their localities.[78] With these saving groups, a representative community mandate was bestowed on the members who could now model the grievances by their communities and present them to the relevant authorities while also devising solutions to community challenges whenever it became necessary.[79] The savings were also considered to be the glue that held the communities together and helped the members cope with any calamities that would befall them such as demolitions.[80] I will argue in this work that there is a story to be told about the splintered acts of resistance by the excluded groups and I will situate the resistance in Mukuru in a historical context of planning in Nairobi.

With the enactment of the Constitution in 2010, marginalized groups are guaranteed the right to participate in governance and other spheres of life.[81] As discussed in this work, the Constitution has a significant bearing on community mobilization initiatives. Being the supreme law, and what Modiri terms as the supreme rationality, a constitution acts to embed particular cultural and ideological values which can either preserve or alter the arrangements of power and knowledge.[82] It equips marginalised groups with the grammar through which they can articulate their claims and challenge the existing relations of power. The Kenyan Constitution contains elaborate provisions on public participation which has now been elevated as a national value and a right under the Bill of Rights.

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[77] See Moseti, D., 'Muungano's Womancode', available at https://www.muungano.net/browseblogs/2016/02/05/muunganos-womancode accessed October 29, 2018.

[78] Horn, P. *et al.,* 'Towards Citywide Participatory Planning: Emerging Community-led Practices in Three African Cities', 21.

[79] Lines, K. and Makau, J., 'Muungano Nguvu Yetu (unity is strength) 20 years of the Kenyan Federation of Slum Dwellers', (2017) *iied Working Paper*, 63.

[80] Ibid, 26.

[81] Constitution of Kenya (2010) Art. 56.

[82] Modiri, J.M. 'Conquest and Constitutionalism: First Thoughts on an Alternate Jurisprudence', (2018) 34 *South African Journal on Human Rights*, 305.

1.3.1 The SPA Declaration

Ultimately, by the Kenya Gazette Notice Volume. CXIX- N0.114 published on 11th August 2017, The Nairobi County Executive Committee Member for Lands and Urban Planning declared all the area of land measuring approximately 550 acres covering the informal settlements of Mukuru Kwa Njenga, Mukuru Kwa Reuben and Viwandani as a Special Planning Area. This Declaration was made in realization of the insufficiency of conventional planning tools to address the realities within the Mukuru SPA.[83] The Declaration was made pursuant to Section 23(1), (2), and (3) of the Physical Planning Act.[84] These provisions, among other things, confer the Director of Physical Planning with the power to declare an area with unique development potential or problems as a special planning area for the purpose of preparation of a physical development plan.[85] The Declaration prohibited further developments within the SPA for a period of not more than two years from the date of publication of the notice. The Gazette Notice indicated that the declaration was intended to notify the public of the intention of the Nairobi City County Government (NCCG) to initiate a participatory process to develop a Physical Development Plan for the area.

Prior to the Declaration, the NCCG engaged professionals and academics grouped into eight consortia. These were, Housing, infrastructure and commerce; land and institutional arrangements; education; coordination, community organisation and communication consortium (CCOCC); health services consortium (HSC); water, sanitation and energy; environment; and finance.[86] The various consortia embarked on a process of developing a situational analysis for the three settlements. The situational analysis was aimed at establishing the context of planning and to further provide crucial evidence to support the making of informed decisions during the planning

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[83] See Communication, Coordination and Community Mobilization Consortium for the City County of Nairobi, 'An Integrated Development Plan: Mukuru SPA Inception Report', (2017) Technical Paper, Muungano wa Wanavijiji, Akiba Mashinani Trust, Slum Dwellers International Kenya, and Franciscan International Kenya 1.

[84] Act No. 6 of 1996 (Revised 2012).

[85] Section 25 of the Act provides that a physical development plan shall consist of-
    (a) A survey in respect of the area to which the plan relates carried out in such a manner as may be prescribed; and
    (b) Such maps and descriptions as may be necessary to indicate the manner in which the land in the area may be used having regard to the requirements set out in the Third Schedule in relation to each type of local physical development plan.

[86] See Communication, Coordination and Community Mobilization Consortium for the City County of Nairobi, 'An Integrated Development Plan: Mukuru SPA Inception Report', (2017) Technical Paper, Muungano wa Wanavijiji, Akiba Mashinani Trust, Slum Dwellers International Kenya, and Franciscan International Kenya 19.

process.[87] The analysis revealed crucial information on the unique development challenges faced by the inhabitants of the settlements.[88] The challenges identified through the analysis ultimately led to a number of conclusions including, that inadequate participation in development activities has inhibited the identification of toxic stressors that has enabled the persistence of health inequities.[89] The identification and documenting of these challenges coupled with agitations by the inhabitants of the settlements prompted the SPA Declaration by the County Government.

NCCG's declaration of Mukuru as a SPA and the initiatives towards the preparation of local development plans for the area has been hailed as transformative. The Mukuru IDP will be the first local development plan in Nairobi to be developed in a participatory manner at the local level.[90] As will be discussed in this work, the ecology which the SPA process creates provides groups whose knowledge and agency had previously been disqualified as inadequate, with visibility and a voice to articulate their claims. It treats them as local experts who are presumptively best placed to identify, articulate, and solve challenges which directly affect them. This effectively subverts the traditional distinctions between experts and subjects of planning processes. The Mukuru IDP, which is the ultimate output of the SPA process, will consist of both long- and short-term plans and will be comprised of sectoral and spatial plans.[91]

The importance of the SPA process cannot then be understated. Its success is likely to be replicated in resolving similar challenges in other informal settlements both in Kenya and in cities across the world.[92] Moreover, the SPA Declaration comes at a time when global focus is on the United Nations Sustainable Goals whose overarching goal is to "leave no one behind" in realization of

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[87] Ibid 3.

[88] Ibid.

[89] UC Berkeley, University of Nairobi, Muungano wa Wanavijij and Strathmore University, '2017 Situational Analysis: Mukuru Kwa Njenga, Kwa Reuben & Viwandani', (2017), 54. These stressors include; poor air quality, insecurity, economic insecurity, lack of proper infrastructure such as roads and green spaces, inadequate provision of health care resources, tenure insecurity among others.

[90] Ibid 8.

[91] Communication, Coordination and Community Mobilization Consortium for the City County of Nairobi, 'An Integrated Development Plan: Mukuru SPA Inception Report', (2017) Technical Paper, Muungano wa Wanavijiji, Akiba Mashinani Trust, Slum Dwellers International Kenya, and Franciscan International Kenya, 9.

[92] In Sao Paulo, Brazil, an inclusive city model has been realized by the use of Special Zones of Social Interest approach to urban planning. See Hirata, M.S. and Samora, P.R. 'Participatory Urban Plans for 'Special Zones of Social Interest' in Sao Paulo: Fostering dense central areas', (2013) *Rethinking Urban Inclusion*.

the development agenda.[93] The process further fits squarely within SDG 11 that aims to 'make cities and human settlements inclusive, safe, resilient and sustainable.' Indeed, the transformative nature of the SPA process has now seen the declaration of Kibera and Mathare informal settlements as special planning areas with lessons from the Mukuru SPA informing the planning processes in both settlements.[94]

1.3.2 Potential for advancing claims to the right to the city through a participatory SPA process

One of the aims of the Mukuru SPA process is to entrench a culture of community-driven upgrading schemes.[95] Within the SPA process, the inhabitants of Mukuru are provided with platforms that they use to identify local challenges and with possible approaches to solving them. They ultimately co-produce interventions together with external experts. The external actors, who constitute the eight consortia, use their expertise to offer relevant advice to the communities. As will be discussed in this study, it is imperative that community-generated discourses guard against appropriation by external actors. Mitlin and Patel caution against an overrepresentation of non-governmental organisations (NGOs) in community-led initiatives as this will likely lead to a case where the NGOs take the role of defining the agenda for the community and muzzling community voices.[96] Deliberate efforts must then be invested to ensure that less powerful individuals are provided with opportunities to express their views and to challenge prevailing views.[97]

The approaches adopted by the SPA are important in ensuring that consensus is built, and it enables all the stakeholders to approach issues with a collective voice. In Mukuru, the success of collective action has previously been witnessed where the inhabitants have been able to stop evictions and demolitions from taking place by protesting and submitting petitions to relevant authorities, and

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[93] United Nations, 'The 2030 Agenda for Sustainable Development', A/RES/70/1.

[94] Kinyanjui, M., 'NMS Begins Construction of 28 km Road in Kibera', The Star February 4, 2021 available at https://www.the-star.co.ke/counties/nairobi/2021-02-04-nms-begins-construction-of-28km-road-in-kibera/ accessed March 14, 2021.

[95] Key Informant interview with a member of the CCOCC on October 6, 2020.

[96] Mitlin, D. and Patel, S. 'The Urban Poor and Strategies for a Pro-poor Politics: Reflections on Shack/slum Dwellers international', in Parnell, S. and Oldfield, S. (eds) *The Routledge Handbook on Cities of the Global South* (Routledge, 2014) 298.

[97] Mitlin, D., and Thompson, J. 'Participatory Approaches in Urban Areas: Strengthening Civil Society or Reinforcing the Status Quo?', (1995) 7(1) *Environment and Urbanization,* 249.

through court cases.[98] Some of the cases have targeted politicians and powerful people in the government who are said to be beneficiaries of the illegal land allocations in the settlements and perpetrators of the injustices.[99]

The localized political initiatives by communities can be viewed as manifestations of mobilization to secure the right to the city.[100] Mobilization enables a collective articulation of rights and assertion of claims to justice.[101] The manifestation of these initiatives also dispels the view of the urban poor as disorganized and incapable of meaningful self-help or organization.[102] In Mukuru, mobilization has seen the coalescing of individual grievances into collective claims for rights to, among others, recognition and participation. These claims have been expressed as calls for justice. For instance, in a letter addressed to one of the grantees in Mukuru, *School Equipment Production Unit (SEPU)* who was attempting to evict the occupants of Land L.R. NO. 209/14099, the occupants reiterated that they would resist any form of eviction that was not done in line with the Constitution and that was done without consulting the community.[103] This means that the SPA inhabitants now view their claims as claims to rights which are safeguarded by the Constitution.

I will present the platforms provided by the SPA as critical in providing the inhabitants with an opportunity to advance their quests to realize improved health outcomes. The SPA process, I will argue, provides discursive openings for the inhabitants to redefine participation in spatial governance and to assert themselves as urban citizens. Under the SPA, the inhabitants take ownership of and situate themselves at the center of the collaborative processes from when problems are defined to when interventions are formulated and implemented. Their actions are manifestations of what Holston and Appadurai refer to as 'performances of citizenship' or what Blokland *et al* have termed as 'acts of citizenship' where groups take cognisance of the fact that they have certain shared interests and that they have a right to participate and access opportunities

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[98] See Ogemba, P., 'Slum Dwellers Protest at Evictions', *Daily Nation* February 13, 2012. See also Howden, D., 'Kenya's Slum Dwellers Versus the Elite', *The Independent* September 26, 2012.

[99] Some, K., 'Nairobi Slum Dwellers Plan to Sue Firms over Land', *Daily Nation* September 9, 2012.

[100] Benit-Gbaffou, C. and Oldfield, S., 'Claiming 'Rights' in the African City: Popular Mobilization and the Politics of Informality', in Parnell, S. and Oldfield, S. (eds) *The Routledge Handbook on Cities of the Global South,* 281.

[101] Ibid 282-284.

[102] Ross, M.H., *The Political Integration of Urban Squatters* (Northwestern University Press, 1973, 63.

[103] Lines, K. and Makau, J., 'Muungano Nguvu Yetu (unity is strength) 20 Years of the Kenyan Federation of Slum Dwellers', 62.

within their localities.[104] Here, we can see the metamorphosis of the inhabitants' splintered acts of resistance into institutionalized forms of political participation anchored in an expanded legal space. Public participation is then viewed in this work as a political project whose goal is to challenge existing power relations and structures that produce marginality. Public participation will in effect expand access to the city by previously excluded groups.

1.3.3 Potential for realizing improved health outcomes through participatory urban planning

Discussions on how to engender health equity in planning and how to address the determinants of health have largely been missing from urban studies debates.[105] Debates have mostly focused on how to expand the spaces for participation to excluded groups in pursuit of their right to the city.[106] In these debates, participation has been framed as an end on itself. This sidesteps identification of the benefits that can be extracted from participatory processes. Such approaches fail to interrogate how participation can lead to the realization of material outcomes for individuals. Here, we miss an opportunity to reckon with how participation can advance quests to realize outcomes like equitable access to health resources and outcomes. I suggest that spatial governance processes should be oriented and framed in a manner that enables beneficiaries to identify and develop appropriate responses to the drivers of health inequity within their localities.[107] Indeed, failure to take health equity considerations in planning is a missed opportunity by policy makers to engender health equity in spatial governance.[108]

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[104] Holston J. and Appadurai, A., 'Cities and Citizenship' in Holson, J. (ed) *Cities and Citizenship* (Duke University Press, 1999) 6. See also Blokland, T., *et al.,* 'Urban Citizenship and the Right to the City: The Fragmentation of Claims', 663.

[105] Herrick, C., 'Healthy Cities of/from the South', in Parnell, S. and Oldfield, S. (eds) *The Routledge Handbook on Cities of the Global South,* 556.

[106] See Myers, G., *African Cities: Alternative Visions of Urban Theory and Practice* (Zed Books, 2011).

[107] The important correlation between urbanization processes and health has seen the WHO designate urban settings as social determinants of health. See World Health Organization, 'Social Determinants of Health: Urban settings as a Social Determinant of Health', available at http://www.who.int/social_determinants/publications/urbanization/factfile/en/ accessed October 30, 2018. Pieterse urges that the dimensions of urban imaginaries and practices must be effectively articulated for the possibilities of transformation to be realized. Pieterse, E., *City Future: Confronting the Crisis of Urban Development* (UCT Press, 2008) 11.

[108] Corburn, J., *et al.* 'Health in All Urban Policy: City Services through the Prism of Health', (2014) 91(4) *Journal of Urban Health*, 623.

Public participation, a manifestation of the right to the city in practice, has been said to possess the potential to enhance the realization of economic and social rights such as the right to health.[109] In this way, the right to the city dovetails with the right to health and expands the scope for the realization of improved health outcomes. This relationship becomes more apparent where claims to the right to the city are underwritten by a properly framed public participation framework that recognizes and affirms the agency of the beneficiaries. Properly structured participatory processes bear the potential of reorienting health systems and making them responsive to the needs of beneficiaries while at the same time influencing health norms within their localities.[110]

Conversely, poorly framed participatory processes can lead to the entrenchment of health inequities.[111] Recipients of poorly structured urban planning initiatives are likely to face handicaps which may bar them from effectively identifying the determinants of health within their localities and developing appropriate planning interventions.[112] Addressing concerns on health equity within an urban planning framework, therefore, warrants a thorough assessment of the public participation framework(s) adopted. It specifically requires an interrogation of how questions on agency on the part of the beneficiaries have been dealt with.

As already stated in this chapter, the SPA process provides platforms for participation for the inhabitants of Mukuru. Within these platforms, the inhabitants are provided with opportunities to identify the drivers of poor health in their neighborhoods, set health priorities and co-produce interventions for the identified barriers. Community mobilization has been a key tool for the building of the community's capacity to participate. For instance, on August 21, 2014, a group of women who had collected 15,000 signatures held a demonstration and presented a petition to the Cabinet Secretary for Health requesting him to set up an inquiry on the appalling health conditions in Mukuru under Section 11 of the Public Health Act.[113] The petition proposed that the inquiry

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[109] Orago, N. 'Poverty, Inequality and Socio-economic Rights: A Theoretical Framework for the Realization of Socio-economic Rights in the 2010 Kenyan Constitution', 169. See also Marcuse, P., 'From Critical Urban Theory to the Right to the City', (2009) 13 (2-3) *City,* 192.

[110] Corburn, J. and Sverdlik, A., 'Slum Upgrading and Health Equity', (2017) 14(4) *International Journal of Environmental Research and Public Health*, 8.

[111] Clare Herrick has demonstrated the complex dynamics that lead to glaring disparities between the urban rich and poor in terms of health outcomes. See Herrick, C., 'Healthy Cities of/from the South', 560.

[112] See Corburn *et al.* 'Health in All Urban Policy', 625.

[113] Weru *et al.,* 'Confronting Complexity', 253. Public Health Act (Chapter 242) Laws of Kenya.

investigates and develops recommendations on the steps to be undertaken in addressing the public health conditions in the settlements.[114] This is clear illustration of the existence of local knowledge on the underlying drivers of health inequity.

The Health Services Consortium (HSC) of the Mukuru SPA has also engaged with the community at multiple levels to establish the key priorities for health for the inhabitants and co-produce interventions for the identified challenges. It has conducted a situational analysis of the Mukuru SPA to identify the underlying health challenges and priority areas for the residents. Some of the drivers of health inequity that have been identified to be persistent within the settlement include: poor air quality; poor sanitation; poor infrastructure; and insufficient healthcare providers and facilities.[115] All these are key determinants of health within communities.[116] The Consortium has carried out consultation meetings involving residents, community health workers and other health workers.[117] In the table below, some of the identified health priorities in Mukuru are enumerated.

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[114] Ibid.

[115] Presentation by the Health Services Consortium of the Mukuru Special Planning Area in Mombasa on June 25-26, 2017.

[116] Rydin, Y., *et al.* 'Shaping Cities for Health: Complexity and the Planning of Urban Environments in the 21st Century', (2012) 379(9831) *Lancet*.

[117] Presentation by the Health Services Consortium of the Mukuru Special Planning Area in Mombasa on June 25-26, 2017.

Characteristics- Priorities for Health	N= 368 (%)
Top Priority to Improve Health	
Reduce Air Pollution	21 (5.7)
Improve Toilets	100 (27.2)
Improve Household Energy	6 (1.6)
Increase Knowledge About Hygiene	51 (13.9)
Improve Household Ventilation	7 (1.9)
Improve Drinking Water	52 (14.1)
Increase Access/ Affordability of Medications	18 (4.9)
Increase Access to Food	7 (1.9)
Increase Clinics	39 (10.6)
Improve Drainage and Reduce Flooding	43 (11.7)
Reduce Cost for Healthcare	14 (3.8)
Improve Waste Collection	10 (2.7)

Table 1: *Preliminary findings on priorities for health in the Mukuru SPA.* (Figures from Health Services Consortium of the Mukuru SPA)

I will argue in this work that the public participation platforms that are adopted by the HSC provide the inhabitants with an opportunity to explicate their local health conditions and co-produce interventions together with external experts. The participatory processes have enabled them to put their health situation under a magnifying lens like never before. In the SPA, the inhabitants are equal research partners to the external experts and their experiential knowledge feeds into the SPA planning processes. Through the SPA process one can tell that there exists among the Mukuru community concrete data explicating their conditions and individuals that are able to co-produce interventions with external experts. Participation in the SPA then enables the inhabitants to identify barriers to better health outcomes, set priorities and act on the identified barriers. The potential that this has in delivering on the health needs of the inhabitants of Mukuru will be explored below.

1.4 Research questions

Paulo Freire in his *Pedagogy of the Oppressed* framed dialogical action as a pathway for the liberation of the oppressed.[118] Freire considered dialogue to be a tool of creation. He argued that "without dialogue there is no communication, and without communication there can be no true education".[119] It is upon these foundations that this study aims at a critical assessment of whether the approaches to public participation adopted in the SPA provide a platform for genuine and meaningful engagement for the community in the Mukuru SPA and whether this can contribute to realization of improved health outcomes for the inhabitants. My focus will primarily be on how excluded urban communities organize and interact with the state and other external actors to effect change within their localities. I will suggest that public participation as approached in the Mukuru SPA process is an embodiment of the right to the city. I will argue that its framing in the SPA process can contribute to the realization of improved health outcomes by the inhabitants as it expands their ability to identify the key drivers of health inequity and to collectively develop requisite interventions. Public participation, the right to the city and health outcomes are then the central organizing concepts which will form the framework within which arguments in this work are advanced.

My research proceeds through an investigation of three principal questions:

1. In what ways does insecure land tenure foster exclusionary spatial planning in Nairobi?
2. To what extent is the SPA an effective tool in engendering participatory urban planning? and;
3. Has the SPA process been properly structured to enable the realization of improved health outcomes by the inhabitants of Mukuru?

To answer the first of these broad questions, I will take land as the locus over which power relations are shaped and challenged, and where claims to urban citizenship are framed. I will argue that land, and specifically public land, in Nairobi has acted as a patronage resource and has played a fundamental role in defining relationships of power, domination and subordination in the city.[120]

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[118] Freire, P. *Pedagogy of the Oppressed* (Penguin, 1996) 61.
[119] Ibid, 66.
[120] Blok defines patronage as "a structural principle which underlies asymmetric, personal transactions involving protection and loyalty between two persons or groups of persons." See Blok, A. "Variations in Patronage" (1969) *Sociologishe Gids* 16: 365. Patronage resources are then resources of the state whose access to have been monopolised by the ruling elites.

From this orientation, the poor urban inhabitants have been subjected to the full violence of enforcement of possessory rights which has led to their dispossession and their erasure from spatial planning processes. I will ultimately demonstrate how access to land and tenure security has been an important entry point to urban citizenship, and subsequently a licence to participate in urban planning.

For the second question, I will read the SPA process as a political project with the political end of reorienting power relations in the city and redefining the conditions of urban citizenship. The study will propose that the SPA process provides a path to urban citizenship that has hitherto been denied to the inhabitants of Mukuru. I will argue that the process facilitates the inhabitants' entry into official domains of participation from which their presence was previously precluded. Using empirical evidence, I will provide an in-depth account on how public participation has been tested in Mukuru through the SPA process. Attention will be directed at examining how the process frames participants, how they participate, and how the process grapples with questions on agency that are intrinsic in such processes. I will also examine some of the palpable shortfalls in the SPA process that could potentially undo its transformative objectives.

Regarding the third question, I will appraise the platforms employed by the SPA's HSC to engage with the community and other stakeholders and assess how they contribute to realization of improved health outcomes for the inhabitants. Using the capability approach proposed by Amartya Sen as a frame of analysis,[121] I will demonstrate how the platforms employed by the HSC for public participation have aided the inhabitants in identifying their health priorities, how they enable inhabitants to identify and access health resources within their localities, and the potential that they bear in enabling inhabitants to convert the identified resources into improved health outcomes. My goal here will be to demonstrate how participation in planning can act to expand the practical opportunities for individuals to realize improved health outcomes. In this way, I will recognise the relevance of 'opportunity' as a frame of analysis.[122] Its application in this work is as follows: Public participation as employed by the SPA provides opportunities for expansion of health capabilities and realisation of improved health outcomes for the SPA inhabitants.

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[121] Sen, A. 'Capabilities, Lists, and Public Reason: Continuing the Conversation', (2004) *Feminist Economics* 77-80.
[122] Sen, A. 'Response to Commentaries', (2002) 37(2) *Studies in Comparative International Development,* 84.

1.5 Research methodology

This work examines the operation of the participation apparatus within the context of the Mukuru SPA. It investigates how participatory processes are produced and put into practice. The study is grounded in socio-legal methods as it takes the social dynamics in Mukuru as its point of departure. It investigates the 'everyday' mundane acts of participation and examines how these acts move into formal spaces. In doing this, the work assesses the practice of the law of participation in the SPA, how it is perceived by those who use and live in it, and how its boundaries are tested. The study's socio-legal orientation is evident from its treatment of participation as a concept and its interrogation of 'participation in action' which is effectively an examination of 'how the legal system actually operates'.[123] Emphasizing on how the law actually operates, what Partington calls 'laws reality',[124] will lead us to see how the law on participation works in Mukuru. By practicing participation as expressed in the law, and in testing the boundaries of participation as provided by the law, the inhabitants contribute to giving meaning to public participation. This work thus contributes to socio-legal scholarship. It aligns with what Silbey observes to be the role of socio-legal scholarship, that is, to 'investigate the human constitution of law- how human action produces law and legality.'[125]

The Mukuru informal settlements are selected as a case study because their declaration as a SPA marked the first time in the history of Nairobi that NCCG acknowledged the limitations of conventional planning methods in areas like Mukuru. The declaration also meant that for the first time, the constitutional provisions on public participation of marginalized groups in spatial planning would be tested. The Mukuru SPA would set precedent on how local development plans are to be developed in a participatory manner. It is thus appropriate to examine how public participation has been framed and employed in the SPA, and to assess its transformative potential and the bearing that is has on health outcomes in the settlements.

In this section, I describe the qualitative approaches that I adopted in answering the research questions that I have already enumerated. As elaborated further below, various methods were

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[123] Feenan, D. 'Exploring the 'Socio' of Socio-legal Studies', in Feenan, D. (ed) *Exploring the 'Socio' of Socio-Legal Studies* (Palgrave Macmillan, 2013) 5.

[124] See Partington, M. 'Law's Reality: Case Studies in Empirical Research in Law: Introduction', (2008) 35 *Journal of Law & Society*, 1.

[125] Silbey, S.S. 'What Makes a Social Science of Law? Doubling the Social in Socio-Legal Studies', in Feenan, D. (ed) *Exploring the 'Socio' of Socio-Legal Studies* (Palgrave Macmillan, 2013) 20.

employed by this study. The study was primarily guided by literature reviews, fieldwork, observations, archival works, use of images, and semi-structured interviews with the identified respondents and key informants. Literature reviews enabled me to identify the theoretical approaches that would help to understand and explain the phenomena in the SPA.

1.5.1 Literature surveys, theoretical insights, and case analysis

Susan Parnell and Edgar Pieterse refer to theory, method, and data as an 'inseparable trinity' in the study of the contemporary African city.[126] They argue that probing the urban condition in Africa requires the adoption of a multiplicity of approaches which may be different to those adopted when researching on cities in the global north.[127] To them, this practice must foreground African voices in the wider discussions of global urbanism. It means taking note of and engaging with existing African urban knowledge registers.[128] Their conclusion here is informed by what they term as the muting of African voices in global urbanism discussions.[129] I am therefore guided by their call for a closer engagement with African perspectives and urban scholarships that appreciate the political realities which they are immersed in.[130]

In the global marketplace for knowledge, some perspectives may be muted and discounted as inadequate which inhibits the understanding of the realities within certain contexts. Hence for Musila, discounting 'other' methods of knowing leads to epistemic disarticulation and this is counterproductive in understanding local realities.[131] Musila uses 'epistemic disarticulation' in reference to outcomes that result from 'the inability to acknowledge multiple modes of knowing and their accompanying indices of credibility'.[132] For Musila, maintaining the West as the only 'Seeing Eye', while muting other archives of knowledge can be counterproductive.[133] This is especially true when researching on African cities whose unique urban conditions may not be adequately explained without reference to African urban knowledge registers.

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[126] Parnell, S. and Pieterse, E. 'Translational Global Praxis: Rethinking Methods and Modes of African Urban Research', (2015) *International Journal of Urban and Regional Research*, 237.
[127] Ibid, 241.
[128] Ibid, 244. See also Parnell, S. 'South African Cities: Perspectives from the Ivory Towers of Urban Studies', (1997) 34(6) *Urban Studies*. Pieterse, E. *City Futures: Confronting the Crisis of Urban Development* (Zed Books, 2008).
[129] Ibid, 244.
[130] Ibid.
[131] Musila, G.A. 'Navigating Epistemic Disarticulations', (2017) 116(465) *African Affairs*, 695.
[132] Ibid, 693.
[133] Ibid, 694-95.

Guided by the above considerations, this work has maintained an African orientation when undertaking a review of both primary and secondary literature. During this exercise, I reviewed books, journal articles, chapters in edited works, newspaper articles and grey literature from various organisations. I selected and reviewed relevant cases decided by Kenyan courts and legislations enacted at both the national and county levels. My search for the relevant literature necessitated conducting archival research in Kenya. This enabled me to gain access to a wealth of primary documents detailing the growth of Nairobi and the evolution of urban planning in the city. I visited The Kenya National Archives, The MacMillan Memorial Library, and The British Institute in Eastern Africa. I was also able to extract several land titles from the Ministry of Lands which became critical for my analysis in chapter three. The Special Collections of The University of Cape Town was also an important repository which facilitated my access to the Thornton White Papers.[134] The Arts and Social Studies Library at Cardiff University was also instrumental in providing me with access to documents like the 1948 Nairobi Master Plan for a Colonial Capital and other out-of-print publications. The review of these literature enabled me to formulate the research questions that I would use to engage with the Mukuru study. My previous work with some of the institutions that were involved in the SPA also enabled me to gain access to a lot of documents and grey literature that would ordinarily not be shared with an 'outsider' like myself.

1.5.2 Research ethics

No serious ethical concerns are associated with this work. Notwithstanding this, I have during this study taken certain precautionary measures to prevent any negative impacts that could arise from carrying out this research, particularly for my research participants. Before conducting fieldwork, I sought ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC). Prior to this, I had received appropriate research ethics training from the University. I received ethical approval (Internal Reference: SREC/200520/04) from SREC on 3rd July 2020. In addition to this approval, I applied for and was granted a research license (no. NACOSTI/P/20/6081) by the Kenyan National Commission for Science, Technology and Innovation (NACOSTI).

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[134] I am very grateful to my supervisor Prof. Ambreena Manji and to Tara Weinberg and Simon Rakei at the University of Cape Town for enabling my access to some of the materials from this collection.

During the fieldwork and before administering the interviews to the respondents, I explained to the respondents the nature of the study, explained to them the important role that they played in the study, and obtained their consent to proceed with the interviews and to subsequently use their responses as data, while at the same time explaining to them the confidentiality considerations that the study employed and their freedom to withdraw consent at any point during the interview and within one month from the date of the interview. I additionally ensured that the interviews were conducted at locations that the respondents felt safe and comfortable. For the inhabitants, this meant conducting the interviews in their homes or places of business while for the key respondents I conducted the interviews at their offices and places of work like at a health centre. Any personal data obtained from the respondents has been treated with confidentiality and anonymized. No direct reference to any respondent that would lead to their identity being revealed has been made in this work.

1.5.3 Sampling techniques

The inhabitants of the Mukuru SPA were the primary target population for this study. In this study, two types of respondents were identified and interviewed. The first category of respondents were ordinary people living and working in the three settlements that constitute the Mukuru SPA. So that three clusters were identified *to wit*; Kwa Njenga, Kwa Reuben and Viwandani. The idea of dividing the SPA into the three clusters was so that I could narrow the sampling field from the large heterogeneous Mukuru community to smaller ones that are relatively homogeneous at a geographical level.[135] Within these clusters, I gained access to the informants through purposive sampling which entailed approaching an individual, asking whether they were aware of the SPA process and subsequently requesting their participation in the research if they answered the former question in the affirmative. Purposive sampling is used to select respondents based on their relevance to the research which could take the form of having knowledge on the matters being investigated.[136]

For the second category of respondents, which constituted key informants, I had prior to the fieldwork developed an idea of the type of individuals that I wanted to interview and listed them. I particularly sought to target institutions which played lead roles in the SPA process and especially

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[135] See Benard, H.R. *Research Methods in Anthropology* (Altamira Press, 1995) 89.
[136] Creswell, J. *Qualitative Inquiry and Research Design: Choosing From among Five Approaches* (2nd Edition, Sage Publications, 2007).

those that had been tasked with community mobilization for public participation and those that were responsible for developing the health sector plan. This was crucial since for key informants, it is important that the researcher finds informants that are trustworthy and who are observant, reflective, and articulate.[137] My key informants then consisted of a representative from the HSC, a representative from a social movement that has been active in the SPA processes, representatives from the CCOCC, community leaders in Viwandani and Kwa Njenga, and CHWs in Kwa Reuben and Kwa Njenga. I contacted the key informants via email to arrange for the interviews and subsequently conducted the interviews at locations that were convenient for my informants.

Once I had contacted and interviewed the key informants that I had hitherto identified, I used snowball sampling to locate other key individuals and asked them to name others who they thought would be likely candidates for the research. The snowball technique became particularly important during my efforts to interview CHWs whose contribution to this study was magnanimous. The CHWs that I initially interviewed referred me to other CHWs who I also interviewed. A key limitation of this approach is that the sample of key informants that I would eventually interview was limited. This means that the responses that I obtained were not as diverse as compared to if I had resorted to interviewing key informants who did not know about each other. Ultimately, by employing the sampling techniques which I have discussed here, I was able to interview a total of forty respondents and a breakdown of this is provided in Appendix 3.

1.5.4 Semi-structured interviews, observation, and photography

According to Bernard, semi-structured interviewing is based on an interview guide which contains a list of questions and topics that the interviewer wants to cover in a particular order.[138] When structured properly, semi-structured interviewing should create room for participants to share their experiences and in this regard both the interviewer and interviewee will co-produce knowledge.[139] A key objective when using semi-structured interviews will be to enable the respondents' to present their own meanings and interpretations of the research topic.[140] Adopting semi-structured interviewing also provides space for the respondents to 'raise important issues not contained in the

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[137] Benard, H.R. *Research Methods in Anthropology,* 168.
[138] Ibid, 209.
[139] Mason, J. Qualitative Researching (2nd Edition, Sage, 2002).
[140] Rapley, T.J. 'The art(fulness) of Open-ended Interviewing: Some Considerations on Analysing Interviews', (2001) 1(3) *Qualitative Research,* 306.

schedule.'[141] It is on account of the above considerations that this study adopted semi-structured interviews to engage with the respondents.

Guided by the research questions that this work sought to explore, I developed three sets of interview questions that would guide my conversations with the various categories of informants. These are provided in Appendix 2. The three sets of interview guides contained open-ended questions and certain suggested probes. Interviews with the individuals inhabiting or working in Mukuru sought to gauge their awareness of any physical planning initiatives that had been undertaken in their areas, including the SPA. It also sought to understand whether they have participated in any of these initiatives, the nature of their participation, whether their participation in the SPA equipped them with skills that can enable them to tackle health challenges in the settlements among other things. For the key informants from the CCOCC, I sought to understand how the SPA participatory sessions were convened, which groups were invited to participate, what lessons can be learnt from collaborating with the communities, among others. My interview with the HSC key informant was aimed at understanding why health was identified as a key priority area, how the Mukuru community was involved in the HSC participatory sessions, how the interventions proposed by the HSC would be implemented, among others.

The interview questions posed to the inhabitants were translated into Swahili during the interviews and any technical concepts were broken down into understandable ones. I tried not to be too structured while at the same time ensuring that my interview guide served its intended role. Indeed, as Kvale notes, by relying on a flexible guide rather than a structured list of questions, the goal is to strike a balance between covering the topics that I as the researcher think are important while providing room for any unforeseen topics to be introduced by the interviewee.[142] Roer-Strier and Sands describe this as the bidirectional nature of interviews where both the interviewer and the informant serve as subject and object.[143] This bi-directional nature of semi-structured interviews was apparent during fieldwork as I found myself on numerous occasions responding to questions from my informants.

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[141] Silverman, D. *Interpreting Qualitative Data* (Sage, 2014) 179.
[142] Kvale, S. *Doing Interviews* (Sage Publications, 2007).
[143] Roer-Strier, D. and Sands, R.G. 'Moving Beyond the "official story": when "others" Meet in a Qualitative Interview', 263.

One question that constantly featured during data collection was whether my research would feed into the SPA process. The informants particularly wanted to know whether my research would contribute to addressing some of the concerns that they had raised on how the SPA implementation process was unfolding. By raising these questions, my informants enabled me to be more reflexive of my research and any undertakings that I would make to them. It also acted as a constant reminder of my 'outsider' positionality even as I claimed to know the language of the interviewed and notwithstanding the relatively similar cultural backgrounds between myself (a Kenyan) and the interviewees. Interviewing produced an environment which enabled the informants to convey to me "their situation from their own perspective and in their own words".[144] This generated more perspectives for me which I could not have obtained without conducting the interviews.

In addition to the semi-structured interviews, I was able to observe the study context and document the physical changes that were being effected in Mukuru by the Nairobi Metropolitan Service (NMS). Some of these observations are documented in this study using randomly captured photographs. The photographs are used in this work to illustrate the ongoing changes in Mukuru and to affix visual representations to the textual narratives in this work. As Ferguson remarks, 'the still image enables us to connect to social phenomena in ways that transcend verbal and textual accounts'.[145] In documenting the research context using photography, I maintained anonymity of the participants by ensuring that no faces were visible in any of the photographs that I took. However, one disadvantage of overly focusing on the physical while blurring the social is that the imagery presented will not adequately capture moving social forces and this may lead the researcher to misinterpret the study context.[146] It is why Ferguson calls for combining visual methods with other methods such as interviews,[147] which is an approach that this study adopted.

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[144] See Kvale, S. 'Epistemological Issues of Interviewing', in Kvale, S. (ed) *Doing Interviews* (Sage Publications, 2007) 11.
[145] Ferguson, T. Social Research Methods (3rd edition, Oxford University Press, 2013) 4.
[146] Ibid, 10.
[147] Ibid.

1.5.5 Thematic analysis

Responses from my informants were physically recorded and anonymized. The audio recordings from the key informant interviews were stored in a password-protected device which only I had access to. Recording the interviews using an audio device would also minimalize information loss and it subsequently facilitated the use of a conversation style when I was developing the narratives from the interviews.[148] Upon completing the interview process, I transcribed the audio files of the interviews using NVivo 12® software. Using this software enabled me to play the recordings at an ideal speed and this ensured that I did not miss anything that was said by the informants. As Zamawe documents, the use of Computer Assisted Qualitative Data Analysis Software (CAQDAS) like NVivo relieves the researcher of the burden associated with manual transcription and coding.[149] I consequently read the transcripts in detail which bolstered my familiarization with the data. This was followed by systematically coding the data, consolidating correlated codes, and assigning them a descriptive label or a 'theme' that would reflect the underlying ideas to be explored by the research questions. My approach here employed a thematic deductive analysis in which the emerging themes within the data are identified and analysed against the research questions which this work seeks to explore.[150]

The themes generated by the respondents were identified from the repeated words and topics in the interview transcripts. By reading through the transcripts, I was able to get a sense of and interrogate the meaning of the data and this also enabled me to sift out the themes that did not have much bearing on the work. In searching for themes and reviewing them, I was engaged in what Braun and Clarke refer to as an iterative-reflective process in which the researcher identifies themes and constructs them in relation to the research questions with those that may not be relevant being discarded.[151] The deductive analysis that is employed in this work was guided by the research questions earlier enumerated and the critical theoretical knowledge that emerged from my literature review. Insights generated from this analysis would primarily feed into chapters six and seven which are the principal analysis chapters and which directly respond to two important

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[148] See Aberbach, J.D. and Rockman, B.A. 'Conducting and Coding Elite Interviews', (2002) 35(4) *Political Science and Politics*, 675.

[149] Zamawe, F.C. 'The Implication of Using NVivo Software in Qualitative Data Analysis: Evidence-Based Reflections', (2015) 27(1) *Malawi Medical Journal*, 14.

[150] Braun, V. and Clarke, V. 'Using Thematic Analysis in Psychology', (2006) 3(2) *Qualitative Research in Psychology.*

[151] Ibid, 96.

research questions, that is; to what extent is the SPA an effective tool in engendering participatory urban planning? and has the SPA process been properly structured to enable the realization of improved health outcomes by the inhabitants of Mukuru?

I have in some chapters used verbatim narratives obtained from certain respondents during the interviews. The use of these quotations from informants demonstrates my direct engagement with them and acknowledges their role as co-producers of the knowledge that is presented in this work. As Mbathi posits, the use of verbatim quotations gives participants in research processes a voice and it personalizes and adds value to work in a way that narrative accounts would not.[152] Using verbatim quotations is also aimed at 'presenting findings in a way that sensitively captures the multiple levels of a research encounter.'[153]

1.6 Reflexive analysis and a note on qualitative research in the middle of a global pandemic

Qualitative research will often require that the researcher immerses themselves within the lived contexts of the researched. A researcher's behavior may in turn be influenced by the world that they are studying.[154] The researcher will constantly seek to grasp the meaning of the lived realities of the researched by for example asking questions that are relevant to the research topic.[155] The qualitative researcher will then be engaged in a probing exercise while assigning meaning or interpretations to the data generated.[156] Given this, Finlay has suggested that for qualitative research to maintain its rigor and relevance, the researcher must constantly engage in reflexivity.[157] Wilkinson defined being reflexive as 'disciplined self-reflection'.[158] So for Finlay, reflexivity will encompass "continual evaluation of both our subjective responses (personal reflexivity) and our method of research (methodological reflexivity)."[159] This is necessary in any reflexive exercise by a researcher as it enables one to acknowledge their role within and outside the research and to

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[152] Mbathi, M.M. 'Integrating Geo-information Tools in Informal Settlement Upgrading Processes in Nairobi, Kenya', PhD Thesis (Newcastle University, 2011) 71.

[153] Riach, K. 'Exploring Participant-Centred Reflexivity in the Research Interview', (2009) 43(2) *Sociology*, 356.

[154] Finlay, L. 'Reflexivity: An Essential Component for all Research?' (1998) 61(10) *British Journal of Occupational Therapy,* 455.

[155] Kvale, S. 'Epistemological Issues of Interviewing', 16.

[156] Finlay, L. 'Reflexivity: An Essential Component for all Research?' 453.

[157] Ibid.

[158] Wilkinson, S., 'The Role of Reflexivity in Feminist Psychology', (1988) 11(5) *Women's Studies International Forum*, 493.

[159] Finlay, L. 'Reflexivity: An Essential Component for all Research?' 453.

appreciate the intersubjective dynamics that may influence their approach to research.[160] I will in this part briefly highlight relevant aspects of my experiences that have shaped my approaches in this study.

Since 2013, I have collaborated with some of the institutions that operate in Mukuru such as SDI and its affiliates Muungano and AMT. During this period, I have worked with them on numerous projects, observed them from the sidelines, and provided constructive criticism. I have particularly paid attention to how social movements enter contested spaces and navigate the politics that is intrinsic to these spaces. Additionally, I have learnt about the strategies that these movements deploy in fronting everyday resistance to exclusion and injustices in the city, while also engaging with some of these movements to collectively explore pathways to justice for the excluded urban poor. My input towards causes by these organisations have taken the form of preparing legal advisories on various matters, drafting communiques to be presented to government agencies, participating in workshops and training activities, assisting with the drafting of legal pleadings, among others. I have also played a role in the SPA process as a member of the Land and Institutional Arrangements Consortium that was tasked with developing a plan for the acquisition of the land in Mukuru by the state.

For some of the institutions that were involved in the SPA, an 'outsider' evaluation of the SPA process has been particularly welcome as their goal was to petition the NCCG to declare other informal settlements in Nairobi as SPAs. An evaluation of the Mukuru SPA would then provide them with useful lessons that they would employ in future undertakings. My connections with these institutions also came in handy when I was unable to travel to Kenya because of the disruptions occasioned by COVID-19, as I was able to follow on the developments in Mukuru through my contacts in these social movements.

The COVID-19 pandemic which started in my second year of this study and before I had conducted fieldwork particularly impacted the methods that I adopted and the adjustments that I had to make. As Lobe *et al*. have noted, the unprecedented changes and disruptions that have been occasioned by COVID-19 have presented unique opportunities and challenges to qualitative researchers.[161]

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[160] Roer-Strier, D. and Sands, R.G. 'Moving Beyond the "official story": when "others" Meet in a Qualitative Interview', (2015) 15(2) *Qualitative Research,* 253.

[161] Lobe, B. *et al*. 'Qualitative Data collection in an Era of Social Distancing', (2020) 19 *International Journal of Qualitative Methods,* 1-8.

Teti *et al*. also observe that the pandemic is a "social event that is disrupting our social order."[162] Hence for the qualitative researcher, much reflection is needed on how to navigate the practical difficulties that are presented by the pandemic. This is especially relevant when fieldwork is employed in data collection among disadvantaged groups. These groups are far too familiar with the perennial interludes when their daily lives are disrupted by clipboard-carrying researchers like myself with a misguided presumption that research subjects in deprived areas will always have disposable time to lend to these research activities. This is something that I constantly had to take heed of when I initially conceptualized this work and later on during the pandemic.

The COVID-19 pandemic was taking hold globally at the time when part of this work was being carried out. As of 27 July 2020, the total number of confirmed COVID-19 cases in Kenya was 17,975.[163] The disruptions occasioned by the pandemic were particularly felt by the inhabitants of informal settlements who now had to adjust to the new socio-economic realities. In informal settlements, the high transmissibility rates of COVID-19 attracted significant attention early in the pandemic due to the high concentration of people in these settings and inadequate provision of services and infrastructure to contain the virus.[164] With these considerations in mind, I had to rethink my approach to the research. Ultimately, concerns about ease of travel, my safety and that of my informants forced me to make my fieldwork ambitions modest.

I had initially intended to observe how the public participation sessions were conducted by the HSC and other consortia. I was particularly interested in observing how participation happened in the subcluster and segment levels. As I discuss in chapters six and seven, these are some of the platforms where the HSC had identified as important for convening the community to participate. My initial plan was to attend the sessions in the thirteen segments in Mukuru and to also attend the participatory sessions in a few subclusters that I would identify. I would ultimately attend all the community validation meetings that the HSC would convene after its gathering of the data from the community.

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[162] Teti, M. *et al*. 'Methods in the Time of COVID-19: The Vital Role of Qualitative Inquiries', (2020) 19 *International Journal of Qualitative Methods*.

[163] Ministry of Health, 'COVID-19 Outbreak in Kenya: Daily Situation Report-132', available at https://www.health.go.ke/wp-content/uploads/2020/07/Kenya-COVID-19-SITREP-132-27-Jul-2020.pdf accessed June 15, 2021.

[164] UN-Habitat, 'UN-Habitat Covid-19 Response Plan', (2020) available at https://unhabitat.org/sites/default/files/2020/04/final_un-habitat_covid-19_response_plan.pdf

My plans to attend these sessions were rendered impossible by the national lockdown that was imposed by the Kenyan government at the outset of the pandemic.[165] With the national lockdown, no flights were allowed into the country between March 2020 and August 2020. Even before this, there were numerous uncertainties around the COVID-19 pandemic and the public health measures that different countries were taking at the time. The national lockdown, concerns about my safety and those of my informants, and the disruptions occasioned by COVID-19 meant that I could not travel to Kenya for my fieldwork.

As I will discuss in chapter six, some of the SPA consortia were before the onset of the pandemic already facing budgetary shortfalls. The pandemic further disrupted their work given that Kenya had put in place a national lockdown with similar measures being adopted to regulate movement within the country. This made it difficult for the SPA consortia to maintain a proper schedule of all the public participation sessions that they were intending to hold which in some cases meant that the sessions had to be held at a short notice. With this, it became difficult for me to plan to attend the sessions convened by the HSC and to observe how the consortium carried out public participation. The implication of this was that I could no longer get a first-hand account of the different dynamics at play by observing 'participation in action' in Mukuru.

Throughout this work, I have been engaged in conversations with community leaders in Mukuru, CSOs, members of social movements and academics. Through these conversations, my ideas have been shaped up and this has also enabled me to have a better grasp of the local realities in Mukuru. From these engagements, I have been able to acknowledge the underlying complexities within these contexts and how these may require the adoption of multi-pronged approaches. I have also reflected on my position and privileges as a Kenyan middle-class man and on how this may influence my approaches to this research. The relevance of this becomes particularly apparent in my critique of the NMS that is advanced in chapter six. While critiquing the NMS, I remain cognisant of my 'outsider' perspective which may not be in tune with the lived realities of the inhabitants of Mukuru. I acknowledge that my approach in critiquing the NMS might be construed as presumptuous in knowing what is in the best interest of the marginalised.

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[165] See BBC News, 'Coronavirus: Kenya Introduces Tight Restrictions', available at https://www.bbc.co.uk/news/world-africa-51917920 accessed April 25, 2021.

Additionally, as an 'outsider' working within a marginalised community, it is easy to fall in the trap of assuming that I have the monopoly of seeing, and that the studied communities lack the capacity to return the gaze.[166] Any assumptions that I had on my monopoly of casting the gaze were promptly annulled the moment that I set foot in Mukuru, and even before that when I contacted my key informants. Most of the respondents that I interacted with took me to task to address them on the benefits of my research to the ordinary person in Mukuru, and whether I was engaged in the too-familiar extractive research undertaking which would end with a narration of yet another composite story on informal settlements. It was clear from this that the inhabitants understood that power is intrinsic in any ability to observe them and that the power asymmetries in the knowledge marketplace would require that the observed reciprocate the gaze and challenge any flawed epistemological accounts and premises. I also acknowledged this by positioning myself as an outsider who needed to gain critical insights from the respondents whom I treated as experts in their own right and effectively signalling that data collection was a co-production undertaking.

In observing social movements like Muungano, I have taken heed of the call by scholars that study social movements to take the imaginations of social movements seriously "even if they reject outright the Constitution or prevailing legal norms and arrangements to make new demands."[167] Walking this tightrope has enabled me to see from the social movements' perspective, from where I can identify the role of the law and legal institutions in producing the injustices which the movements seek to undo. To some of these movements, the ruse of the liberal legal order is itself evident as it claims to emancipate its subjects by prescribing abstract rights while at the same time resubordinating them through its failure to acknowledge the material power relations that constrains freedoms, in what Modiri refers to as 'law's poverty'.[168]

I can now understand the allure of radical visions of justice that operate outside the bounds of the law which are employed by social movements and the place of these radical alternatives in expanding access to rights. This particularly becomes evident when we examine the methods that are employed by the excluded urban inhabitants to claim space in the city. As will be established

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[166] See Jacobs-Huey, L., 'The Natives are Gazing and Talking Back: Reviewing the Problematics of Positionality, voice, and Accountability among "Native" Anthropologists', (2002) 104(3) *American Anthropologist*. See also Musila, G.A. 'Navigating Epistemic Disarticulations'.
[167] Akbar, A. *et al*. 'Movement Law', (2021) 73 *Stanford Law Review*, 42.
[168] Modiri, J.M. 'Law's Poverty', (2015) 18(2) *Potchefstroom Electronic Law Journal*, 249.

in this work, formal law for some of these groups is not central and oftentimes viewed to be slow and a hinderance to their redistributive objectives. In its place, local norms and practices have been adopted to guide social relations and to advance redistributive causes.

However, it would be inaccurate to interpret my approach here as the disavowal of legal pathways to rights. On the contrary, this should be treated as an invitation for a nuanced understanding of and engagement with social movements which may go beyond the remit of our disciplinary safegrounds. These movements are not always perfect, but they provide important pathways for the deepening of democracy and the expansion of collective self-governance.[169] With these considerations in mind, I remain guided by Owusu-Ansa and Mji's call to African scholars to engage in actions and research that empower Africans from poverty and social injustices or oppression.[170] It also takes me back to what Akbar, Ashar and Simonson recap as be the role of movement lawyers, that is, 'to listen and consider, learn, participate, and cogenerate.[171]

1.7 Structure of the thesis

This work is structured as eight chapters. In **Chapter Two**, I will be concerned with historicizing the growth of Nairobi as an African metropolis from an urban planning perspective. Dealing with contemporary inequalities in Nairobi means reckoning with its history. I structure the discussion in the chapter into three parts or what I call waves of exclusion. Nairobi, I will argue, is a city whose growth has largely been influenced by exclusionary logics where urban planning has been instrumentalized as a tool for exclusion. I will demonstrate how during the colonial period space in the city was manipulated to attain the ends of racial segregation and social control and to entrench the sense of non-belonging amongst certain groups. I will also show how public health laws were in this period manipulated to enable the attainment of segregatory objectives. Additionally, the chapter demonstrates how the approaches to planning during this period cast Nairobi on an exclusionary trajectory in which top-down approaches to planning were adopted where "specialists" and government functionaries engaged in developing urban plans. The chapter

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[169] Akbar, A. *et al.* 'Movement Law', 29.
[170] Owusu-Ansah, F.E. and Mji, G. 'African Indigenous Knowledge and Research', (2013) 2 African Journal of Disability.
[171] Ibid, 28.

will also elaborate on the continuities with these approaches that the various post-independence administrations adopted and how these entrenched social exclusion.

Chapter Three describes how access to land and secure tenure has been elevated as an entry point for participation in urban planning. In this chapter, land is treated as the locus around which power relations in the city are shaped, challenged and where claims to urban citizenship are advanced. I will demonstrate how possessory logics have been deployed in an attempt to erase certain groups' occupation and use of space in Nairobi. I will problematize land as a patronage resource in the aftermath of Kenya's adoption of the Structural Adjustment Programs at the behest of the International Monetary Fund (IMF) and the World Bank in the 1980s. The competing interests in access to urban land during this period are examined against the backdrop of the changing economic situation at the time. I will then demonstrate how what Manji calls the "perversion of the public interest"[172] by the political elite during this period resulted in what Klopp has referred to as "the grabbing mania"[173] and how this led to illegal allocation of land in Nairobi, including the land on which the Mukuru SPA sits. I will demonstrate how the resulting unequal access to land produces marginality in Mukuru, acts to deny them access to citizenship rights in the city, and precludes the inhabitants from shaping outcomes and accessing opportunities in the city.

In **Chapter Four**, I will explore the overarching theoretical framework which guides the work, that is, Henri Lefebvre's thesis on 'the right to the city'.[174] The thrust of my argument in the chapter is that urban citizenship as currently structured is largely inegalitarian in distribution and highly exclusionary to the poor urban majority who lack access to secure land tenure. I will demonstrate how this group has in turn fronted sustained struggles against exclusionary spatial practices that deny them access to rights in the city. These struggles, I will argue, are struggles for reimagination and the expansion of urban citizenship. I use Mukuru to illustrate how marginalized groups in the city employ various mechanisms to claim for space and voice in the city. Hence, the Mukuru SPA process is problematized as an attempt by the inhabitants to redefine urban citizenship. I suggest that the SPA process is a fundamentally political project that offers to the inhabitants an 'ecology

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[172] Manji, A., 'The Grabbed State: Lawyers, Politics and Public Land in Kenya', (2012) 50(3) *Journal of Modern African Studies,* 469.

[173] See Klopp, J.M. 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya', (2000) 47(1) *Africa Today,* 9.

[174] Lefebvre, H., *Writings on Cities* (Blackwell Publishers, 1996).

of transgression' from where they can redefine urban citizenship beyond its traditional limits and to a more just and beneficial form. The approaches that are employed by the inhabitants to achieve this will also be discussed.

Chapter Five offers an extensive analytical treatment of public participation as a concept. I examine how participation has been envisioned from normative and theoretical standpoints which is an important prelude to a later exercise of examining 'participation in action' in Mukuru that is undertaken in chapter six. I will in this chapter also examine how the concept of public participation is structured under the Kenyan legal system.

In **Chapter Six**, I will examine the norms discussed in chapter five against the empirical realities which emerge in Mukuru. I will provide an in-depth account on how public participation has been tested in Mukuru through the SPA process and explore the effectiveness of the SPA as a tool for engendering participatory urban planning. The chapter will provide an account on how participation has been approached in the SPA and specifically focus on how participants are formulated in the process and how they participate in the various activities which are oriented at producing an IDP for the SPA. I will suggest the SPA process to be an invited space for participation that builds on the long history of struggles and transgressions by the inhabitants. This will then require that I examine whether considerations on the participants' agency are taken into account by the process while examining any innovative approaches that are adopted by the SPA to ensure meaningful participation by the inhabitants. I will also address the limitations of the SPA process as a tool for the emancipation of the inhabitants of Mukuru.

Chapter Seven will look at the approaches employed by the Health Services Consortium (HSC) of the Mukuru SPA to engage with the inhabitants and other stakeholders. The analysis in this chapter will assess these approaches and explore their effectiveness in advancing the realization of improved health outcomes for the SPA inhabitants. Using the inhabitants' experiences with the HSC processes, I will demonstrate how the approaches employed by the HSC enable the inhabitants to document local phenomena and conditions, and to subsequently use locally generated information to engage with external experts in formulating interventions for the identified health challenges. I will outline and examine some of the interventions that are co-generated by the community and external experts and explore the potential that these interventions bear in improving health outcomes of the SPA inhabitants.

Chapter Eight is a conclusion to this work where I summarize and reflect on the themes that have emerged from this study. I will demonstrate that participation by the inhabitants in the SPA process signals the recognition of their voices and perspectives in the creation of the city. I will also argue that the SPA's deflection of the land question is potentially detrimental to the goal of meaningful participation by the inhabitants as tenure insecurity prevents them from exerting any meaningful influence on such processes. I will conclude with a cautionary note against tying marginalized groups' claims to processes that may act to deradicalize and depoliticize such claims.

2   Nairobi: Tracing the Growth of a Divided City

2.1 Introduction

This chapter is concerned with the contest for space that has been the hallmark of the growth of Nairobi. The chapter uses a historical lens to examine the nuances that have underpinned urban planning and allocation of space and resources in the city and divisions that have ensued from this contest. The discussions here highlight how the growth of Nairobi has been characterized by manipulation of space to attain the ends of segregation and social control leading to the obscurity of certain groups. These exclusionary practices have left an indelible mark on the approaches to urban planning adopted in Nairobi with deleterious consequences on how the city is structured. The chapter also discusses how the habitual path of exclusion first adopted by the colonial regime and subsequently religiously observed in post-colonial Nairobi has occasioned the non-responsiveness of the urban plans generated for the city. This shaped the feelings of the excluded groups towards these urban plans, feelings fueled by the ubiquitous sense of non-belonging in the city. This has disempowered them from being able to shape conditions within their localities.

What becomes apparent from this analysis is that the seed of exclusion was sowed early in the day by colonial authorities through alienation of Natives and Indians in the governance processes including in urban development. This was done by resorting to racial justifications in the name of public health concerns to justify and maintain the racial spaces created. Indeed, as Lonsdale notes, 'one will get a better understanding of the history of African Nairobi from looking at the records of the Medical Department than from the office of the Chief Native Commissioner'.[1] The immediate implication of these approaches for urban governance was elevation of one racial group, that is, the white minority, at the expense of the African majority in the colony. This resulted in an enduring imprint of colonial ideologies in spatial governance processes.

Discussions in this chapter highlight how concerns raised by Natives and Indians in the formative years of colonial rule were lost out to segregatory colonial objectives. These drew support from the dominant settler voices at the time. They were sanctified by evasive interpretations of the law

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[1] Lonsdale, J. 'Town Life in Colonial Kenya', in Charton-Bigot & Rodriguez-Torres, D. *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 19.

which sought to justify the racist colonial ideologies and to achieve imperial ends.[2] The chapter also focuses on the enduring legacy of colonialism in the field of urban planning in Nairobi and its contemporary manifestations. It also examines how this colonial legacy has had far reaching ramifications on the manner in which the city is currently structured, and the different outcomes that this structuring generates. This chapter will establish that the contemporary approaches to urban planning are modelled on the old lines of exclusion with resulting urban plans developed being unresponsive to the local situations and facing bottlenecks in their implementation.

The making of Nairobi as an African metropolis is herein presented as a confluence of two factors. The first is institutionally-sanctioned segregation which later morphed into a scheme of social exclusion.[3] This factor laid the basis for configuring of the colonial state and urbanization during this period with its remnants mutating into the post-colonial state. The second factor takes the form of resilience by the excluded who have threatened and to some extent dismantled the viability of the exclusionary measures. Here, the chapter repudiates the impression that the city's inhabitants are helpless bystanders in the city making processes. It instead presents them as being at the very heart of these processes. The chapter problematizes their resilience as resistance. It argues that exclusionary measures in both colonial and post-colonial periods have had an unintended effect of galvanizing the excluded to dismantle the dominant exclusionary urban planning ideologies. For the excluded, the law is no longer a tool of oppression but a bulwark against spatial injustices. The

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[2] The chapter follows Edward Said's assertion of Imperialism to be "an act of geographical violence through which virtually every space in the world is explored, charted, and finally brought under control". See Said, E. *Culture and Imperialism* (Chatto & Windus, 1993) 271. Franz Fanon also asserted that colonialism by its nature is separatist and regionalist with its constant aim being entrenching divisions. See Fanon, F. *The Wretched of the Earth* (Presence Africaine, 1963) 74.

[3] Social exclusion is assigned the meaning given by Madanipour *et al.* as

> "a multi-dimensional process, in which various forms of exclusion are combined: participation in decision making and political processes, access to employment and material resources, and integration into common cultural processes. When combined, they create acute forms of exclusion that find a spatial manifestation in particular neighbourhoods."

See Madanipour, A., Cars, G. and Allen, J. (eds) *Social Exclusion in European cities* (Jessica Kingsley, 1998) 22.
In this study, exclusion is examined in its two-pronged manifestation, that is, *distributional,* where exclusion has taken the form of denial of certain groups of access to valued resources in the society such as land and social services, and *relational* where the aforementioned groups have further been excluded from power and participation. See Veit-Wilson, J. *Setting adequacy standards* (Policy Press, 1998) 44.
See also Correspondence Regarding the Position of Indians in East Africa (Kenya and Uganda) [Cmd.1311] HMSO 1921.

chapter places Nairobi as an urban context of resistance and as a base for dismantling of the injurious legacy of the sense of "non-belonging" afflicted on the poor urban majority.

This chapter pursues this analysis through what the study refers to as waves of exclusion which are grouped into three. The first wave, it is argued took the form of alienation of Natives from land with the establishment of the new imperial outpost. This period, as discussed herein, pitted Natives against colonists and a struggle for control of space ensued between the colonizer and the colonized. The second wave arose upon the establishment of trading and administrative capitals within the outposts. Nairobi is particularly set as the stage for the secondary resistance that emanates as a result of the entrenched exclusionary practices.[4] Exclusion in this case took the form of denial of opportunities for Natives to effectively participate in shaping the outlook of the town despite them forming the majority that incurred disproportionate consequences of poor planning.

The third and last wave took the form of social exclusion that has been sustained in the post-independence State. The nationalistic functionaries of the post-independence governments replicated the old practice of neglect of certain urban communities as they consolidated their control of the newly independent and unequal society. This last wave has further been characterized by a sustained confrontation of, and systematic resistance to established norms of urban governance. It is not the goal of this chapter to adopt rigid periodizations that would impute the existence of clear dichotomies during the period under examinations. On the contrary, the approach in this chapter only enables us to understand the continuities of the exclusionary practices.

The chapter is structured as follows. The first part entails a brief discussion on introduction of colonial rule in Kenya. This introduction aims to facilitate an understanding of the colonial objectives at the time and the approaches taken by the colonialists to meet these objectives. This part also highlights the fundamental place that land occupied in the colonial aspirations. The second part examines the dalliance that the colonial government had with maintaining racial segregation in urban areas, with particular focus on Nairobi. This section provides a glimpse of how the law at this time was fashioned to validate the exclusionary objectives of the colonial administration and the consequences that this brought, especially for the health of Natives. The

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[4] Said, E. *Culture and Imperialism*, 252. Secondary resistance is used here to refer to what Edward Said calls an ideological resistance aimed at reconstituting a shattered community.

final section of this chapter looks at the uninterrupted practice of exclusionary urban planning and the sustained resistance against it.

2.2 The first wave

2.2.1 Declaration of Protectorate status and introduction of colonial rule

Planning laws and approaches cannot be examined without establishing the power dynamics that inform land ownership within a locality. In Kenya, these power dynamics are situated within the imperial objectives that saw her conferment with a protectorate status and the subsequent colonial fixation at providing legal justifications for the establishment of settler occupation of the Protectorate. The declaration of a protectorate status was done on 15 June 1895, with Kenya becoming a British colony in 1920. This subsisted until 12 December 1963 when Kenya attained self-rule.[5]

The administration of the Protectorate was left to a company, the Imperial British East Africa Company (IBEACO). IBEACO was in 1888 granted a charter to administer the interior of the British sphere.[6] The period around 1894 saw one European ex-missionary Stuart Watt establish settlement near Machakos in what put him in the path of conflict with the native Kamba community.[7] The view largely held by this group of settlers was that the African continent was *terra nullus* or *open access* hence free for expropriation and dominion.[8] The administration of the Protectorate was soon after in 1895 transferred to protectorate authorities appointed by the British Government on 30 June 1895.[9] This marked the beginning of direct British administration in the area hitherto administered by the IBEACO.[10]

The commencement of direct administration of this area by the British Government also made it clear that despite its dwindling fortunes in the protectorate, the British Government was still preoccupied with control of Uganda which was strategic given the belief that it was the source of the Nile. Uganda, came to be seen as an essential part of Britain's overall strategy to control Egypt

[5] Ghai, Y.P. and McAuslan J.P.W.B, *Public Law and Political Change in Kenya* (Oxford University Press, 1970) 3.
[6] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate* (Clarendon Press, 1966) 7.
[7] Sorrenson, M.P.K. *Origins of European Settlement in Kenya* (Oxford University Press, 1968) 16.
[8] Okoth-Ogendo, H.W.O. 'The Tragic African Commons: A century of Expropriation, Suppression and Subversion', (2002) *Land Reform and Agrarian Change in Southern Africa,* 4.
[9] Ibid, 17.
[10] Ghai, Y.P. and McAuslan J.P.W.B, *Public Law and Political Change in Kenya,* 14.

and the Suez Canal in particular.[11] This view is succinctly captured in Elizabeth Huxley's book, *White Man's Country* that;

> "*Whoever rules Uganda, rules the Nile, whoever controls the Nile, dominates Egypt, whoever dominates Egypt holds the Suez Canal, and whoever holds the Suez Canal has his hands upon the throat of India's trade.*"[12]

At this point, the Foreign Office had already decided to construct the Uganda railway as a public undertaking, under the management of a committee of experts in London and chief engineer in the Protectorate.[13] This necessitated the establishment of a base where survey of the potential path of the railway would be undertaken from. Mombasa was picked as the most suitable base for this hence necessitating preparation of the base to support the railway undertaking.[14] The preparation entailed among others, provision of housing of staff and shelter for imported labor that mostly consisted of Indian workers.[15] By 1901, the entire railway line had reached Kisumu- the lake terminus.[16]

In order to provide a legal validation and safeguards for the British occupation of its colonies, the Foreign Jurisdiction Act was enacted in 1843 and subsequently amended and consolidated into the Foreign Jurisdiction Act 1890.[17] The 1890 Act vested in the British crown the power to exercise jurisdiction over subjects in that foreign country.[18] The Africa Order in Council 1899 was adopted to direct colonial administration in dealing with the areas that lay beyond the former domains of the Sultan of Zanzibar.[19] The application of the Africa Order in Council 1899 together with the East Africa (Acquisition of Lands) Order in Council 1897 had the effect of conferring the mandate of dealing with the Natives upon the British Government.[20]

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[11] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 7.
[12] Huxley, E. *White Man's Country: Lord Delamere and the Making of Kenya* (Chatos and Windus, 1935) 48.
[13] See Hill, M.F. *Permanent Way: The Story of the Kenya Uganda Railway* (Nairobi, 1950).
[14] O' Callaghan, F.L.O. 'Uganda Railway', (1900) XXVI(VIII) Professional Papers of the Corps of Royal Engineers (Occasional paper series) 4.
[15] Ibid.
[16] Sorrenson, M.P.K. *Origins of European Settlement in Kenya,* 20.
[17] Ghai, Y.P. and McAuslan J.P.W.B, *Public Law and Political Change in Kenya,* 15
[18] Foreign Jurisdictions Act, 1890, Preamble, sections 1 and 2.
[19] Ghai, Y.P. and McAuslan J.P.W.B, *Public Law and Political Change in Kenya,* 16.
[20] Ibid, 19

The sub-commissioners appointed in the protectorate also started asserting their administrative authority beyond the line of the railway line. This saw the establishment of an administrative station at Kitui by J.D. Ainsworth, the sub-commissioner of the Ukamba Province.[21] The establishment of these outposts was done with the advancement of the railway construction in the hinterland. Trade also flourished with the establishment of these stations and by 1898 bazaars were commonplace at Voi, Kibwezi, Machakos and Nairobi which had emerged as the major railway and administrative stations.[22] The approach by the Commissioner of the Protectorate to establish administrative units in the hinterland and to appoint administrative officials at these stations seem to have been at odds with the perspective of the British Foreign Office which envisioned the administration of the Protectorate through Zanzibar.[23] This is a manifestation of the administrative disarray that was characteristic of the early days as new administration set out to lay its policies and consolidate control of the Protectorate.[24] The "ad hoc" creation of these urban centers is also a depiction of the fact that the British lacked a clear agenda on establishing settlements in Kenya.[25]

Notably, Indians outnumbered Europeans in these stations. Indians controlled much of the commercial activities that occurred in the stations as the Europeans were slower in taking advantage of the commercial prospects opened up by the railway.[26] Indian domination of commerce can also be attributed to the fact that this group had been blocked from agricultural enterprises in the more agriculturally productive areas.[27] However, in the subsequent years, European settlement of the Protectorate was deliberately encouraged to make the railway pay.[28] This manifests the incoherent approaches taken by the Protectorate authorities to consolidate their dominion in the Protectorate while battling the numerous challenges that had not been anticipated by the authorities.

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[21] See Low, D.A. 'British East Africa: The Establishment of British Rule, 1895-1912', *History of East Africa,* II, 10-34.

[22] Sorrenson, M.P.K. *Origins of European Settlement in Kenya,* 24.

[23] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 16.

[24] See Murunga, G. '"Inherently Unhygienic Races" Plague and the Origins of Settler Dominance in Nairobi, 1899-1907', in Salm, S.J. and Falola, T. (eds) *African Urban Spaces in Historical Perspective* (University of Rochester Press, 2009) 101.

[25] Otiso, K. 'Colonial Urbanization and Urban Management in Kenya', in Salm, S.J. and Falola, T. (eds) *African Urban Spaces in Historical Perspective* (University of Rochester Press, 2009) 78.

[26] Sorrenson, M.P.K. *Origins of European Settlement in Kenya, 24*.

[27] Ogot, B.A. and Ogot, M. *History of Nairobi 1899-2012: From a Railway Camp and Supply Depot to a World-Class African Metropolis* (Anyange Press Ltd, 2020) 59.

[28] Sorrenson, M.P.K. *Origins of European Settlement in Kenya,* 27.

Individuals like Frederick Lugard encouraged European settlement in the Protectorate on an experimental basis arguing that the highlands were suitable for European settlers.[29] What followed this was the introduction of small European settlements within the Protectorate with the long-term goal of establishing a white majority country.[30] At this point, Mamdani contends that the British administration was faced with an overriding dilemma, that is, the native question.[31] Choosing to administer the Protectorate as a settler colony meant that land relations between Natives and the colonists had to be addressed. This dilemma had further been occasioned by the knowledge by the Protectorate administrators that the exercise of protectorate status did not confer any authority on the administrators to alienate any land within the protectorate.[32]

2.2.2 Land acquisition in the Protectorate

To attain its goals, the colonial government had to acquire land within the protectorate. The colonists were, however, faced with a difficult task on how to provide legal justifications for the acquisition of title to land that was already under native occupation. In what became commonplace during the colonial regime, the Indian Land Acquisition Act was in 1897 extended to apply in the interior of the Protectorate and this became the basis of land acquisition in the hinterland.[33] The colony of India had assumed the place of a halfway house for the colonial policies and administrative approaches that would later be introduced to other colonies under British control.[34] As discussed in this chapter, India also played an important role when it came to planning in the urban centers emerging in the new colonies. Planning practices that were adopted in India would subsequently be introduced to other British colonies.[35]

The application of the East Africa (Acquisition of Lands) Order in Council had the effect of vesting land within the Protectorate in the Commissioner of the East African Protectorate, to be held in trust for the crown.[36] This was an indicator of early initiatives by the colonists to justify acquisition of land in the Protectorate and pave way for the European settlement of the colony. In 1901, the

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[29] Ibid, 32.

[30] Hamshere, C.E. 'The Uganda Railway', (1968) 18(3) *History Today,* 194.

[31] Mamdani, M. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press, 1996)16.

[32] Ghai, Y.P. and McAuslan J.P.W.B, *Public Law and Political Change in Kenya,* 25.

[33] Okoth-Ogendo, H.W.O. *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya* 11.

[34] Mamdani, M. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism,* 50.

[35] See Ominde, S.H. *Land and Population Movements in Kenya* (Northwestern University Press, 1968) 69.

[36] Sorrenson, M.P.K. *Origins of European Settlement in Kenya,* 25.

East African (Lands) Order-in-Council purported to confer on the Commissioner of the Protectorate power to dispose all public lands on such conditions and terms as he might think fit with the implication that land that was designated as crown lands was to vest in the commissioner in trust for the crown.[37] The 1902 Crown Lands Ordinance also conferred upon the Protectorate administrators enormous discretion with regard to disposal of land within the Protectorate.

Alienation of Natives was one key objective pursued by the Protectorate administrators. This is discernable from Hardinge's attitude towards Natives. In a letter to the Foreign Office, Hardinge expressed himself as follows: "*The natives would everywhere, I think recognize the right of the Serikali (crown) to take waste land; as a matter of fact it had been done in many cases without consulting them*."[38] This together with Charles Eliot's view that the interior of the Protectorate was a white man's country set the tone for justification of subsequent European settlements in the Protectorate.[39] What this also meant was that Natives would be displaced to pave way for the establishment of European settlements.

2.3 The second wave

2.3.1 A railway headquarters and an accidental capital

The mushrooming of administrative and trading stations was attributed to the ongoing construction of the Uganda railway and the commercial activities that were generated therefrom. Construction of the railway heavily depended on an imported Indian labor force. By 1900, approximately sixteen thousand Indian laborers were working on construction of the railway making them the majority of the workforce.[40] Nairobi became an important station for the railway construction as it provided a resting point with an open level plain.[41] Workshops and railway offices were constructed in this locality to enable effective administration of the railway project. The reasons for establishment of the railway centre at Nairobi are however contested with one view being that Nairobi was a good resting point for the railway construction that had rapidly progressed.[42] The other version suggests

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[37] Okoth-Ogendo *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya,* 12.

[38] Foreign Office. 107/55, memo. Of 9 October 1896 in Colonial Office to Foreign Office, 4 September 1896, quoted in Sorrenson M.P.K. *Origins of European Settlement in Kenya,* 48.

[39] See Eliot, C. *The East African Protectorate* (1905). Quoted in Sorrenson p. 7.

[40] O' Callaghan, F.L.O. 'Uganda Railway', 30.

[41] Ibid, 10.

[42] Tiwari, R. *Nairobi: A Study in Urban Geography* (PhD Thesis, University of Reading, 1964).

that the establishment of the station in Nairobi was done to prevent land disputes that would arise had the station been established in Kikuyu country.[43]

In July 1899, the railway headquarters was moved from Mombasa to Nairobi marking the beginning of a new chapter for what had been conceived as a railway stop.[44] At this point, Nairobi began to rival Mombasa as an important administrative centre. What followed was a population boom in the centre with statistics indicating that in 1901 approximately 8,000 inhabitants lived in the centre by the lowest standards of sanitation.[45] Most of the administrative functions continued to be conducted from Zanzibar and Mombasa. It however became impractical to effectively administer the Protectorate from these two locations. Efforts to move the headquarters from Mombasa to Nairobi were constantly frustrated by the Foreign Office whose officials argued that such relocation would be expensive and imprudent as Mombasa was still the commercial centre.[46]

The responsibility of administering Nairobi was left to Ainsworth who had moved from Machakos to Nairobi. According to Mungeam, Ainsworth was initially of the view that administration of Nairobi would be an easy task once he had settled in the centre.[47] Ainsworth later found that he had more than enough administrative tasks in the nascent township to occupy his time and attention.[48] The ineptitude of the colonial administrators to effectively administer the emerging urban areas was at this point beginning to show. The railway administration had on the other hand quickly established itself and began organizing its own housing, workshops, and offices.[49] A deep division had at this point already emerged between the railway administrators and the colonial authorities. Ainsworth was forced to set up a provincial headquarters and government housing in areas not wanted by the railway.[50] One of the suspicions by the railway authorities was that Ainsworth was going to usurp their powers hence they were disinclined to welcome him to the township.[51]

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[43] Ibid.

[44] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 67.

[45] Hamshere, C.E. 'The Uganda Railway', 193.

[46] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 97.

[47] Ibid, 98.

[48] Ibid, 98.

[49] Ibid.

[50] Ibid.

[51] Tiwari, R. *Nairobi: A Study in Urban Geography* (PhD Thesis, University of Reading, 1964).

From its inception, Nairobi lacked an overall plan for development. The growth of the town occurred in a piecemeal fashion which was predicated on the whims of particular individuals,[52] a period that Dutton refers to as a "ramshackle adolescence".[53] For instance, the town lacked basic infrastructure for sewage and refuse disposal.[54] Moreover, a vast majority of the Protectorate staff was illiterate and not qualified for the respective roles that they were tasked with, including the Protectorate's Principal Medical Officer (PMO).[55] The plague outbreak that occurred in 1902 leading to the death of nineteen people exemplified the confused state of affairs in the colonial administration and the gross incompetence of the administrators.[56] The selection of Nairobi as an administrative capital and a railway headquarters were dual responsibilities which Nairobi was exceptionally unprepared for. Indeed, the colonial administration attempted to transfer the location of the centre up to the hilly parts around the city but the financial nightmares that would be occasioned by this led the administration to shelve these plans.[57]

Only the railway administrators seemed to have a clue on what they were doing. When the railway reached Nairobi in 1899, the administrators developed an initial plan for Nairobi which showed the street structure and staff quarters in the town.[58] In 1901, the Uganda Railway General plan was developed. The Plan for the first time in the town's history depicted different land uses that had emerged in the town.[59] At this point also, space became a political tool zealously deployed by the railway administrators to attain segregatory ends. The British were particularly wary of Indian competition which came from the latter's numerical strength.[60] The Natives had already been subdued through a flurry of Ordinances and treaties which kept them in check. For instance, the Native Passes Regulations 1900 and Ordinance prohibited Africans from leaving the districts where they lived unless they had a pass.[61] Ogot and Ogot have argued that the colonial

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[52] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 97.

[53] Dutton, E. *Kenya Mountain* (Jonathan Cape, 1929) 1-2.

[54] East Africa Protectorate Report for 1913-14, Cd. 7622-31, 51.

[55] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 98.

[56] Hamshere, C.E. 'The Uganda Railway', 193.

[57] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 99.

[58] Wanjiru, M.W. 'Typonomy and the Spatial Politics of Power on the Urban Landscape of Nairobi, Kenya', (2018) Graduate School of Systems and information Engineering, 41.

[59] Ibid.

[60] Parker, M. 'Race Relations and Political Development in Kenya', (1951) 50(198) *African Affairs,* 42.

[61] Home, R. 'Colonial Township Laws and Urban Governance in Kenya', (2012) 56(2) *Journal of African Law,* 179.

administration at this point invoked health and morality considerations to justify these kinds of restrictions.[62]

2.3.2 Dealing with the "inherently unhealthy races"

The Europeans settlers could not accept equal treatment with the Indians, let alone the Natives. The plague outbreak that had occurred in 1901 presented a compelling opportunity based on European prejudices to institutionalize colonial patronage and social control.[63] Indians became the immediate victims of this calculated scheme drawn straight from the colonial playbook. Edward Said describes this approach as the use of the power to narrate or block other narratives from emerging which was a powerful tool of imperialism.[64] This narrative, as discussed herein, entrenched subjugation of the unwanted groups in the township by confining them to certain localities. In the 1901 Railway General Plan, the European Bazaar was located separate from the Indian Bazaar.[65] The European authorities viewed Indians as unsanitary and disease-bearing hence warranting the separation.[66] More Europeans were thus encouraged to settle in the town to keep the Indian numbers in check.

The colonial administration used annexed land as an incentive to encourage more European immigration into the Protectorate. It led to an eventual racial and political hierarchy revolving around land.[67] At this point, a number of European settlers had formed the habit of holding land for speculative purposes hoping that the value would increase and in effect making a profit out of the situation.[68] This privileged group exploited the situation for their own profit despite the dire conditions that were beginning to take root in the town where many Natives could not find spaces for living. As Hake argues, the purchase of land in Nairobi by Europeans was done more with a

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[62] Ogot, B.A. and Ogot, M. *History of Nairobi 1899-2012,* 37.
[63] Ndege, G.O. *Health, State and Society in Kenya* (University of Rochester Press, 2011) 9. For Crosswell, the use of language and rhetoric of disease implies disorder, that a group is out of place (or spatial transgressions) and the possibility of spatial solutions to these problems. See Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression* (University of Minnesota Press, 1996) 41.
[64] Said, E. *Culture and Imperialism,* xiii.
[65] Wanjiru, M.W. 'Typonomy and the Spatial Politics of power on the Urban Landscape of Nairobi, Kenya', 43.
[66] Parker, M. 'Race Relations and Political Development in Kenya', 42.
[67] Otiso, K. M. 'Colonial urbanization and urban management in Kenya', in Salm, S.J. and Falola, T. (eds) *African Urban Spaces in Historical Perspective* (University of Rochester Press, 2009) 79.
[68] Hake, A., *African Metropolis: Nairobi's Self-Help City* (Sussex University Press, 1977) 36.

view of selling for profit than for genuine development.[69] This is a phenomenon that later presents itself in a different form in the post-colonial periods as discussed in this study.

According to Murunga, the prevailing notions of town planning and public health were directly imported from Britain and its colonial outposts in Asia, New Zealand, Australia, and South Africa.[70] This practice was further driven by an imperial fantasy that took the form of replicating British towns in the colonial outposts.[71] This can also be deduced from the practices by the colonists of naming towns and streets to correspond with those in the metropole.[72] The new towns were viewed as "the white man's peculiar creation".[73] Their internal spatial forms were also framed to affirm imperial hegemony.[74] In essence, colonial space had to undergo sufficient transformation so as no longer to appear foreign to the imperial eye.[75] Colonial policies were thus aimed at entrenching urban privileges for whites.[76] These discriminatory policies were also sanctioned by the British House of Commons.[77]

A detailed plan of the Nairobi township dated 1904 shows land use in the city to constitute the railway functions, the administrative functions, and private land usage.[78] Native absence in the settlement is starkly depicted in the map which shows a handful of Europeans owning

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[69] Ibid. C.W. Hobley, a senior civil servant at the Colonial Office had this to say concerning the situation;

> "during the last two years the country has been overrun by several hundred more or less adventurers, mostly from South Africa, whose sole idea was to take up land upon the pretence that they had any means to develop it, but when it was granted, they simply sat still and waited for a purchaser to come along and take the land off their hands."

See Jackson to Lyttelton, October 1905, Colonial Office Records 879/87/771, p. 91-101; a memorandum written with C.W. Hobley.

[70] Murunga, G. "Inherently unhygienic Races" Plague and the Origins of Settler Dominance in Nairobi, 1899-1907', 102.

[71] Makau Mutua opines that the impulse of the Europeans to possess and transform that which was different arose from an imperial view of superiority and the barbarization of that which was non-European. Mutua, M., 'Savages, Victims and Saviors: The Metaphor of Human Rights', (2001) 42(201) *Harvard International Law Journal,* 212.

[72] See Wanjiru, M.W. 'Typonomy and the Spatial Politics of power on the Urban Landscape of Nairobi, Kenya', 14.

[73] Ibid.

[74] Myers, G.A. *Verandahs of Power: Colonialism and Space in Urban Africa* (Syracuse University Press, 2003) 34.

[75] Said, E. *Culture and Imperialism,* 273.

[76] Parnell, S. 'Creating Racial Privileged: The Origins of South African Public Health and Town Planning Legislation', 471.

[77] See UK House of Commons, 'Kenya Colony (Segregation of Indians)', HC Deb 23 February 1921 Vol. 138 c980W.

[78] Wanjiru, M.W. 'Typonomy and the Spatial Politics of power on the Urban Landscape of Nairobi, Kenya', 46.

approximately 97% of the land in the township with Indians owning the remaining 3%.[79] In 1909, the town was elevated to a Municipal Council and vested with full corporate rights.[80]

With increased settlements, plague outbreaks recurred in 1902 which resulted in 19 deaths in 1904, with the most severe one happening in 1906.[81] A newspaper report later claimed that the bubonic plague had originated in India.[82] At this point, Indians had already become hapless victims of such outbreaks which were claimed to originate in their Bazaars.[83] The unsanitary conditions in the Indian Bazaars which had been occasioned by the location of Nairobi in a marshy area with poor drainage made them prone to the outbreaks. The outbreaks in the Indian sections also whetted the appetite of the settlers who were demanding for the eradication of the Indian Bazaar to pave way for European establishments. This is indicative of the fact that European authorities used the guise of public health concerns to achieve economic ends where there was perceived competition.[84]

Europeans were particularly keen on maintaining residential segregation, and not commercial segregation. Their businesses were set to suffer if they prohibited other races from purchasing from their establishments.[85] They thus used crises opportunistically to further segregatory ends. Ndege argues that epidemics like the bubonic plague outbreaks presented a dramatic and compelling opportunity for the Europeans to institutionalize segregationist tendencies, colonial patronage, and social control.[86] To meet these ends, the colonial authorities deliberately disregarded expert opinion like those contained in the Williams Sanitary Report which squarely attributed the unsanitary conditions in the town to poor planning.[87]

The health care system in place did not help much to contain the outbreaks. Ndege argues that the formative years of colonial rule saw health care being structured primarily to address the health

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[79] Ibid, 47.

[80] Makworo, M. & Mireri, C. 'Public open spaces in Nairobi City, Kenya, under threat', (2011) 54(8) *Journal of Environmental Planning and Management,* 1109.

[81] Nevanlinna, A. *Interpreting Nairobi: The Cultural Study of Built Forms* (Finnish Literature Society, 1996).

[82] See, From Our Nairobi Correspondent, 'Royal Charter for Nairobi', *Times,* 30 Mar. 1950, p.7. *The Times Digital Archive,* available at http://tinyurl.galegroup.com/tinyurl/8wMpX3 Accessed 30 Jan. 2019.

[83] Wanjiru, M.W. 'Typonomy and the Spatial Politics of power on the Urban Landscape of Nairobi, Kenya', 43.

[84] Parnell, S. 'Creating racial privileged: The origins of South African Public Health and Town Planning Legislation', (1993) 19(3) *Journal of Southern African Studies,* 472.

[85] See Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital: A Report Prepared for the Municipal Council of Nairobi* (H.M.S.O. 1948)15.

[86] Ndege, G.O. *Health, State, and Society in Kenya,* 45.

[87] Bransby, W. *Report on the Sanitation of Nairobi and Report on the Township of Naivasha, Nakuru and Kisumu,* (1907) British East Africa Protectorate, Kenya National Archives, GP 363.7 BRI, Nairobi. 4-6.

concerns of Europeans in the townships.[88] During this period, health care was designated to protect Europeans from epidemics that were erroneously perceived to be Indian and Native in nature.[89] This assertion is also deduced from the patterning of health facilities in the urban centres which was geared towards unequal access based primarily on race.[90] The incompetence of the colonial medical personnel did not also help with the health situation. This can be deduced from Eliot's discovery that his Principal Medical Officer, Dr. Macdonald was 'absolutely unfit' for his post.[91]

By heaping the sanitation blame on the Indians, the European authorities had resorted to the hewn path of expediency through shifting blame rather than unearthing the root cause of the unsanitary conditions within the Native and Indian settlements. Within the Nairobi Township Committee, the root causes of the sanitary problems in the town were avoided in favor of the entrenched racialized rhetoric of inherently diseased races.[92] What had started as a township planning concern had now been transformed into a parable of inherently unhygienic races.

2.3.3 Containing the undesirable Natives: The use of vagrancy ordinances, pass laws and public health laws

Compared to the Indians in the township, Natives suffered from several handicaps that barred their effective participation in the township's economy and its development. Firstly, most Natives had been forced to work on European farms in the highlands to enable them to acquire Rupees for the payment of Hut Tax imposed by the Protectorate authorities.[93] Secondly, the railway authorities largely controlled the workforce within the railway station and in the township which enabled them to have a firm control of the township demographics. Thirdly, the colonial authorities resorted to violence which took the form of destruction of Native settlements in the township. An early manifestation of this was the destruction of Pangani village in 1938.[94] Fourthly, a raft of laws were

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[88] Ndege, G. Health, State and Society in Kenya, 8.

[89] Ibid.

[90] Ibid, 9.

[91] Eliot to O'Callaghan (Managing Member, Uganda Railway Committee, Private 11 April 1902, F.O. 2/572) quoted in Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 98.

[92] Murunga, G. "Inherently Unhygienic Races" Plague and the Origins of Settler Dominance in Nairobi, 1899-1907', 113.

[93] Mungeam, G.H. *British Rule in Kenya 1895-1912: The Establishment of Administration in the East Africa Protectorate,* 111.

[94] Lonsdale, J. 'Town Life in Colonial Kenya', in Charton-Bigot & Rodriguez-Torres, D. *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 14.

adopted to regulate African labor, movement and relations to towns.[95] Preposterous justifications were adduced by the colonists for the need for segregatory laws. For instance, Lugard was convinced that segregation was desirable because, according to him:

> "…*the policy does not impose any restriction on one race which is not applicable to the other. A European is as strictly prohibited from living in the native reservation, as a native is from living in the European quarter. On the other hand, since this feeling exists, it should in my opinion be made abundantly clear that what is aimed at is segregation of social standards, and not a segregation of races….The native peasant often shares his hut with his goat, or sheep, or fowls. He loves to drum and dance at night, which deprives the European of sleep. He is skeptical of mosquito theories…For these people, sanitary rules are necessary but hateful. They have no desire to abolish segregation.*"[96]

Lugard was essentially arguing that segregation had to be sustained until the Native transitioned from being "archaic" to "civilized". This, according to him, justified the differential provision of services to natives and Europeans. This was a fundamentally counterproductive argument since non-provision of the essential social services to the Native occupied areas meant that the sanitation problems would persist especially now that the population of the township was constantly growing. Any outbreaks in the Native and Indian sections would eventually find their way to the areas reserved for Europeans. Such arguments on differential provision of services were pegged on the belief of cultural supremacy of Europeans. Natives were viewed as subscribers to benighted cultures.[97] This informed the reluctance of the colonial authorities to address the structural factors that occasioned the challenges in the areas occupied by Natives and Indians.

Lugard's statement also confirms the fact that the colonial authorities' fixation on the "hygienic gaze" that was primarily aimed at legitimization of racial boundaries.[98] It is not surprising that most official records on the Indian Bazaar say more about sanitation in the area than about its

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[95] Home, R. 'Colonial Township Laws and Urban Governance in Kenya', 179. See also Furedi, F. 'The African Crowd in Nairobi: Popular Movements and Elite Politics', (1973) 14(2) *The Journal of African History*, 276.
[96] Lugard, F.D. *The Dual Mandate in British Tropical Africa* (Frank Cass, 1965) 149-50.
[97] Said, E. *Culture and Imperialism* (Chatto & Windus Ltd, 1993) 197. See also Fanon, F. *The Wretched of the Earth* (Presence Africaine, 1963).
[98] Murunga, G. "Inherently unhygienic Races" Plague and the Origins of Settler Dominance in Nairobi, 1899-1907', 119-20.

commercial activities.[99] Lugard's view was further reinforced by official reports by the PMO which were biased and sidestepped the broad context of inequity in service provision.[100]

The legal system introduced in the Protectorate was principally designed to contain and punish the Native. Through colonial laws, Native mobility was checked, which was a key element in meeting the ends of segregation. The colonial town planning framework and other legislations viewed Natives merely as a temporary occupant of the township for as long as their services were required.[101] The Europeans viewed the townships as dormitories for the Natives who would only sojourn while attending to the "white man's needs".[102] Natives without gainful employment in the township were therefore unwelcome.[103] This also meant that the township would not invest in provision of housing and other social services for the Natives. Indeed, official reports indicate that Natives lacked proper water supply and were exposed to contaminated drinking water while the Europeans enjoyed better quality of social services.[104]

The Native labor force in the township was regulated through pass laws. The Native Passes Regulations 1900 and Ordinance 1903 played an effective role in controlling movement. Further, the Registration of Natives Ordinance (1915) mandated every male native of over 15 years to carry with him a *Kipande.* This was a finger-printed certificate of identity with detailed information about his employment record.[105] Vagrancy ordinances, six of which were passed between 1898 and 1930 also consolidated the administration's power to exclude Africans from urban areas.[106] These Ordinances were particularly driven at prohibiting access by Africans to European neighborhoods. They allowed the authorities to remove Natives without a registered place of abode in the town and return them to the Native reserves.[107] In 1913, W.J.R. Simpson prepared the first township plan for Nairobi on colonial instructions.[108] Simpson, the principal advocate of racial segregation through town planning sought to justify the existence of these measures by stating:

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[99] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 175.

[100] Ibid.

[101] Njoh, A.J. *Planning power: Town Planning and Social Control in Colonial Africa',* (UCL Press, 2007) 175.

[102] Were, G.S. and Wilson, D.A. *East Africa through a Thousand Years* (Africana Publishing Co, 1968) 100-05.

[103] Otiso, K. M. and Owuso, G. 'Comparative urbanization in Ghana and Kenya in time and space', (2008) 71 *GeoJournal,* 148.

[104] East Africa Protectorate Report for 1905-6, Cd. 3285-6, 45.

[105] Burton, A. *African Underclass* (British Institute in Eastern Africa, 2005) 26.

[106] Home, R. 'Colonial township laws and urban governance in Kenya', 180.

[107] See The Official Gazette of the Colony and Protectorate of Kenya, Vol. LI- No. 16, April 19, 1949, 206.

[108] Home, R. 'Colonial township laws and urban governance in Kenya', 185.

"In view of the fact that Government has set aside large areas of land for the use and benefit of the native tribes of the Colony, it is only proper that the townships, which were primarily established for occupation by non-natives, should be reserved for those who should properly reside there, and that the residence therein of natives should be confined as far as possible to those whose employment on legitimate business requires them so to reside…Unrestricted movement of natives into and within townships leads to the collection in these areas of the worst class of idle disorderly and criminal natives. Such class makes its living either by begging or by stealing. In the former case they impose themselves upon the hospitality of those members of their tribe who are in employment, relying upon custom to preclude refusal, and become an intolerable burden upon a decent and industrious community."[109]

Until the enactment of the Public Health Act in 1930, the Colony had largely been operating without a comprehensive legislation on public health, notwithstanding the numerous public health concerns that had already emerged.[110] The Act left an enduring imprint on the colonial urban development and management in Kenya as it advanced the goals of segregation.[111] With regards to the establishment of health care facilities, the 1906-07 Colonial Report indicates that Nairobi had one hospital primarily established to cater for its European population and another serving the natives with many deaths being recorded in the native hospital.[112] The Native hospital, which mostly saw plague patients, was inadequately equipped and has been described as being hopelessly insanitary.[113]

Native hospitals like the Lady Grigg African Maternity Hospital (now Pumwani Maternity Hospital) were gravely understaffed with frequent resignations from its staff.[114] Native locations were also poorly serviced with ambulance services leading to long delays in the collection of sick

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[109] Memorandum on legislation and regulations in Kenya affecting natives living in municipalities and townships (1931): CO 822/37/9. Quoted in Home, R. 'Shaping Cities of the Global South: Legal Histories of Planning and Colonialism', in Parnell, S. and Oldfield, S. (eds) *The Routledge Handbook on Cities of the Global South* (Routledge, 2014) 76.

[110] Ndege, G. Health, State and Society in Kenya, 70.

[111] Otiso, K. M. 'Colonial urbanization and urban management in Kenya', 82.

[112] East African Protectorate Report for 1906-7, Cd 3729-21, p. 21.

[113] Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital,* 13.

[114] Municipal Council of Nairobi, 'Minutes of Proceedings of Council and the several Committees thereof for the year ended the 30th day of June, 1945', Vol. XII, 505

people by the government ambulance.[115] Other laws like the 1906 Plague and Cholera Ordinance were also framed in a manner that viewed Natives as potential disease carriers whose movements had to be monitored and restricted.[116] The health laws in place thus remarkably failed to safeguard the interests of the township's Native community and instead played the role of entrenching segregation.

Prohibitions brought about by these laws and ordinances had the effect of killing the Native psyche and minimized their participation in development of the township. Natives came to view the township and urban areas in general as temporary places of sojourn with the few who owned urban housing viewing them as "houses" rather than "homes".[117] This had far-reaching implications on how the town would later be structured and the African attitude towards it. Indeed, the case of *Virginia Edith Wambui v Joash Ochieng Ougo and Omolo Siranga*[118] which was decided many years after the establishment of Nairobi and after the departure of the colonialists is illustrative of the implications of the exclusionary colonial policies. In this case, members of the *Umira Kager* clan strongly held the view that a Luo man (including the claimant's deceased husband) could only have a house, not a home in Nairobi. Houses were temporary sojourns, unkempt and fungible unlike homes which were consecrated and required tending to for progenies.

Through its policies and actions, the colonial administration waged a psychological war against Natives by generating a feeling of non-belonging or invisibility among them. The psychological oppression generated by the policies of the colonial administration was an important tool for asserting and maintaining colonial hegemony.[119] Franz Fannon argues that this tool was used to deprive the colonized of anything that humanized him so that even the trivial handouts in some cases managed to impress him.[120] Moreover, since the planning ordinances were only strictly enforced in the areas with European occupation, the impression generated amongst Natives was

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[115] Municipal Council of Nairobi, 'Minutes of Proceedings of the Council and the several Committees thereof for the year ended the 30th day of June, 1944', Vol. XI, 418.
[116] Ndege, G. Health, State and Society in Kenya, 37.
[117] Ibid, 74.
[118] [1982-88] 1KAR.
[119] Fannon, F. *The Wretched of the Earth* (Presence Africaine, 1963) 90.
[120] Ibid.

that planning was not meant for them.[121] For the Europeans on the other hand, segregation created privileged enclaves of access, amenity and community.[122]

2.3.4 The Feetham Local Government Commission, 1926

In 1926, Edward Grigg, the Governor of the Colony and Protectorate of Kenya, appointed a Commission of Inquiry constituting of; Justice Feetham, W.C. Huggard, and H.T. Martin. It was tasked with making recommendations as to the establishment or extension of local Government in: Nairobi and its environs; Mombasa and its environs; and such areas that the Commissioner may consider suitable for the establishment of local Government.[123] It was also mandated with making recommendations on the manner in which local governing bodies were to be constituted and the powers to be vested in these entities.

For Nairobi, the Commission proposed that the Municipal Council established should be constituted of eighteen members drawing from nine elected Europeans, five elected Indians, one nominated Goan, one Government representative, one Railway and one District Council representative.[124] No Native representation was provided for in this proposal. Composition of the Council drew from the age-long battle of might that was the legacy of Indian and European relations in the township and the Protectorate in general. Native concerns continued to be ignored. Failure to appoint Native representatives to the Council meant that the Native voices would be subdued. This omission also disregarded the fact that they were the majority in the township. Official records indicate a Native population of approximately 9,300 in 1906, 12,000 in 1923, and 18,000 in 1926.[125] The constant increase of Native population in the town despite the numerous hurdles established to check their population denotes defiance and refusal to acquiesce to the colonial objectives.

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[121] Njoh, A. 'Colonial Philosophies, Urban Space, and Racial Segregation in British and French Colonial Africa', (2008) 38(4) *Journal of Black Studies,* 590.
[122] Dovey, K. *Framing Places: Mediating Power in Built Form* (Routledge, 1999).
[123] See Report of the Local Government Commission 1927 (Colony and Protectorate of Kenya, 1927).
[124] Ibid, xviii.
[125] Ibid, 7.
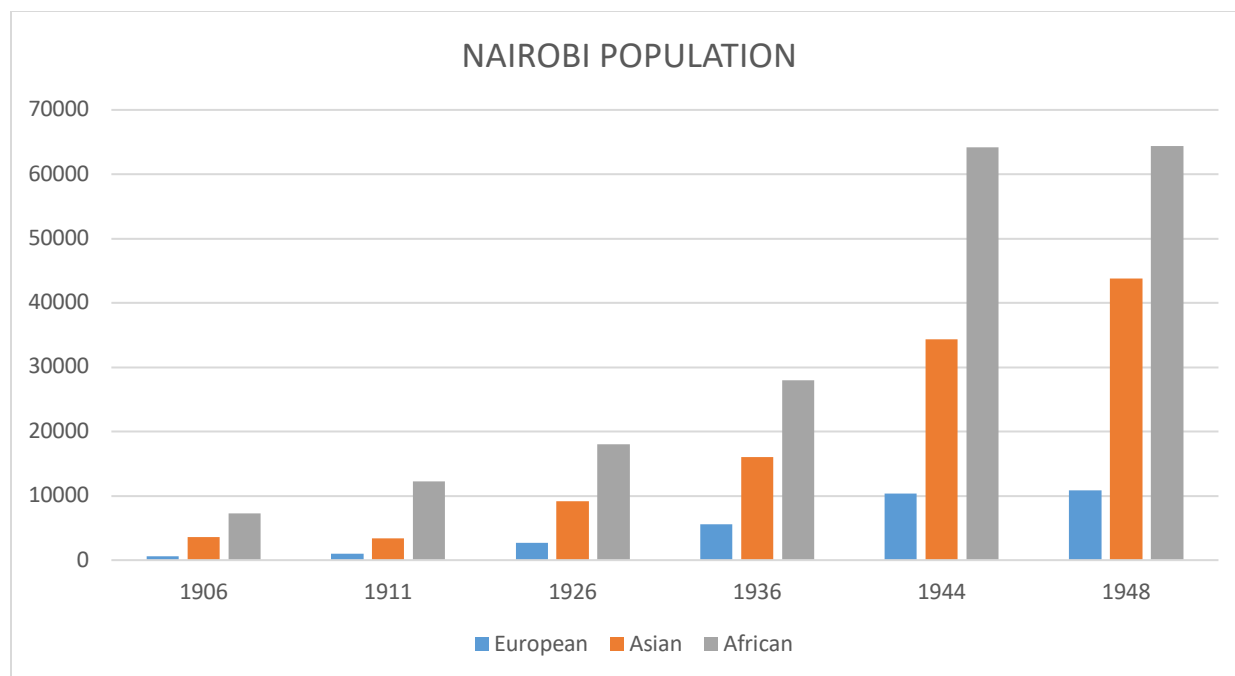
Fig 5: *Population of Nairobi between 1906-1944* (figures drawn from White et al., p. 43, 84)

With regards to public health, the Commission recommended that the Municipal Council of Nairobi should assume public health responsibilities in its area.[126] It noted the sanitary challenges that had plagued Nairobi since its inception and the resulting health consequences. Its report decried the slow pace at which the sanitation infrastructure was being put up in the Municipality noting that sewering of the commercial area had only begun in 1924.[127] Once again, the Commission took the easy path of deflecting the blame to the Indians and Native whose practices it termed as unsanitary instead of addressing the infrastructural shortfalls that were evident in the Municipality.[128] It also failed to take note that the 1921 Public Health Ordinance vested the obligation to provide the health and sanitary infrastructure on the local authorities. The evasive language adopted by the report did not come as a surprise. Feetham, the head of the Commission, was known to be conventionally pro-settler with little concern for Native and Indian sensitivities.[129]

According to the Commission, employers of more than 25 Natives within Nairobi were required to provide temporary housing for their employees. The objective was to control of ingress of

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[126] Ibid, 147.
[127] Ibid, 10.
[128] Ibid, 11.
[129] Home, R. 'Colonial Township Laws and Urban Governance in Kenya', 183.

Natives and "to exclude Natives who are of bad repute or habitually unemployed."[130] Control of Native inflow was, therefore, a task that was delegated to the employers and provision of housing would help control the number of Natives in the Municipality. The requirement for employers to house their employees was provided for in section 52 of the Native Servant Ordinance of 1937. This provision was largely violated by the European employers and many Africans had to look for alternative housing in dormitories located in African settlements like Pumwani.[131] As a result shanty villages emerged in the eastern parts of the town which catered for the pressing housing needs of the Natives.[132] The Commission further recommended the establishment of the position of the Municipal Native Affairs Officer whose duties had little to do with Native affairs and a lot to do with the control of Natives in the Municipality.[133] According to the Commission's Report, the officer who would take up this position would be one:

> "…who has a natural bent for that class of work, and who is prepared to devote most of his afternoons and evenings to the town, and especially to the native locations, for it is only during the hours then the natives are not at their daily work that the Native Affairs Officer will have an opportunity of meeting them and knowing what they are doing."[134]

This attitude of "keeping natives in check" defined the principal colonial policy towards Natives not just in Nairobi but in the entire colony. Space, in colonial Kenya and in the post-colonial period, has been manipulated and used as a tool for social control. The law has been used to maintain the manipulations. [135] Land alienation laws in the early days of colonial rule played the role of keeping Natives in check, labelling them 'tenants at the will of the crown'.[136] This was followed by the pass laws and vagrancy ordinances that followed the establishment of the Native reserves. This attitude also became apparent in the local policies within the colonial Municipalities. As discussed further in this chapter, the attitude did not change with Kenya's attainment of independence. The attitude of antipathy has partly been entrenched by the ubiquitous fear of the unknown that has always beset the minds of local administrators when dealing with marginalized groups within their

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[130] Report of the Local Government Commission 1927, xviii.

[131] Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital,* 35.

[132] Sindiga, I. 'Early medical ideas and the spatial evolution of Nairobi', Paper prepared for the First International Conference on Urban Growth and the Spatial Planning of Nairobi, Kenya December 13-17, 1988, 8.

[133] Report of the Local Government Commission 1927, 157.

[134] Ibid.

[135] Ndege, G.O. *Health, State, and Society in Kenya,* 33.

[136] See Barth judgment in *Isaka Wainaina v Murito* [1923] 9(2) KLR 102.

localities. The Feetham Commission left an indelible mark by entrenching this attitude in the governance of the Municipality of Nairobi. The Commission's imprints can be seen in the subsequent development plans of Nairobi that are discussed below.

2.3.5 The 1926 Nairobi Plan

The British East Africa Protectorate was claimed by the British Crown as a colony in 1920.[137] At this point Nairobi had already asserted its place as the colonial capital and had been declared a municipality a year earlier.[138] With the growth of the township, coupled with the numerous roles that it was now taking, a pattern of racially distinct commercial and residential zones started to emerge. This period also witnessed heightened interests in town planning. This saw the passing of a Town Planning ordinance in 1919 which largely followed similar legislation in England, Western Australia, and New Zealand.[139]

The development of the 1926 plan for the Municipality of Nairobi was the first attempt by the colonial administration to provide a comprehensive urban plan for Nairobi.[140] To facilitate this, a town-planning consultant was appointed and mandated with making recommendations on the zoning arrangements within the municipality.[141] The mandate of the Planning Authority appointed was limited to a 10 mile radius, taking Nairobi House as its centre.[142] The Planning Authority which was led by Walton Jameson essentially developed a bluntly racist plan that reaffirmed the neighborhood segregation envisioned by the colonial authorities and European settlers.[143] For the first time in the history of the town, zoning became a tool for exclusion and containing certain groups within designated localities.

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[137] Ghai, Y.P. and McAuslan J.P.W.B, Public Law and Political Change in Kenya, 27.

[138] Colony and Protectorate of Kenya, *Legislative Council Debates, 1928* (Government Printer, 1929) 475.

[139] Home, R. 'Colonial Township Laws and Urban governance in Kenya', 184.

[140] Medard, Claire, 'City Planning in Nairobi: The Stakes, the People, the Sidetracking', in Charton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 27.

[141] Owuor, S. and Mbatia, T. 'Post-independence development of Nairobi City, Kenya', Paper presented at Workshop on African capital cities Dakar, 22-23 September 2008, 3.

[142] Colony and Protectorate of Kenya Report for 1926, 5.

[143] Myers, G.A. 'Designing Power: Forms and Purposes of Colonial Model Neighborhoods in British Africa', (2003) 27 *Habitat International,* 195.

2.3.6 Nairobi Master Plan for a Colonial Capital, 1948

L.W. Thornton White, an architect, P.R. Anderson, a civil engineer, and L. Silberman, a sociologist, the team responsible for preparation of the Master Plan described its objective as being an analysis of the "Nairobi Problem" and formulation of principles for its solution.[144] The team conceived the Master Plan as a key plan to the general physical, economic and social development of Nairobi over the next 25 years from 1948.[145] The "Nairobi Problem" was partly conceived by the Plan to be the multiracial nature of the city which presented questions as to whether different planning principles would apply to the various people and their specific cultures.[146] According to the Plan, this multiracial nature of Nairobi threw in many difficulties in the path of democratic planning.[147]

Natives were particularly called out as being primitive presenting a barrier to the planning process. The plan then proposed the establishment of different zones for Europeans, Asians, and Natives.[148] Regrading Native affairs, the Plan heavily borrowed from the Simpson Report which, as established in this chapter, was blatantly biased against Natives. Contrary to assertions by certain authors, the 1948 Master Plan was specifically deployed to reaffirm the colonial hegemony that favored a segregated Nairobi.[149] Moreover, the objectives of colonial urban planning were always aligned with the imperial objectives of the colonial state.[150]

The Master Plan took cognizance of the fact that Natives constituted the largest group in Nairobi. It went on to state that the Native was also Nairobi's most "transitory" element.[151] The large Native population was confined to limited spaces in the eastern parts of the town that were less desirable

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[144] Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital,* 1.
[145] Ibid.
[146] Ibid, 3.
[147] Ibid, 9.
[148] Ibid, 15.
[149] This fact is disputed by Medard, Claire in 'City Planning in Nairobi: The Stakes, the People, the Sidetracking', in Charton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 28. Medard argues that the fact the Master Plan continued to be used even after Kenya attained independence explains why it was not an explicit apartheid tool. This assertion fails to take into consideration the continuities that were adopted by the independence government in reinforcing the spatial hegemony that had been established in the colonial periods. Hake also notes that the authors of the 1948 Master Plan were influenced by the racial assumptions at the time where planning was directed towards the realization of imperial traditions. See Hake, A., *African Metropolis: Nairobi's Self-Help City,* 57.
[150] Myers, G. 'A World-Class City-Region? Envisioning the Nairobi of 2030', (2015) 59(3) *American Behavioral Scientist* 329.
[151] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 21.

for European occupation. The view perpetuated by the Master Plan is reminiscent of the earlier portrayal of Natives by Europeans as transient elements with the town merely acting as his dormitory until he was no longer needed to serve the needs of the Europeans. Such views were laden with the characteristic paternalistic attitudes of imperialism.[152] They were meant to dissociate a population with the space that it occupies, essentially rendering a collective claim to these spaces void, even invisible.[153]

The views were translated into action by most European employers who failed to provide housing for their Native workers despite the law requiring them to do so. The vacuum created by the failure to provide housing as required by law saw the emergence of Native squatter settlements within the town, most of which were quickly demolished after being medically condemned.[154] Even where employers provided housing, such housing was considered to be temporary, relied on the cheapest materials and their presence was predicated on the benevolence of the municipal authorities.[155] Notably, one of the objectives of zoning adopted by the Master plan was the stabilization of the urban African population.[156] This meant that the authorities were to actively take measures to ensure that the Native population was kept in check even if this meant the destruction of Native establishments which, as discussed here, was commonplace. [157]

A number of generalized recommendations were made in the Master Plan on the general design of residential areas within Nairobi. With regard to segregation of these areas, the Plan took an evasive approach by basically stating that its concern was on the technical structuring of the town and proclaiming neutrality on the subject of racial segregation.[158] Emig and Ismael have called out the plan for its liberal guise while in reality what it did was to preserve the common authoritarian outlook.[159] This guise by the technicians tasked with developing plans for colonial towns during

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[152] Said, E. *Culture and Imperialism,* xx.
[153] See generally Blomley, N. *Unsettling the City: Urban Land and the Politics of Property* (Routledge, 2003) xx.
[154] Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital*, 36.
[155] Municipal Council of Nairobi, 'Minutes of Proceedings of Council and the several Committees thereof for the year ended the 30th day of June, 1945', Vol. XII, 461.
[156] Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital*, 57.
[157] Manji argues that there is still an unwillingness to accept that the urban poor have a right to the city with the contemporary manifestation of this being forced evictions in Nairobi to make way for road building. See Manji, A. 'Bulldozers, homes and highways: Nairobi and the right to the city', (2015) 42(144) *Review of African Political Economy,* 208.
[158] Ibid, 49.
[159] Emig, S. and Ismail, Z. *Notes on the urban planning of Nairobi* (School of Architecture, Copenhagen, 1980) 55.

this period is revealed in a letter which Silberman, the sociologist involved in the preparation of the Master Plan for Nairobi and a plan for Mombasa, wrote to White. In this letter, Silberman notes that "nature has offered a beautiful means of segregation: four races and four municipal areas…needless to say we won't call it segregation as this word would cause a revolution."[160] Silberman was voicing the need not to disturb the *status quo* which meant that the plans that would be developed would basically endorse the structures in place without questioning their implications. It is therefore no surprise that the Master Plan envisioned the location of Native neighborhoods in the eastern parts of the town with industries, including noxious industries, being located near Native locations.

The Nairobi Master Plan was also characterized as a technical document with no indication of representation of the various groups in Nairobi during its development, save for a generic statement that "local personalities" were interviewed during its preparation.[161] It is no surprise that the only indication of representation of the more than 64,000 Native population in the Master Plan was through the submission of a memorandum by T.G. Askwith, the European Municipal African Affairs Officer.[162] The development of the 1948 Master Plan was also a foundation of a phase in urban planning where the processes were primarily driven by specialists with limited contribution from the people to be directly affected by these plans. This period saw the assemblage of techno-scientific institutions of planning that enabled the institutionalization of certain urban planning norms.[163] This approach to planning explains the unresponsive nature of the plans developed in this manner which have largely been out of touch with local realities.

This period also saw the entrenchment of top-down approaches to planning where only "specialists" and government (mostly local government) functionaries were involved in the development of urban plans. Natives became passive recipients of technical urban plans whose most visible impact for them was their erasure from certain spaces and confinement to certain

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[160] University of Cape Town, Special Collections. Thornton White Papers (BC 353). Silberman Letters. B25/D68/493. Silberman to Thornton White, 3 June,1947.
[161] Thorton, L.W. *et al., Nairobi Master Plan for a Colonial Capital,* 2.
[162] Ibid, vi.
[163] Byerley, A. 'Drawing white elephants in Africa? Re-contextualising Ernst May's Kampala plans in relation to the fraught political realities of late colonial rule', (2018) Planning Perspectives, 11. Writing on road construction in post-independence Kenya, Klopp notes that there is a wide belief that roads and planning are technical matters to be left to technical experts with limited participation from those likey to be affected by such projects. Klopp, J.M. 'Towards a political economy of transportation policy and practice in Nairobi', (2011) 23(1) *Urban Forum,* 10

predetermined localities. Murunga argues that such approaches of excluding the Natives from the planning processes were founded on the colonial idea that Africans had no role in Nairobi.[164] This view denotes the entire edifice of spatial planning in colonial Nairobi. It also reaffirms the dominant view held by European settlers about African representation on municipal bodies that "Africans are inherently incapable of participating equally with other races in government, whether central or local."[165] This imperialist ideology was replicated elsewhere in India, other African colonies and even in Ireland. Writing on the Irish experience, Mary Hamer noted that, 'the colonized is typically supposed to be passive and spoken for, does not control its own representation but is represented in accordance with a hegemonic impulse by which it is constructed as a stable and unitary entity.'[166]

Exclusion of Natives entrenched the feeling of non-belonging and further disempowered them from being able to shape conditions within their localities. Natives were denied a voice to assert their right to access the town, benefit from access to resources and opportunities, and to be able to shape the planning processes. This exclusion was once justified on the basis that the Natives and Indians did not have the "British tradition" which was considered important in running a local government.[167] It is no surprise that Native deaths were always the highest to be recorded in the town painting a vivid picture of the poor living conditions that they were subjected to.[168] The dire state of affairs within Native localities can further be attributed to the failure by colonial authorities to make any attempts at getting solutions to challenges faced by Natives from the Natives themselves.

This situation can also be attributed to the economic exclusion of Natives who were forbidden from freely moving to and within the city. Moreover, Europeans in the town knew of the repute of the Native areas and what they knew they did not care for.[169] To many of them, the Native and

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[164] Murunga, G. "Inherently unhygienic Races" Plague and the Origins of Settler Dominance in Nairobi, 1899-1907', 112.
[165] See Parker, M. *Political and Social Aspects of the Development of Municipal Government in Kenya with Special Reference to Nairobi* (Colonial Office Library: London, 1959) 57-58
[166] Hamer, M. 'Putting Ireland on the Map,' (1989) 2 *Textual Practice,* 195.
[167] See, From Our Nairobi Correspondent, 'Royal Charter for Nairobi', *Times,* 30 Mar. 1950, p.7. *The Times Digital Archive,* available at http://tinyurl.galegroup.com/tinyurl/8wMpX3 Accessed 30 Jan. 2019.
[168] See Kenya Colony and Protectorate Report, 1936 where Native deaths in Nairobi are recorded as the highest amongst the various racial groups p. 12.
[169] Anderson, D. *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (Weidenfeld & Nicolson, 2005) 182.

Native problems were invisible. Indeed, White and his team of planners did not see the importance of involving Natives, who they viewed as "primitive", in the planning process.
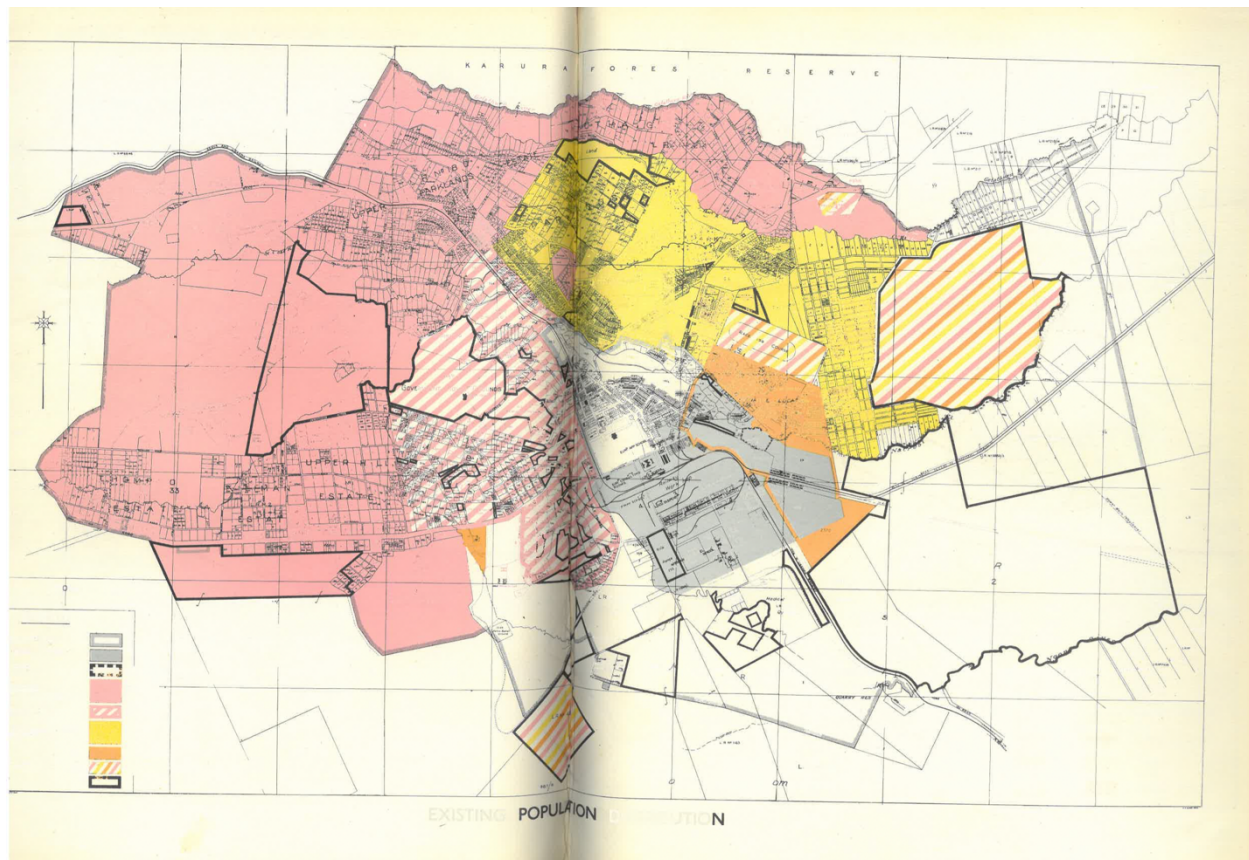
Fig 6: *Population distribution in Nairobi.* Native areas are marked in orange. Source: White et al.

2.3.7 The Emergency years

Nairobi was declared a city in 1950 through a Royal charter on March 30, 1950.[170] At this point, reports indicate that population in the city was 130,000 consisting of 12,000 Europeans, 50,000 Asians and 60,000 Africans with Goans, Somalis, Sychellois, and Arabs making up the remainder.[171] At the same time that the city was basking in its newfound glory, African workers in the City had downed their tools demanding among others, for self-rule.[172] A new kind of resistance was growing. This resistance was predicated on the endemic oppression and bad conditions of living that Africans were exposed to. Indeed, as elaborated in this study, it is

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[170] See, From Our Nairobi Correspondent, 'Royal Charter for Nairobi', *Times,* 30 Mar. 1950, p.7. *The Times Digital Archive,* available at http://tinyurl.galegroup.com/tinyurl/8wMpX3 Accessed 30 Jan. 2019.
[171] Ibid.
[172] Anderson, D. *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire,* 181.

discernible that there was increased awareness among Natives of the disparities in the living conditions between them and Europeans in the City.[173] Natives had become more aware of the fact that their issues were constantly relegated to the penumbra of the administration's agenda. For instance, the colonial authorities were always hesitant to provide social services for the Natives with the fear that this would encourage Native settlement in the town.[174] It explains the growing agitation of the Natives with the colonial system.

The colonial authorities were also keen on dismantling hawking activities in the city which was a source of livelihood for many Natives who could not access formal employment.[175] The authorities employed various approaches towards this including limiting the number of premises and hawking licences issued to Native traders.[176] The economic activities of the Natives were effectively criminalized by a regime which was unwilling to provide them with alternatives. This essentially paved the way for conflicts between the colonial administration and the Natives. Robertson argues that this systemic persecution of the Native traders with the aim of their obliteration precipitated resistance and boycotts by African traders who were fed up with constant harassment from the local authorities.[177] Resistance by the Native traders also took the form of proliferation of illegal trading by Natives who stationed themselves in the vicinity of markets and shops with the intention of intercepting customers destined for the licensed businesses.[178]

Social exclusion of Natives in the city essentially meant that many had to find alternative ways of accessing employment and access to basic amenities within the city. The state of Native housing was particularly dire. Between 1946 and 1957, the shortfall in Native housing is reported to have been at over 30,000 units.[179] To fill the gaps left by the inadequate provision of housing, shanties

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[173] These actions can also be related to Said's view that with increased entrenchment of imperialism, the culture of resistance also mounted and opposition to the dominant oppressive structures was a result of the awareness on the part of individuals of the unjust structures and practices. See Said, E. *Culture and Imperialism,* 268, 289.

[174] Hake, A., *African Metropolis: Nairobi's Self-Help City* (Sussex University Press, 1977) 57.

[175] Robertson, C. 'Whose Crime? Arson, Class Warfare and Traders in Nairobi, 1940-2000', (2007) 11(2) *Crime, History & Societies,* 5.

[176] Ngesa, P.O. 'A History of African Women Traders in Nairobi, 1899-1952', Master of Arts Thesis (University of Nairobi, 1996)159.

[177] Robertson, C. 'Whose Crime? Arson, Class Warfare and Traders in Nairobi, 1940-2000', (2007) 11(2) *Crime, History & Societies,* 6.

[178] Ngesa, P.O. 'A History of African Women Traders in Nairobi, 1899-1952', Master of Arts Thesis (University of Nairobi, 1996) 159.

[179] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 58.

started emerging in the eastern parts of the town.[180] The African city developed in the fringes of the colonial city in the unoccupied spaces that were not attractive to the colonists.[181] Eastlands, as commonly known, became the epicenter of urban blight with the emergence of unregulated settlements in native establishments like Pumwani, Kariokor, Pangani and Shauri Moyo.[182] It is estimated that in the 1960s the density of dwellings per acre in Eastlands was approximately twenty-five times that of Upper Nairobi which was predominantly white.[183] Eastlands also became fertile grounds for expression of Native agitation and recruitment of native revolutionaries. The dawning of the Mau Mau uprising in 1952 alarmed the colonial government which now, albeit belatedly, realized that it was of critical importance that the grievances raised by the Natives were addressed. Part of the solutions offered were on the question of Native housing problem and the commissioning of urban renewal to deal with the frequent disease outbreaks.[184] These interventions however came in too late as country was on an inevitable path to independence.

2.4 The third wave

2.4.1 Entrenching social exclusion at Independence and after

The heroic resistance by excluded groups in the city and other parts of the colony ultimately ended colonialism. However, the exclusionary colonial practices were soon after carried over into post-colonial Kenya. Challenges were particularly pronounced in locations that were predominantly occupied by Africans during colonial rule with these areas bearing the scars of their colonial past. Health and sanitation concerns were rife in a city that had previously availed resources on the basis of one's race. Health challenges were exacerbated by the fact that Kenya had inherited a health care system that was elitist in its orientation, curative in its emphasis, uneven in its geographical distribution, and fragmented.[185] Moreover, the population explosion in the city after the attainment of independence meant that the limited health resources were now extremely strained and faced severe breakdowns. The African population in Nairobi in 1948 was 66,336, 157,865 in 1962 and

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[180] Obudho, R.A. & Aduwo, G.O. 'The Nature of the Urbanization Process and Urbanism in the City of Nairobi', (1992) 7(1&2) African urban Quarterly, 54.

[181] Charton-Bitot, H. 'Preface', in Charton-Bigot, H. & Rodriguez-Torres, D. *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers) x.

[182] Anderson, D. *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire,* 186.

[183] Nevanlinna, A. *Interpreting Nairobi: The Cultural Study of Built Forms,* 206.

[184] Ndege, G. *Health, State and Society in Kenya,* 132.

[185] Ibid, 134.

421,079 in 1969.[186] The exponential growths in population saw increased strains on the limited social services and on space within the city. This resulted in the growth of crowded, unplanned or inadequately serviced settlements with increased number of individuals living in unhygienic environments.[187]

It is estimate that by 1971, one-third of Nairobi's population was living in unauthorized housing.[188] The City also lacked a clear planning strategy which saw the failure to actualize the Nairobi Metropolitan Growth Strategy formulated in 1973.[189] Moreover, this Metropolitan Growth Strategy had been modelled to preserve the status quo established by the 1948 Master Plan with protection of the interests of the existing upper class being clear in the Strategy.[190] This period also saw the adoption of ambiguous, half-hearted and self-contradictory responses to the prevailing challenges by government authorities. This group stood to benefit from the disarrays that would soon ensue.[191] According to Emig and Ismael, the approach adopted in formulating the Metropolitan Growth Strategy saw the transformation of physical planning into a political strategy where urban planning was now used to meet the political ends of control.[192]

Failure to adopt a clear strategy for the growth of Nairobi meant that growth in the city would remain to be guided by the 1948 master plan. The 1948 master plan was primarily developed for a colonial and segregated capital. Obudho laments that even with the African-led government that came into place upon the attainment of independence, planning initiatives were visibly uncoordinated and did too little to involve people in the processes.[193] We will in the next chapter see how the planning approaches adopted during this period reproduced differential access to land leading to the entrenchment of social exclusion. We shall also examine how this has created one group that enjoyed the benefits of urban citizenship and another that has been constantly excluded from full access to rights in the city.

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[186] Obudho, R.A. 'Nairobi: National Capital and Regional Hub', in Rakodi, C. (ed) *The Urban Challenge in Africa: Growth and Management of its Large Cities* (United Nations University Press, 1997) 301.
[187] Ibid, 325.
[188] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 93.
[189] Obudho, R.A. 'Nairobi: National capital and regional hub', 327.
[190] Nevanlinna, A. *Interpreting Nairobi: The Cultural Study of Built Forms,* 232.
[191] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 248.
[192] See Emig, S. and Ismail, Z., *Notes on the Urban Planning of Nairobi* (Royal Academy of Fine Arts, 1980) 82.
[193] Obudho, R.A. 'Nairobi: National Capital and Regional Hub', 327.

2.5 Conclusions

This chapter has endeavored to trace the growth of Nairobi. It has elaborated on the nuances that underlie approaches to urban planning and allocation of space in the city. The growth of Nairobi has been entangled with the narrative of exclusion and manipulation of space. The goal of this was to attain what initially took the form of segregatory objectives and later morphed into practices of social exclusion. The chapter has also elaborated on how the urban enclaves created by the exclusionary ideologies and practices have been characterized by disparities in services provision, especially provision of health care. During the colonial period, Natives were denied a voice to assert their rights in the town, benefit from access to resources and opportunities, and to shape the planning processes. The excluded groups in the City have pushed back against the ubiquitous feeling of 'invisibility' by claiming a stake and asserting their right to belong in the city and to equitable access to services and opportunities.

The chapter has further been concerned with the sustained resilience by these groups. As argued herein, the excluded have resisted unjust spatial practices. The enduring theme of excluding certain social groups from effective participation in accessing resources and shaping the growth of Nairobi was carried on to the post-colonial state. This took the form of denial of access to land within certain localities in the city and constant evictions by the State and other actors. The constant evictions have been deployed in a bid to erase any memories of occupation of these areas by the poor. However, these groups continue to assert their claims to belong to the city. We shall in the next chapter see how the practice of urban planning has instrumentalized private land ownership in a scheme that produces social exclusion and differential access to the city.

3   Land, Urban Citizenship and Planning in Nairobi

3.1 Introduction

In this chapter, land is taken as the locus over which power relations are shaped, challenged and where claims to citizenship are framed. Access to land has played a fundamental role in defining relationships of power, domination, and subordination in the city. Land in Nairobi is problematized as a patronage resource in the wake of the shrinking space of traditional sources of patronage in the aftermath of Kenya's adoption of the Structural Adjustment Programs (SAPs) in the 1980s.[1] Under these schemes of patronage, the poor inhabitants of the city have been subjected to the full violence of enforcement of possessory rights. This has led to dispossession and their attempted erasure from the urban landscape. As I discuss in this chapter, the exclusion arising from an entrenched system of patronage and its networks made the poor become adept at deploying self-help initiatives to reclaim space in the city.

The self-help initiatives were met with state-sanctioned violence whose outcome was the production of marginality and exclusion.[2] I use land to elaborate on the multiple contestations that the idea of belonging evokes, while also revealing the political consciousness that exclusionary practices awaken among poor urban inhabitants that are denied access to land. Self-help by the excluded poor is framed as a cry for help and a claim to citizenship by a group that has not hesitated to deploy measures to protect what they view as their spaces. This chapter demonstrates a historical continuum of exclusions and builds on the historical analysis pursued in chapter two. There have been constant efforts by the different regimes to exclude, especially in the aftermath of the adoption of SAPs. The outcome has been polarisation of the city into impoverished enclaves and elite spaces with the later having access to resources and opportunities.

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[1] See Klopp, J.M. 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya', (2000) 47(1) *Africa Today* 8.

[2] The study borrows from the theoretical approach adopted by Kimari who extensively documents continuities with the colonial project of exclusion and are constantly embroiled in constant struggles against exclusion. See Kimari, W. ''Nai-rob-me' 'Nai-beg-me' 'Nai-shanty' Historicizing Space Subjectivity Connections in Nairobi from its Ruins', PhD Thesis (York University, Toronto, 2017) 63. Self-help is used in reference to the schemes that excluded groups in the city deployed to ensure their survival in the city. See Hake, A., *African Metropolis: Nairobi's Self-Help City* (Sussex University Press, 1977).

The aim of this chapter is not to romanticize self-help initiatives, but to highlight their place in shaping the urban forms and their contribution to the new forms of urbanism that took root in the 1980s and 1990s in Nairobi. I also use self-help to demonstrate the state's abdication of its obligations especially to poor urban inhabitants. This has contributed to creating dual categories of urban inhabitants. In this chapter, self-help is viewed as key to the poor's survival and their claim to belonging. This view is informed by the fact that during the periods under examination, access to resources such as land was done to their exclusion by individuals that abused their closeness to political power. The actions of these networks of patronage ran into the interests of an excluded poor who were also keen on safeguarding their interests in accessing land in the city.

Tenure insecurity became a tool employed in denying the poor access to basic services and subjecting them to constant evictions, as a reminder that they did not belong. Resistance began to shape up, first in uncoordinated forms and subsequently through networks and coalitions built with social movements. Resistance has been fronted by the poor who increasingly felt disenfranchised. They opposed forms of urbanism that have incessantly denied them a voice in shaping urban processes. The growth of different forms of resistance is problematized in this chapter as claims to urban citizenship, in which excluded groups fight for the right to participate in urban processes, to occupy and use space in the city. These claims are further enmeshed with the legal and political transformations that occur in the country.

The chapter pursues this analysis in two sections. The first half of the analysis locates the discussions in a historical context that is denoted by the scheme of social exclusion adopted by the Kenya African National Union (KANU) regime in the wake of the SAPs. In these parts, the chapter illustrates how elite banditry in the 1980s-90s flew into the headwinds of self-help initiatives resorted to by the excluded poor. This later group also wanted recognition as urban citizens and to benefit from the rights that come with such recognition. This first half also traces the growth of self-help initiatives by the urban poor and how this takes the form of their occupation of public land. Such occupation is problematized as a claim to urban citizenship by the excluded groups. The second part of this chapter use Mukuru as an illustration on how claims to urban citizenship have been predicated on one's access to land and their security of tenure. The Chapter examines the Nairobi Metro 2030 and the Nairobi Integrated Urban Development Master Plan (NIUPLAN)

to illustrate how they gesture at inclusion while simultaneously excluding a significant portion of the city.

3.2 Institutionalization of violence in Nairobi

The previous chapter traced the struggles for space in the city when Kenya was a British colony and in the immediate periods following the attainment of independence. Feelings of disenfranchisement among the poor urban majority began to emerge as the new state embarked on a programme of exclusion. Like their colonial predecessors, the ruling elite in the newly independent state viewed slums as a reservoir for resistance, making them easy targets for demolitions.[3] Various methods were deployed to deal with the constantly growing informal settlements. In Nairobi, arson was one of the tools resorted to by the local authorities to eradicate settlements established without City Council's approval. For instance, the City Council Askaris (officers) on 19 January 1970 set alight Kaburini village in a bid to rid Nairobi of unregulated dwellings while a majority of the occupants were away from their homes in their places of work.[4] These actions rendered a population of around 1,700 people homeless, drawing ire from various segments of Kenyan society.[5] The demolitions also left the vulnerable groups that had been pushed to the hard edges of urbanization exposed and fraught with no place to call home.

The implication of the evictions was not only to render the people homeless but also to destabilize the economic life of the inhabitants of such settlements. This deepened poverty among these groups.[6] These actions by the City Council authorities bear stark resemblance with those carried out during the colonial periods where arson was resorted to with the pretext of containing the spread of disease from Native and Indian settlements. The actions also demonstrate the lengths that the regime was ready to go to stamp its authority in the City. Such continuities with colonialist-introduced techniques are succinctly described by Cooper as follows:

> *Harassing squatters, beer brewers and prostitutes underlined the hegemony of the dominant class, whose orderly ways were made to appear legitimate, while the 'illegitimacy' of lower-class life was rubbed in by humiliation of police raids. Such an*

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[3] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 144.
[4] See *East African Standard,* 20 January 1970.
[5] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 122.
[6] Ibid, 145.

urban policy might also preclude other forms of control, co-optation and legitimacy, and make more difficult the development of a hierarchy of privileges and incentives that would encourage a differentiated and respectable working class instead of a threatening urban mass.[7]

The hegemony that Cooper describes saw the dominant elite in post-independence city continue with practices that entrenched social exclusion. Space in the City was subject to constant reconfiguration with increased African settlement. What was previously race-based segregation was replaced by social segregation, with the new African elite occupying the spaces vacated by the Europeans.[8] "Clean-up" campaigns became habitual in a bid to stop Nairobi from becoming what the then president, Jomo Kenyatta, referred to as a "shanty-town".[9] The excluded groups in this infant era of statehood became adept at self-help initiatives. This was a response to government policies which were out of touch with the lived realities of the poor majority in the City. What followed in the subsequent years was the elevation of self-help measures as the normative order of nearly every sector of Kenyan society.[10] The immediate manifestations of this were evident in Nairobi. These self-help initiatives flourished as a result of the superficial solutions by both the colonial administration and the City authorities in post-colonial Nairobi.[11] Cosmetic solutions provided a cloak for the exclusionary agenda that guided both regimes. The self-help phenomenon is examined in greater details in the later parts of this chapter.

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[7] Cooper, F., 'Introduction', in Cooper, F. (ed) *Struggle for the City: Migrant Labor, Capital and the State in Urban Africa* (Sage, 1983) 8.

[8] Rodriguez-Torres, D., 'Nairobi, between Muthaiga and Mathare Valley', in Grignon, F. and G. Prunier (eds), *Le Kenya contemporain,* (Karthals-IFRA, 1998) 209-229.

[9] Nevanlinna, A. *Interpreting Nairobi: The Cultural Study of Built Forms,* 215-17. For the poor it was "Not yet Uhuru" (not yet freedom) as Kenya's first Vice-President Jaramogi Oginga Odinga puts it in his memoir. See Oginga Odinga, *Not Yet Uhuru* (Heinemann, 1968). This situation is captured in an interview conducted in Mathare where the residents decry the situation as follows:

> "We thought after Uhuru…we would be no longer molested. We have been hoping against hope. It is only the stranger in Nairobi who does not know us. Now and then it is either Mathare or Majengo that makes headlines in papers. We are the enemy of the City Council for ever. But where do we go?…If they were replacing them with houses of their taste and allowed us to live in them…but you know what they do. They are simply chasing us. They do not want us. We are an eye-sore. But where shall we go?"

See Manyatta, D., 'The Slum Dwellers Talking, Dan Manyatta Reports from Mathare Valley', *Sunday Nation* April 18, 1971. Quoted in Nevanlinna *Ibid* 218.

[10] Hake, A., *African Metropolis: Nairobi's Self-Help City,* 94.

[11] Ibid, 176. Hake further writes that the policy of burning and demolition pursued by the colonial authorities achieved little or nothing except the displacement of the problem to another site.

Exclusionary practices adopted by the government went against the vision for African socialism which had been suggested as the guiding framework for the new era of self-governance.[12] This vision was expressed in Sessional Paper no. 10 of 1965 on *African Socialism and its Application to Planning in Kenya* which envisioned equitable distribution of resources and opportunities.[13] The Government at this point had embarked on a program to Africanize and nationalize assets which gave it firm control over a number of resources in the State. Land was a key candidate for Africanization.[14] The Government compulsorily acquired land that had earlier been occupied by Europeans who left the country or died without leaving any known heirs. One such example was the land in which the Mukuru informal settlements are currently located.[15] Such acquisitions saw the Government solidify its position as an important landholder in the city.

Indeed, the Nyayo Philosophy ascribed to by Daniel Moi, who succeeded Jomo Kenyatta as the second president of Kenya, signalled the regime's intention to continue with the policies that had been adopted by his predecessor.[16] What soon followed Moi's ascent to the presidency was the centralization and consolidation of power.[17] Political patronage and clientelism became institutionalized with the regime deploying authoritarian tactics whenever it dealt with any perceived opposition. This period also saw the restructuring of the security apparatuses which were now adapted to the whims of a Presidency that Moi had at this point personalized.[18] During single party rule, urban areas were viewed by the regime as enclaves of despondency and insecurity. Grassroots movements emerged in these areas to challenge the one-party state and Moi's authoritarianism.[19] The Moi regime's survival was therefore presumedly pegged on containing the voices of dissent that found a ready home within the disgruntled slum populations. The regime co-

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[12] Mboya, T. *Freedom and After* (Kenway Publications, 1986)164.

[13] Government of Kenya, *Sessional Paper No. 10 of 1965,* 13.

[14] Ibid, 29.

[15] Centre for Urban Research and Innovation (CURI), 'Mukuru kwa Njenga slum upgrading project', (CURI, 2012) 3.

[16] Murunga, G.R., 'Urban Violence in Kenya's Transition to Pluralist Politics, 1982-1992', (1999) XXIV(1&2) *Africa Development,* 173.

[17] Adar, K. G. and Munyae, I.M., 'Human Rights Abuse in Kenya Under Daniel Arap Moi, 1978-2001', (2001) 5(1) *African Studies Quarterly,* 1.

[18] Ibid, 6.

[19] Murunga, G.R., 'Urban Violence in Kenya's Transition to Pluralist Politics, 1982-1992', 176.

opted militias in the slums and embarked on a scheme of informalizing security agents with the aim of unleashing violence on perceived regime opponents.[20]

3.3 Liberalization, Structural Adjustment Programs, and a diminishing patronage

The 1980's saw the adoption of contradictory policy positions by the Government. These contradictions saw the clawing back of some of the gains that had been realized in various areas including in the health care sector. For instance through Sessional Paper No. 10 of 1965, the government made an undertaking of its commitment to recognize and protect the right to health.[21] The immediate period after the attainment of independence, commonly referred to as the "Golden Years" saw some progress with life expectancy rising to 69 years and a simultaneous drop in mortality rates.[22] This period also saw an increase in the number of registered medical personnel.[23] In 1978, Nairobi had 26 hospitals, 2 health centres and 112 health sub-centres and dispensaries, serving a population of approximately 827,000.[24]

The same government through Sessional Paper No.1 of 1986 undermined its initial commitment through its emphasis on cost-sharing in the funding of health care services.[25] The adoption of this Sessional Paper had been triggered by an earlier Sessional Paper No. 4 of 1980 on *Economic Prospects and Policies* which set Kenya on the trajectory of restructuring her economy. The two policy papers were premised on the government's commitment to pursue Structural Adjustments Programs (SAP's) initiated at the behest of the International Monetary Fund (IMF) and the World Bank.[26] To meet the requirements stipulated by the IMF and the World Bank, the government committed to increase taxes and cut down on its expenditure.[27] An immediate implication of the

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[20] Katumanga, M., 'A City under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', (2005) 32(106) *Review of African Political Economy,* 508. Co-optation as a strategy takes the form of conferring some benefits to a potentially threatening group to incentivize them to cooperate. Goodfellow, T. & Jackman, D. 'Control the Capital: Cities and Political Dominance', (2020) 135 ESID Working Paper, 20.

[21] Ndege, G. *Health, State and Society in Kenya,* 145.

[22] Rono, J.K. 'The Impact of Structural Adjustment Programmes on Kenyan Society', (2002) 17(1) *Journal of Social Development in Africa* 82.

[23] Republic of Kenya, *Statistical Abstract 1980* (Central Bureau of Statistics, 1980) 205.

[24] Ibid.

[25] Republic of Kenya, *Sessional Paper No.1 of 1986, Economic Management for Renewed Growth,* Nairobi, 1986. See also Ndege, G. *Health, State and Society in Kenya* 145.

[26] Zeleza, T. 'Economic Policy and Performance in Kenya Since Independence', (1991) 20 *Transafrican Journal of History* 38.

[27] Hecox, W.E. 'Structural Adjustment, Donor Conditionality and Industrialization in Kenya', in Coughlin, P. and Ikiara, G.K. *Industrialisation in Kenya: In Search of a Strategy* (East African Educational Publishers LTD) 204.

adoption of the SAPs was the erosion of the social aspect of human development notably through neglect of provision of social services.[28] For the poor, this had grave ramifications and most were now pushed to the periphery when it came to access to health care and other social services. These were now pegged on an individual's ability to pay. The institutionalization of the SAP's resulted in great suffering among many citizens who had no safety net to fall back to.[29] With the introduction of the SAPs, unemployment became rife given that the government undertook to liberalize the economy which saw the collapse of local industries that could no longer compete with cheap imports from industrialized countries.[30]

Faced with these harsh economic realities, the government retreated to a benevolent posture in the provision of social services.[31] This approach inevitably led to the disregard of certain constituencies when it came to provision of basic services with access only being granted whenever political expediency demanded. The path of benevolence pursued by the government during this period is reminiscent of the colonial attitude where provision of basic services was done to quell rising agitation within Native settlements.[32] The informal settlements that had now mushroomed everywhere were particularly feared by the government which viewed them as bedrocks of resistance, a role that the slums had effectively played during the struggles for liberation.

The official government policy alternated between ignoring the problem and demolishing the settlements all together.[33] Kimari describes this as continuation with a neo-colonial project albeit with African faces at the helm.[34] The urban poor also equated their struggles with the erstwhile struggles against colonialism.[35] Failure by the government to provide alternatives for the occupants of the demolished settlements meant that individuals would still put up structures on any available spaces in the city. Moreover, despite the quest for Africanization of all segments of Kenyan life,

[28] Rono, J.K. 'The Impact of Structural Adjustment Programmes on Kenyan Society', 84.

[29] Zeleza, T. 'The Global Dimensions of Africa's Crisis: Debts, Structural Adjustments, and Workers', (1989) 18 *Transafrican Journal of History* 3-7.

[30] Rono, J.K. 'The Impact of Structural Adjustment Programmes on Kenyan Society', 87.

[31] Ndege, G. *Health, State and Society in Kenya,* 145.

[32] Ibid, 163.

[33] Weru, J. 'Community Federations and City Upgrading: The Work of Pamoja Trust and Muungano in Kenya', (2004) 16(1) *Environment & Urbanization* 48.

[34] Kimari, W. ''Nai-rob-me' 'Nai-beg-me' 'Nai-shanty' Historicizing Space Subjectivity Connections in Nairobi from its Ruins', Phd Thesis (York University, Toronto, 2017) 63.

[35] Klopp, J.M. 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya', 22.

including the structure of the City, the post-independent governments lacked a clear definition of what an African city should look like, and Nairobi continued to witness development that lacked a clear structure.[36]

During this period, the Nairobi City Council retreated in the delivery of its mandate to its inhabitants and instead focused on augmenting its revenue collection capacity.[37] In 1987, the City Council ran 1 hospital, 22 health centers, 5 dispensaries and 25 clinics.[38] These facilities were overstretched with population in the City growing at a rate above what available resources could provide. In addition, the facilities were unevenly distributed with areas with high residential populations being accorded the least number of facilities.[39] The ineptitude displayed by the City's administrators attracted the attention of the National Government which had to replace the City Commission.[40] The replacement also followed the trend where the national government would edge out local authorities which were either mistrusted for political reasons, or in order to enable the usurpation of their responsibilities by the centralized national government.[41] As discussed in chapter six, the contemporary manifestation of this became apparent in 2020 when the national government sought to take over the functions of the Nairobi City County Government.

Development plans prepared by the Nairobi City Commission were hardly implemented.[42] Government capital investment for the development of the city failed to keep pace with the growth of city population with statistics indicating the plummeting of government capital expenditure for every new urban resident in the 1980s.[43] What resulted was the production of extensive sprawl in the city occasioning increased strains on the limited social amenities. Urban poverty, unchecked

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[36] Makworo, M. & Mireri, C. 'Public Open Spaces in Nairobi City, Kenya, Under Threat', 1114.

[37] See City Council of Nairobi, *Annual Report 1977* (1978).

[38] Ikiara, G.K. 'The Challenge of Health Care Provision in the City of Nairobi, Kenya', (1992) 7(1&2) *African Urban Quarterly* 152.

[39] Ibid, 153.

[40] See Kenya National Assembly Official Record (Hansard) 12 March 1987, No.77. See also Kenya National Assembly Official Record (Hansard) 10 May 1988.

[41] McAuslan, P. *Bringing the Law Back: Essays in Land, Law and Development* (Ashgate, 2003) 34.

[42] Owuor, S. & Mbatia, T. 'Post-independence Development of Nairobi City', 5.

[43] Okelo, O. 'The Role of Public Policy in Developing Planning', Paper presented at a workshop organized by First International Conference on Urban Growth and Spatial Planning of Nairobi, Kenya December 13-17, 1988, 17.

growth, densification of informal settlements and deterioration of living conditions became rife. This was accompanied by the breakdown of legal institutions.[44]

The National Development Plan of 1989-1993 expressed the vision of Kenya to become an industrial nation and it heightened the quest for industrialization.[45] The quest for industrialization was further meant to fulfil the SAPs objectives where the government would encourage private investments and relinquish its stakes in the state-run parastatals which were considered to be ineffective and financially imprudent.[46] To fast-track industrialization, the government was required to create incentives for new industries that were to be geared towards production for export. Land reforms were considered key in encouraging private investments. The government undertook measures to supposedly unlock the potential of land through the acceleration of land titling processes.[47] Musembi argues that the area of property systems was a key candidate for contemporary donor-funded 'good governance' reforms after the end of the Cold War.[48] Land held by the government was an easy target as it could easily be argued that the government's holding of public land was unproductive necessitating the relinquishment of these holdings to private entities.

The antagonisms of the 1980s and 1990s between the poor and the political elite cannot therefore be examined without reference to the underlying economic transformations in the country at the time. Michael Chege's work on Mathare and Dagoretti has shown the linkages between the emergent economic interests in the 1980s-90s and the sordid state of affairs in the urban areas.[49] Chege suggests that competing interests in access to urban land between the urban poor and the new commercial interests in the city should be considered against the development of capitalism occurring at the time.[50] For instance, the SAPs demanded that the state relinquishes the grip that it had on the economic activities in the country. The regime's interpretation of these conditionalities

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[44] Ngau, P. 'University of Nairobi-Kenya', Proceedings of a Regional Conference on Approaches to Informal Settlement Upgrading in East Africa 11th July 2012, 10.

[45] Republic of Kenya, *Development Plan 1989-1993* (Government Printer, 1989).

[46] Rono, J.K. 'The Impact of Structural Adjustment Programmes on Kenyan Society', 83.

[47] Hecox, W.E. 'Structural Adjustment, Donor Conditionality and Industrialization in Kenya', in Coughlin, P. and Ikiara, G.K. *Industrialisation in Kenya: In Search of a Strategy* 211.

[48] Musembi, C.N. 'De Soto and Land Relations in Rural Africa: Breathing Life into Dead Theories about Property Rights', (2007) 28(8) *Third World Quarterly* 1474.

[49] Chege, M., 'A Tale of Two Slums: Electoral Politics in Mathare and Dagoretti', (1981) 20 *Review of African Political Economy.*

[50] Ibid, 75.

was twofold. Firstly, the political elite restructured its hold on the economy by establishing industries that would directly benefit from the waning presence of the state in the economy. Secondly, political patronage was restructured to coincide with the diminishing of patronage resources in the country and public land, which was unfettered with international conditionalities, became the key patronage resource that the ruling elite turned to.[51] The fragilities occasioned by the restructuring of the economy were particularly felt by the urban poor whose sources of livelihoods were shattered, rendering their survival in the city fragile.[52]

Implementation of economic reforms saw the government bestow control of Government Land in some areas to industries though the issuance of grants. In Nairobi, for instance, the government allocated huge chunks of land to individuals for the purpose of establishment of industries. However, as McAuslan posits, [53] and as alluded to by Manji,[54] implementation of land reforms was a task for which most governments lacked capacity.[55] This occasioned the adoption of an ambivalent approach by the government towards the reforms. The approach taken by the government in implementing these land reforms saw the emergence of groups with competing interests in land and with varied levels of tenure security and access to land. The land reform initiatives pursued by the Kenyan government in the 1980's and early 1990's further entrenched exclusion. This was because of the tenure contestations that ensued from the competing interests to land in the urban areas.

Contestations arose following illegal and unlawful allocations prevalently deployed by the ruling elite and public officials. The socio-spatial polarization occasioned by the economic processes pursued by the government during this period form the basis of this chapter and I examine below how access to land became the basis for social exclusion and what Wacquant refers to as spatial

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[51] See Klopp, J., 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya', (2000) 47(1) *Africa Today* 17.

[52] Murunga, G.R., 'Urban Violence in Kenya's Transition to Pluralist Politics, 1982-1992', (1999) XXIV(1&2) *Africa Development* 181.

[53] McAuslan, P. 'Making Law Work: Restructuring Land Relations in Africa', (1998) 29 *Development and Change* 529.

[54] Manji, A. 'Land Reform in the Shadow of the State: The Implementation of the New Land Laws in Sub Saharan Africa', (2001) 22(3) *Third World Quarterly* 332.

[55] The manifestation of this is discussed in the next chapter which will detail how administrative lapses and corrupt practices by land authorities saw the vesting of grants to individuals and companies that failed to meet the grant conditions.

concentration and stigmatization of poverty.[56] Yiftachel posits that certain state-sanctioned activities coercively disperse groups into new informal and unplanned gray spaces.[57] The state sanctioned activities create environments of neglect where authorities are bestowed with powers to legalize, criminalize, incorporate or evict.[58] As I argue in the later parts of this chapter, tenure insecurity has been deployed to create these 'gray spaces' in the City and to sustain what Kimari refers to as an 'ecology of exclusion'.[59] Individuals that occupy these gray spaces are neither in nor out. Their belonging in the city is often mediated by the state which define the terms for inclusion.

3.4 Reinvention of land patronage and growth of a bandit economy

The diminishing grip that the ruling Kenya African National Union (KANU) elite previously had on state parastatals prior to the adoption of SAPs necessitated the resort to alternative patronage assets to sustain its client networks.[60] Public land readily took its place as a patronage asset sustaining patron-client networks. The Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u Commission) in its Report documents the elaborate schemes devised to allocate public land to individuals and corporations in total disregard of the public interest. The Commission particularly noted that a combination of legal and political factors conspired to facilitate illegal and irregular allocations of public land. The Presidential power of allocation of land through grants was singled out as a power that was wantonly abused.[61] According to Syagga, most of the illegal allocations of public land occurred soon after the multi-party elections of 1992, 1997, and 2002 and such allocations were made through direct grants as political reward or patronage.[62] The scheme of rewarding the rich with urban land, in what Manji refers to the

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[56] Wacquant, L.D. 'Urban Marginality in the Coming Millennium', (1999) 36(10) *Urban Studies* 1639-47. See also Byrne, D. *Social Exclusion* (Open University Press, 2005) 119.

[57] Yiftachel, O. 'Theoretical Notes on 'Grey Cities': The Coming of Urban Apartheid', (2009) 8(1) *Planning Theories* 91.

[58] Ibid, 93.

[59] Kimari, W. ''Nai-rob-me' 'Nai-beg-me' 'Nai-shanty' Historicizing Space Subjectivity Connections in Nairobi from its Ruins', 54.

[60] See Klopp, J., 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya', 17.

[61] Republic of Kenya, 'Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land', 7.

[62] Syagga, P. 'Public Land, Historical Land Injustices and the New Constitution', SID Constitution Working Paper No. 9, 14.

"perversion of the public interest",[63] paid no heed to the urban poor, sparking discontent among this group.[64]

With the privatisation of public goods (in this case public land) Katumanga argues that a bandit economy flourished in the early 1990s.[65] These acts were perpetuated by the political networks of kin and clients who undeniably operated with the backing of the Moi administration. Where formal institutions and procedures inhibited or prohibited the banditry, or what Klopp refers to as "the grabbing mania"[66], they were simply ignored or manipulated to facilitate the attainment of accumulation by the elite.[67] The Ndung'u Commission Report highlights the numerous occasions where the Commissioner of Lands unlawfully made grants of land under section 3 of the Government Lands Act[68] (repealed), a power that only the President could exercise. Indeed, the Report documents the blatant disregard of the substantive and procedural safeguards for the allocation of public land by elements keen on subverting the public interest.

This period also saw what Ngau refers to as pervasive institutional decay.[69] The KANU regime adopted the approach of co-opting other entities such as the corrupt city council in this scheme of illegal accumulation while ensuring the sufficient erosion of the institutional capacity of the city council to enforce its own by-laws.[70] Council laws and regulations then became malleable to meet the interests of politicians. Moreover, a majority of the councillors who had been elected to represent the interests of their constituents in the different parts of the city owed their allegiance to their political parties and had little regard to the affairs of the electorate.[71]

As already noted in this chapter, the adoption of the SAPs saw the political elite restructure their hold of the economy by establishing industries that would ultimately benefit from the relinquishing

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[63] Manji, A., 'The Grabbed State: Lawyers, Politics and Public Land in Kenya', (2012) 50(3) *Journal of Modern African Studies* 469.

[64] Olima, W.H.A. 'The Conflicts, Shortcomings, and Implications of the Urban Land Management System in Kenya', (1997) 21(3) *Habitat International* 327.

[65] Katumanga, M., 'A City under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', 507.

[66] Klopp, J., 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya' 9.

[67] Berman, B, Cotrell, J. and Ghai, Y., 'Patrons, Clients, and Constitutions: Ethnic Politics and Political Reform in Kenya', (2009) 43(3) *Canadian Journal of African Studies* 478.

[68] Chapter 280, Laws of Kenya.

[69] Ngau, P., *For Town and Country A New Approach to Urban Planning in Kenya,* (2013, Africa Research institute) 10.

[70] Katumanga, M., 'A City under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', 511.

[71] Mittulah, W.V., 'Local Political System of Nairobi', in Charton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 324.

of the state's stake in the economy. These industries became key beneficiaries of the illegal allocations of public land. The Ndung'u Report in its annexes provides a list of land and names of individuals and corporations to whom public land was illegally allocated. The Report lists a total of 821 companies nationally that were beneficiaries of such illegal allocations. Surprisingly, even land within State House (Plot No. 209/5581/2) that had been reserved for setting of a children's playground was illegally allocated to an engineering company.[72] One would think that the land on which the official residence of the president is located would escape the 'grabbing mania' but this was not the case. In Mukuru kwa Njenga, land that had been earmarked for the establishment of an open-air market was illegally allocated by the Commissioner for Lands to a user who converted it for business use.[73] A cursory analysis of the Ndung'u Report annexure reveals clear ties between the individuals and companies listed as beneficiaries of illegally allocated public land and the Moi administration. These, and many more examples, paint a picture of intricately curated networks of elite banditry sustained by a corrupt Commissioner of Lands with the blessings of the presidency.

Public land also became a key element in speculation, exclusion and displacement.[74] Nairobi became the location for a class of spectators who drew their support from the KANU regime and who endeavoured to structure space in the city for their benefit.[75] Speculators further held land in the city unproductively as most failed to develop their allocated parcels which in most cases were subsequently invaded by squatters.[76] Companies were established for the sole purpose of benefiting from the land allocations and not to carry out any business. These companies would use their allocated land as collateral to obtain credit from banks. In most cases, land was allocated to individuals and companies notwithstanding the fact that the parcels already had occupants.

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[72] Republic of Kenya, 'Report of the Commission of Inquiry into the illegal/Irregular Allocation of Public Land- Annexes Volume I', 52.

[73] Ibid, 98.

[74] The Ndung'u Report also highlights the practice of holding land for speculative purposes, a practice that was rife with the illegal allocations. Republic of Kenya, 'Report of the Commission of Inquiry into the illegal/Irregular Allocation of Public Land', 8.

[75] Rodriguez-Torres, D., 'Public Authorities and Urban Upgrading policies in Eastlands', in Charton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 92. See also Manji, A., 'Bulldozers, Homes and Highways: Nairobi and the Right to the City', (2015) 42(144) *Review of African Political Economy* 209. Nairobi had already become the locus for land speculation during the colonial period.

[76] Olima, W.H.A. 'The Conflicts, Shortcomings, and Implications of the Urban Land Management System in Kenya', 328.

Squatters were in effect deemed to be invisible to the land authorities and their presence could not stand in the way of the elite grabbers. As Jane Weru observes;

> *"So the politician [being bribed] would say, 'I want land in Nairobi', because Nairobi is where land is nice and prime. They would go to the lands office and look for empty land. They would see empty land in Mathare, Kibera and be given titles over that land. But when they went on the ground they would find that the land is occupied by people. So they would just get police to carry out evictions."*[77]

The beneficiaries of the speculative practices enjoyed protection from the allocating agencies in what appears to be a scheme to defraud the public and state-controlled financial institutions. The state's control of land in the city was greatly diminished with no spaces being left for the establishment of public utilities.[78] Cannibalisation of public land by the political elite further resulted in a lot of misery and deepened inequality in the city where most of the people were unable to access land. Public land for the establishment of housing units by the government and the City Council was no longer available, leaving the intended beneficiaries with no option but to occupy slums or to encroach on any available spaces in the city.[79] Urban planning has also been gravely impacted from these illegal acquisitions and this explains the haphazard developments in the city.[80]

3.5 Self-help schemes in the city

The poor in the city were at this point embroiled in a quest for survival having been excluded from accessing space and opportunities in the city. Self-help schemes were employed to respond to the immediate threats of evictions and lack of access to social services that prevailed in the areas that they occupied.[81] These schemes also demonstrate the class schisms that emerged from the deployment of exclusionary practices by an elitist regime. The excluded poor were cognisant of the fact that their survival was pegged on their thrift rather than the bounty of the government. This group took various approaches to sustain their existence which included establishment of

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[77] Lines, K., and Makau, J., 'Muungano Nguvu Yetu (unity is strength) 20 years of the Kenyan Federation of Slum Dwellers', (2017) iied Working Paper 18.

[78] Olima, W.H.A. 'The Conflicts, Shortcomings, and Implications of the Urban Land Management System in Kenya', 327.

[79] Rodriguez-Torres, D., 'Public Authorities and Urban Upgrading Policies in Eastlands', in Charton-Bigot, H. & Rodriguez-Torres, D. (eds) *Nairobi Today: The Paradox of a Fragmented City* (Mkuki na Nyota Publishers, 2006) 67.

[80] Republic of Kenya, 'Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land', 118.

[81] Katumanga, M., 'A City Under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', 510.

settlements in open public spaces and unutilized private lands. The methods adopted are described by Andrew Hake in his seminal work *African Metropolis: Nairobi Self-help City* where he traces the growth of self-help initiatives in Nairobi during the periods of 1950s-70s.

Hake posits that nearly all aspects of the lives of the urban poor in Nairobi were sustained by self-help initiatives that took different forms including; self-help jobs, self-help medical practice, self-help welfare, and illegal and unregulated settlements.[82] In this study however, the impetus by the excluded groups to resort to self-help is located within social consciousness. This consciousness was advanced by the democratic movements that sprung up in the 1990s. I suggest that this consciousness enabled the excluded to rejuvenate themselves from within and claim a stake in shaping the governance processes in a truncated democratic space. The practical manifestations can be seen by reference to the Mukuru slums particularly with regard to the occupation of the land by squatters.

The KANU regime had a penchant for violence which was deployed to counter the resistance by the poor against exclusion. The elite were also keen to ensure the recomposition of the urban spaces, especially in areas that the poor had been evicted from.[83] Otiso points out the fact that the spaces where the poor are evicted from usually witness redevelopment with permanent high-rise buildings becoming the common feature.[84] Grabbers have largely been the beneficiaries of the recomposition of these spaces as it allows them to develop structures which they eventually rent out.[85] In Mukuru, recomposition has also taken the form of reparcelling and subdivision of land previously occupied by squatters. During the Moi regime, informality was criminalised with brute force being deployed to counter any resistance.

The destruction of Muoroto slums in 1990 marked a phase where violence was appropriated and normalized as a tool for political control and to facilitate the accumulation of public land by politicians.[86] The deep involvement of KANU operatives in the demolitions and ensuing violence showed the lengths that the regime was ready to go to contain dissent that flourished in the wake

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[82] Hake, A., *African Metropolis: Nairobi's Self-Help City* (Sussex University Press, 1977).
[83] Katumanga, M., 'A City under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', 518.
[84] Otiso, K., 'Forced Evictions in Kenyan Cities', (2002) 23(3) *Singapore Journal of Tropical Geography* 261.
[85] Republic of Kenya, 'Report of the Commission of Inquiry into the illegal/Irregular Allocation of Public Land', 119.
[86] See Klopp, J.M., 'Remembering the Destruction of Muoroto: Slum Demolitions, Land and Democratisation in Kenya', (2008) 67(3) *African Studies* 298.

of wanton elite accumulations. For the Moi administration, dissent was linked to support of multipartysim and the poor squatters became easy targets of state violence.[87] Private violence was also co-opted to counter the brewing resistance. This involved enlisting regime-friendly gangs and militia.[88] Violence was also deployed in a calculated manner with the regime abandoning it whenever it required to win over support.

3.6 Producing marginality in Mukuru

Within the informal settlements of Mukuru kwa Njenga, Mukuru kwa Reuben and Viwandani, the pervasive heritage of maldistribution of land in the Nairobi is more glaring than any other informal settlements in the city. Three factors contributed to this situation. The first factor arises from the way the land was vested in the government in the first place. As already noted in chapter one, the land in Mukuru was designated as unalienated government land upon the departure of the colonial settlers who hitherto had sisal farms and operated a quarry on the land.[89] The colonial settlers employed African workers, a majority of who continued to occupy the land after the settlers' departure. Mukuru kwa Njenga, one of the settlements within the Mukuru SPA, draws its name from Mzee Njenga who until his recent death resided in kwa Njenga and is said to be one of the first African workers in the area.[90] In kwa Reuben, the remaining African workers invited their friends and relatives who also built temporary structures on the farm leading to the expansion of the settlements.[91]

The second factor relates to the treatment accorded to the inhabitants of Mukuru during the allocations that were made in the 1990s. The Moi administration embarked on a process of allocating government land through grants under the repealed Government Lands Act (GLA). Section 3 of the Act vested the authority to allocate land through grants in the president. Regarding this special power, the Act provided as follows;

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[87] Ibid, 295.

[88] Ibid, 299. See also Katumanga, M., 'A City Under Siege: Banditry & Modes of Accumulation in Nairobi, 1991-2004', 508.

[89] The Government Land Act (Cap 280) (repealed) defined unalienated Government land as "Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment." See also Lamba, A., 'Land Tenure Management Systems in informal Settlements: A Case Study in Nairobi', MSc Thesis (International institute for Geo-information Science and Earth Observation, 2005) 59.

[90] Ibid.

[91] Wairitu, J., 'Muungano Support Trust', available at http://muunganosupporttrust.files.wordpress.com/2012/02/mukuru-inventry.pdf 20, accessed May 8, 2019.

> "*The President, in addition to, but without limiting, any other right, power or authority vested in him under this Act, may-*
> *(a) Subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land…*"

The GLA was instructive on the manner through which public land could be allocated. The same was largely ignored with the Commissioner of Lands usurping powers reserved for the President.[92] The power to allocate land through grants was a power exclusively reserved for the president. Section 7 of the GLA unequivocally barred the exercise of this power by the Commissioner. A review of some of the grants issued on the Mukuru land shows that the grants were issued by the Commissioner of Lands who was purportedly acting on orders from the president. The individuals and companies issued with the grants also exhibit close association with the then ruling KANU regime. These allocations were made notwithstanding the fact that most of the parcels were already occupied by squatters. This signals the regime's intention to deny these groups recognition of urban citizenship.[93] Other parcels lay vacant for many years after they had been allocated and were subsequently encroached upon.[94] This initiated the invisibility that would subsequently characterise the inhabitants of these settlements.

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[92] Republic of Kenya, 'Report of the Commission of Inquiry into the illegal/Irregular Allocation of Public Land, 8.
[93] See Ouma, S. Weru, J. and Kinama, E., 'Exploring Options for Leaseholds in the Mukuru Special Planning Area', Paper presented at the 2019 World Bank Conference on Land and Poverty, March 27, 2019.
[94] Ibid, 8.
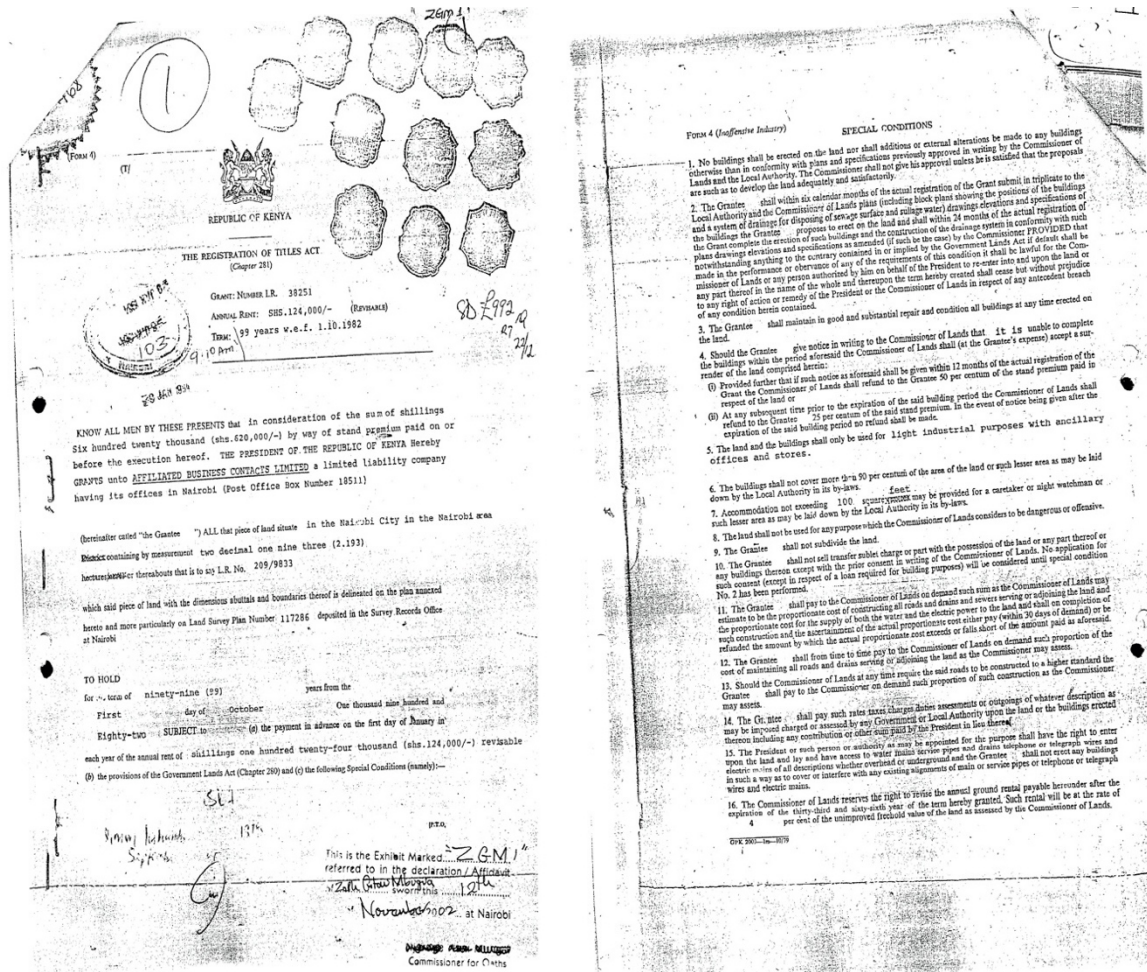
Fig 7: *A copy of certificate of title issued to a grantee in Mukuru* (Source: Author)

Once a certificate of title had been issued to a grantee, the certificate was deemed to be absolute evidence of proprietorship with the ownership being deemed absolute and indefeasible.[95] Additionally, the grants issued for the land in Mukuru contained certain Special Conditions that bound the grantees in line with section 3(b) of the GLA. The grants further defined the annual rent that the grantees would pay for their occupation and use of the land. It is however worth noting that many of the grantees failed to meet the grant conditions. Some of the grantees, upon being issued with the grants, used the land as collateral to obtain credit facilities from financial institutions in breach of Special Conditions 2, 5 and 10 while failing to develop the parcels. Other grantees embarked on illegal subdivisions of the parcels allocated to them in breach of Special Condition 9. The table below illustrates some of the breaches that I saw when I studied the titles.

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[95] Registration of Titles Act (Cap 281) (repealed) s. 23.

Table 2: *Illustration of breach of special conditions in Mukuru*

Special condition	Grant/L.R Number	Nature of breach
2. The Grantee shall within six calendar months of the actual registration of the Grants submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and a system of drainage for disposing sewage surface and sullage water) drawing elevations and specifications of buildings the Grantee proposes to erect on the land and shall within 24 months of the actual registration of the Grant complete the erection of such buildings……	1. I.R. 51O34 (L.R. 209/10306)	I.R. 51034 was not developed within the two years specified in the grant. The grantee further attempted to unlawfully sell the land as evidenced by a letter dated 25th May 2012. In the letter, it is indicated that the grantee, a limited liability company, was only established to own land which is indicative of the speculative practices adopted by the grantees.
9. The Grantee shall not subdivide the land without prior consent in writing of the Commissioner of Lands.	1. L.R. 209/12425	Grantee has been subdividing the land and selling the plots.
10. The Grantee shall not sell, transfer, sublet, charge or part with the possession of the land or any part thereof or any buildings thereon except with the prior consent in writing of the Commissioner of Lands. No application for such consent (except in respect of a loan required for building purposes) will be considered until Special Condition No.2 has been performed.	1. I.R. 58302 (L.R. 209/10341) 2. I.R. 65381 (L.R. 209/11881)	I.R. 58302 was charged to Post Bank Credit Ltd on 27/9/1993 before development. Grantee has in the past also attempted to sell the land. A charge was registered against I.R. 65381 on 29/5/1995.

Lastly, Mukuru is fraught with layered claims over land. The key players in Mukuru are tenants, structure owners, grantees, and the government both at the national and county level.[96] According to a representative from Slum Dwellers International (Kenya), it is not always easy to distinguish between these stakeholders, as a person may fall into one or more category.[97] For instance, a person may both be a structure owner and a tenant. Similarly, a structure owner may in addition be a government representative or an elected official such as a Member of Parliament or a Member of County Assembly (MCA).[98] Each of the stakeholders also lays some claim to the land within the Mukuru SPA.

Ultimately, rent-paying tenants remain as the principal stakeholders in the settlements with the settlements having a tenancy rate of 92 percent.[99] Tenure insecurity has particularly caused

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[96] Weru, J. Wanyoike, W. and Di Giovanni, A., 'Confronting Complexity: Using Action-Research to Build Voice, Accountability, and Justice in Nairobi's Mukuru Informal Settlements', 237.

[97] Key informant interview with member of a social movement on October 2, 2020.

[98] Ibid.

[99] Weru, J., *et al.,* 'The Akiba Mashinani Trust, Kenya: Role of a Local Fund in Urban Development', (2017) iied Working Paper, 22.

numerous challenges for tenants who continue to experience forced evictions that are mostly perpetrated by the police at the behest of the grant holders.[100] This group is located within what Yiftachel and Roy refer to as 'gray spaces', between what is considered to be legal and what is not, with the latter habitually attracting the state's violent power of eviction and destruction.[101] The nexus between land tenure and access to basic services is manifested in Mukuru where the inhabitants continue to survive on close to no provision of basic services by local authorities.[102] Discussions in chapter one have already elaborated this by showing the close linkages between security of tenure and access to basic services in Mukuru.
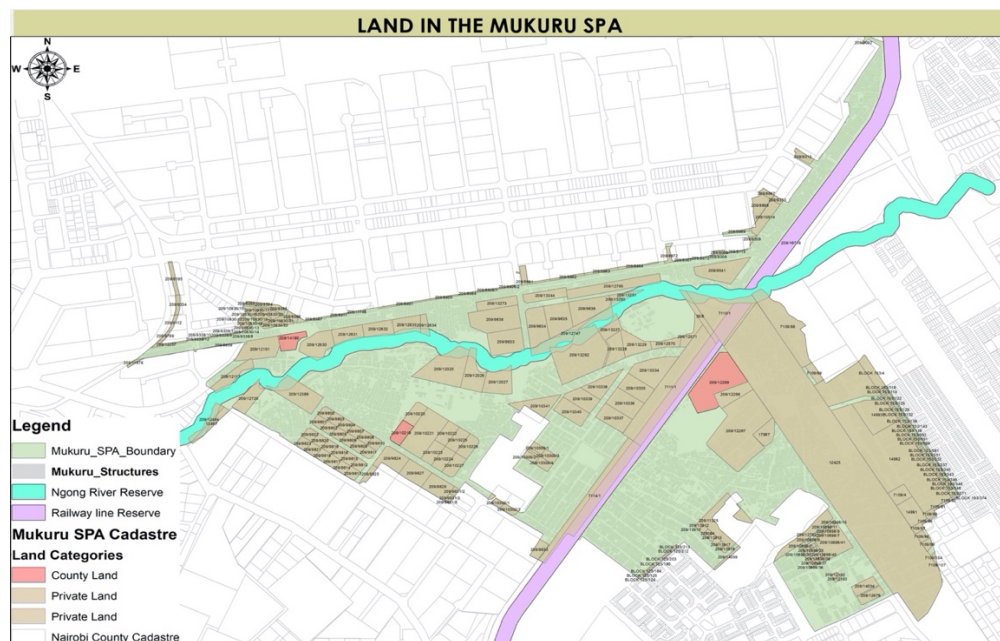
Fig 8: *Land Ownership in Mukuru.* (Source: Slum Dwellers International)

Citizenship rights in Mukuru are conferred to those who have legally recognised title like the one that has been illustrated in Figure 7. For most of the tenants in Mukuru, the lack of formal title has

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[100] See Weru, J., Wanyoike, W., and Di Giovanni, A., 'Confronting Complexity: Using Action-Research to Build Voice, Accountability, and Justice in Nairobi's Mukuru Informal Settlements', 240. Addressing the contested claims of ownership has been identified as an important aspect in the quest to develop an integrated development plan for the Mukuru SPA. See SDI Kenya and Akiba Mashinani Trust, 'An Integrated Area Development Plan: An Inception Report', (2017, SDI Kenya) 5.

[101] Yiftachel, O. 'Theoretical Notes on 'gray cities': The Coming of Urban Apartheid?', (2009) 8(1) Planning Theory, 92. See also Roy, A. 'Slumdog Cities: Rethinking Subaltern Urbanism', (2011) 35(2) *International Journal of Urban and Regional Research*, 235.

[102] See Mutinda, M. and Otieno, S., 'Unlocking Financing for Slum Redevelopment: The Case of Mukuru', (2016) Harvard Africa Policy Journal.

been used to deny them the opportunity to perform their citizenship. Inability to access secure tenure precludes them from shaping planning processes and accessing opportunities in the city. Tenure insecurity sustains the existence of a limited citizenship which can also be erased through acts of evictions. It makes the inhabitants of informal settlements unable to function as full agents who can make meaningful impact on urban planning processes. An evident manifestation of a denial of citizenship is exclusion from planning processes. Urban planning, as practiced in Nairobi valorises private land ownership and is implicated in the erasure of other rights that do not amount to ownership. Individuals will find difficulties in relying on subsisting use or occupancy rights as the basis for their participation in spatial planning. Manifestations of this will be discussed below.

Having ownership rights has also been identified as an important determinant of agency which is instrumental whenever individuals participate in spatial planning.[103] McAuslan draws connections between securing tenure for the poor urban majority and their participation in urban planning.[104] According to him, securing tenure enables the recognition of the poor in urban areas as urban dwellers rather than urban transients.[105] Such recognition ensures that these groups can be meaningfully engaged in urban development processes as their stake in the city is recognised. Tenure insecurity has thus contributed to the exclusion of Mukuru from urban planning processes. This has implications on access to basic services by the inhabitants.[106] It goes to show the instrumentality of property rights in solving the numerous problems witnessed in informal settlements.[107]

In no place has the connection between tenure security and participation been more apparent than during the formulation of Nairobi Metro 2030, a master plan developed by the then Ministry of Nairobi Metropolitan Development (MoNMeD) and the Nairobi Integrated Urban Development Master Plan (NIUPLAN) developed by Japan International Cooperation Agency (JICA) for the Nairobi County Government. The former was developed in 2008 just before Kenya adopted a new

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[103] Ibid, 191. Agency connotes "a person's ability to pursue goals that she values and has reason to value." See Alkire, S. and Deneulin, S., 'The Human Development and Capability Approach', in Deneulin, S. and Shahani, L. (eds) *An Introduction to the Human Development and Capability Approach: Freedom and Agency* (2009, Human Development and Capability Association) 37.
[104] McAuslan, P., 'The Urban Land Question', 550.
[105] Ibid.
[106] University of California Berkeley, 'Mukuru Special Planning Area Rapid Health Impact Assessment', 8.
[107] Alder, G., 'Tackling Poverty in Nairobi's Informal Settlements: Developing an Institutional Strategy', (1995) 7(2) *Environment and Urbanisation,* 91.

Constitution and the latter in 2014, four years after the Constitution came into effect. As I show below, it is apparent that in both Metro 2030 and NIUPLAN, an urban citizen is envisioned in a very limited sense. The focus in these two is on those with access to land and secure land tenure. This is considered an important entry point to urban citizenship, and a licence to participate in urban planning. Conversely, tenure insecurity weakens claims to citizenship and denies individuals agency to participate in urban planning processes.

The paradox of these two plans was that their formulation was happening within a non-egalitarian context of land relations. On the other hand, they pegged the eligibility to participate in urban planning on private ownership of land as will be seen below. As in the case of maps, spatial plans can tell a compelling story on belonging, of who can be seen and who must remain invisible.[108] With these two plans, we can already see the boundaries defining who is in and who is out.

3.7 The exclusionary logics of Nairobi Metro 2030 and NIUPLAN

3.7.1 Nairobi Metro 2030

The Nairobi Metro 2030 was formulated in 2008 under the MoNMeD with the aim of making Nairobi a "world class African metropolis".[109] Even though Metro 2030 suggests that its development was informed by among other aims 'ensuring participation and inclusivity,' there is no evidence to show that the most vulnerable urban inhabitants were involved in its formulation.[110] The Plan has an entire section dedicated to addressing questions on quality of life and inclusiveness. It adopts a superficial language when dealing with the question of security of tenure. No concrete proposals are made on how to ensure that the "inclusive" city envisioned incorporates informal settlements. Indeed, the word "informal settlements" appears only twice in the entire Plan. The Plan speaks generally on the need to eliminate slums in the Nairobi Metro.[111] Metro 2030 appears to have been structured in a technicist fashion with the language of inclusivity being adopted to give an impression of the Plan's inclusiveness. Moreover, the only indication of participation of the inhabitants of the city is where the Plan refers to participation by resident

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[108] Pieterse, E. 'Stitching Fragments and Fractals', available at https://gerhardmarx.co.za/Stitching-fragments-fractals-Edgar-Pieterse accessed February 1, 2021.

[109] Republic of Kenya, *Nairobi Metro 2030: A World Class African Metropolis* (Republic of Kenya 2008).

[110] In his statement, the then Minister for MoNMeD hailed Metro 2030's formulation process as being inclusive and that it engaged different stakeholders including local communities. See Ibid, xxii.

[111] Ibid, 96.

associations which are registered entities and are commonplace in the middle and high-income areas of the city where land tenure is secure.[112]

Throughout the Plan, swanky graphical illustrations of "world class infrastructure" are used to present idealised alternative futures of the city. This has led to the Plan being critiqued as elitist in its approach with "destructive modernist ideas".[113] The modernist depiction of the city in Metro 2030, its illustrations of planned elite suburban housing and development, and its alienation of informal settlements in the city further illustrates the plan's neoliberal structuring.[114] Such a structuring makes the 'world class' definitions of the urban the de facto focus of local politics and initiatives.[115] Ananya Roy terms this as 'poverty capital' in which poverty is converted into or made visible for global capital.[116] In Nairobi, photographs have been mounted on billboards which stand disjunctively against the glaring reality of informality in the city.[117]

Such illustrations of 'a green city in the sun' or 'world-class city region' stimulate what Myers refers to as a 'jaundiced optimism' as large sections of urban residents are often alienated.[118] We can even see this with the construction of mega-infrastructure in the city like the Nairobi Expressway which will have limited benefits for the poor. Moreover, the regeneration gaze is habitually directed at poor neighbourhoods. They aim at dispossession of the inhabitants of these neighbourhoods who will suffer from the displacements that will inevitably follow.[119] The

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[112] Ibid, 12.

[113] Huchzermeyer, M. *Tenement Cities: From 19th Century Berlin to 21st Century Nairobi* (2011, Africa World Press) 236. The Terms of Reference outlined in the Request for Proposals issued by the MoNMeD (which was open for international bidding) for the development of a Spatial Planning Concept for the Metro 2030 master plan required the consultant to develop a land use system that would among other things: build an internationally competitive and inclusive economy for prosperity; deploy world class infrastructure and utilities for the region; optimise mobility and accessibility through effective transportation; enhance the quality of life and inclusiveness in the region; deliver a unique image and identity through effective place branding; ensure a safe and secure Nairobi Metropolitan Region; and employ World Class Metropolitan Governance Systems. See Republic of Kenya, *Request for Proposals (RFP) to Develop a Spatial Planning Concept for the Nairobi Metropolitan Region* (2009, Republic of Kenya) 10.

[114] Myers, G., 'A World-Class City-Region? Envisioning the Nairobi of 2030', (2014) 59(3) *American Behavioral Scientist,* 340.

[115] Pieterse, E., *City Future: Confronting the Crisis of Urban Development* (UCT Press, 2008) 133.

[116] Roy, A. 'Slumdog Cities: Rethinking Subaltern Urbanism', 229.

[117] Smith, C., 'Our Changes'? Visions of the Future in Nairobi', (2017) 2(1) *Urban Planning,* 36.

[118] Myers, G., 'A World-Class City-Region? Envisioning the Nairobi of 2030', 330. See also Kimari, W. 'We Will be Back to the Street!': Protest and the 'empires' of Water in Nairobi', in Bekker, S., Croese, S. and Pieterse, E. (eds) *Refractions of the National, the Popular and the Global in African Cities* (African Minds, 2021)104.

[119] Porter, L., 'Possessory Politics and the Conceit of Procedure: Exposing the Cost of Rights Under Conditions of Dispossession', (2014) 13(4) *Planning Theory*, 391.

depiction of the stakeholders' forum through the photographs used in the Metro 2030 Plan also point at an elitist approach as there is no illustration of such participatory forums being held in informal settlements.[120]

3.7.2 Nairobi Integrated Urban Development Master Plan (NIUPLAN)

NIUPLAN was developed by the NCCG with support from the Japanese Government through JICA. Its development commenced in 2013, three years after the coming into force of the 2010 Constitution and was completed a year later in 2014. NIUPLAN's formulation saw the inaugural Nairobi County administration take on the county planning mandate vested on it by the Constitution and the County Governments Act. The development of the Plan was necessitated by the expiration of the 1973 Nairobi Metropolitan Growth Strategy in 2000.[121] NIUPLAN outlines the high priority projects to be undertaken in the city which consist of a number of largescale infrastructure projects aimed at reconfiguring the city's outlook.[122] The Plan is presented as the product of numerous grassroots meetings and consultation forums held in each of the nine sub-counties in Nairobi.[123] It outlines the number of public notices that the project convenors put in place and it also details the stakeholder meetings that were conducted.[124]

Public meetings are said to have been conducted in three parts. The first part of the Stakeholder Meetings was conducted at the subcounty level drawing a total of 196 participants.[125] The second part drew participants from selected sector groups that included resident associations and professional associations.[126] The third part was also conducted in the nine subcounties and drew from 169 participants.[127] Subsequently, the NCC organised 23 public consultations which equalled to one consultation per constituency.[128] It is notable that the focus of these public participation forums seemed to have been directed towards the inhabitants of middle and high-income

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[120] Myers, G., 'A World-Class City-Region? Envisioning the Nairobi of 2030', 340.

[121] Nairobi City County, *The Project on Integrated Urban Development Master Plan for the City of Nairobi in the Republic of Kenya- Final Report* (2014, Nairobi City County) foreword.

[122] Ibid, ES 19.

[123] Ibid.

[124] Ibid, 10-8.

[125] Ibid.

[126] Ibid.

[127] Ibid.

[128] Ibid, 10-18.

neighbourhoods with resident associations in these areas taking prominent roles in the sessions.[129] This can be deduced from the fervour with which resident associations are engaged while no visible efforts are made to engage community groups within the informal settlements.

The disparity in the levels of engagement is illustrative of who the planning agencies imagine as urban citizens and hence entitled to benefit from planning processes. It draws from the exclusionary instincts which historically define urban planning in the city. Under NIUPLAN, the citizen is defined within the bounds of spatial legality.[130] Eligibility to participate in formulating the plan is in equal measure associated with this fact. The interests of marginalised groups that are mostly affected by tenure insecurity are thus disregarded. An analysis of who is included and who is excluded from the planning processes helps to deduce the nature of power relations in Nairobi.

Even in constituencies where informal settlements are prevalent, NIUPLAN's public consultation approaches failed to identify the real underlying issues. This can be seen from the proposals outlined in the Master Plan.[131] For instance, the Master Plan provides graphical illustrations of the envisioned interventions for Imara-Daima (a middle-class neighbourhood) while leaving the adjacent Mukuru informal settlements untouched.[132] According to Kimari NIUPLAN accepts informal settlements in the city with ambivalence with planning happening in their peripheries in areas having secure tenure.[133] Poor urban settlements are effectively eliminated from the 'development impulse' while at the same time paradoxically being acknowledged to be an important aspect of the city.[134] In Mukuru, we see this where NIUPLAN outlines the need to have an access road joining Mukuru to Imara-Daima, perhaps to facilitate movements of undercompensated labour from Mukuru to the legal and tenured infrastructures that surround the settlements. NIUPLAN's posture here sets these two adjacent neighbourhoods on completely

[129] Nairobi City County, *Public Consultation for the Integrated Urban Development Master Plan for the City of Nairobi,* Day 5 Workshop proceedings on 27/02/2014 held at Bomas of Kenya, Karen/Langata Constituency 4.

[130] Bhan and Revi understand spatial illegality as "all forms of inhabitation and the production of space by urban residents that do not confer upon them a de jure property right." See Bhan, G. & Revi, A. 'The Intent to Reside: Spatial Illegality, Inclusive Planning, and Urban Social Security', 86.

[131] See Nairobi City County, *Public Consultation for the Integrated Urban Development Master Plan for the City of Nairobi,* Workshop Proceedings Held 03/02/2014 at St. Jude Catholic Church Hall, Embakasi South Constituency.

[132] Nairobi City County, *The Project on Integrated Urban Development Master Plan for the City of Nairobi in the Republic of Kenya- Final Report* 6-46.

[133] Kimari, W. 'We do not Want any More Masters': Ruins, Planning and the "messy labours" of the Urban Poor', (2016) XIV(5) *Mambo!* 3.

[134] Ibid. See also Manji A., 'Bulldozers, Homes and Highways: Nairobi and the Right to the City'.

different development trajectories while at the same time seemingly acknowledging their links with each other.

The exclusionary logics employed by Nairobi Metro 2030 and NIUPLAN have had far-reaching effects on the way urban citizenship has been defined in Nairobi. They additionally influence how the city is structured and the distribution of and access to basic services, what Samara *et al.* refer to as social and spatial outcomes.[135] It is on this basis that the next chapter will examine the city as the locus for the struggle for an expanded urban citizenship. I will demonstrate how the excluded urban inhabitants in Mukuru have resisted exclusionary spatial governance processes like the ones that have been discussed in this chapter and engaged in processes that reaffirm the legitimacy of their occupation of spaces in the city, their participation in spatial governance, and access to opportunities in the city.

3.8 Conclusions

Discussions in this chapter have highlighted the importance of land as the locus where citizenship discourses in Nairobi have been shaped. Access to land has been identified as an important entry point to urban citizenship. My analysis has shown that tenure security is often used to determine who is included and who is excluded from planning processes. Tenure insecurity has been deployed to render the poor urban majority who lack secure land tenure vulnerable and deprived of opportunities to make meaningful impact in urban planning processes. Exclusionary instincts have informed approaches to urban planning in Nairobi with detrimental effects on the poor urban majority. It is important to note that lack of planning in certain parts of the city is also a policy signal from the agencies tasked with spatial planning. It signals who is recognised as an urban citizen and who is excluded from this category and unworthy of access to basic services. It also signals a non-recognition of any occupancy rights that the inhabitants of informal settlements may claim over the spaces that they occupy. I have highlighted the limits of claiming citizenship rights in the city where question on land tenure remain unresolved. What becomes apparent is that until questions on land tenure are fully addressed, the realization of urban citizenship by the poor will be limited and so will the ability of the excluded groups to realize the attendant rights to urban citizenship such as participation in spatial planning.

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[135] Samara, T.S. *et al.* 'Locating Right to the City in the Global South', 3.

4   A Theoretical Survey of the Mukuru SPA

4.1 Introduction

In his magnum opus essay collection titled *Citizenship and Social Class* published in 1950, T.H. Marshall offered an extensive account of what he construed to be the link between citizenship and social inequality. Marshall suggested that citizenship plays a central role in legitimating social inequality.[1] To him the relationship was worth investigating with the sharpening antagonisms between citizenship and capitalism during the time of his writing. Citizenship is in this work used in reference to a status, and 'a set of practices (juridical, political, economic or cultural) that define a person as a competent member of society, and which as a consequence shape the flow of resources to persons and social groups.'[2] It is also read here as an incomplete project denoted by such practices that are oriented towards 'formulation of new rights or the struggle to expand and maintain existing rights.'[3] It is now widely accepted that the practice of citizenship can be exercised on various platforms with sites like the national, transnational, and subnational (which include the city as well as local communities) lending themselves to citizenship discourses.[4]

Many years after Marshall's observations, citizenship remains a gatekeeping tool that is habitually deployed to deny access to rights in the city. This is the thrust of my argument in this chapter. Urban citizenship, as currently structured, adopts a form that is largely inegalitarian in distribution and highly exclusionary to the poor urban majority who lack access to formal title to land. It has been used to disenfranchise and impoverish certain groups by denying them the right to the city and attendant rights that accrue with the recognition of belonging. The excluded have in turn organised sustained struggles against dominant groups that continue to benefit from the current

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[1] See Marshall, T.H., *Citizenship and Social Class* (Cambridge University Press, 1950). Citizenship has also been defined as a form of 'collective action based in common experiences of oppression, disadvantage or social exclusion'. See Barnes, M. 'Users as Citizens: Collective Action and the Local Governance of Welfare', (1999) 33(1) *Social Policy and Administration,* 82. The view here reorients focus from the nation-state conception of citizenship, which may be exclusionary, to that which appeals to a broader collective of individuals. See Cornwall, A. and Gaventa, J. 'From Users and choosers to Makers and Shapers: Repositioning Participation in Social Policy', (2001) 127 *IDS Working Paper,* 7.

[2] Turner, B.S. 'Contemporary Problems in the Theory of Citizenship', in Turner, B.S. (ed) *Citizenship and Social Theory* (Sage, 1993) 2.

[3] Isin, E.F. and Wood, P.K. *Citizenship and Identity* (Sage, 1999) 4.

[4] Stewart, A. 'Two Conceptions of Citizenship', (1995) 46(1) *British Journal of Sociology*, 74. See also Ndegwa, S., 'Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics', (1997) 91(3) *American Political Science Review*.

structuring of social relations in the city.[5] They have occasionally resorted to strategies outside the bounds of the law. They have realised that the law and the institutions that it creates are often implicated in producing their marginality. We have already seen in the previous chapter how planning law and land tenure considerations have defined who is included in and who is excluded from spatial governance. We have also witnessed the differential allocation of protection that the law produces in the city. We have seen its implicit endorsement of the violent erasure of one group's presence by not recognising their occupation of space.

This chapter explores the city as the locus of the struggle for urban citizenship. In the present analysis, the city is explored as a site in which claims to urban citizenship are reclaimed, (re)shaped and destabilised.[6] I draw a historical analogy by inserting the Mukuru experience within a corpus of theories on the urban context. The chapter engages Henri Lefebvre's thesis on 'the right to the city', and other scholarship on this right, as a theoretical entry point for analysing how alternative urban citizenship forms are firstly reclaimed and subsequently (re)imagined in Nairobi. For indigent urban inhabitants, the right to the city is no longer an abstract right but has now adopted a concrete form which is epitomized by a justiciable right to participate. As will be discussed in the next chapter, participation is a citizenship right protected by the Kenyan constitution which guarantees this right for every person, and particularly for marginalised groups. Citizenship claims

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[5] Hegemony, according to Gramsci is concerned with the idea of a 'dominant fundamental group' imposing consent on the great mass of the population. The State will in this case be used as a coercive apparatus to enforce discipline on groups that do not consent to the directions imposed by the dominant social groups. See Gramsci, A. *Selections from the Prison Notebooks.* Ed. And translated by Hoare, Q., and Nowell-Smith, G., (Lawrence and Wilshart, 1971) 12. It involves the dominant group actively securing 'leadership' and 'direction' which it imposes on the great mass of the population (the subordinate group). See Hunt, A., 'Rights and Social Movements: Counter-Hegemonic Strategies', (1990) 17(3) *Journal of Law and Society* 311. Counter-hegemony on the other hand relates to "the process by which subordinate classes challenge the dominant hegemony and seek to supplant it by articulating an alternative hegemony." See Hunt (ibid) 312. Ranajit Guha has argued that it was not possible for colonial states to adopt a hegemonic status that their metropolitan counterparts had. Instead, what was possible within these contexts was the existance of a coercive structure of dominance. See Guha, R. Dominance without Hegemony (Harvard University Press, 1998). Her argument follows Fanon who attributed this to the fact that the colonial state must answer to global capital rather than to the social forces within its own society and this produces domination rather than hegemony. See Fanon, F. *The Wretched of the Earth*. See also Salem, S. 'Gramsci in the Postcolony', *Africa is a Country* December 12, 2020, available at https://africasacountry.com/2020/12/gramsci-in-the-postcolony accessed January 12, 2021.
[6] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', (2003) 27(3) *International Journal of Urban and Regional Research,* 564.

therefore advance realisation of the right to participate especially where the claims are pursued as part of a wider radical political project.[7]

(Re)imagination of urban forms is possible through what Blokland *et al.* have referred to as 'splintered acts of citizenship' which includes the active participation of the inhabitants in spatial governance processes.[8] Similarly, Holston and Appadurai refer to 'performance of citizenship' which involves inhabitants actively assigning new meanings to space in the city and engaging in processes that reaffirm the legitimacy of their occupation of these spaces.[9] Through their occupation of space, the inhabitants are able to firstly reclaim a citizenship that was removed from them and subsequently project and shape the kind of urban citizenship that they want. These ideas are clear from the way the marginalised and indigent groups in the city adopt new ways of claiming space and voice.[10] In essence, their 'consumption of place becomes the production of place'.[11] Thus, citizenship offers key insights that are useful in the analysis employed in this chapter. Its attractiveness as an analytical tool stems from its political and aspirational character particularly within contexts where rights have previously been denied.[12] Effectively, by using citizenship as an analytical tool, we are drawn to envision an alternate ordering where previously inaccessible rights can be enjoyed, including, *inter alia*, the right to participate in the structuring of the city and to enjoy full membership in the city.

In this chapter, the Mukuru SPA process is problematised as an attempt to redefine urban citizenship by previously excluded urban inhabitants and as a drive towards social equity.[13] The

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[7] Mohan, G. and Hickey, S., 'Relocating Participation within a Radical Politics of Development: Critical Modernism and Citizenship', in Hickey, S. and Mohan, G. (eds) Participation: From Tyranny to Transformation? (Zed Books, 2004)70.

[8] See also Blokland, T., *et al.,* 'Urban Citizenship and the Right to the City: The Fragmentation of Claims', (2015) *International Journal of Urban and Regional Research* 663.

[9] Holston J. and Appadurai, A., 'Cities and Citizenship' in Holston, J. (ed) *Cities and Citizenship* (Duke University Press, 1999) 6.

[10] Appadurai, A. 'Deep Democracy: Urban Governmentality and the Horizon of Politics', 2001 13(2) *Environment & Urbanisation* 25.

[11] Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression* (University of Minnesota Press, 1996) 9. 165.

[12] James, D. 'Citizenship and Land in South AFRICA: From Rights to Responsibilities', (2013) 33(1) *Critique of Anthropology* 26.

[13] The Kenyan scholar E.S. Atieno-Odhiambo understood citizenship to be a historical construct of the bourgeoise stratum of the society meaning that the ordinary groups had to fit into the constructs already modelled from them by the bourgeoise. See Atieno-Odhiambo, E.S., 'Hegemonic Enterprises and the Instrumentalities of Survival: Ethnicity and Democracy in Kenya', (2002) 61(2) *African Studies* 223-249. His assertions are also true for the city and

argument here follows Bhan's observation on how spatial illegality assumes a prominent role in mediating contemporary urban citizenship within cities in the global South.[14] This study views the SPA process as a fundamentally political project which offers to the inhabitants what I term as an 'ecology of transgression' which can enable them to redefine urban citizenship beyond its traditional limits to a more just and beneficial form. By participating in the SPA processes, the inhabitants open the space for urban citizenship which has historically been denied. It enables their entry into official domains of participation from which their entry was hitherto precluded. Simone encourages us to delve into the details of how claims and interests 'in' and 'of' the city are actually made, and where they possibly lead.[15] Hence, the Mukuru experience is here used to demonstrate how voices and sustained resistance from the grassroots will play an important role in expanding a currently limited form of urban citizenship. By looking at Mukuru, we are able to reveal the forms of popular agency which according to Ananya Roy "often remain invisible and neglected in the archives and annals of urban theory."[16]

The organisation of the present chapter is as follows. In the first part, the chapter explores in depth the theoretical writing in which my arguments are grounded, that is, Lefebvre's important contributions on the idea of the right to the city. The ideological appeal of Lefebvre's work to this study springs from his radical proposals on how to realise the right to the city particularly his emphasis on the import of restructuring property arrangements in the city to enable realization of the right to the city. The two constituent elements to this right as proposed by Lefebvre, that is 'the right to appropriate' and 'the right to participate' are examined. In the second part, the study explores the concept of citizenship - and urban citizenship specifically - while explaining the symbiotic relationship that spatial governance has with urban citizenship and the former's role in shaping the later.

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in this chapter I urgue that the excluded groups have attempted to restructure the power relations in the city which potentially enables them to redefine the idea of urban citizenship. The narrative of this chapter fits with that pursued by Atieno-Odhiambo who viewed citizenship as a social construct or a product of social imagination that must constantly be worked to be achieved.

[14] Bhan, G., *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* (The University of Georgia Press, 2016)152.

[15] Simone, A., 'Just the City', Lecture at the Georg Simmel Think and Drink Colloquium, Humbolt University, Berlin, 13 May 2013. Quoted in Blokland, T., *et al.,* 'Urban Citizenship and the Right to the City: The Fragmentation of Claims'.

[16] Roy, A. 'Slumdog Cities: Rethinking Subaltern Urbanism', (2011) 35(2) *International Journal of Urban and Regional Research*, 224.

Part three of this chapter brings property rights to the fore and isolates them as what I refer to as a 'gatekeeping tool' in the urban context, while at the same time highlighting the important role that it plays in mediating urban citizenship. The study invokes Lund's hypothesis that land plays a critical role in negotiation for urban citizenship and other rights.[17] In part four, Mukuru is used to illuminate attempts by the excluded urban poor to reclaim urban citizenship through sustained resistance to exclusionary practices. I propose that these are consistent with Lefebvre's proposals for radical appropriation of space in the city by breaking through the obstacles that have been placed by the dominant groups.[18] The penultimate part proposes the Mukuru SPA as an 'ecology of transgression' conducive for the inhabitants to imagine and negotiate for a substantive form of citizenship that is instrumental in their quest to reduce inequities in the city. Lastly, a conclusion is offered in part six.

4.2 Envisioning a possible world through the right to the city

Writing on the right to the city, Henri Lefebvre drew guidance from his belief in demanding the impossible in order to get all that is possible (*demander l'impossible pour avoir tout le possible*).[19] This belief stemmed from his imaginations of alternative possibilities and what he considered to be the desire by the excluded to realise these possibilities. Lefebvre suggested that, to think about alternative possibilities, we need utopias.[20] The desire for these utopias spring from excluded urban social groups that have been denied an identity, a citizenship in the city. Lefebvre called for the radical restructuring of the city by altering the power relations that define the production of urban space to enable the redirection of focus towards the urban inhabitants.[21] For Lefebvre, the urban represents an unaccomplished reality that sits in the horizon and that requires overcoming of obstacles to reach to it and to realize it.[22] Accordingly, he viewed the right to city to bear great potential in the quest for renewal of urban life as the right takes the form of both a "cry" and a "demand" for action.[23] Marcuse on the other hand examines these two as a dichotomy and asserts

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[17] Lund, C., 'Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa', (2011) 46(3) *Africa Spectrum* 74.

[18] Lefebvre, H., *Writings on Cities* (Blackwell Publishers, 1996) 196.

[19] Ibid, 35.

[20] Ibid, 21.

[21] Purcell, M., 'Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant', (2002) *GeoJournal,* 101.

[22] Lefebvre, H., *The Urban Revolution* (University of Minnesota Press, 2003) 16.

[23] Lefebvre, H., *Writings on Cities,* 158.

that the "demand" is by those deprived of basic material and existing legal rights while the "cry" is an aspiration by those discontented with life as they see it around them.[24] It is these two groups that, Marcuse envisions, will lead the push for the right to the city while rooting their claims in the quest for a more just and inclusive city.[25]

The right to the city therefore, 'legitimates the refusal to allow oneself to be removed from urban reality by a discriminatory and segregative organisation'.[26] Lefebvre imagined that excluded urban groups would reconstruct urban spatial forms through confrontational acts and struggles in their quest to renew the right to urban life.[27] Consequently, exercising the right to the city, according to David Harvey, demands collective action that enables a radical and fundamental shaping of the urbanization process.[28] Harvey takes an approach to the right to the city that assumes the form of the dispossessed groups (as a response to infusion of capital in the urban) retaking these spaces and challenging hegemonic liberal and neoliberal market logics.[29] This collective action by marginalised and excluded groups aims for the attainment of a common good that is essential to a full and decent life. The collective action by these groups also underscores the collective rights that are embodied in the right to the city.[30] Collectivity of actions asserts the place of the city as a public good, to be accessed and enjoyed by all. For this to be realised, the city must undergo a radical metamorphosis to be led by those who inhabit it.[31] Two elements that Lefebvre implies in his conceptualization of the right to the city, that is, the right to appropriation and the right to participation are examined below.

4.2.1 The right to (re)appropriation.

Key to Lefebvre's argument was the importance of altering relations of production and ownership to enable realization of urban utopias.[32] To him, the city is the locus where capitalism thrives and also contains the seeds of its destruction.[33] This view was informed by his understanding of

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[24] Marcuse, P., 'From Critical Urban Theory to the Right to the City', (2009) 13 (2-3) *City* 190.
[25] Ibid, 192.
[26] Lefebvre, H., *Writings on Cities,* 195.
[27] Ibid.
[28] Harvey, D., 'The Right to the City', (2008) 53 New Left Review.
[29] Ibid, 23.
[30] Marcuse, P., 'From Critical Urban Theory to the Right to the City',194.
[31] Lefebvre, H., *Writings on Cities,* 158.
[32] Ibid,39.
[33] Purcell, M., 'Possible Worlds: Henri Lefebvre and the Right to the City', (2013) 36(1) *Journal of Urban Affairs* 148.

capitalism as an important means through which the ruling class maintains its hegemony.[34] Land, as a facet of capitalism and a means of production is particularly relevant to the present analysis. Lefebvre conceives two elements that undergird the right to the city (an *oeuvre*, constantly undergoing transformations) that is, the right to participation and the right to appropriation.[35] Appropriation according to Lefebvre, is concerned not with the property value but the utility value of space.[36] To this end, the social value or connections that emanate from the holding of space in the city forms a key entry point in Lefebvre's call for the reorientation of space in the city.

Appropriation bestows upon the inhabitants of the city the right to 'full and complete usage' of space in their everyday lives in the city.[37] To Lefebvre, this right includes the right of inhabitants to physically access, occupy and use space to meet their everyday needs in the city.[38] This means that space in the city must be viewed as a commons to be accessed by all as a social good. This idea has also been articulated by the UN Habitat which has defined the right to the city as "the right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life."[39] This means that the inhabitants of the city must be allowed full access to the city and the benefits of urban life.

Lefebvre's suggestions have been considered to be radical as he proffers a version of appropriation that does not stop at the ability of urban inhabitants to access space in the city but extends to their right to produce urban space in a manner that meets their needs.[40] Purcell terms this as 'the value aspect' of urban space, which he argues, must take primacy when making decisions that produce urban space.[41] To both Lefebvre and Purcell, the right to appropriation must concern itself with taking a stance against the concept of urban space as private property, which is central to the capitalist production process. Appropriation, therefore, negates the exchange value (private property rights) and elevates the use value of urban space.[42]

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[34] Lefebvre, H., *The Production of Space* (Editions Anthropos, 1984) 10.

[35] Lefebvre, H., *Writings on Cities,* 20.

[36] Ibid. See also Fawaz, M. 'Towards the Right to the City in Informal Settlements', in Samara, T.S. *et al.* (eds) *Locating Right to the City in the Global South,* 32.

[37] Ibid.

[38] See Isin, E., and Wood, P., *Citizenship and Identity* (Sage, 1999).

[39] United Nations Conference on Housing and Sustainable Urban Development, *Habitat III Policy Papers: Policy Paper 1 The Right to the City and Cities for All* (United Nations, 2017) 26.

[40] Purcell, M., 'Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant', 103.

[41] Ibid.

[42] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 578.

Within the city, social connections are primarily defined by property rights arrangements.[43] Property relationships define how claims to the city occur and the manner, and to who these claims accrue. It is for this reason that Lefebvre considers the right to appropriate to be an important entry point for claims to the right to the city and by extension claims to urban citizenship. For Lefebvre, alteration of the modes of production presents a radical point for the realisation of the right to the city.[44] This elevated position that the right to appropriation takes in Lefebvre's framework comes from the significant role that appropriation (as opposed to conferment of limited private property rights) plays in ensuring that the social utility of space (land) is realised. Appropriation enables us to take a radical view of space in the city and to propose a more pragmatic view, that takes space in the city as belonging to and shaped by those who inhabit it.[45] It has been defined as the right of the everyday user of space in the city.[46]

With reference to Mukuru, this study offers an expanded view of Lefebvre's conception of the right to appropriate as the right to (re)appropriate, arguing that in exercise of this right, the inhabitants are taking back what has been expropriated from them.[47] (Re)appropriation therefore, plays the role of reorienting the city away from its role as an engine of capital accumulation to a more functional role which positions the urban as the locus of cooperative social relations among its inhabitants.[48] As currently structured, the city adopts a form in which the dispossession of one group will always serve the purpose of accumulation by another. The current ordering has thrived within a context where space and nature is habitually commodified. This effectively reinforces the world colonisation created.[49] This understanding will be particularly apt when discussing how in Mukuru one group (a minority) holds formal title to land which they do not put to use while the other (the majority inhabitants) suffers from insecure tenure and constant threats of eviction from the land in which they are in actual occupation of. While the former group has perfected the

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[43] Purcell, M., 'Possible Worlds: Henri Lefebvre and the Right to the City', 149.

[44] Lefebvre, H., *Writings on Cities,* 196.

[45] Purcell, M., 'Possible Worlds: Henri Lefebvre and the Right to the City', 149.

[46] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', (2003) 27(3) *International Journal of Urban and Regional Research,* 581.

[47] According to Lefebvre, property rights took (expropriated) what rightfully belongs to inhabitants and vested it on property owners whose titles are accorded legal safeguards. See Lefebvre, H., *Writings on Cities,* 129

[48] Purcell, M., 'Possible Worlds: Henri Lefebvre and the Right to the City', 149.

[49] See Adebisi, F.I. 'Why I Say 'Decolonisation is Impossible'', *African Skies* December 17, 2019 available at https://folukeafrica.com/why-i-say-decolonisation-is-impossible/ accessed December 18, 2019.

practice of using space for speculative purposes, the latter has within the limited space that they occupy established their dwellings and other social amenities.

4.2.2 The right to participation

Discussions in the preceding section have explored the primacy of space and the constant struggles to reconstitute space that are engendered in the right to the city. What becomes apparent is the fact that access to space is often accompanied by a struggle by counter-hegemonic interests that envision radical changes in the spatial order. At the heart of these struggles is the quest to alter power relations which have a strong bearing on the decision-making processes within cities.[50] By claiming a stake in the shaping of the spaces that they occupy, these groups are effectively pushing to have more say in the decision-making processes. Struggles for space in the city are, therefore, an embodiment of struggles for power.[51] These struggles are essentially incomplete in the absence of fundamental alterations to the decision-making processes in the city.

Decisions that affect the production of space in the city must be subject to citizen control.[52] This explains why to Lefebvre, citizen participation is necessary and a prerequisite whenever decisions that produce urban space are to be made.[53] Exercising the right to the city therefore demands for the meaningful participation of people in spatial governance processes.[54] Hickey and Mohan argue that a radicalised understanding of citizenship must elevate participation as a political project that must be configured to challenge existing power relations and structures of marginalisation.[55] By situating our understanding of participation within a wider citizenship project, we embrace a political project that seeks to challenge the structures producing marginalization.

Lefebvre, however, decries the fact that participation is often invoked but not practiced seriously in the city, what Purcell refers to as "impoverished participation".[56] To this end, Lefebvre calls for "real and active participation" that leads to the awakening of the inhabitants.[57] This posture also

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[50] See Pieterse, E., *City Future: Confronting the Crisis of Urban Development* (UCT Press, 2008) 5.
[51] Hickey, S. and Mohan, G. 'Relocating Participation within a Radical Politics of Development', (2005) 36(2) *Development and Change*, 250.
[52] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 577.
[53] Lefebvre, H., *Writings on Cities,* 145.
[54] United Nations Conference on Housing and Sustainable Urban Development, *Habitat III Policy Papers: Policy Paper 1 The Right to the City and Cities for All,* 28.
[55] Hickey, S. and Mohan, G. 'Relocating Participation within a Radical Politics of Development', 250.
[56] Purcell, M., 'Possible Worlds: Henri Lefebvre and the Right to the City', 150.
[57] Lefebvre, H., *Writings on Cities,*145. See also Purcell Ibid.

conforms to Purcell's thinking of participation as a manifestation of the living struggle for the city with its control accruing on its inhabitants who are empowered to manage the production of urban space by themselves.[58] Both Lefebvre's and Purcell's views assume an ability on the part of the inhabitants to function as active agents of change within the areas that they occupy. Purcell suggests that the inhabitants must be activated to enable them to attain the agency that will enable them function as capable stewards of the urban and its collective life.[59] 'Activation' may take the form of granting property rights to the inhabitants. This explains why the right to participation will only be effective if it is tied to the right to appropriation.[60] These two rights assume a symbiotic relationship which is useful in the advancement of the right to the city.[61]

Purcell has proposed an approach in which the right to appropriation is operationalised through the exercise of the right to participation. This takes the form of direct participation of inhabitants in decisions that produce urban space.[62] According to him, the fact that participation places inhabitants at the centre of decision-making processes enables them to use this position to pursue an urban geography that upholds their right to appropriate.[63] As I spelt out earlier in this chapter, when structured as a tool for political mobilization, participation will enable the legitimation of claims by groups who will mobilize to realize redistributive ends. Participation will therefore directly or inadvertently facilitate (re)appropriation. For instance, within Mukuru, the use of participatory geo-spatial mapping has facilitated advancing the agenda of secure land tenure by enabling inhabitants to use the information generated as an advocacy tool to negotiate for land occupied by the inhabitants.[64] I will explore this further in chapter six where the practices of participatory planning in the Mukuru SPA are explored.

Further, the act of (re)appropriating space is an indication of, and contributor to, the agency of its inhabitants which can facilitate Lefebvre's "real and active participation". This circular relationship is significant to this study especially in analysing the Mukuru SPA as an embodiment

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[58] Ibid.

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 582.

[63] Ibid.

[64] Mbathi, M.M. 'Integrating Geo-information Tools in Informal Settlement Upgrading Process in Nairobi, Kenya', PhD Thesis, Newcastle University (2011) 128. Mbathi's study reveals that the inhabitants are able to use evidence in the maps generated as evidence of their longstanding occupation of the land in Mukuru and to refuse evictions.

of the right to the city. As discussed in chapter one of this work, the SPA process takes a multifaceted approach with one of its ultimate goals being the recovery of the land in which the SPA sits. Once this land has been recovered from the grantees, it will be vested in the NCCG which would enable effective planning and provision of social services and essential public goods. It is also assumed that it would be easier to hold the government to its duty to enable access to SERs by the inhabitants once the land is vested to the NCCG. The SPA process in effect deploys participation and (re)appropriation to ensure that land within the Mukuru SPA serves a broader social role.

4.3 Redefining urban citizenship

The formulations above lead us to an important concept that underpins this study, that is, urban citizenship. Lefebvre's thesis on the right to the city offers a radical platform for reimagination and negotiation of a new form of citizenship that offers alternatives to the current neoliberal order.[65] These alternatives are key to expanding the ability of citizens to control decisions and processes that affect their material opportunities and outcomes.[66] In order to understand the scope and meaning of urban citizenship, Allison Brown urges a view of the right to the city as a vehicle for urban change, and which incorporates all urban dwellers as urban citizens.[67] It is this group (urban dwellers) that Lefebvre refers to as *citadins* instead of citizen to signal his reference to the ordinary inhabitant of the city with an everyday routine in the city.[68] To Lefebvre, the right to the city;

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[65] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 564.

[66] Ibid, 579. Purcell argues that the right to the city provides an opportunity for the adoption of new politics in which capital and the state are displaced and the voice and agenda of urban inhabitants occupy center stage. See Ibid, 583.

[67] Brown, A., 'Urban Policies and the Right to the City: Rights, responsibilities and citizenship', (2009) UN-Habitat 17.

[68] Lefebvre, H., *Writings on Cities,* 34. For Lefebvre, this new form of citizenship is not concerned with one's membership in a nation-state but with their inhabitation and use of space in the city. Brogger also defines urban citizenship as "membership of an urban community dependent on acceptance as a member of the community". See Brogger, D., 'Unequal Urban Rights: critical Reflections on Property and Urban Citizenship', (2019) *Urban Studies* 3. Benedict Anderson viewed such groupings as 'imagined communities' whose variants to him were denoted by the coming together of individuals into a fraternity or comradeship. See Anderson, B., *Imagined Communities* (Verso, 1983) 6-7. Bellamy on the other hand views citizenship as 'a particular set of political practices involving specific public rights and duties with respect to a given political community'. To him, citizenship entails one's involvement with an exclusive club which enables one to 'take the key decisions about the collective life of a given political community'. See Bellamy, R., *Citizenship: A Very Short Introduction* (Oxford University Press, 2008) 3, 12. For Lund, Citizenship means meaningful membership of an organised political body. See Lund, C. 'Rule and Rupture: State Formation through the Production of Property and Citizenship', (2016) 47(6) *Development and Change,* 1204.

Complemented by the right to difference and the right to information, should modify, concretize and make more practical the rights of the citizen as an urban dweller (citadin) and user of multiple services. It would affirm, on one hand, the right of users to make known their ideas on space and time of their activities in the urban area; it would also cover the right to use of the centre, a privileged place, instead of being dispersed and stuck into ghettos (for workers, immigrants, the 'marginal' and even the 'privileged').[69]

Marshall on the other hand equated this status to having full membership of a political community.[70] To extend Marshall's suggestion using the framework proposed by Richard Bellamy, citizenship will emerge in the presence of the three interlinked components, that is- (1) membership of a democratic political community, (2) presence of collective benefits and rights associated with the membership, and (3) participation in the community's political, economic, and social processes.[71]

With regard to the first component, I suggest that by inhabiting the city an individual has a good starting point in determining their membership and therefore citizenship in the city.[72] My suggestion here seeks to avoid the difficulties that can be caused by an ideological rigidity when defining membership and belonging which Bellamy acknowledges can be exclusive and restrictive.[73] My suggestion also resonates with Berenchot and Klinken's view that our focus should be directed at the place of informal connections in mediating citizenship claims.[74] Bhan is also of the view that the emphasis of residence or inhabitancy produces the city as the scale for the

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[69] Ibid.

[70] See Marshall, T.H., *Citizenship and Social Class,* 28.

[71] Bellamy, R., *Citizenship: A Very Short Introduction* 12. Lund has summed the idea of citizenship as the right to have rights. See Lund, C., 'Land Rights and Citizenship in Africa', Discussion Paper 65, Nordiska AfrikaInstitutet (2011) 11. It is to those whom the status of citizenship accrue that the rights outlined by Bellamy are availed.

[72] See also Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 577. Cooper is of the view that membership or belonging is an ambiguous term. She argues that this term can be used to illustrate a wide array of things including, property ownership, political accountability, a relationship to place, and a certain type of behaviour that fits within a place. See Cooper, D., *Governing out of Order: Space, Law and the Politics of Belonging* (Rivers Oram Press, 1998) 16.

[73] Bellamy, R., *Citizenship: A Very Short Introduction* 52. Bellamy however fails to devote enough attention on the internal exclusions that can result from membership. The fact that an individual has been conferred with the status of citizenship does not preclude them from exclusions within the political community in which they belong. As seen in chapters two and three, social exclusion is rampant and mainly targets those who, though conferred with national citizenship, are still social excluded.

[74] Berenschota, W. and Van Klinkenb, G. 'Informality and Citizenship: The Everyday State in Indonesia', 2018 22(2), *Citizenship Studies* 96. The authors argue that the fixation with western experiences of state formation obscure an examination of the informal interactions which are necessary for the realization of citizenship rights.

determination of citizenship.[75] Inhabiting a place will signal an individual's holding of a stake in a given locality and their commitment to pursue objectives that match /resonate with those of others within their localities.[76]

The implication of my position will become clear when showing how the established norms have favoured an exclusionary interpretation of membership. This has resulted in the denial of access to rights for those groups within the city who, though recognised as national citizens, are denied citizenship in the city. Regarding the last component, Bellamy ambitiously sums the right of an individual to participate as the primary element that gives sustenance to citizenship.[77] He views participation as the glue that holds all the other components together and also as the catalyst for the realisation of the other components.[78] He, therefore, advocates the revitalisation of political participation to enable the realisation of rights, which are the prime benefits of citizenship.[79] It is this revitalisation which, I suggest, will be attained when participation is reoriented towards the attainment of political mobilisation.

The formulation of citizenship proposed above chimes with the objective of the right to the city proposed by Lefebvre and Purcell who view space in the city from its utility value.[80] Those who inhabit and use space in the city are its citizens. This concept of citizenship proffered by Lefebvre aims at ensuring that citizenship plays a role in creating a different social life.[81] It is an idea that Marshall believes implicitly bestows equality among members of a community which in effect imputes their ability to access and enjoy rights.[82] The citizenship project in effect aims at the realisation of rights in fuller ways.[83] What this means is that it should not stop at providing services that fulfil the basic needs of individuals but should be oriented at ensuring that individuals are provided with conditions that can enable them to sustain themselves socially and economically.[84]

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[75] Bhan, G., *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi,* 163.
[76] Bellamy, R., *Citizenship: A Very Short Introduction* 62.
[77] Ibid, 17.
[78] Ibid, 26.
[79] Ibid, 123.
[80] Ibid, 20. See also Purcell, M., 'Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant', 103.
[81] Lefebvre, H., *Writings on Cities,* 33.
[82] See Marshall, T.H., *Citizenship and Social Class* 33.
[83] Bellamy, R., *Citizenship: A Very Short Introduction* 79.
[84] Chipkin, Ivor, 'Functional' and 'Dysfunctional' Communities: The Making of National Citizens', (2003) 29(1) *Journal of Southern African Studies,* 65.

To this end, citizenship in its proper form ought to be egalitarian.[85] I propose that it is only through an egalitarian conception of citizenship that we are able to ensure that the full realm of rights that citizenship offers can be attained.

Marshall's views echo those by Holston who equates cities with sites of insurgencies where new identities and practices are assumed and in effect disturbing the established histories.[86] Holston strongly urges a citizenship that takes a substantive form and not merely formal citizenship.[87] The former confers full access to rights to the people while the latter is concerned with membership in a political community.[88] Holston's approach views citizenship as something that must be actively struggled for and not to be attained from the benevolence of the State.[89] Membership, or what Lund refers to as "belonging" provides one with a legitimate opportunity to stake a claim.[90] Citizenship, therefore, offers a platform from which claims to rights can be launched.

While writing on the historical evolution of national citizenship, Marshall pioneered the approach of delinking of citizenship from its purely formal and legal aspects.[91] He proposed a move from the nation-state conception of citizenship to a view that entailed conferment of the identity on those who are "fully fledged members of the community".[92] Effectively, small communities with shared values and experiences could under this view also be the fora for the enactment of citizenship.[93] Marshall's idea of citizenship encompassed three aspects- civil, political and social, all of which are inclined towards the realisation of equality.[94] Accordingly, Marshall proceeded from the point of view that the conferment of citizenship would effectively reduce social inequality.

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[85] Bellamy, R., *Citizenship: A Very Short Introduction,* 46.

[86] See Holston, J., 'Spaces of Insurgent Citizenship', in Holston J. (ed) *Cities and Citizenship* (1999, Duke university Press) 167.

[87] Ibid, 169. Moreover, for Lund and Rachman 'formal national citizenship is just one of several configurations of socially constructed collective subjectivities.' See Lund, C. and Rachman, N.F. 'Occupied! Property, Citizenship and Peasant Movements in Rural Java', (2016) 47(6) *Development and Change,* 1318.

[88] Ibid, 168.

[89] Ibid.

[90] Lund, C., 'Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa', 74.

[91] See Marshall, T.H., *Citizenship and Social Class* (Cambridge University Press, 1950). Marshall's proposals have led to the now widely accepted view that the nation-state is not the avenue for the elaboration of citizenship as other communities can also assume this role. See Ndegwa, S., 'Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics', 600.

[92] Marshall, T.H., *Citizenship and Social Class* (Cambridge University Press, 1950) 28.

[93] Ndegwa, S., 'Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics', 600.

[94] Marshall, T.H., *Citizenship and Social Class,* 28.

Marshall's views have been critiqued as ineffectual in identifying the inability of the social state to produce equality.[95] Mazza for instance, argues that the social state will inadvertently lead to the entrenchment of the same inequalities whose elimination Marshall set out for.[96] Marshall's views have also been reproved for failing to take cognisance of the dependency that social rights have on the market system and the subordination of these rights to the economic system.[97] Critics of Marshall's approach underscore the primacy of economic and social transformation for the successful implementation of social rights. Their view is central to Lefebvre's formulation of the right to the city which as discussed above is centrally organised around reformation of the market and reorientation of the means of production.

4.3.1 Spatial governance and citizenship

If redistribution is central to the citizenship project as suggested by Lefebvre, then attention must be drawn to spatial governance processes. Mazza defines these as "the political processes that articulate and legitimate urban and territorial changes."[98] Spatial governance plays the critical role of redistributing the use and control of space.[99] Space on the other hand is a primary resource for instituting claims to and forms of citizenship.[100] It is within space that claims to belonging/citizenship are conceived. At the same time, space and place provide the platform from which the normative world is questioned and restructured.[101] It is also within space that citizenship is recognised and practised.[102] Spatial governance and citizenship in effect enjoy a circular relationship, with the former being instrumental in (re)shaping citizenship.[103] Spatial governance processes provide platforms where citizenship claims can be sketched, reformulated or denied. It is through these processes that space can be remade to attain different social ends.[104]

As discussed in chapter two, and as further elaborated in this chapter, spatial governance processes in Nairobi have visibly played the role of denying citizenship to certain groups. This has been

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[95] Mazza, L., *Planning and Citizenship* (Routledge, 2016) 100.
[96] Ibid.
[97] Ibid.
[98] Ibid, 1.
[99] Ibid.
[100] Ibid.
[101] Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression,* 9. This according to Cresswell, makes space an important element in the ongoing hegemonic and counterhegemonic struggles.
[102] Mazza, L., *Planning and Citizenship* 1.
[103] Ibid, 155.
[104] Blomley, N. *Unsettling the City: Urban Land and the Politics of Property* (Routledge, 2003) 7.

occasioned by the neoliberal practices that have determined how space in the city is structured and to whom it is vested. Citizenship in the city has been imagined and institutionally defined within the bounds of spatial legality.[105] Indeed, the current ordering of the city favours a view of space from its exchange value rather than the use value.[106] It explains why vast spaces in the city remain vacant as they are either used for speculation purposes or have been used as collateral for obtaining credit from financial institutions. The same is true for Mukuru where most parcels have been used as collateral to obtain credit from financial institutions with the spaces remaining largely disused. This approach inadvertently leads to the denial of citizenship especially within a context where citizenship is mediated by standards of ownership and security.[107] Ownership or property rights, therefore, plays what I view as a critical gatekeeping role for the idea of citizenship. This significance is explored below.

4.4 Property and citizenship: The circular relationship

By exploring the binary relationship between the place of property and citizenship and the place of property as a gatekeeping tool for citizenship, this study inevitably leads to the proposal for restructuring property arrangements in the city. This view is informed by the growing consensus that the citizenship project is incomplete without an overhaul of the current economic order to a more redistributive form. In fact, citizenship as an ideal is incompatible with the existence of poverty and social deprivation.[108] What is, therefore, necessary as a prelude to any programme towards urban citizenship is the restructuring of the property arrangements to a more egalitarian form. The Mukuru SPA process has, to some extent, taken cognisance of this fact. It proceeds from the basis that reforming the land tenure arrangements within the SPA is key in enabling the realisation of the goals envisioned by the SPA process and tackling the unique development needs in Mukuru.

It is for instance, widely accepted that the NCCG will be better placed to meet the needs of the inhabitants once the land is converted to public land as opposed to the current situation where it is

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[105] Bhan, G., *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi,* 180.
[106] See Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 578.
[107] See Vincent, A., and Plant, R., *Philosophy, Politics and Citizenship: The Life and Thought of the British Idealist* (Blackwell, 1984) 86.
[108] Mazza, L., *Planning and Citizenship,* 75.

in private hands.[109] The NCCG can be easily challenged as to its responsibilities regarding provision of social services once the land is in its control. As it currently stands, the NCCG continues to argue that it is likely to be subjected to numerous lawsuits if it enters into the land in Mukuru to provide any type of amenities not authorised by the registered proprietors. Such an argument cannot be sustained where the land in question is public land. Having provided this background, it is important to now draw the link between property rights and citizenship. This connection becomes important in subsequent analysis of the Mukuru SPA process and the form of citizenship that it inculcates.

Lund offers a theoretical entry point that is crucial for this chapter. He argues that property and citizenship play key gatekeeping functions in any state and are used to determine who can have rights, and what rights they can have.[110] He illustrates this using property rights in land which he argues, plays a critical role in defining social identity with such rights at the same time being partly defined by social identity.[111] Land is fundamentally a powerful tool whose access can be devised to disenfranchise or on the converse enfranchise particular groups or individuals.[112] Lund argues that access to property bolsters claims to citizenship and that citizenship can equally be an avenue for securing property.[113]

For Lund, land is a key benefactor of an identity, of a citizenship, and an instrumental element in the continuum of rights. Access to it determines the terms on which individuals inhabit a locality and the privileges (if any) that will extend to them from such occupation.[114] Access to land thus acts as a key entry point to urban citizenship and it facilitates local negotiations of membership in both urban and rural communities.[115] Struggles over land are, therefore, conceived to be struggles for identity and access to a wider range of rights.[116] Access to land underscores the import of the right to (re)appropriate in the citizenship project. The inescapable conclusion is that in the absence

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[109] See Nairobi Studio, 'Land Tenure and Slum Upgrading', available at http://nairobistudio.blogspot.com/2014/01/land-tenure-and-slum-upgrading.html accessed June 18, 2019.

[110] Lund, C., 'Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa', 75.

[111] Ibid, 72.

[112] Isumonah, V.A. 'Land, Citizenship, and the Laws of Disenfranchisement', (2018) *The Oxford Handbook of Nigerian Politics* 7.

[113] Lund, C., 'Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa', 74.

[114] Brogger, D., 'Unequal Urban Rights: critical Reflections on Property and Urban Citizenship',13.

[115] Ibid, 6.

[116] Ibid, 3.

of (re)appropriation (of land), a weak form of citizenship is built which leaves groups vulnerable to other groups that have 'proper' citizenship as a result of their appropriation/expropriation.[117]

Within Mukuru, this nexus is clearly apparent. Inhabitants are always viewed as "illegal" (not belonging) by the authorities who use this as a justification for non-provision of basic services. This situation primarily originates from the endemic land tenure insecurity within the settlements. Tenure insecurity produces vulnerability and marginality amongst the inhabitants. Land tenure has further been deployed to craft an exclusionary idea of citizenship which is pervasive with the spatial governance processes in Nairobi. Ultimately, the situation of tenure insecurity leaves the inhabitants in a sordid state where they are forced to endure living conditions that are in violation of their human rights.[118] It is against this background that the Mukuru case is examined in the subsequent sections. The study traces what Blokland *et al.* refer to as 'splintered acts of citizenship'[119] with reference to the excluded urban inhabitants in Mukuru who have organised to counter the exclusionary planning ideologies that are dominant in the city. The Mukuru SPA is problematised as an attempt to redefine urban citizenship and expand it beyond its traditional limits. The assessment here takes heed of Simone's proposal that understanding urban citizenship necessitates delving into the details of how claims and interests 'in' and 'of' the city are actually made and where they possibly lead to.[120]

4.5 (Re)claiming urban citizenship in Mukuru from below

Resistance to exclusion in Mukuru has been buoyed by similar occurrences in other locations in the city where groups have struggled to (re)assert their rights to belong. Blokland *et al.* have referred to such occurrences as 'splintered acts of citizenship'.[121] Muoroto is a classic example where resistance shaped up with the destruction of the slums in 1990. The inhabitants of Muoroto firstly reacted to the evictions by signalling their intention to stay put even in the face of the

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[117] Ibid, 11.
[118] See Nairobi Studio, 'Land Tenure and Slum Upgrading', 3.
[119] See Blokland, T., *et al.,* 'Urban Citizenship and the Right to the City: The Fragmentation of Claims', (2015) *International Journal of Urban and Regional Research* 663.
[120] Simone, A., 'Just the City', Lecture at the Georg Simmel Think and Drink Colloquium, Humbolt University, Berlin, 13 May 2013. Quoted in Blokland, Ibid.
[121] These acts of citizenship take cognisance of the fact that social groups possess the capability to create their own sense of place and contesting the hegemonic constructs. See Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression* 47.

evictions that would later befall them.[122] What can be deduced from their subversive acts is that the inhabitants viewed themselves as being entitled to the spaces that they occupied. This necessitated resistance against the perceived intruders in the form of the City Council authorities.[123]

Moreover, the fact that a majority of the affected practiced their economic activities on the land in different forms which were mostly of the *jua kali* (small-scale artisans) type meant that the individuals had premised their livelihoods and by extension existence on access to and occupation of these spaces.[124] The inhabitants were in this regard anchoring their claims to occupy the spaces within the city on their economic contributions to the development of the city. As discussed in this chapter, the struggle by individuals to be able to (re)appropriate space in the city is a key element when claiming citizenship in the city.[125] This struggle is often pegged on the fact that occupants of these spaces draw their legitimacy to occupy the spaces from the publicity that accompanies their occupation.[126] Control of space has in addition been proposed as akin to control of citizenship and instrumental in its shaping.[127]

Widespread condemnations followed the destruction of Muoroto with the criticisms adopting political undertones.[128] Politicians and church leaders saw this as an opportune moment to rebuke the Moi administration whose grip on power was fundamentally weakened by the heightened calls and struggles for the adoption of multiparty politics.[129] The politicised nature of the demolitions also invited the heightened levels of rebuke witnessed as many perceived the demolitions as punishment on the poor by the KANU elite over loss of access to state-controlled land.[130] Amidst

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[122] Klopp, J.M., 'Remembering the Destruction of Muoroto: Slum Demolitions, Land and Democratisation in Kenya', 299.

[123] Trespass is one of the tools deployed by the weak as a weapon in socio-political struggle. See Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression,* 89.

[124] See Macharia, K., 'Slum Clearance and the Informal Economy in Nairobi', (1992) 30(2) *The Journal of Modern African Studies* 231.

[125] Brown, A., 'Urban Policies and the Right to the City: Rights, responsibilities and citizenship', (2009) UN-Habitat 14.

[126] See Simone, A., 'Propositions of the (non)urban: Dancing the Future Away', Fage Lecture 2019, University of Birmingham 22nd May 2019.

[127] Mazza, L., *Planning and Citizenship,* 65.

[128] Klopp, J.M., 'Remembering the Destruction of Muoroto: Slum Demolitions, Land and Democratisation in Kenya', 299.

[129] Macharia, K., 'Slum Clearance and the Informal Economy in Nairobi', 232.

[130] Klopp, J.M., 'Remembering the Destruction of Muoroto: Slum Demolitions, Land and Democratisation in Kenya', 306.

all this arose movements to counter state repression that was particularly wanton in informal settlements. In 1996, the Nairobi Informal Settlements Coordination Committee (NISCC) was established by the ministry of Local Government and other stakeholders to facilitate participatory governance following the Nairobi City Convention of 1993 which was themed the 'Nairobi We Want'.[131] NISCC was established to facilitate participation by poor communities in articulating their needs through the Local Authorities Service Delivery Action Plan (LASDAP) of the Ministry of Local Government.[132]

NISCC has been identified as not being as successful as it had been intended because of its approach to community participation. NISCC was modelled as an 'invited space' for participation and access to it was limited to the identified stakeholders.[133] NISCC also came at a period characterised by the waning of the political momentum that had been witnessed in the early 1990s and the rise of consultative participation through NGOs.[134] Hendriks notes that the assumed representation of citizens through NGOs and the widespread unawareness amongst the inhabitants of informal settlements of the existence of NISCC occasioned its failure.[135] NISCC's failure also necessitated the adoption of different approaches in the quest for inclusive planning.[136]

CSOs began assuming more pronounced roles in shaping urban discourses.[137] These groups could now openly fraternise with disgruntled urban inhabitants. Increased presence of CSOs and other social movements in shaping the urban discourse was induced by the expansion of the collective political agency of these groups which was fostered by the struggles for multiparty democracy in the country. In this work, the term 'social movements' is used to refer to both formal and informal

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[131] Hendriks, B., 'Urban livelihoods, institutions and inclusive governance in Nairobi: 'spaces' and their impacts on quality of life, influence and political rights', (2010) 1 *Habitat International* 252.

[132] Institute for Housing and Urban Development Studies, 'Disclosing Actors and Citizen Participation in Nairobi', available at https://www.cordaid.org/nl/wp-content/uploads/sites/2/2014/08/PM_Nairobi_Kenya_1.pdf 43.

[133] Hendriks, B., 'Urban Livelihoods, Institutions and Inclusive Governance in Nairobi: 'spaces' and their Impacts on Quality of Life, Influence and Political Rights', 268, 276.

[134] Ibid, 261.

[135] Ibid, 276.

[136] See Guma, P.K., 'The Governance and Politics of Urban Space in the Postcolonial City: Kampala, Nairobi and Dar es Salaam', (2015) 8(1) *Africa Review* 1-13.

[137] Kedogo, J., 'Good Urban Governance, Actors' Relations and Paradigms: Lessons from Nairobi, Kenya, and Reclife, Brazil', (2010) 46th ISOCARP Congress 6.

organisations that attempt to effect change on social structures.[138] We shall in the next chapter examine the critical roles that CSOs have played in shaping the constitutional discourses in Kenya.

The growth of multiparty democracy as an outcome of the sustained struggles by the opposition and other groups also widened spaces for coalitions between communities and CSOs and the coalescing of resistance. Democratic expansions have been hailed as being key in destabilising older formulations of order and repression.[139] According to Weru, the battles that took shape during this period were framed as political rather than legal hence necessitating mobilisation of the inhabitants of the settlements against the elite.[140] The excluded poor were in this regard asserting their political agency by framing the narrative on the injustices.[141]

4.5.1 Grassroots mobilising and the place of social movements

Muungano wa Wanavijiji was established in 1996 as a federation uniting informal settlement dwellers to address the various problems facing their settlements such as forced evictions.[142] In this study, I suggest that its birth is a critical point for insurgent citizenship movements in Nairobi. At the heart of these movements is the idea of redefining urban citizenship and asserting the legitimacy of the excluded as urban citizens.[143] Most of these movements emerged prior to the enactment of the 2010 Constitution. Muungano assumed the identity of a grassroots resistance movement countering forced evictions occasioned on residents of slums in Nairobi.[144] Key to this resistance has been the quest to secure tenure for the excluded urban poor.[145] Muungano has in the past mobilised its member communities to demonstrate against evictions and has at the same time

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[138] See Minkoff, D.C. 'The Sequencing of Social Movements', (1997) 62(3) *Amer. Soc. Rev*, 779.

[139] Holston, J., 'Insurgent Citizenship in an Era of Global Urban Peripheries', (2009) 21(2) *City & Society* 261.

[140] Lines, K., and Makau, J., 'Muungano nguvu yetu (unity is strength) 20 years of the Kenyan federation of slum dwellers'19.

[141] Klopp, J.M., 'Remembering the Destruction of Muoroto: Slum Demolitions, Land and Democratisation in Kenya', 302.

[142] Lines, K., and Makau, J., 'Muungano nguvu yetu (unity is strength) 20 years of the Kenyan federation of slum dwellers',13.

[143] The study borrows from Holston's thesis of cities as spaces for the redefinition of identities and belonging, and where traditional ideas of citizenship are challenged and transformation of the relationship between state and citizen happen. See Holston, J., 'Spaces of Insurgent Citizenship', in Holston J. (ed) *Cities and Citizenship* (1999, Duke University Press)167. In Mukuru, groups that have traditionally been viewed as transitory elements in the city continue to reframe this narrative as they claim recognition of their permanence within these spaces.

[144] Lines, K., and Makau, J., 'Muungano nguvu yetu (unity is strength) 20 years of the Kenyan federation of slum dwellers'19.

[145] Weru, J. Wanyoike, W. and Di Giovanni, A., 'Confronting Complexity: Using Action-Research to Build Voice, Accountability, and Justice in Nairobi's Mukuru Informal Settlements', 240.

written protest letters and memorandums to various government agencies documenting the grievances raised by its members.[146]

Mobilization and collective action reaffirm the view that such groups belong to a political community and are manifestation of what Mazza refers to as 'acts of active citizenship'.[147] Such acts of resistance resemble the idea of an excluded group (re)claiming its citizenship in the city and asserting its right to appropriate space similar to other groups that have the backing of the law. Through such occupations, inhabitants mobilise to claim space and enact their versions of urban citizenship. Occupying space enables them to gain political and legal visibility that provides them with leverage to be used in subsequent negotiations for recognition.[148] Occupation also signals what Holston refers to as "clashes of citizenship" with the excluded groups proposing a city with a different order of citizenship.[149] Foweraker and Landman suggest that social movements play active roles in discovering, shaping and disseminating rights and these processes have been linked to the discourse of acquisition of citizenship.[150] Coalitions between the excluded poor, CSOs and social movements are therefore important in amplifying the voices of the excluded and their claims to urban citizenship.[151]

In another attestation of 'acts of active citizenship', Muungano has, through its affiliate Akiba Mashinani Trust (AMT), mobilised its members to participate in saving groups where members pool their resources to cushion them in cases of eviction, other disasters, or where members want to improve their structures or businesses.[152] The actions spring from an idealist notion of citizenship as an active and community-oriented practice which aims at the attainment of the

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[146] Institute for Housing and Urban Development Studies, 'Disclosing Actors and Citizen Participation in Nairobi', 44.
[147] Mazza, L., *Planning and Citizenship,* 66.
[148] Lund, C. and Rachman, N.F. 'Occupied! Property, Citizenship and Peasant Movements in Rural Java', (2016) 47(6) *Development and Change,* 1333.
[149] Holston, J., 'Insurgent Citizenship in an Era of Global Urban Peripheries', 246.
[150] Foweraker, J. and Landman, T., *Citizenship Rights and Social Movements: A Comparative and Statistical Analysis* (Oxford Scholarship Online, 2000) 33. Foweraker and Landman argue that while social movements are key in the advancement of citizenship, the quest for citizenship rights may also result in the emergence of social movements. The latter may particularly be appropriate in explaining the origins of Muungano. See also Earle, L., *Transgressive Citizenship and the Struggles for Social Justice: The Right to the City in Sao Paulo,* 36. Turner on the other hand argued that in so far as social movements direct their activities towards expanding social inclusion then they are inevitably about the rights of citizenship. See Turner, B.S., *Citizenship and capitalism: The Debate over Reformism* (Allen and Unwin, 1986)92.
[151] Holston, J., 'Insurgent Citizenship in an Era of Global Urban Peripheries', 248.
[152] Institute for Housing and Urban Development Studies, 'Disclosing Actors and Citizen Participation in Nairobi' 44. See also Mitlin, D. and Patel, S. 'The Urban Poor and Strategies for a Pro-poor Politics', 301.

common good.[153] AMT has been guided by the view that financial contribution can be used as a leverage by the poor to engage with the government towards improving conditions within their settlements by undertaking *in situ* upgrading projects.[154] Initiatives to leverage on financial contributions from members of the Mukuru community also spring from the desire by inhabitants to provide local solutions to the acute economic marginality that is endemic in their settlements. This approach views finance as an important tool for building the capacities of communities to engage with the government[155] and is useful in creating a 'financial citizenship' among these groups.[156]

Improving capacities of communities through financial contributions becomes particularly useful where tenure regularization is adopted as these groups will now have leverage when purchasing land in the areas where regularization is adopted.[157] In Kiandutu informal settlements (located in the outskirts of Thika town within Kiambu County) the inhabitants, through an initiative supported by Muungano, have leveraged on their savings to acquire half an acre of land worth USD 22,880 which has been used to meet certain sanitation needs within the settlement.[158] According to Muungano, financial contributions is also an important way of building social capital and the idea of a community which enables collective approaches to initiatives within the settlements.[159] Financial contribution through saving groups has to this end been used as a tool for negotiation of citizenship and for conversion of informal claims into viable urban holdings.

The success of the Kiandutu case described above illustrates concession on the part of the government to acknowledge that the inhabitants have some legitimate claim to occupy land within their settlements.[160] It also underscores the place of community-led development projects in

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[153] Vincent, A., *The Philosophy of T.H. Green* (Paradigm, 1986) 60.

[154] Weru, J., *et al.,* 'The Akiba Mashinani Trust, Kenya: Role of a Local Fund in Urban Development', 5.

[155] Ibid. See also Mitlin, D. *et al.* 'Capital, Capacities and Collaboration: The Multiple Roles of Community Savings in Addressing Urban Poverty', (2011) 34 iied Human Settlements Working Paper Series, 17.

[156] Appadurai, A. 'Deep Democracy: Urban Governmentality and the Horizon of Politics', 32.

[157] See Lines, K., and Makau, J., 'Muungano nguvu yetu (unity is strength) 20 years of the Kenyan federation of slum dwellers', 31.

[158] See Mbaka, S., 'Regularisation of Informal Settlements: a Tale of Kiandutu Slums', available at https://www.muungano.net/browseblogs/2014/05/22/regularisation-of-informal-settlements-a-tale-of-kiandutu-slums accessed June 26, 2019.

[159] Lines, K., and Makau, J., 'Muungano nguvu yetu (unity is strength) 20 years of the Kenyan federation of slum dwellers', 43.

[160] See Muungano wa Wanavijiji, 'Muungano Launches Kiandutu Ablution Block', available at https://www.muungano.net/browseblogs/2015/02/03/muungano-launches-kiandutu-ablution-block?rq=kiandutu accessed June 25, 2019.

delivering tenure rights to inhabitants which is a key element in the citizenship project. Muungano's approach of taking financial contribution as an entry point to participation still bears similarities of invited spaces of participation.

This approach may be exclusionary to the inhabitants of the settlements who do not contribute to these saving schemes. The success of this approach to participation may also be limited in a place like Mukuru where the land in question is in the hands of private grantees who lack the incentive to transfer the land to any community savings groups unlike in Kiandutu where the land is public land held by the Kiambu County Government. The exclusionary hazards of this approach will be discussed further in chapter six. Nonetheless, the approaches discussed above illustrate the interweaving of order and subversion where subversion is invoked to gain certain concessions, and the inhabitants at the same time engaging with the authorities whenever necessary to advance their quest for recognition.[161]

4.5.2 Rescaling urban citizenship through a justiciable right to participation

The coming into force of the 2010 Constitution, specifically its provisions on public participation as a national value and a right, necessitated the adoption of a different approach that corresponds with what Bhan refers to as 'new expectations and practices of state-citizens relations'.[162] The Constitution, which is grounded on the ideal of social justice and realisation of the potential of all human beings, operationalised initiatives to redefine the conditions of citizenship in the city which are discussed herein. These initiatives are rooted in the panoply of rights contained in the Bill of Rights which cultivate an enabling ecology for the alteration of power relations in the country. For instance, the Constitution in Article 56 recognises the right of minorities and marginalised groups to participate in governance and all spheres of life. Participation lies in the idea of citizenship pursued in this analysis. It is a justiciable right through which the right to the city can be concretised and political action organised and operationalised around it.

By invoking the right to participation, this work aligns the right to the city with the normative human rights framework provided for under the Kenyan Constitution. Through the right to participation, a new politics that reorganises control of urban space is imagined, placing inhabitants

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[161] See also Lund, C. and Rachman, N.F. 'Occupied! Property, Citizenship and Peasant Movements in Rural Java', 1334.

[162] Bhan, G., 'The Impoverishment of Poverty: Reflections on Urban Citizenship and Inequality in Contemporary Delhi', (2014) 26(2) *International Institute for Environment and Development* 548.

at the centre of decision-making processes.[163] The Mukuru SPA process, whose public participation framework is the focus of this study, has taken account of this by creating a representative community mandate that incorporates voices from the 'grassroots'.[164] As Weru and Cobbett have noted, the SPA unblocks the political and bureaucratic obstacles that have prevented participation by the marginalised inhabitants in spatial governance processes.[165]

The approaches adopted in the SPA process are based on what Holston refers to as "new conceptions of rights to the city" which are undergirded by public participation.[166] The approach embodied by the SPA feeds into the 'chances for citizenship claims'[167] which may ultimately lead to the creation of new citizen identities, identities which aim at civic equality. Thus, Mukuru SPA provides a space for the negotiation of a new form of citizenship by an increasingly politically articulate and cohesive group, albeit with the net effect of destabilizing the current order. The destabilising effect induced by the SPA particularly springs from two standpoints: its participatory nature which seeks the inclusion of previously excluded groups; and its emphasis on the reorientation of land tenure arrangements. Participants in the SPA process are equipped with the vocabulary that would enable their identification, naming and challenging the exclusionary norms in the city.

4.6 Strategies and tools in the Mukuru SPA

In exploring the capacity of rights as elements of emancipation, Hunt suggested that rights take shape and are constituted by and through struggle.[168] Struggle also emanates from a realization that the declaration/codification of rights only marks the beginning of a political process that is in most cases replete with power imbalances, and as such the struggles must be oriented towards

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[163] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 582.

[164] Lines, K., and Makau, J., 'Muungano nguvu yetu (unity is strength) 20 years of the Kenyan federation of slum dwellers', 63.

[165] Weru, J. and Cobbett, W. 'Slum Upgrading in Kenya: What are the Conditions for Success?', available at https://news.trust.org/item/20210225133836-td97u accessed February 28, 2020.

[166] Holston, J., 'Insurgent Citizenship in an Era of Global Urban Peripheries', 248.

[167] Blokland, T., *et al.,* 'Urban Citizenship and the Right to the City: The Fragmentation of Claims', 663. Pieterse on the other hand has referred to these initiatives as the 'politics of potentiality' which he argues valorizes politics to a more radical and distributive form. See Pieterse, E., *City Future: Confronting the Crisis of Urban Development* (UCT Press, 2008) 106.

[168] Hunt, A., 'Rights and Social Movements: Counter-Hegemonic Strategies', 325. The sentiments were also shared by Marshall who viewed the acquisition of rights as contingent and never-ending struggle. Bellamy, R., *Citizenship: A Very Short Introduction* 49.

altering these imbalances.[169] Again, struggle underscores the importance of adopting the discourse of rights or legal tactics in combination with other modes of political mobilization in the quest to realize social change.[170] Adopting a multifaceted approach becomes particularly relevant within contexts where the law is partly responsible for the production of the marginality which the struggles seek to undo. Within such contexts, both legal and subversive strategies can be employed by the marginalised to protect their interests and to access resources and opportunities.

In Mukuru, a combination of transgressive and legal strategies are deployed by the inhabitants to gain concessions from the state and other actors. Transgression as a strategy employs tools like unlawful occupation of land and illegal establishment of utility lines by the inhabitants. Legal and democratic strategies on the other hand employ tools like litigation, protests and petitions, community-driven planning, voting in elections and negotiations with landowners and utility providers. Litigation and the use of law in this case signal the emergence of what Bhan terms as a new 'set of shared norms of justice and equality'.[171]

Transgressive and legal strategies are 'toolboxes' from which the inhabitants draw whenever they want to secure their needs and interests and in their pursuit of full urban citizenship. As Mitlin argues, these kinds of strategies should not be viewed as separate but rather as pragmatic and complementary alternatives that the poor use to address their needs.[172] Transgressive strategies can for instance be deployed in place of slow-paced legal strategies especially when there is need for immediate elimination of conditions of precarity. Legal strategies on the other hand can be employed to provide normative bases and the discursive openings necessary to ground claims, gain long-term concessions and eliminate systemic inequalities. These strategies and tools are explored further below.

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[169] Scheingold, S.A., *The Politics of Rights: Lawyers, Public Policy and Political Change* 85.
[170] Ibid, 211. See also Mutua, M., 'Is the Age of Human Rights Over?', in McClennen *et al.* (eds) *Routledge Companion to Literature and Human Rights* (Routledge, 2016) 451.
[171] Bhan, G., *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi,* 162.
[172] Mitlin, D. 'Beyond Contention: Urban Social Movements and their Multiple Approaches to Secure Transformation', (2018) 30(2) *Environment & Urbanization,* 558.

4.6.1 Mukuru SPA as an 'ecology of transgression'

The idea of transgression implies inherent spatiality.[173] It is a term often described in geographical terms and is concerned with (re)defining these geographies.[174] Being a tool for spatial governance, the SPA inescapably brings geography and the boundaries it subsumes into sharp focus. It is in this regard that the SPA process is understood to fashion what is referred to in this study as an 'ecology of transgression' where new conceptions of urban citizenship and the right to the city are imagined and (re)constructed. It is important that that SPA acts as a site where the normative points of reference that have acted to exclude the participation of certain segments of the society are challenged and new counter-narratives cultivated. Acts of transgression in these spaces are the product of the inequalities that define the current structuring of the city and the desire by the excluded to reorient the city to a more equitable form. What is aimed at by these transgressive acts is the attainment of a condition of civic equality, which Bellamy characterises as the defining feature of citizenship.[175]

Transgressive approaches should ultimately be aimed at reorienting rights or stretching their limits to attain the desired ends. By this, I urge the adoption of approaches which actively test the limits of rights with a view of occasioning wider structural changes. My suggestion here stems from the belief that rights are never apolitical. There is always a political project subsumed in claims to rights.[176] In the present analysis, the political project would be the redefinition of the idea of citizenship and enabling access to attendant rights that were hitherto withheld. Mukuru as a site of resistance then presents excluded groups with the chance to annul the hegemonic influences and gatekeeping roles of private property and the marginality that it produces. It is indeed through

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[173] Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression* 26. See also Pieterse, E., *City Future: Confronting the Crisis of Urban Development*, 136.

[174] Ibid, 21-27. According to Cresswell, 'to have transgressed means to have been judged to have crossed some line that was not meant to have been crossed.' This line could be the establishment of the law, the government or other dominant institutions within a given context.

[175] Bellamy, R., *Citizenship: A Very Short Introduction* 121.

[176] Mutua, M., 'The Transformation of Africa: A Critique of the Rights Discourse', in Gomez Isa, F. and De Feyter, K., (eds) *From Human Rights and Diversity: International Human Rights Law in a Global Context* (University of Deusto, Bilbao, 2009) 911.

transgression that the meaning of a place and the relationship of individuals to the place is changed.[177]

In Mukuru the strategies of the insurgent citizenship movements led by Muungano that have been discussed above have mutated into what Lucy Earle, based on her work in Sao Paulo, refers to as 'transgressive citizenship'.[178] Through a multitude of approaches, the excluded have deployed their democratic imaginations to test the limits of their new formulations of citizenship and the possible alternative futures, which in effect expands the realms of urban citizenship. The SPA process epitomises attempts by an excluded group to define what Mukuru means to them and also to redefine their relationship with the space.[179] For these groups, the law now provides a cloak of power which they utilise in expanding the possibilities of urban citizenship and to gain access to institutions and resources that have previously been concealed from their reach and participation.

For instance, the inhabitants (through a group) constructed a public toilet on a private parcel of land which attracted a lawsuit from the proprietor. The court in the claim that emanated from the inhabitants' transgression affirmed the inhabitants' actions by ordering that the public toilet should not be demolished.[180] It was the court's view that the public interest derived from the toilet outweighed the private interest in the land on which it was constructed. Here, we see the invocation of both transgressive and legal mechanisms by the inhabitants which enables their access to a critical resource. The excluded in this case employed what Upendra Baxi refers to as the 'politics for space' where the sacred idea of private property is confronted and substituted with a view of space as a social good.[181] Encroachment is employed as a subversive act that can lead the state to

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[177] Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression,* 60. Cresswell argues that transgression will enable the meaning of a place to change, leading to the place itself changing, and ultimately the place in question will be transformed into the place of the transgressors. In Mukuru, social processes are aimed at transgression and they seek to transform space from its currently structuring as private to a form that is accessible to its inhabitants as a commons.

[178] Earle, L., 'From Insurgent to Transgressive Citizenship: Housing, Social Movements and the Politics of Rights in Sao Paulo', (2012) 44(1) *Journal of Latin American Studies* 121. Earle frames transgressive citizenship to the rooting of claims to citizenship in positive law in contexts of fundamental legal ambiguity, if not outright illegality. Transgression essentially concerns going beyond the boundaries of what is considered to be acceptable.

[179] Redefinition in this case entails the inhabitants presenting themselves not as unlawful occupants of the land, but as legitimate stakeholders within the settlements.

[180] See *Martin Waweru Nguru v Godfrey Momanyi Onchanya & 2 Others,* ELC Case No. 968 of 2013.

[181] Baxi, U. 'A Philosophical Reading of the RTTC', in Zérah, M.H. et al. (eds) Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship', (UNESCO, 2011) 20.

negotiate and compromise with the community.[182] Hence, what would previously be isolated cases of everyday subversion in Mukuru morph into full-scale justiciable claims and disputes.

Within Mukuru, this study also suggests that transgressive citizenship claims have also been judicialized with the inhabitants being accorded their 'day in court' to present their counternarratives. Here, the indigent intertwine transgressive acts with legal strategies in their quests to gain concessions. Mitlin has noted that such shifts in strategy by the poor and their social movements can potentially offer political advantages.[183] In Mukuru, transgression springs from the long history of subjugation, selective planning and realization of the fact that citizenship remains a means for distributing and legitimating inequality.[184] Incidences of transgression are also emblematic of excluded social groups' quest to create their own sense of space, to (re)affirm their existence, while contesting the construct of dominant groups in the city.[185]

As already noted, spatial governance practices have been contrived to deny the inhabitants of Mukuru citizenship in the city. Occupation of space by this group has been rendered illegal and this affects the eligibility to access resources in the city. The most prominent illustration of this is the endemic exclusion of the inhabitants from access to social services and from participation in shaping discourses within the city. This reflects what is a widespread practice in Nairobi where the idea of citizenship that has been pursued has historically been exclusionary despite the city's lack of an ethnic preponderance.[186] This is for instance discernible from the language adopted by

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[182] Mitlin, D. 'Beyond Contention: Urban Social Movements and their Multiple Approaches to Secure Transformation', 567.

[183] Ibid, 563.

[184] Marshall, T.H., *Citizenship and Social Class* (Cambridge University Press, 1950) 9. See also Holston, J., 'Insurgent Citizenship in an Era of Global Urban Peripheries', 260. Indeed, Cresswell, while highlighting the limits of transgressive approaches, pointed to the fact that transgression is mostly reactionary and would disappear in the absence of the unjust conditions. He was also of the view that transgression only acts to critique existing boundaries and not to replace them. See Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression,* 167. It is my position that on the contrary, acts of transgression can not only critique existing boundaries but will also go along to replace them by new forms established by groups that had hitherto been excluded. The Mukuru scenario is illustrative where boundaries of what is considered to be private is constantly being replaced by a notion of it being public or communal. The potency of these acts of transgression in Mukuru will become evident where the SPA process successfully aids in reclaiming the land from the current grantholders, that is, removing it from its current private realm to a public or communal holding.

[185] Cresswell, T., *In Place, Out of Place: Geography, Ideology, and Transgression,* 47.

[186] See Mboya, J. and Oluoch-Olunya, G., '*Nai Ni Who?:* Exploring Urban Identity, Place and Social (Re)construction in Nairobi', (2017) 11(1) *Journal of African Art History and Visual Culture* 60.

the Nairobi Metro 2030[187] which romanticises Nairobi as a global city, an 'idealised zone of abundance and orderly consumption',[188] signalling the kind of citizenry that it endorses for the city.

Such depictions exclude the poor from the 'imagination of the city' and in turn reduces them to spatial illegality.[189] Notions of development that are resultantly adopted are haunted by imprecisions concerning who is the imagined citizen but we can already tell who is excluded from this category.[190] As I show in chapter two, one of Metro 2030's predecessors, the 1948 Master Plan for a Colonial Capital was also unequivocal on the type of citizenry that Nairobi was reserved for, as construed from a plain reading of its heading and from its contents. The same is the case with NIUPLAN which adopts an ambivalent approach when dealing with informal settlements in the city. This intrinsic understanding of citizenship has been used to legitimate injustices occasioned on the poor inhabitants of the city.

For the 'non-citizens', which chiefly consists of the poor urban dwellers, the bulldozer is regularly deployed to clear the spaces that they inhabit and to pave way for the grandiose infrastructural projects aimed at making Nairobi a 'global city' for its 'global citizenry'.[191] Violence of the state is also meted against the indigent as a result of their transgression into spaces that they ostensibly should not be in. Within these groups, disease outbreaks are rampant as illustrated in Mukuru where 43 cases of cholera outbreaks were reported in 2009 and 40 others in 2015- the highest number in the country.[192] Such outbreaks are primarily attributed to non-provision of social amenities like toilets and sanitation services by the relevant government agencies.

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[187] The Nairobi Metro 2030 was formulated in 2008 at the auspices of the MoNMeD with the aim of making Nairobi a "world class African metropolis". See Republic of Kenya, *Nairobi Metro 2030: A World Class African Metropolis* (Republic of Kenya, 2008).

[188] See Harrington, J., 'Blood Donations and Dreams of Inclusion in Kenya In the Aftermath of the Westgate Terrorist Attack', (2019) 89 Africa (forthcoming) 15.

[189] Bhan, G., *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi,* 177.

[190] Chipkin, I., 'Functional' and 'Dysfunctional' Communities: The Making of National Citizens', 80.

[191] Forced evictions for infrastructural projects aimed at making Nairobi 'a global city' illustrate how certain groups may be denied urban citizenship. See Manji, A., 'Bulldozers, homes and highways: Nairobi and the right to the city', (2015) 42(144) *Review of African Political Economy*. Moreover, according to Blomley, 'the very creation of the city and its continued remaking seems all too often associated with acts of dispossession and eviction'. See Blomley, N. *Unsettling the City: Urban Land and the Politics of Property* (Routledge, 2003) xvii.

[192] Blanton, E. *et al.,* 'A Rapid Assessment of Drinking Water Quality in informal Settlements after a Cholera Outbreak in Nairobi, Kenya', 13.3 (2015) *Journal of Water and Health,* 723.

Disasters in the city also brings to sharp focus the differentiated idea of citizenship within the city. Harrington illustrates this using the 2013 terrorist attack on Westgate Mall in the upmarket Westlands neighbourhood.[193] The attack on Westgate prompted a collective response to the tragedy and portrayed a 'a harmonious, ordered biopolitical community formed out of altruistic donors unknown to each other', a stark contrast to the response to the fire tragedy that struck Mukuru-Sinai (one of the constituent villages of the Mukuru SPA) two years earlier which was largely treated with indifference by the government and a majority of the city dwellers.[194]

Formal citizenship is evidently an insufficient precondition for accessing substantive citizenship.[195] Disparities in access to social services in Nairobi is illustrative of this, that, being a poor Kenyan citizen inhabiting Mukuru does not guarantee one's access to rights available elsewhere in the city. What this means is that access to social services in the city is to a large extent determined by where one resides with areas experiencing tenure insecurity witnessing disproportionate levels of inequalities compared to other parts of the city. Pervasive inequalities generated by the inegalitarian conceptions of citizenship have necessitated recourse to transgressive approaches when dealing with these inequalities.[196] The excluded have to this end resorted to a multiplicity of interventions to reassert their citizenship claims and the benefits that flow from the recognition of this status.

Certainly, Mukuru constitutes a space that has been fraught with competing and contested claims. All these claims are primarily concerned with the idea of appropriating space and ideas on belonging. Amidst these claims exist illegalities by the tenants, structure owners, grantees, and the government. Some of the illegalities have however been legitimated by the State or those in control of the state machinery. Illegalities by grantees continue to receive legal sanctions and political protections. For instance, Orbit chemicals, the holder of land title number LR No. 209/12425 on which part of the settlement stands, continues to illegally subdivide the land allocated to it in what

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[193] Harrington, J., 'Blood Donations and Dreams of Inclusion in Kenya in the Aftermath of the Westgate Terrorist Attack' (2019) 89 Africa (forthcoming).

[194] Ibid, 22.

[195] Holston, J., 'Spaces of Insurgent Citizenship',168-69. According to Holston, Formal citizenship is concerned with membership in a political community- in modern history, preeminently, the nation-state. Substantive citizenship on the other hand concerns the array of civil, political, and social rights available to people. Substantive citizenship is in effect concerned with the distributive aspect of formal citizenship.

[196] See Pieterse, E., *City Futures: Confronting the Crisis of Urban Development* (UCT Press, 2008).

appears to be a scheme authorized by the government.[197] Tenants who inhabit Mukuru remain to be the most vulnerable of all the categories of stakeholders and they play a subordinate role and have access to limited rights. The different privileges and rights to belong that are discernible in Mukuru are principally linked to ownership of property, and in this case land ownership. Illegalities by the poor majority (tenants) are easily derided and hastily subdued by the state's violent power. This is seen through the violent acts of evictions that are common in the settlements.

These contradictions have been seized upon by the poor who have in retaliation deployed the 'politics of rights'[198] to advance their claims and locate them in positive law. Inhabitants here use both political and legal platforms to obtain concessions from the state. They have portrayed themselves as individuals with full understanding of their local conditions and who have a stake in the land that they occupy and in spatial governance processes. When confronted with evictions, the inhabitants of Mukuru have in the past mobilized to produce consensus and resist the evictions. The have also called upon religious and other opinion leaders to front their claims. They have collectively retorted to eviction threats by arguing that the State has an obligation to protect the people and the people have a right to shelter.[199] They have also leveraged on positive rights to attain the ends of political mobilisation ultimately leading to what Scheingold refers to as the 'alteration of the balance of political forces'.[200] In no place has the manifestation of this been more evident than in the courts as will be demonstrated shortly through the cases that the inhabitants have instituted. Additionally, the inhabitants have publicly rebuked the state by pointing out the illegalities that it has facilitated especially with regard to the irregular allocations of the grants by government functionaries.

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[197] Documents on file with author.

[198] Scheingold, S.A., *The Politics of Rights: Lawyers, Public Policy and Political Change* (Yale University Press, 1974).

[199] When the residents of Mukuru kwa Njenga were ordered to leave the settlement in January 1999, the then Archbishop of Nairobi, Ndingi Mwana a'Nzeki retorted by saying "Who are they calling strangers, are we now strangers in our own country? We cannot allow strangers to grab our land and then evict us. Kenyans cannot be rendered strangers in their own country". See Duba, M., 'Mukuru residents told to move out', *Sunday Standard* January 24, 1999.

[200] Scheingold, S.A., *The Politics of Rights: Lawyers, Public Policy and Political Change* 148.

These are key elements to Lucy Earle's transgressive citizenship.[201] Cruz also views informal habitation of land as manifestation of transgression of the established property lines.[202] In essence, the community in Mukuru proceeds on the basis that its members can still claim rights to land, and by extension rights to citizenship, under the law notwithstanding their illegal occupation.[203] These groups mobilize behind their claim to rights and challenge state-sanctioned illegalities by the elite. This has been seen in cases where the community in Mukuru has rallied to oppose illegal subdivisions of land by grantees.[204] In yet another case, occupants of the SEPU land that is discussed in Chapter One resisted any form of evictions not done in line with the Constitution and which failed to consult the community, notwithstanding the fact that they do not have title to the land. In this way, the inhabitants assert their right to the city by resisting attempts at privatising public space.

However, such acts of resistance by the community against dispossession may, if not properly framed, morph into struggles for private possession. This may particularly arise where we fail to foreground the use value of property.[205] Porter cautions that with such occurrences, radical claims for space will likely be de-politicised and co-opted into formalised spaces for the negotiation of rights.[206] Additionally, when we pursue this orientation, we depart from both Lefebvre's and Purcell's ideas that the right to the city is not a right that is concerned with appropriation of space as private property but a right that should be concerned with the use value of space.[207] Spaces for transgression must then be insulated from the logics of possession and should instead valorise the

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[201] Earle, L., 'From Insurgent to Transgressive Citizenship: Housing, Social Movements and the Politics of Rights in Sao Paulo', 122.

[202] See Cruz, T. 'Levittown Retrofitted: An Urbanism Beyond the Property Line', in Kelbaugh, D. and McCullough, K. (eds) *Writing Urbanism: A Design Reader* (Routledge, 2007).

[203] Invoking property rights, according to Blomley, is 'to summon up both formally prescribed rights as well as nonjusticiable, yet still powerful, understanding of ownership and entitlement.' See Blomley, N. *Unsettling the City: Urban Land and the Politics of Property* xvii. The implication of this assertion is that any claim to property or rights over space would need to be seriously examined.

[204] Acts by the excluded poor of staying put despite being confronted with evictions has also been construed by Earle as a form of protest and civil disobedience and to be also important in facilitating engagement of these groups with the state. See Earle, L., *Transgressive Citizenship and the Struggles for Social Justice: The Right to the city in Sao Paulo* (Palgrave Macmillan, 2017) 273.

[205] The Supreme Court's decision in *Mitu-Bell Welfare Society v The Kenya Airports Authority* Petition No.3 of 2018. should provide us with a cautionary guidance as the Court appears sceptical to affirm possessory interests in land but instead focuses on the interests that the marginalised can derive from the use of land such as the establishment of housing.

[206] Porter, L. 'Possessory Politics and the Conceit of Procedure: Exposing the Cost of Rights under Conditions of Dispossession', (2014) 13(4) *Planning Theory*, 390.

[207] Purcell, M., 'Citizenship and the Right to the Global City: Reimagining the Capitalist World Order', 578.

use value of space. This means that transgressive claims must maintain as their goal expanding the right to use, and not to own, space. The cautionary note outlined in the foregoing becomes particularly relevant where transgressive claims move into formal adjudicatory spaces as will be seen below.

4.6.2 Legal and democratic strategies

Acts of transgression are further courted and encountered within the court precincts. For instance, a number of Mukuru inhabitants were the Applicants in *Republic v Cabinet Secretary Ministry of Transport and Infrastructure & 4 Others Ex Parte Ali Golle & another* where they instituted a claim challenging the construction of a road arguing that the process failed to consult them. [208] As discussed in Chapter Five, the court in this matter prohibited the Respondents from carrying out any evictions of the Applicants for the purpose of construction of the road until after they had carried out consultations with the Applicants. The fact that the Applicants were unlawful occupants of the land in question did not preclude the Court from arriving at this finding. This case importantly highlights the understanding of the inhabitants of Mukuru kwa Njenga on the transformative nature of the 2010 Constitution and particularly its provisions on public participation. The language of rights adopted by communities in such cases pits the community against the state with the Courts being approached to be the arbiter in what Lucy Earle refers to as the "politics of rights".[209] This process in effect expands the realms of urban citizenship.

In another matter, *Martin Waweru Nguru v Godfrey Momanyi Onchanya & 2 Others*[210] the Claimant sued the Defendants in the latter's capacity as the officials of Mukuru Slum Water and Sanitation Improvement Project claiming that they had encroached on his parcel of land and constructed public washrooms. The said land had been issued to the Claimant in 1990 and he proceeded to use it as collateral for a loan in 1991. In arriving at its determination, the Court noted that even though the Claimant was the registered owner of the suit property, the block of ablutions constructed on the property served a large number of people living in Mukuru slums. It went on to weigh on the Claimant's proprietary rights in the suit property against the broader public interest served by the ablution block for sanitation and hygiene of the inhabitants of Mukuru slums and

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[208] Judicial Review No. 146 of 2017.
[209] Earle, L., *Transgressive Citizenship and the Struggles for Social Justice: The Right to the city in Sao Paulo* (Palgrave Macmillan, 2017) 277.
[210] ELC Case No. 968 of 2013.

arrived at the conclusion that granting the Claimant the orders sought (an eviction order against the Defendants) was not the most efficacious remedy.

The Court directed the Nairobi City County to survey the suit property and compensate the Claimant for the portion occupied by the ablution block. This is an instance where the Court is seen to aid the transgressive claims of the inhabitants. The court in this matter ratifies the subversion of private property protections where such protections run counter purposed to public interest. It was the Court's view that public health and the sanitation rights of the inhabitants cannot be sacrificed at the altar of private property rights. Here, the potency of private property rights is isolated and brought to the Court's attention by the inhabitants. They ultimately lead the Court to a determination that aids the subversion of the hegemony of private property and an elevation of its use value. They thus propose that the Court adopts a different meaning to property, that which underscores its social utility. The decision of the Court in this matter resonates with an earlier assertion made in this Chapter, that is, that claims to the right to the city and urban citizenship must be oriented at ensuring that space serves a social utility. From the decision, we can also establish that when approached at the appropriate moments, institutions can enable claimants to negotiate for and assert their claims to use property with success.[211]

In both cases discussed above, the courts elevate the inhabitants' occupation of the land in Mukuru and accords it a status deserving legal protection. The implication of such determinations will be the 'unsettling of previous terms in which citizenship entitlements have been recognised'.[212] Thus, the courts have aided in the urban citizenship project by proposing a framework for the negotiation of citizenship entitlements between the state and the inhabitants. This role that courts can play in subverting entrenched property rights has featured in recent decisions by the Kenyan Supreme Court in *William Musembi v The Moi Educational Centre Co. Ltd*[213] and in *Mitu-Bell Welfare Society v The Kenya Airports Authority*.[214] According to Bhatia, the Supreme Court in both instances appears to be sceptical of affirming entrenched property rights, which are the outcomes

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[211] Lund, C. *Local Politics and the Dynamics of Property in Africa,* (Cambridge University Press, 2008) 107.
[212] Bhan, G., *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi,* 167.
[213] Petition No.2 of 2018.
[214] Petition No.3 of 2018.

of violence and dispossession.[215] He argues that the Court instead foregrounds constitutional interests in land and decouples it from the legal interest in land.[216] The former, Bhatia argues, would vest in the occupant of land a range of enforceable rights to the land that they occupy.[217] In both *Mitu-Bell* and *William Musembi*, the Supreme Court adopts a view that valorises the social utility of land rather than the legally protected interests.

Care must however be exercised not to over rely on judicial pronouncements for the realisation of rights. Courts cannot be entirely relied on to advance redistributive goals especially within the current neo-liberal order.[218] Litigants have in some cases been left worse off than before they approached the Courts where judgments have been issued which amplify their disenfranchisement.[219] Struggle for equal access through the courts does not necessarily abolish the inegalitarian order of things. Moreover, only a small number of individuals will be in a position to enjoy the protections of access to justice and the courts.[220] Mitlin cautions that the publicity that emanate from such approaches can end up undoing the continued practice of subversive acts.[221] The public attention that litigation draws can potentially jeopardise the continued occupation of space by inhabitants with insecure tenure. In Bangalore, Benjamin documents that NGO's pursuit of a 'rights' agenda has in the past escalated threats to evictions of poor groups that had hitherto been reasonably successful in establishing de-facto tenure over a location.[222]

These handicaps which are characteristic of the law are what draws Modiri to the conclusion that genuine transformation is not to be realised within the domain of the law, but from a revolutionary

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[215] Bhatia, G., 'Notes from a Foreign Field: The Kenyan Supreme Court on Land, Evictions, and Horizontal Rights', available at https://indconlawphil.wordpress.com/2021/07/16/notes-from-a-foreign-field-the-kenyan-supreme-court-on-land-evictions-and-horizontal-rights/ accessed July 16, 2021.

[216] Bhatia, G., 'Notes from a Foreign Field: The Kenyan Supreme Court on Housing, Evictions, and the Right to Land', available at https://indconlawphil.wordpress.com/2021/01/14/notes-from-a-foreign-field-the-kenyan-supreme-court-on-housing-evictions-and-the-right-to-land/ accessed July 16, 2021.

[217] Ibid.

[218] O'Connell, P. 'The Death of Socio-Economic Rights', (2011) 74(4) *The Modern Law Review,* 553.

[219] See for instance *Everline Sande Ngulamu & 2 Others (suing in public interest, on their behalf and on the behalf of the 647 Residents of Deep Sea Informal Settlement Located in Highridge, Parklands Area Facing Eviction) v. Kenya Urban Roads Authority & 9 Others* ELC Petition 46 of 2018.

[220] Modiri, J. M. 'The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-)Apartheid South Africa', (2012) 28(3) SAJHR, 434.

[221] Mitlin, D. 'Beyond Contention: Urban Social Movements and their Multiple Approaches to Secure Transformation', 567.

[222] Benjamin, S. 'Urban Land Transformation for Pro-poor Economies', (2004) 35 *Geoforum*, 185.

social struggle.[223] He further argues that pursuing the rights discourse potentially depoliticises the historical and political conditions of the sufferings that we seek to combat.[224] It is why this chapter calls for variegation of transgressive approaches when imagining alternative futures. This means that rights-based strategies should be deployed for strategic purposes and to advance transgressive strategies.

Outside the courts, elective politics is another tool that marginalised groups use to perform their citizenship. Both Mukuru kwa Njenga and kwa Reuben have been demarcated as wards hence entitled to representation by a Member of County Assembly (MCA). During the general elections conducted in 2017, more than fifty polling centres were established within the settlements in a bid to facilitate the inhabitants' exercise of their democratic rights.[225] Somewhat oddly, the inhabitants have been allowed to exercise the highest and most ideal form of democratic participation though voting in general elections while being denied a chance to participate in spatial governance in the city. This recognition of citizenship is nonetheless paradoxical and convenient to the wielders of power who benefit from granting a limited recognition of citizenship. It treats the inhabitants as objects of politics, subjects and not citizens.

In yet another bewildering manifestation of limited recognition when financial expediency demands, Kenya Power and Lighting Company (KPLC) (an electricity utility provider with a government majority shareholding) provides electricity to many structures within Mukuru. For one to obtain electricity connection from KPLC, the proprietor of the land on which the premise is situated must provide a wayleave approval before electricity cables are laid over the land.[226] It is not clear whether any of the registered grantees issued consent to KPLC to lay the electricity cables over the land. All these illustrate the paradoxes of limited recognition of the inhabitants' right to the city.

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[223] Modiri, J. M. 'The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-)Apartheid South Africa', 434.

[224] Modiri, J.M. 'Laws Poverty', (2015) 18(2) *PER/PELJ,* 249.

[225] See Independent Elections and Boundaries Commission, *KIEMS Report Logs by Polling Station for 26th October 2017- FPE,* available https://www.iebc.or.ke/uploads/resources/DjVeeev5d7.pdf at Accessed 24 May 2019.

[226] See Kenya Power, 'Enquiry for Supply of Electricity Form', available at https://www.kplc.co.ke/img/full/GOSS9XbKP72N_ENQUIRY%20FOR%20SUPPLY%20OF%20ELECTRICITY.pdf accessed June 2, 2019.

Strategies	Transgressive	Legal
Tools	- Unlawful occupation of private/ public land. - Illegal connections to utility networks. - Resistance to forceful evictions. - Oppositions to land subdivision.	- Court cases. - Protests and petitions. - Community-driven planning. - Voting in local elections. - Negotiation with landowners and utility providers.

Table 3: *Strategies and tools in the Mukuru SPA*

4.7 Mukuru SPA as a pathway to rights

NCCG's declaration of Mukuru as a SPA prompted a participatory process oriented at formulating an integrated development plan for Mukuru. Within the framework adopted by the SPA, public participation plays the critical role of placing decisions that affect the production of space in the hands of the inhabitants. The end product of the SPA process, the Integrated Development Plan, is expected to be the result of extensive deliberation with the inhabitants of Mukuru. Not only has the SPA process effected the right of Mukuru inhabitants to participate but it has also recognized their capacity to meaningfully engage in the process. It is within the SPA's public participation framework that the inhabitants are able to imagine and conceive a sense of belonging and to negotiate for a substantive form of citizenship. For instance, the inhabitants have participated in developing sector plans targeting areas like education, health, and other social services and which are to ultimately contribute to the IDP generated. Their participation in these platforms has the potential to enable access to rights within the context of an expanded urban citizenship.

By engendering public participation as its key guiding principle, the Mukuru SPA produces an ecosystem where previously excluded groups can redesign and reconstruct urban citizenship to a more equitable form. It enables the entry of these groups into official domains of participation from where they can undo an entrenched regime of discriminatory spatial governance, selective planning, and unequal citizenship. The sense of belonging generated from this will also be key in imparting responsibility amongst the inhabitants who will gain the capacity to identify the common good that they should collectively strive for.[227] Similarly, it is within the SPA's public participation

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[227] Ibid, 663. See also Mazza, L., *Planning and Citizenship,* 94.

framework that the inhabitants are able to negotiate for rights, with SERs being of key relevance. For instance, the Health Services Consortium (HSC) of the Mukuru SPA has engaged the inhabitants in a participatory process where they have identified the determinants of health inequity within the SPA and outlined a raft of proposals for key target areas identified.[228] Discussions on public participation as envisioned by the Kenyan constitution, and its place in the elimination of inequities is discussed further in the next chapter. Subsequently, the way participation is deployed in practice will be examined in chapters six and seven where the practice of participation in the Mukuru SPA is evaluated.

4.8 Conclusion

The task of redefining citizenship in a more beneficial form is formidable, yet necessary. It is a task that the inhabitants of the Mukuru SPA have assumed, notwithstanding the barriers that have constantly been deployed in their way by the targeted dominant groups and beneficiaries of the status quo. In this chapter, an attempt has been made to paint the inhabitants of Mukuru as a group that has not been passively enduring their fate, but one which has been keen on reorienting urban citizenship to a more beneficial form. This has been manifested by the multiple illustrations of acts of citizenship that recur within the SPA which have signalled the demand by the inhabitants to be viewed and treated as urban citizens entitled to the rights that accrue from the status. The analysis pursued in this chapter has been guided by literature on the right to the city and on urban citizenship. What emerges is the importance of reforming urban citizenship to a form that recognizes the right of all its inhabitants to occupy and use space in the city. By placing the inhabitant at the heart of spatial governance process we create conditions for ensuring that space in the city serves a social utility.

This end will however not be met unless property relations in the city are fundamentally altered. Claims to citizenship will be considered weak and incomplete for as long as the pervasive question of land ownership, remains unresolved. The current property arrangements which are oriented towards capitalistic production have been established to be exclusionary and easily deployed as a gatekeeping tool for urban citizenship. Any discourse on citizenship must therefore, as its starting point, tackle land access and redistributive questions within a society. Indeed, Irwin Stotzky argues that for any meaningful participation to occur, there ought to be a minimal level of socio-economic

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[228] Mukuru Special Planning Area Health Services Consortium Sector Brief.

empowerment of the targeted groups.[229] Such empowerment accords the poor with the requisite agency to effectively participate in governance processes.[230] This is why Lefebvre's proposal of a fundamental and radical reorganisation of the current capitalistic social relations which goes beyond Marshall's positive and pragmatic progressivism is central to this study.[231]

Moreover, Holston and Appadurai have suggested that citizenship rights can not only be limited to participation, but must extend to other claims such as socioeconomic, civil, and cultural claims.[232] That is why Bellamy importantly makes the point that the three components of citizenship addressed earlier in this chapter stand and fall together.[233] Conditions for citizenship will not be met if any of the three components is absent. This also takes us back to the circular relationship discussed earlier between the right to participate and the right to (re)appropriate. Participation will only be meaningful when it is backed by, or when it is directed at, realising the right to (re)appropriate and use space. Reforming tenure to a more distributive form should, therefore, precede any urban planning process as this recognises the importance of tenure security when negotiating for recognition of citizenship.[234] Participation by the inhabitants of Mukuru in planning processes can, therefore, be more effective when such participation is not encumbered by considerations on tenure. By reforming the property relations in the city, we create conditions for the attainment of a level of urban citizenship that will enable genuine and meaningful participation in the affairs of the city which will be instrumental in the quest to realize other rights.

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[229] See Stotzky, I.P., 'Creating the conditions for democracy' in Hongju-Koh, H. & Slye, R.C. (eds) *Deliberative Democracy and Human Rights* (1999, Yale University Press).

[230] Czapanskiy, K.S. and Manjoo, R., 'The right of public participation in the law-making process and the role of the legislature in the promotion of the right', (2008-2009) 19(1) *Duke Journal of Comparative and International Law* 22.

[231] See Mazza, L., *Planning and Citizenship,* 134.

[232] Holston J. and Appadurai, A., 'Cities and Citizenship',14.

[233] Bellamy, R., *Citizenship: A Very Short Introduction* 25.

[234] Bhan, G., 'The Impoverishment of Poverty: Reflections on Urban Citizenship and Inequality in Contemporary Delhi', 550. See also Watson, V., 'The Planned City Sweeps the Poor Away…': Urban Planning and 21st Century Urbanisation', (2009) 72 *Progress in Planning* 183.

5   The Rhetoric, Dilemma and Practice of Participation

5.1 Introduction

The establishment of deliberative platforms from which the inhabitants of Mukuru can express their views, and the rigor with which participation has been deployed in the SPA necessitates a closer examination of participation as a concept. It also warrants looking at the empirical realities which participation embodies in the Mukuru SPA. Before I present an empirical account of participation in the next chapter, it is important to explore the normative and conceptual groundwork here. This analysis firstly acknowledges that eligibility to participate in governance processes is now entrenched in the Kenyan Constitution. It is a 'national value' that 'bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts or applies or interprets any law; or makes or implements public policy decisions.'[1] It is also a guaranteed right in the Bill of Rights for minorities and marginalized groups.[2] Secondly, it is necessary to examine how participation is usually envisioned from a normative and theoretical standpoint. This will shape our understanding of the concept and give us a strong starting point from where we can survey and reflect on its empirical realities. It is from this exercise that we can identify practices that do not conform to the realities that we encounter. Consequently, we can formulate durable and contextual models that can be drawn on by other participatory initiatives.

This chapter will endeavor to provide conceptual clarity to the idea of participation, with reference to the way it is traditionally practiced and how it is structured under the Kenyan legal system and understood by the courts. This will provide the conceptual background for an analysis of how participation is deployed within the context of limited urban citizenship discussed in chapter four. Pursuing this line of analysis also allows an assessment of how the SPA process envisages the Mukuru inhabitants. I have already alluded to the ubiquitous presence of Civil Society Organisations (CSOs) and other social movements in the arenas of participation. Their presence can reinforce the very exclusionary practices that we seek to remove. What does this say about the capacity of the inhabitants to act as active agents who make and create rather than merely

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[1] Constitution of Kenya (2010), Art. 10 (1).
[2] Ibid, Art. 56(a).

consuming spatial governance processes? Will such framing take consideration of the need to recognize and respect their agency?

Processes matters, and so do the participants in these processes who must be viewed as active agents in the "making and creation" of the services/outcomes that they receive rather than simply "consuming" them.[3] Under the SPA, the inhabitants are presented as autonomous participants who are able to engage with the experts as 'equals'. They use the participatory platforms to present their alternative imaginations. It is on these platforms that the inhabitants shape the language that they subsequently deploy to address the various issues identified in the SPA. Thus, what is envisioned in the framing of participation here is a relationship of accountability where there is collaboration while at the same time respecting the autonomy of the various actors. The platforms for participation in Mukuru are understood as invited spaces that are heavily reliant on a conceptual apparatus nurtured and framed by CSOs and social movements. The platforms could potentially be dominated by the discursive practices of powerful external actors which may constrain the ability of the intended beneficiaries to articulate their views. With these kinds of arrangements, the beneficiaries' agency can potentially be obscured. A nuanced analysis will aim to examine the manner by which participation in these platforms is envisioned, negotiated and materialized. It also requires us to examine the concept of agency which in this work is employed in reference to the ability to exercise autonomy in decision-making.

The analysis in this chapter is presented as follows. In the first part, I examine how participation has traditionally been crafted while bringing to the fore the underlying paradoxes that arise from these framings. I first trace the growth of the citizenship project and its contribution to dismantling the boundaries of exclusion that characterise spatial governance practices. I then move to a discussion on how participation acts to recognize agency of excluded groups. I conclude that meaningful participation will only be attained when we create conditions for engagement in equal terms from the inception of these processes. What follows is an elaboration of some of the dilemmas that arise whenever spaces for participation are constructed. We see these questions arising on multiple levels: from the framing of the participants, to how, and on whose terms, they participate. We are faced with critical questions on how we can craft effective models for

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[3] Barnes, M., 'Users as Citizens: Collective Action and the Local Governance of Welfare', (1999) 33(1) *Social Policy and Administration,* 84.

participation in light of the power imbalances within these spaces and within the context of an incomplete citizenship project.

In the second part, I transition from the theoretical to the normative assumptions organized in the law. Here, an analysis of the legal framework on public participation in Kenya is undertaken. I consider how the constitutional framework on participation has been structured and if it can potentially open up discursive spaces to enable meaningful participation. Lastly, whether the interpretative exercises of these provisions carry any transformative value for the marginalized. While the aim of this chapter is not to provide a prescription of the 'best' model for participation, it will demonstrate how processes rooted in the law can be potentially disruptive when framed to reflect local realities and where concerns on the participants' capacity to participate are directly tackled. It is this agency-conscious orientation to participation which the chapter advances as the bearer of a transformative potential in spatial governance processes.

PART A.

5.2 From exclusion to citizenship

Appreciating how the urban citizen is conceptualized is a critical first step to understanding the nature of their participation in spatial governance processes. Urban citizenship has in this work been viewed as an incomplete project that is largely mediated and defined from the standpoint of spatial illegalities. The attainment of the status of an 'urban citizen' has traditionally signaled eligibility to participate in spatial governance. Thus, presence in the master plan is often an acknowledgment of one's citizenship.[4] This will mean that a large majority of urban inhabitants will be prevented from participating in governance processes where their personhood or citizenship is denied. Drawing on the experiences in India, Bhan observes that exclusionary spatial governance approaches preclude the participation of residents of informal settlements whose personhood has often been tied to their unlawful occupation of spaces in the cities with the state viewing them as lacking 'the moral attributes of community'.[5]

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[4] Bhan, G. *In the Public Interest: Evictions, Citizenship and Inequality in Contemporary Delhi* (University of Georgia Press, 2016) 180.
[5] Ibid, 182. See also Chatterjee, P. *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (Columbia University Press, 2004) 57.

Struggles for participation will show the power dynamics within a given context and how power is exercised by the various actors in these spaces.[6] In most cases, the power to define these limits will be left to government agencies and institutions which are likely to erect barriers to effective involvement of citizens.[7] Moreover, the existence of other factors like inequalities in the cities have also contributed to undermining of the idea of citizenship especially where the state fails to take action to eliminate the drivers of inequality.[8] Most inequalities in the city are the direct outcome of differential access to opportunities and outcomes with the state through its policies and practices often generating the inequalities. For instance, by conditioning provision of basic services in the city to land tenure, the state precludes a majority in the city from access to these essential services. Additionally, by basing individuals' participation in spatial governance processes on their tenure situation, the state signals to them that they have no stake in the city and are thus not entitled to access opportunities in the city.

As we saw in the previous chapter, the citizenship project is aimed at dismantling the boundaries of exclusion that have relegated certain groups to a subordinate role in urban contexts. It also has as its goal, the conferment of the entitlements of citizenship that will enable effective social and political participation by individuals.[9] The quest for substantive citizenship takes the form of struggles by excluded groups to gain access to rights that they have been denied.[10] Brown and Kristiansen have underlined the importance of participation in conferring substantive citizenship. They argue that substantive urban citizenship requires that democratic spaces for participation are provided.[11] Once these spaces have been availed, citizens must be allowed to access these spaces and claim rights of participation.[12]

Struggle underlines the citizenship project. In Mukuru we have seen this being manifested by the resistance that have defined the inhabitants' conduct. The viability of these approaches has further been bolstered by the growing cohesion by a now politically articulate group inhabiting Mukuru. We are now able to see instances where the inhabitants confidently engage with state institutions

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[6] Gaventa, J. and Valderrama, C. 'Participation, Citizenship and Local Governance', Background note prepared for workshop on 'Strengthening participation in local governance' Institute of Development Studies, June 21-24, 1999.
[7] Ibid.
[8] See Lister, R. *Citizenship: Feminist Perspectives* (Macmillan, 1997) 17.
[9] Ibid, 41.
[10] Ibid, 43.
[11] Brown, A. & Kristiansen, A. *Urban Policies and the Right to the City*, (UNESCO, 2008) 15.
[12] Ibid.

both as individuals and as groups. Through such conduct, the inhabitants try to recast themselves as full citizens and political actors. Their actions also correspond to Oldfield's bifurcated idea of citizenship as both a status and a practice.[13] Since the analysis in the previous chapter has been considerably dedicated to citizenship as a status, this chapter and the next will be mainly concerned with citizenship as a practice or what Helga Hernes refers to as the 'participatory aspects of citizenship.[14]

A key outcome of the struggles and resistance prominent in the citizenship project has been the creation of alternative spaces for participation by previously excluded groups. Thus, by voicing citizenship claims, they are made to enter what Gaventa refers to as 'institutional arenas' or 'spaces for participation'.[15] It is within these spaces that new meanings and practices of citizen engagement are molded and that new political identities through which people come to participate are forged.[16] Groups will use the platforms to present their counter-imagination of urban space and shape the language that they subsequently deploy in demanding for rights as rightful and legitimate claimants. When individuals use these platforms to highlight the drivers of social exclusion and barriers to participation, their goal is the creation of an inclusive citizenship where all can realize their rights.[17]

However, a weak understanding of what participation constitutes increases the risk of overlooking the ability of excluded groups to exercise control over their affairs. It fails to see how participatory processes can be properly structured to lead to meaningful outcomes for the excluded. This often arises where inadequate attention is accorded to studying the characteristics of the populations who participate. Not surprisingly, the dominant scholarship on the subject of participation today fails to adequately address the issue of capacity of the excluded to meaningfully participate in governance processes. This inhibits adequate understanding of the nature of their participation within these spaces and is unhelpful in understanding how people perceive and perform their

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[13] See Oldfield, A. *Citizenship and Community, Civic Republicanism and the Modern World* (Routledge, 1990). See also Lister, R. Ibid, 41.

[14] Hernes, H. *Welfare State and Woman Power* (Norwegian University Press, 1987)138.

[15] Gaventa, J., 'Introduction: Exploring Citizenship, Participation and Accountability', (2002) 33(2) *IDS Bulletin,* 3.

[16] Cornwall, A., *et al.,* 'States of Citizenship: Contexts and Cultures of Public Engagements and Citizen Action', (2011) 363 *IDS Working Paper,* 8.

[17] See Lister, R. 'Citizen in Action: Citizenship and Community Development in a Northern Ireland Context', (1998) 33(3) *Community Development Journal,* 226.

citizenship rights.[18] We, therefore, continue to witness enormous gaps between citizenship aspirations by the excluded groups and their lived realities especially where their spaces for participation are not properly understood and structured. A consequence of this is a perpetually incomplete citizenship project for the excluded.

In the next section, I offer a candid exploration of questions of agency by framers of participation where the target is inclusion of groups that have traditionally been excluded from participatory processes. I argue that that the spaces often presented as a panacea for the ills of an exclusive citizenship are so often characterized by the very patterns of exclusion which they seek to replace. The practice of participation, as I argue here, continues to exude privilege. The poor are perpetually framed as hapless victims in constant need of tutelage from 'experts'. Their knowledge is often disqualified as inadequate and substituted with those of external actors. Processes which reinforce the marginalization of the poor then become normalized. Their lived realities are concealed and their participation approached through formalist and highly structured techniques.

This explains Gaventa's concern of participatory spaces being not neutral but on the contrary, 'shaped by the power relations which both enter and surround them'.[19] Many authors have also emphasized the importance of understanding the spaces for participation in the contexts in which they are created.[20] Their focus has been directed at the elimination of power imbalances within the spaces and enhancing the confidence of the excluded to effectively participate.[21] Ultimately, the aim here is to ensure accountability and autonomy. The alternative would be incompatible with the vision of citizenship that we are pursuing. It explains the elevated role that beneficiaries' agency will have in the discussions in this chapter and my acknowledgment of its transformative potential.

5.3 Locating agency in participation

The search for durable models of participation within contexts of deprivation have been informed by doubts about the dominant approaches habitually deployed in development discourses. 'Poor

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[18] Gaventa, J., 'Introduction: Exploring Citizenship, Participation and Accountability', 8.
[19] Ibid, 9.
[20] See Cornwall, A. and Gaventa, J., 'From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy', (2000) 31(4) *IDS Bulletin.* Nyamu-Musembi, C. 'Toward an Actor-oriented Perspective on Human Rights', (2002) 169 *IDS Working Paper,* 18. Ackerman, J., 'Co-governance for Accountability: Beyond "Exit" and "Voice", (2004) 32(3) *World Development.*
[21] Barnes, M. 'Users as Citizens: Collective Action and the Local Governance of Welfare', 82.

communities' have been on the receiving end of numerous development projects. These romanticize and sanitize their agency in arrangements of co-option termed as 'partnerships', which are characterized by numerous contradictions.[22] In most of these arrangements, the poor have been used as testing grounds for new concepts and relegated to subordinate roles where questions of their agency remain completely unaddressed. Hardly any effort is directed at learning how the groups perceive their rights, how they act on these meanings, and how these are bounded by issues of knowledge and representation,[23] or what these projects portend for their futures. Thus, inclusion has been transformed into a rhetoric which legitimates the subordination of community needs to those of internal and external powerful forces.[24] The communities' expression of agency will effectively be constrained in the absence of properly structured participatory processes and where the arrangements are defined by domination by one group.[25] As a consequence, no meaningful changes have been attained within these communities. Instead, these arrangements guarantee the reproduction of old paternalistic structures.[26] There is a need for a critical investigation of how these spaces are structured and particularly of how interests are mapped, and how they converge or diverge.

The concept of agency in participation discourses has received considerable attention particularly among feminist scholars examining how individuals interact with political institutions and how the interactions inform their status and practice of citizenship. Ruth Lister, for instance, makes reference to the concept when characterizing individuals as 'autonomous, purposive actors, capable of choice'.[27] To her, equal agency demands that no one gender should have the right to exercise free choice and domination over the other.[28] Like Susan James, Lister is of the view that the development of a conscious sense of agency will arise from the development of individuals' self-esteem which represents confidence that one can participate in political life.[29] Yet, at the same

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[22] See Cornwall, A., *et al.,* 'States of Citizenship: Contexts and Cultures of Public Engagements and Citizen Action', 9.

[23] Gaventa, J., 'Introduction: Exploring Citizenship, Participation and Accountability', 8.

[24] Cornwall, A., 'Locating Citizen Participation', (2002) 33(2) *IDS Bulletin,* 6.

[25] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society* (Cambridge University Press, 1988) 110.

[26] Jacobs, J. *The Death and Life of Great American Cities* (Pimlico, 2000) 284.

[27] Lister, R. *Citizenship: Feminist Perspectives,* 36.

[28] Ibid, 38.

[29] Ibid, 39. See also James, S. 'The Good-enough Citizen: Citizenship and Independence', in Bock, G., and James, S. (eds) *Beyond Equality and Difference* (Routledge, 1992) 60.

time agency has in these cases been taken to have a transformative character which is vital to the citizenship project.[30]

The political theorist Carol Gould viewed agency as an aid to self-development. She defined agency to mean '…of concretely becoming the person one chooses to be through carrying out those actions that express one's purposes and needs.'[31] Giddens, who examines the intersections of structure and agency, understands agency to mean the intentionality and purposiveness of human behavior.[32] It means one's freedom and capacity for self-development. It is the ability of individuals to exert influence in processes that affect them. Gould aptly depicts the circular character that agency has with democracy, that it acts as a key foundation of the democratic character of a society and also as a key value that a democratic society should strive to enhance.[33] This is echoed in the works of Gaventa,[34] Cornwall,[35] and Barnes[36] which explore agency's role in fostering accountability. The import of this will be key when structuring spaces for deliberation as these concerns must be reflected when conceiving participatory processes and subsequently addressed during their implementation. Drawing on these observations, we will examine how agency plays out within participatory discourses.

Participation in decision-making is considered to be the 'most adequate means for the expression of agency'.[37] Through its practice, individuals signal that they have a stake in local matters and that they also have the right to shape local affairs. By doing this they assert their personhood. Its practice also contributes to the increase of individuals' autonomy which Rosseau equated with giving an individual freedom.[38] It is the nature of this relationship that brings Saati to the conclusion that participation will act both as a means and an end to the improvement of individual's potential, essentially, their agency.[39] According to Mitlin and Thompson, participation acts to give

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[30] Ibid.

[31] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 47.

[32] Giddens, A. *Central Problems in Social Theory: Actions, Structure and Contradictions in Social Analysis* (The Macmillan Press Ltd, 1979) 56.

[33] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 295.

[34] Gaventa, J., 'Introduction: Exploring Citizenship, Participation and Accountability', 14.

[35] Cornwall, A., 'Locating Citizen Participation', 6.

[36] Barnes, M. 'Users as Citizens: Collective Action and the Local Governance of Welfare', 84.

[37] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 217. See also Lister, R. 'Citizen in Action: Citizenship and Community Development in a Northern Ireland Context', 228.

[38] Rousseau, J.J. *The Social Contract* bk. I, ch.7 (Penguin Books, 1968) 64.

[39] Saati, A. *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy* (Department of Political Science, UMEA University, 2015) 20.

local people greater control over development processes.[40] So, when structured properly, participation will facilitate the development of individuals' capacity to negotiate with the powerful and effectively put them in direct control of decisions that affect their lives.[41] It can act to portray individuals as autonomous actors who are able to articulate their needs and act upon them.[42]

Within these spaces for participation, communities can potentially generate and convey local knowledge which can feed into decision-making processes.[43] The import of this will be that excluded groups are no longer treated as passive objects of inquiry but as individuals in actual control of their affairs and who use the spaces of participation to empower themselves and to reassert their presence within these spaces.[44] Empowerment is thus a key trait of the educative role that Rousseau attributed to participation.[45] This concept is concerned with expanding individuals' ability to make choices in a context where this ability was previously denied.[46] It is an action-oriented concept whose goal is to eliminate the inhibitors to the maximization of individuals' potentials.[47] The educative outcomes of participation will arise from individuals interacting and learning from others and recognizing the autonomy of each participant and the mutuality of their obligations.[48] They could also rise from interactions that communities have with experts participating in decision-making processes.[49] In arrangements that value community-based knowledge and where factors that reproduce hierarchical power relations are dismantled, the

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[40] Mitlin, D., and Thompson, J. 'Participatory Approaches in Urban Areas: Strengthening Civil Society or Reinforcing the Status Quo?' 235.

[41] Stiefel, M., and Wolfe, M. *A Voice for the Excluded: Popular Participation in Development, Utopia or Necessity?* (Zed Books, 1994).

[42] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,*233. See also Lister, R. *Citizenship: Feminist Perspectives*, 36.

[43] Pfeffer, K., *et al.,* 'Participatory Spatial Knowledge Management Tools', (2013) 16(2) *Information, Communication & Society,* 277.

[44] See Lister, R. 'Citizen in Action: Citizenship and Community Development in a Northern Ireland Context', 228.

[45] See Rousseau, J.J. *The Social Contract* bk. II, ch.3 (Penguin Books, 1968).

[46] Kabeer, N. 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment', (1999) 30 *Development and Change* 436.

[47] Minkler, M. and Wallerstein, N. 'Improving Health through Community Organization and Community Building Perspectives from Health Education and Social Work', in Minkler, M. (ed) *Community Organizing and Community Building for Health and Welfare* (Rutgers University Press, 2012) 45.

[48] Pateman, C. *Participation and Democratic Theory* (Cambridge University Press, 1970) 43. See also Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 257.

[49] Pfeffer, K., *et al.,* 'Participatory Spatial Knowledge Management Tools', 274.

educative role of participation becomes more visible and the community's agency becomes more asserted.[50]

5.3.1 Actuating agency for meaningful participation

While examining urban planning policies pursued by American cities in the 1950s, Jane Jacobs demonstrated how the solution for improvement of lives in slums rested with developing the inhabitants' agency and facilitating their meaningful participation.[51] Although her focus was largely on regenerative practices adopted in these cities, the same accounts can be used in examining how concerns of agency can be addressed in contexts that have lacked any prior contact with planning. In exploring the capacity of participation to improve the wellbeing of communities, focus should be directed at addressing certain barriers that inhibit actuation of agency. Elimination of these barriers would ensure that the opportunities provided for citizen participation are responsive to their needs and enable their meaningful participation.[52] Whenever we embark on the process of eliminating these barriers, we are firstly acknowledging that scarcely will these spaces be neutral. We also are effectively taking steps to ensure that such spaces are accountable and transparent.[53] Issues of knowledge control and power imbalances will have to be addressed head-on when configuring spaces for participation.[54]

Such an assessment requires us to question whether safeguards have been employed to protect against the negative implications of existing knowledge asymmetries within the spaces. Providing these safeguards will mean that communities are shielded from ideological coercion by the dominant interests within the spaces.[55] This will especially be relevant where the spaces have been structured by external actors like CSOs and other experts. Care must be taken as the external actors may artfully (mis)appropriate community-generated discourses and make them inaccessible to the intended beneficiaries. Participation can in these cases be deployed against backdrops where

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[50] Mattern, S., 'Post-it Note City', (2020) *Places Journal,* 12.

[51] Jacobs, J. *The Death and Life of Great American Cities* (Pimlico, 2000) 284.

[52] See Mattern, S., 'Instrumental City: The View from the Hudson Yards, circa 2019', (2020) *Places Journal* 12.

[53] Gaventa, J., 'Introduction: Exploring Citizenship, Participation and Accountability', 13. See also Barnes, M. 'Users as Citizens: Collective Action and the Local Governance of Welfare', 84.

[54] See Leach, M., Scoones, I., and Thompson, L., 'Citizen, Science and Risk: Conceptualising Relationships across Issues and Settings', available at https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/8656/IDSB_33_2_10.1111-j.1759-5436.2002.tb00019.x.pdf;jsessionid=8ADA3AEFCCF939C9B01366381A680F85?sequence=1 accessed March 9, 2020

[55] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 244.

existing hierarchies of power are normalized and perpetuated. Put differently, the discursive practices adopted may end up presuming or alternatively obscuring beneficiaries' agency. It is such tendencies that ultimately reinforce the exclusionary practices which we seek to eradicate.

Participation, as already remarked, is intrinsically imbued with power relations and the exercise of power by different social actors.[56] Lukes deemed these power dynamics to be the outcome of socially structured and culturally patterned behaviors and practices.[57] It follows then that any efforts aimed at widening openings for participation would require that we create conditions for engagement in equal terms by facilitating access to resources that underpin citizenship rights.[58] We are therefore unable to circumvent the important step of providing individuals with the requisite resources that will foment their agency and enable their meaningful participation. From this, we can see the unfolding of Oldfield's and Lister's bifurcated view of citizenship. This is that citizenship as a practice (exercising the agency and right to participate) must be accompanied by citizenship as a status (manifested through access to a wide range of rights like property rights).[59] Where the latter is incomplete, or where a weak form of citizenship is inculcated, then the effectiveness of citizenship as a practice will be in doubt. Therefore, it is worth repeating what was stated in the previous chapter that participation will only be meaningful when backed with access to material rights. Ultimately, even though participation aids in the development of agency, a weak or incomplete citizenship will affect individuals' capacity to participate.

5.4 The rhetoric, dilemma, and practice of participation

In this section, I turn to an evaluation of how participation has often been framed in various contexts and how it is actually practiced. As will be seen here, the crucial test for any model of participation lies in the extent to which the concerns enumerated above have been dealt with, particularly on how questions of agency have been addressed. This means that any assessment aimed at understanding the dynamics of participation must not only examine the mechanisms for public involvement that exist but how participation actually works in practice.[60] For Cornwall this means 'treating participation as a situated practice'.[61] Her approach to participation demands that

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[56] Gaventa, J. and Valderrama, C. 'Participation, Citizenship and Local Governance', 7.
[57] Lukes, S. *Power, a Radical View* (Macmillan, 1974) 21-22.
[58] Oldfield, A. *Citizenship and Community, Civic Republicanism and the Modern World* (Routledge, 1990) 27.
[59] Lister, R. *Citizenship: Feminist Perspectives,* 41.
[60] Cornwall, A. 'Locating Citizen Participation', 33(2) *IDS Bulletin,* 2.
[61] Ibid.

we take a closer look at how participants are imagined and constructed, how these participants construct their engagement and entitlements within these spaces (or how these engagements are constructed for them), what spaces are given to them and what spaces they occupy as their own.[62] Addressing these questions will facilitate an understanding of what participation signifies and how it has been operationalized.[63] By giving meaning to participation we avert a situation where participation is treated as an abstract concept, especially when we isolate it from its intended goals. So, by examining participation, we are not just limiting our focus to whether spaces enhance inclusion of the historically marginalized, but also how this inclusion will contribute to the collective prosperity of these communities.

There remain a host of challenges which become apparent whenever spaces for participation are framed. These challenges primarily arise from the fact that no radical changes have been embraced to reconfigure participatory spaces in such a way as to guarantees their accountability. They are also the outcome of processes which fail to appreciate the role of intended beneficiaries of participatory processes or where these groups are only given limited roles to play.[64] This threatens the transformative potential that participation bears.[65] The very meaning of participation is now subject to changes and is constantly subservient to whichever practices that are fashionable. Practices that restrict people's ability to imagine the city as they want it to be are now widespread with their 'transformative' characters being paradoxically celebrated.[66] What is most alarming is that some of these practices which may be flawed, such as the overuse of technology in planning, are now being codified and purveyed as best practices that need to be replicated.[67] What this portends for communities remains to be seen. Thus, for us to understand the limitations of these spaces for participation we will need to identify their intrinsic peculiarities and examine the discursive practices that underly and define them. I will engage with what Cottrell[68] and Cornwall[69]

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[62] Ibid, 3.

[63] Saati, A. *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy,* 4.

[64] Radil, S.M. and Anderson, M.B., 'Rethinking PGIS: Participatory or (post)political GIS?' (2019) 43(2) *Progress in Human Geography,* 200.

[65] Ghai, Y. and Galli, G., 'Constitution Building Processes and Democratization', (2006) *International Institute for Democracy and Electoral Assistance* 17.

[66] See Mattern, S., 'Instrumental City: The View from the Hudson Yards, circa 2019', 12.

[67] See Mattern, S., 'Post-it Note City', 4.

[68] Cottrell, J., 'Constitutionalizing Public Participation in Kenya', (2016) *The Indian Yearbook of Comparative Law,* 197.

[69] Cornwall, A., 'Unpacking 'Participation' Models, Meanings and Practices', (2008) *Community Development Journal,* 275.

have proposed as the important questions when examining the dynamics of participation, that is, who participates, how and on whose terms.

5.4.1 Framing the participant

How the participant is framed is key whenever we seek to understand the dynamics of participation. A good starting point would be to first identify the subject(s) of participation, in other words, who is taking part in these processes or who the 'public' is. It is common to find predetermined amorphous groups being lumped together in what will assume the label of participation.[70] Even though participation will often bring together individuals with a shared or common purpose, lumping heterogeneous populations together within spaces for participation may not be ideal as there are usually significant underlying differences within these groups.[71] Such characterization also has the potential to co-opt less advantaged individuals into schemes that may not be favorable to them, and may end up with what has herein been referred to as ideological coercion. Understanding the dynamics of social networks and institutions within a community will provide us with a clearer picture of which individuals possess the legitimate mandate to speak on behalf of the community and whether the issues they raise are community-generated or whether, it is a case in which private interests are raised as public concerns.[72]

This will also be the case where activists and academics take the lead in framing issues and processes for communities.[73] As Madlingozi observes, these actors will mostly be 'outsiders' who will frame issues to align with their personal or institutional interests at the expense of the community's autonomy.[74] How these issues are framed will also determine the types of participants that will be drawn to these spaces.[75] All these are reminders that power is ubiquitous whenever these spaces are constituted and interests convened.[76] When heterogenous groups are

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[70] Cornwall, A., 'Unpacking 'Participation' Models, Meanings and Practices', 277-78.
[71] Cohen, J. and Uphoff, N., 'Participation's Place in Rural Development: Seeking Clarity Through Specificity', (1980) 8 *World Development,* 222.
[72] See Cornwall, A. 'Beneficiary, Consumer, Citizen: Perspectives on Participation for Poverty Reduction', (2000) 2 *SIDA Studies,* 56. See also Mitlin, D., and Thompson, J. 'Participatory Approaches in Urban Areas: Strengthening Civil Society or Reinforcing the Status Quo?', 249.
[73] Madlingozi, T., 'Post-Apartheid Social Movements and the Quest for the Elusive 'New' South Africa', (2007) 34(1) *Journal of Law and Society,* 95.
[74] Ibid.
[75] See Fung, A. 'Varieties of Participation in Complex Governance', (2006) 66 *Public Administration Review,* 66-75.
[76] White, S.C., 'Depoliticising Development: The Uses and Abuses of Participation', (1996) 6(1) *Development in Practice,* 12.

lumped together, there is always a possibility that the terms of participation will gravitate in favor the dominant voices within the spaces.

There is also a possibility that participation in these cases will be reduced to numbers and targets with the numbers playing limited roles in actually shaping the outcomes of participation. With these arrangements, there is always a risk of reproducing old power patterns which effectively forecloses any viable avenues for positive transformation. Reducing participation to numbers also blurs an assessment of whether the conditions for participation are optimal for all the interests that have been lumped together.[77] We also run the risk of exposing participants to 'participation fatigue' when we fail to create optimal conditions for their participation and where they perceive little returns from their participation.[78] It additionally undermines the confidence that communities will have in these processes.

Acknowledging these risks would mean exercising care to ensure that even the 'weaker' voices are given a chance to adequately represent their views by balancing intra-community power relations.[79] What Madlingozi suggests is that these arrangements should be guided by Memorandums of Understanding between the communities and the external actors that would 'specify the areas of cooperation, broad tactics to be used, who shall speak, and the period for cooperation'.[80] For him, having these kinds of safeguards will shield from the diminishing of a community's autonomy while also guaranteeing accountability.[81] While I agree with his views, the practicality of this may be difficult in contexts that groups are yet to attain what Chatterjee calls 'the moral attributes of community'.[82] Such safeguards will only be attained where a group can speak with one voice as a community and where it possesses the power to collectively negotiate.

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[77] Cornwall, A. 'Beneficiary, consumer, Citizen: Perspectives on Participation for Poverty Reduction', 56.
[78] Cornwall, A., 'Unpacking 'Participation' Models, Meanings and Practices', 280. See also Richards, C. *et al.,* 'Practical Approaches to Participation', (2004) 1 *SERG Policy Brief,* 12. Wesselink, A. *et. al.,* 'Rationales for Public Participation in Environmental Policy and Governance: Practitioners' Perspectives', available at https://pdfs.semanticscholar.org/4828/ba3ee867bedb600b8fe4510394153f20c542.pdf 12 accessed March 13 2020.
[79] Ackerman, J., 'Co-governance for Accountability: Beyond "Exit" and "Voice", 452.
[80] Madlingozi, T., 'Post-Apartheid Social Movements and the Quest for the Elusive 'New' South Africa', 96.
[81] Ibid.
[82] Chatterjee, P. *The Politics of the Governed: Reflections on Popular Politics in Most of the World,* 57.

The institutional contexts within which participation takes place cannot be disregarded. The importance of this has been captured by Orago who reiterates that participation will not occur in abstract but within a concrete institutional context.[83] It has widely been acknowledged by democracy theorists that individuals and institutions cannot be considered in isolation from one another.[84] Gould regards institutions as being integral for the realization of the purposes that agents have.[85] For Giddens, institutions and structures that emerge within societies will be the product and medium of reproducing societal behaviors and practices.[86] He concludes that agents will act within these structurally determined limits while maintaining some relative autonomy.[87]

So, when we see participation being defined by a ubiquitous presence of NGOs and social movements, such is the natural outcome of and representative of the discursive systems within which our social systems have been sustained. It draws us to a dilemma which Gould discerns, that is, if participation is tied to the agency of individuals, what then happens where decision-making is substituted for them?[88] We can already tell that this creates room for lack of nuanced approaches when framing local issues. Our attention must then be drawn to how these actors have traditionally been implicated in the structuring of various governance and legal processes in Kenya and the implication that this has had.

NGOs' ability to reach disadvantaged groups has contributed to the elevated roles that they continue to play within spaces for participation.[89] We see the burgeoning of these actors in contexts where the state is deemed to be inefficient, bureaucratic, and less democratic.[90] Here 'outsiders' are invited (or invite themselves) into partnerships with communities for the 'elevation' of the latter's voices and to create frameworks for participation. Such an arrangement may however act to diminish the voices of communities or local organizations which may not have the same

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[83] Orago, N. 'Poverty, Inequality and Socio-economic Rights: A Theoretical Framework for the Realisation of Socio-economic Rights in the 2010 Kenyan Constitution', 174

[84] Pateman, C. *Participation and Democratic Theory,* 42.

[85] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics,* 109.

[86] Giddens, A. *Central Problems in Social Theory: Actions, Structure and Contradictions in Social Analysis,* 69.

[87] Ibid, 91.

[88] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society*, 224.

[89] Robinson, M. and White, G., 'The Role of Civic Organisations in the Provision of Social Services', (1997) 37 *Research for Action,* 4.

[90] See Cornwall, A. and Gaventa, J., 'From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy', 13.

amounts of resources and strong organizational structures like NGOs.[91] This will be the case where the concerns about agency that have previously been mentioned are not addressed and where we are dealing with an incomplete citizenship project.

Mitlin also observes that self-help organisations may also be victims of domination by NGOs.[92] So, where NGOs play overly dominant roles, there will always be a likelihood that decision making will be substituted for individuals and communities. It can also mean that the abilities and skills of grassroot organisations and communities will remain underdeveloped.[93] Schönwälder's suggestion that the participatory nature of NGOs and social movements can exert a democratizing influence and reduce clientelism is thus rebuttable given the converse possibility of cooptation of smaller groups that these spaces present.[94] What remains important therefore is the adoption of safeguards that will guarantee the agency of participants. These safeguards also go a long way in guaranteeing that these spaces remain invented or created spaces, rather than unmalleable invited spaces for participation.[95]

5.4.2 How, and on whose terms do they participate?

Our attention must also be directed to how participation discourses are constructed and framed. According to Ackerman, there ought to be some level of intentionality when structuring these spaces.[96] Intentionality can be manifested in multiple ways including in how the processes are steered. Some perception of intentionality can be deduced where processes are structured to position the intended beneficiaries as the principal drivers of these processes from their inception.[97] Ackerman's hypothesis is that participatory processes will be more effective when societal actors are involved in their designing from the earliest stages possible.[98] This means that the subjects of participation must be present from the inception or diagnostic stages to the point in which action plans are formulated and implemented. The outlook and outcomes derived from participatory

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[91] Cornwall, A. and Gaventa, J., 'From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy', 13.

[92] Mitlin, D. 'Civil Society and Urban Poverty- Examining Complexity', (2001) 13(2) *Environment & Urbanization,* 159.

[93] Ibid, 160.

[94] Schönwälder, G., 'New Democratic Spaces at the Grassroots? Popular Participation in Latin American Local Governments', (1997) 28 *Development and Change,* 753-770.

[95] See Cornwall's dichotomy of created and invited spaces in Cornwall, A., 'Locating Citizen Participation'.

[96] Ackerman, J., 'Co-governance for Accountability: Beyond "Exit" and "Voice", 459.

[97] Ibid.

[98] Ibid.

processes will then be influenced by the stage at which communities are involved in their construction. This goes to the very root of the effectiveness of participatory processes. It aligns with Pateman's conclusion that participation will only be effective when citizen engagement is present in all stages.[99]

Jürgen Habermas, in his theory of democracy, also reiterated the importance of guaranteeing participation at each stage of democratic processes in arrangements that deem participants as autonomous legal subjects.[100] For him, these kinds of engagements play the important role of giving the participatory processes a sense of legitimacy and it also enables participants to have a wide sense of understanding of what should happen in these processes.[101] Applying Habermas' discourse theory, we are now able to appreciate how legitimacy of decisions will be guaranteed where the subjects of these decisions are involved in their framing from inception. Simone Chambers has also acknowledged the transformational potential of participatory discourses in what she terms as 'discursive equality' which must be present to guarantee all participants the opportunity to present their views.[102] She argues that the legitimacy of participatory processes will emanate where they are embedded in the convictions of participants.[103] Discursive equality should ideally be maintained at all possible stages. This can act to guarantee accountability within the participatory spaces. Thus, it becomes difficult for NGOs and other external players to misappropriate discourses once communities are involved from the inception and at all stages.

How individuals participate will also mean addressing concerns of agency which have earlier on been mentioned. We are for instance concerned with whether individuals are accorded some leverage to frame community-generated issues in an environment that upholds their autonomy. For this to occur, certain enabling conditions must be present which should simultaneously be accompanied by the elimination of certain constraining conditions. The community must firstly be seen to possess the requisite knowledge about their surroundings which can facilitate their meaningful participation. Where the levels of knowledge are minimal, Orago suggests that these

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[99] See Pateman, C. *Participation and Democratic Theory* (Cambridge University Press, 1970).
[100] Habermas, J., *Contributions to a Discourse Theory of Law and Democracy* (translated by William Rehg) (Polity Press, 1996) 126-27.
[101] Ibid.
[102] Chambers, S. *Reasonable Democracy: Jurgen Habermas and the Politics of Discourse* (Cornell University Press, 1996) 99-100.
[103] Ibid, 190.

groups should be mobilized and educated on the issues that affect them.[104] Saati has repeated this call by arguing that participation will only be effective where people possess the relevant and sufficient information about the issues under consideration.[105] Mbathi additionally highlights the importance of equipping communities with information that will facilitate their meaningful participation.[106]

While I agree with the three authors' positions, I will add that such educative endeavors must deliberately refrain from what was earlier on termed as 'ideological coercion' which would negate the agency of participants. My position here acknowledges the subjectivities of the various actors within the spaces for participation, including those that assume these educative roles which will in most cases be actors from NGOs. These biases have already been witnessed in participatory mapping processes such as the oft-deployed Participatory GIS (PGIS) where community-generated knowledge is often ignored and substituted with knowledge from professionals who then dominate the processes.[107] Mbathi acknowledges the perils of these models and argues that they may end up serving the interests of the external actors rather than those of the beneficiary communities.[108] Elsewhere, Corbett and Keller have demonstrated the potential that PGIS carries in enabling communities to use the language of decision-makers in making critical decisions that affect their lives.[109] Their conclusion however obscures how these practices may end up substituting decision-making for communities in a manner that undermines the empowerment goals of participatory processes. Additionally, such occurrences will be inevitable in the face of the embedded unequal relationships between communities and experts.

Influencing decisions in urban planning has often been depicted in the form of a ladder conceptualized by Sherry R. Arnstein, whose thesis was that effective participation would be

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[104] Orago, N. 'Poverty, Inequality and Socio-economic Rights: A Theoretical Framework for the Realisation of Socio-economic Rights in the 2010 Kenyan Constitution', 173.

[105] Saati, A. *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy,* 24.

[106] Mbathi, M. 'Integrating Geoinformation Tools in Informal Settlement Upgrading Processes in Nairobi, Kenya', PhD Thesis (University of Newcastle, 2011) 128-134. See also See Miessen, M. *The Nightmare of Participation* (Sternberg Press, 2010) 236.

[107] Pfeffer, K., *et al.,* 'Participatory Spatial Knowledge Management Tools', 261. Jo Guldi highlights how participatory mapping can enable communities to renegotiate for land tenure and property. Guldi, J. 'A History of the Participatory Map', (2017) 10 *History Faculty Publications*, 93.

[108] Mbathi, M. 'Integrating Geo0information Tools in Informal Settlement Upgrading Processes in Nairobi, Kenya', 138.

[109] Corbett, J.M. and Keller, C.P. 'An Analytical Framework to Examine Empowerment Associated with Participatory Geographic Information Systems (PGIS)', (2005) 40(4) *Cartographica,* 91-102.

realized where authority and decision making is transferred from expert elites to citizens.[110] Arnstein suggested that participation can manifest itself in eight different forms, as demonstrated in the figure below. These are informed by the extent that citizens have power to determine the end product.[111] For her, participation should ideally lead to citizens exercising power over processes, which can be realized where it takes the forms of partnership, delegated power or citizen control.[112] Full participation thus implies vesting participants with complete authority over the decision's being made.[113] Cornwall has argued that attaining this state of 'full' participation that Pateman advocates for will always be elusive given that we can never reach this ideal state as a result of the numerous dynamics that will influence participation.[114]

It is difficult to determine the threshold which must be attained for participation to be deemed as effective. Cornwall thus calls for a pragmatic approach to participation where the aim should be the attainment of 'optimum' conditions for participation.[115] The unique conditions of every context should inform the approaches to participation that are adopted, while ensuring that the approaches maintain alignment with the law. As will be seen shortly, Kenyan courts have similarly adopted this view. For them, what amounts to meaningful participation must not be determined by arithmetic precision and that consideration should be put on the effectiveness of the regime of public participation that is adopted.

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[110] Arnstein, S.R. 'A Ladder of Citizen Participation', (1969) *Journal of the American Institute of Planners,* 24-34.
[111] Ibid, 25. These levels are (1) Manipulation and (2) Therapy where the participants' contributions are substituted with those of the power-holders. (3) Informing and (4) Consultation. Where citizens are allowed to participate but lack the power to influence decisions with the status quo being effectively maintained. (5) Placation, where participants contribute but ultimate decisions are made by powerholders. (6) Partnership, where the participants are able to engage in trade-offs and negotiate with powerholders. (7) Delegated power, where citizens achieve dominant decision making and hold significant cards to assure accountability of the program to them, and (8) Citizen control, where citizens obtain the majority of the seats and are vested with full managerial power.
[112] Ibid.
[113] Pateman, C. *Participation and Democratic Theory*, 69-71.
[114] Cornwall, A. 'Beneficiary, Consumer, Citizen: Perspectives on Participation for Poverty Reduction', 55.
[115] Ibid.

Arnstein's ladder of citizen participation (Arnstein 1969)

Key

Degrees of citizen power

Degrees of tokenism

Non-participation

To reach a point where citizens control participatory processes, deliberate measures that disrupt the existing power arrangements must be adopted and we have to provide room for citizens to exert more influence in participatory processes.[116] This is the transformative end of participation which White argues can lead to greater consciousness among participants and boost their confidence.[117] Getting here calls for the provision of new spaces for participation and expansion of the entry points for citizen action.[118] We are able to realize this when safeguards to community agency are employed and where accountability measures are adopted within the spaces of participation. Instead of employing a cursory assessment of how individuals are involved in these spaces, we should instead be more concerned with how (if any) their involvement influence the processes and outcomes. What we are aiming for is a transformation from user involvement to user control,[119] or what Lefebvre referred to as "real and active participation".[120]

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[116] Pfeffer, K., *et al.,* 'Participatory Spatial Knowledge Management Tools', 203.

[117] White, S.C., 'Depoliticising Development: The Uses and Abuses of Participation', 8.

[118] See Cornwall, A. and Gaventa, J., 'From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy', 21.

[119] Ibid.

[120] Lefebvre, H., *Writings on Cities,* 145.

Even where we have invited spaces for participation, it is important that these sites are molded in a form that allows for their reconfiguration by the subjects of participation especially in cases where multiple actors are involved. These spaces should be positioned alongside other kinds of platforms where citizens are completely vested with authority to shape and choose.[121] Ultimately, participants invited into spaces for participation must be aided to occupy these spaces as their own,[122] and to be able to confidently do so. In the next section, I undertake an analysis of the legal framework on participation in Kenya and examine how public participation is envisioned under Kenyan law.

PART B.

5.5 The Legal Frameworks on Public Participation in Kenya

Being a statutorily mandated process, any analysis that seeks to understand the SPA process must necessarily review the legal framework upon which it is underpinned. Since the goal in this chapter has been to determine the extent to which the SPA is an effective tool in engendering participatory urban planning, it will aid our analysis to position the process against this legal framework and assess whether it provides the optimal conditions for participation that should be the outcome of its structuring within the constitutional and legislative guidelines. I have already noted here that the declaration of Mukuru as a Special Planning Area was done pursuant to the provisions in Section 23(1), (2), and (3) of the Physical Planning Act (Cap 286). The declaration was subsequently published in the Kenya Gazette. This declaration was done by the NCCG's Executive Member for Lands and Urban Planning who subsequently placed an advertisement on the local dailies notifying the public of it. As already established, the declaration was made in exercise of the planning mandates that are conferred upon the counties by the Fourth Schedule of the Constitution. This fact reminds us that the legislative, policy and administrative measures that will be discussed here are normative derivatives of the Constitution and as such, their provisions must match the tenets set out in the Constitution.

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[121] See Cornwall, A. 'Locating Citizen Participation', 7.
[122] Ibid, 3.
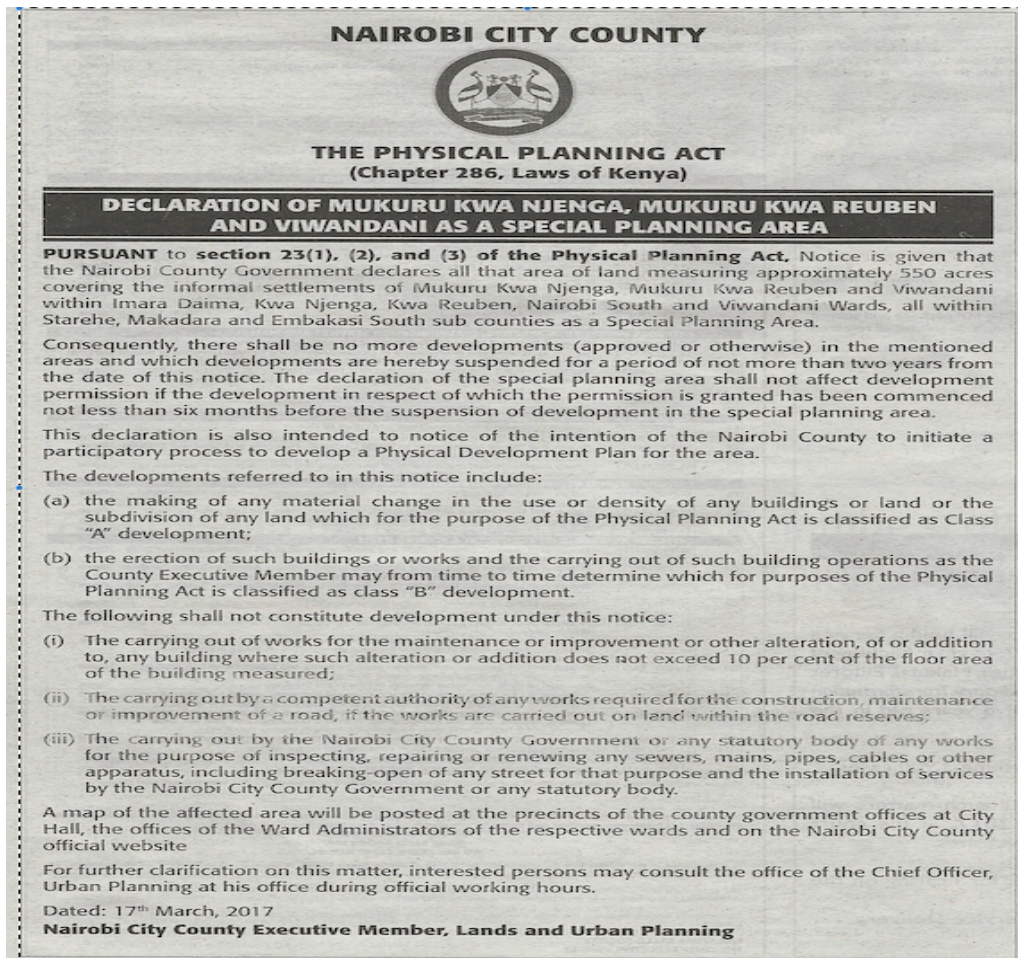
Fig 9: *Notification of SPA Declaration in a local daily*

The Constitution of Kenya, 2010 has often been presented as an outcome of extensive dialogical deliberations which occurred (and continue to occur) within well designed deliberative structures.[123] It is through participation, Orago argues, that rights-bearers will exercise their citizenship in schemes that respect their political capacity to deliberate in the process of constitutional design, interpretation and implementation.[124] Having been the outcome of a democratic process, the Constitution frames public participation as a logical necessity in

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[123] See Orago, N. 'Poverty, Inequality and Socio-economic Rights: A Theoretical Framework for the Realisation of Socio-economic Rights in the 2010 Kenyan Constitution', 168-225. Bannon has also traced the participatory elements in Kenya's constitutional process in; the Bomas Conference, Commissions of Inquiries appointed to look into various matters, the 2005 constitutional referendum, among others. See See Bannon, A. L. 'Designing a Constitution-Drafting Process: Lessons from Kenya', (2007) 116(8) *The Yale Law Journal,* 1824-1872. See also See Cottrell, J. and Ghai, Y. 'Constitution Making and Democratization in Kenya (2000-2005)', (2007) 14(1) *Democratisation,* 1-25.

[124] Ibid, 169.

governance processes.[125] This is effected through its elevation of participation as a national value and a principle of governance.[126] A raft of other provisions in the Constitution similarly mandate for the involvement of the public in governance processes and their right to access information that will facilitate meaningful participation.[127] For instance, Article 35 guarantees every citizen the right of access to information held by the state or by another person and which is required for the exercise or protection of any right or fundamental freedom. Under Article 56, the State is mandated with putting in place affirmative action programmes that are designed to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life. We shall later see how courts have interpreted the constitutional provisions on public participation.

5.5.1 Civil society and participation in Kenya

While Orago views participation in Kenya's constitution-making process as the concerted effort of the State, civil society and citizens,[128] Cottrell adopts an alternate view and considers participation in Kenya's constitution-making not as a grassroots process, but one that was largely advanced by the civil society.[129] Cottrell's views are corroborated when we examine the spaces for participation created in the post-2010 era which are largely defined by the ubiquity of CSOs and social movements. In Kenya, NGOs, faith-based organisations, self-help groups, community-based organisations and the media form part of what is herein collectively referred to as CSOs.[130] They are a collective of organisations in the society that exist apart from the state.[131] CSOs are predominantly constituted by the middle-class with lawyers having significant representation in them.[132] The configuration of participatory spaces in Kenya are then reflective of the country's

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[125] CoK (2010) Preamble and Art. 1(2).

[126] Ibid, Art. 10.

[127] Ibid, See for instance;; Art. 36- n the right to freedom of association; Art. 118- on public access and participation in the conduct of Parliament; Art. 174- on the objects of devolution; Art. 184- on participation of residents in the governance of urban areas and cities; Art. 185- on the legislative authority of county assemblies; Art. 191- on conflict of laws; Art. 196- on public participation in the county assembly; Art. 232 on the values and principles of public service which include the involvement of people in the process of policy making; Art. 258- on enforcement of the Constitution and; the Fourth Schedule- on the distribution of functions between the national government and the county governments.

[128] Ibid, 222.

[129] Cottrell, J., 'Constitutionalizing Public Participation in Kenya', 190.

[130] Munene, J.W. and Thakhathi, D.R. 'An Analysis of Capacities of Civil Society Organisations (CSOs) involved in Promotion of Community Participation and Governance in Kenya', (2017) 17 *Journal of Public Affairs,* 2.

[131] Ndegwa, S. 'NGOs as Pluralizing Agents in Civil Society in Kenya', (1993) 191 *IDS Working Paper*, 2.

[132] See Mutunga, W. *Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992-1997* (Mwengo, 1999) 211. See also Matanga, F.K. 'Civil Society and Politics in Africa: The Case of Kenya', Paper Presented at the Fourth International Conference of ISTR, Trinity College, Dublin, Ireland July 5-8, 2000, 7.

reach with democratic reforms and basically mirror the structures underlying patterns of socialization.[133] As Habermas suggested, these kinds of associations are representative of the organizational substratum of the general public of citizens.[134] In Kenya, this ubiquity could also represent continuities of elite capture that have mired the country's constitutional review processes.[135]

Cottrell and Ghai have already cautioned on the potential effects that these 'manipulated' constitutional processes have on the consciousness of ordinary citizens.[136] Like with the South African Constitution, the Kenyan Constitution is cardinally implicated in the continuation of the power relations subsisting before its enactment.[137] The enduring presence of civil society and political actors means that these groups inevitably define participatory spaces. The role of these institutions became pronounced in the wake of the economic crisis and clamor for multiparty democracy in the 1980s-90s where they took on political activism in their quests for socio-political changes.[138] We have already seen how during this period, organisations like Muungano (which emerged as a grassroots movement in informal settlements) and Pamoja Trust (an organisation that seeks to promote access to land, shelter and basic services for the urban poor) were keen on opposing forceful evictions of inhabitants of informal settlements in Nairobi.

CSOs have been able to draw on their networks of donors to fund their activities without need for any mediation by the state. This also demonstrates a major drawback in their structuring as their agenda will be shaped by their benefactors and some of these organisations may even be coopted by the state where there is opacity in the nature of CSOs internal governance.[139] Murunga has already noted that the civil society in Kenya often replicates the same undemocratic and corrupt practices which they vocally castigate the state for.[140] Nonetheless, through the existence of actors

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[133] See Bannon, A. L. 'Designing a Constitution-Drafting Process: Lessons from Kenya', 1844.

[134] Habermas, J. *Between Facts and Norms* translated by William Rehg (Polity Press, 1996) 367.

[135] Bannon, A. L. 'Designing a Constitution-Drafting Process: Lessons from Kenya', 1850.

[136] See Cottrell, J. and Ghai, Y. 'Constitution Making and Democratization in Kenya (2000-2005)', 1-25.

[137] Modiri, J.M. 'Conquest and Constitutionalism: First Thoughts on an Alternative Jurisprudence', (2018) 34(3) *South African Journal on Human Rights,* 305.

[138] Oyugi, W.O. 'The Role of NGOs in Fostering Development and Good Governance at the Local Level in Africa with a Focus on Kenya', (2004) 29(4) *Africa Development*, 23.

[139] Mati, J.M. 'Civil Society in 'Politics' and 'Development' in African Hybrid Regimes: The Kenyan Case', (2020) 31 *Voluntas*, 684.

[140] Murunga, G. 'Civil Society and the Democratic Experience in Kenya: A Review of Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992-1997, by Willy Mutunga', (2000) 4(1) *African Sociological* Review 102.

like CSOs, the culture of participation has been actuated and rooted in the practice of governance.[141]

The dynamics that have been pointed above underscore the value of constitutional designs that will restrain powerful interests from misappropriating discourses that should primarily be driven by the public. It perhaps explains why the Constitution from its very onset proclaims sovereignty of the people of Kenya which is directly exercisable or delegated through the various institutions that it establishes, effectively militating against the usurpation of citizen power. Any amendments to the Constitution that relate to this sovereignty must be subjected to a referendum.[142] With this, a hierarchy has been interwoven into the Kenyan legal system with the people of Kenya being placed at the top. This must cascade down to all social systems and processes.

5.5.2 The enabling legislative framework

The legal relationships between NCCG and its residents are rooted in the Constitution and in a number of legislative instruments which are discussed here. Since urban planning is now a devolved function, this section will enumerate the legislative and policy frameworks that underpins the SPA's participation framework. The County Governments Act is the principle legislation providing scaffolding to the constitutional provisions on devolution.[143] Public participation is listed as a key tenet undergirding the Act.[144] Planning obligations in the county are vested in the county executive committee which among others is mandated with monitoring the planning processes.[145] The planning mandate is underwritten by the national values contained in the constitution and will serve as a basis for engagement between the county government and their citizenry.[146]

Within the counties, certain decentralized units can further be established to enable effective discharge of the devolved functions.[147] One of the bases for the establishment of these units is to enable facilitation of citizen participation in the development of policies and plans and delivery of

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[141] Bannon, A. L. 'Designing a Constitution-Drafting Process: Lessons from Kenya', 1846.
[142] CoK (2010) Art. 255.
[143] Act No. 17 of 2012.
[144] Ibid, s. 3(f).
[145] Ibid, s.37.
[146] Ibid, s. 102.
[147] Ibid, s. 48. The units include:- urban areas and cities; sub-counties; wards; village units and; such other or further units as a county government may determine.

services.[148] Citizen participation in county governments is extensively provided for in Part VIII of the Act. In this part, the principles undergirding participation in the counties are enumerated.[149] Participation in county planning has been made mandatory and is to be facilitated through-[150]

(a) Mechanisms provided for in Part VIII of the Act; and

(b) Provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including-

    (i)   Clear strategic environmental assessments;

    (ii)   Clear environmental impact assessment reports;

    (iii)   Expected development outcomes; and

    (iv)   Development options and their cost implications.

Importantly, county governments are mandated with promoting the interests and rights of marginalized groups to enable their effective participation. This duty follows from the obligations outlined under Article 56 of the Constitution which requires the state, at either level, to among others put in place mechanisms that guarantee participation by minorities and marginalized groups. The county government is further vested with the duty to facilitate the establishment of structures for citizen participation on different platforms including the decentralized platforms that have

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[148] Ibid, s. 51(g), 52(3), 53(2).
[149] Ibid, s. 87. These principles are:-
   a. timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
   b. reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
   c. protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;
   d. legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;
   e. reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
   f. promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and
   g. recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.
[150] Ibid, s. 115 (1)(a)&(b).

earlier been mentioned.[151] These structures are to be supported by the laws and regulations that are developed by the County Assembly to give effect to the requirements for effective citizen participation.[152] Public communication and access to information has been denoted as an important pillar of devolution that is key for the participation of minorities and marginalized groups within the counties.[153] These safeguards correspond to the Act's provisions on the importance of civic education in enlightening and empowering citizens to enable their ownership of county structures and processes.[154] A positive obligation is thus conferred on each county to devise a programme for civic education to be implemented in the county.[155]

Similar provisions are contained in the Urban Areas and Cities Act whose objects and purposes include the establishment of a legislative framework for participation by the residents in the governance of urban areas and cities.[156] Urban areas and cities shall be governed in a manner that promotes accountability and institutionalized active participation by the residents in the affairs of these areas.[157] Participation is to be facilitated by among others, the establishment of citizen fora where residents will deliberate and make proposals on various matters.[158] The Second Schedule of the Act further elaborates on the respective rights and duties of residents when participating in the affairs of the city. Importantly, the Act confers a duty on the city or urban area to create appropriate conditions for participation by residents.[159] It adopts a transformative orientation by mandating the city to contribute to building the capacity of the residents to enable them to participate in the affairs of the city.[160] This is a mandate that the Act vests in the Board of a city which is appointed by the

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[151] Ibid, s. 91.
[152] Ibid, s. 115(2).
[153] Ibid, Part IX.
[154] Ibid, s. 98-100.
[155] Ibid, s. 100.
[156] Act No. 13 of 2011. s. 3(c).
[157] Ibid, s. 11(c)&(d).
[158] Ibid, s.22.
[159] Ibid, Second Schedule, para. 2(1).
[160] Ibid, para. 2(1)(b).
In paragraph 2 of its Second Schedule, the Act states as follows:-

(1) A city or urban area shall develop a system of governance that encourages participation by residents in its affairs, and shall for that purpose-

(b) contribute to building the capacity of-

(i) the residents to enable them participate in the affairs of the city or urban area; and

county executive committee. Since these provisions confer a positive duty on the county, it therefore means that any county programs like the SPA process will be tested against these precepts to establish their propriety.

The Nairobi City County Public Participation Act, 2015 (NCCPPA) also mandates the county government with the establishment of conditions that will facilitate public participation by among others, contributing to the capacity of the local community to enable it to participate in the affairs of the county.[161] The Act requires that at least two percent of the County's annual budget is to be set aside for public participation.[162] However, the 2% allocation falls short of the 15% that Omolo proposed should be channeled to support citizen participation.[163] Perhaps, this shortfall can be remedied by private initiatives for mobilization of citizens for purposes of public participation which has been recognized by the Act.[164] A county government can enter into partnerships with other non-governmental entities to mobilize funds for public participation. Similar provisions can be found in The Nairobi City County Community and Neighborhood Associations Engagement Act, 2016.

It is important to note that the provisions in these county legislations are informed by the County Public Participation Guidelines prescribed by the Ministry of Devolution and Planning in collaboration with the Council of Governors.[165] These guidelines recognize the importance of building the capacity of the public to engage as one of the considerations that should inform the

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        (ii)   members of the board or town committee and staff to foster community participation.

(c) apply its resources, and allocate funds annually as may be appropriate for the implementation of paragraphs (a) and (b); and
(d) establish appropriate mechanisms, processes and procedures for-
    (i) the receipt, processing and consideration of petitions and complaints lodged by residents;
    (ii) petitions and public comments procedures, when appropriate;
    (iii) notification of public meetings and hearings organised by a board or town committee;
    (iv) Consultative sessions with locally recognised resident organisations; and
    (v) Reporting to the residents.

[161] Nairobi City County Public Participation Act, 2015, S. 6(b)(i).
[162] Ibid, s. 22.
[163] Omolo, A. 'Policy Proposals on Citizen Participation in Devolved Governance in Kenya', The Institute for Social Accountability (TISA) available at
https://www.tisa.or.ke/images/uploads/Policy_Recommendations_on_Citizen_Participation-TISA_2011.pdf accessed March 26, 2020, 32.
[164] Ibid, s.23.
[165] See Ministry of Devolution and Planning & Council of Governors, *County Public Participation Guidelines* (Republic of Kenya, 2016)

design of public participation processes.[166] This means that citizens should be prepared to participate by *inter alia* providing them with the relevant information while maintaining the requisite conditions that facilitate their effective participation at every point.

It is laudable that NCCG has followed on the prescriptions outlined in the County governments Act and enacted the requisite legislation to give effect to the requirements for effective citizen participation. What is however lacking from these legislative interventions are guidelines on the minimum standards that must be met for participation to be deemed meaningful. We have also witnessed glaring gaps between what is provided in law and what happens in practice with such gaps being seen when it comes to financing participation. Critics charge that such variances are the result of the existence of different views on what constitutes effective participation.[167] It is not clear whether NCCG has adopted any frameworks to facilitate civic education to prepare individuals for participation. Even so, as will be discussed in the next chapter, NCCG seems to have abdicated its duty to educate citizens on its functions and responsibilities particularly when it comes to the SPA.

As will be seen shortly, County agencies have also abandoned their obligations when it comes to participation to other external agencies that work with communities. Their disengagement from these processes has essentially meant that no monitoring frameworks exist to check what actually occurs within the spaces for participation and whether they meet the legal thresholds.[168] Even where oversight is exercised, it is not adequate. For example, in Mukuru it is left to certain MCAs who have vested interests in the land that the settlements occupy either as structure or landowners.[169] This creates conflicts-of-interest in their oversight roles and portends doom for the implementation of the IDP developed which must be approved by Nairobi County Assembly.

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[166] Ibid, 8. Para. 18.
[167] The World Bank Group, 'Public Participation Key to Kenya's Devolution', available at https://www.worldbank.org/en/news/feature/2015/04/30/public-participation-central-to-kenyas-ambitious-devolution accessed April 1, 2020. See also Maling'a, S. 'Public Participation in County governance in Kenya: A Withering Eucalyptus in a Desert Middle', (2017) 1 *East African Law Journal.*
[168] Regarding the SPA, we have seen questions being asked in the County Assembly, not on the nature of NCCG's involvement in the processes, but predominantly on the interests of SPA consortia members in the project. It should not escape us that these questions were raised by the MCA for Viwandani ward, who is said to have an interest in certain parcels in Mukuru. See The Nairobi City County Assembly, 'Request for Statements by Hon. David Mbithi, MCA Viwandani Ward', available at http://nairobiassembly.go.ke/ncca/wp-content/uploads/statement/2018/Committee-on-Planning-and-Housing-2-1.pdf accessed April 1, 2020.
[169] Key informant interview with member of a social movement on October 2, 2020.

5.6 Interpreting the Constitution on participation

What exactly amounts to public participation as envisaged by the Constitution? To answer this, we need to now turn to how courts have interpreted the constitutional precepts on participation. As read in this work, the constitutional provisions on its enforcement form part of the constitution's public participation framework. The Constitution in Article 258 invites every person to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention. But even at this level of participation, the Constitution still envisages that where an individual lacks agency to participate (where a person cannot act in their own name) then any other person can institute claims on their behalf.[170] Kenyan civil society has in effect stepped in by instituting claims on behalf of individuals and groups.[171] I read this as part of the civil society's legacy in the constitution-making and governance processes which has now been woven into various social processes. It is a role whose necessity springs from the need for vigilance against practices that perpetuate relations of domination which were characteristic of the previous state-citizen relations.

This conforms to Orago's conclusion that any litigation founded on the Constitution is part of the dialogical scheme that it envisaged. Courts will in this case act as the facilitator of these constitutional dialogues and deliberations.[172] It is a role that they have readily embraced being the guardians of the Constitution. Mutunga C.J. (as he then was) reaffirmed the role of the Courts in what he referred to as the indestructible fidelity to the value and principle of public participation.[173]

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[170] Ibid, Art. 258(2). Courts have interpreted this provision as giving ground for public interest litigation to be instituted by interested parties. See *Momu Matemu v. Trusted Society of Human Rights Alliance & 5 Others* [2014] eKLR. See also *Mitu-Bell Welfare Society v The Kenya Airports Authority &2 Others* Supreme Court Petition No.3 of 2018.

[171] See Oloka-Onyango, J. 'Human Rights and Public Interest Litigation in East Africa: A Bird's Eye View', (2015) 47 *The George Washington International Law Review,* 794. See also Katiba Institute, 'Protecting the Constitution: Public Interest Litigation', available at https://www.katibainstitute.org/protecting-the-constitution-public-interest-litigation/ accessed March 24, 2020.

[172] Orago, N. 'Poverty, Inequality and Socio-economic Rights: A Theoretical Framework for the Realisation of Socio-economic Rights in the 2010 Kenyan Constitution', 185.

[173] See *In the Matter of the National Land Commission* Advisory Opinion Reference No. 2 of 2014 para 320.

> "In the entire history of constitution-making in Kenya, the participation of the people was a fundamental pillar. That is why it has been argued that the making of Kenya's Constitution of 2010 is a story of ordinary citizens striving to overthrow, and succeeding in overthrowing the existing social order, and then defining a new social, economic, political, and cultural order for themselves. It is, indeed, a story of the rejection of 200 Parliamentary amendments by the Kenyan elite that sought to subvert the sovereign will of the Kenyan population. Public participation is, therefore, a major pillar, and bedrock of our democracy and good governance. It is the basis for changing the content of the State, envisioned by the Constitution, so that the citizens have a major voice and impact on the equitable distribution of political power and resources."

Courts have been called upon to provide clarity, protect or to demarcate the content, scope and extent of the entrenched rights like the right to public participation.[174] The meanings that the court choose to assign to the concept of participation will be a good starting point and a prelude to an assessment of how these meanings have been taken up by the various levels of governance, and how they have shaped practical realities.

To begin with, courts have affirmed public participation as one of the founding principles in Kenya's constitutional democracy. The dominant view that courts have adopted is that what amounts to public participation will depend on the particular context under examination and that what matters "is the public has been offered an adequate opportunity to know about the issues and to express themselves on the same."[175] In *David Ndii & Others v Attorney General*, the High Court stated that "public participation must not only be real; it must also be effective, to meet the constitutional standard" and that it cannot be a matter of presumption or conjecture.[176]

Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others,[177] establishes the principles that shall guide our assessment of how public participation has been interpreted by the courts. Ultimately, the principles set out in the case will provide guidance in our assessment on whether public participation in the Mukuru SPA meets constitutional muster. In this case, it was the court's view that public participation in the area of environmental governance needs to be structured in a manner that conforms with the subject matter with the need for innovation and malleability depending on the nature of the subject matter. The Court in paragraph 97 held that public participation entails the following elements or principles;

    a. *First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter.*

    b. *Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single*

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[174] Ibid, 191. See also Mbariza, C. *Litigating Socio-Economic Rights in South Africa: A Choice between Corrective and Distributive Justice* (Pretoria Law Press, 2009). *Kenya Airports Authority v Mitu-Bell Welfare Society & 2 Others* [2016] eKLR. *Kepha Omondi Onjuro & others v Attorney General and 5 others,* Nairobi HCC Petition No. 239 of 2014.

[175] Commission for the Implementation of the Constitution v. Parliament of Kenya & Another [2013] eKLR.

[176] Petitions No. 282 of 2020, 397 of 2020, E400 of 2020, E401 of 2020, E402 of 2020, E416 of 2020, E426 of 2020 and 2 of 2021.

[177] Constitutional Petition No. 305 of 2012.

regime or programme of public participation can be prescribed, and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness.

c. *Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information.[178]*

d. *Fourth, public participation does not dictate that everyone must give their views on an issue... In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.*

e. *Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme. The government agency or Public Official cannot merely be going through the motions or engaging in democratic theatre so as to tick the Constitutional box.*

f. *Sixthly, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand.[179]*

Similar principles have been repeated by Emukule, J. in *John Muraya Mwangi & 501 others v Minister for State for Provincial Administration & Internal Security & 4 others.[180]* The two courts here extensively borrow from South African jurisprudence on participation and they quote Sachs J. in *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others*[181] that public participation cannot be determined with arithmetic precision and that a reasonable test must be

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[178] See also *Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya* (JR Misc. App. No. 374 of 2012).
[179] Ibid.
[180] Petition No. 3 of 2011.
[181] 2006 (2) SA 311 (CC).

used.[182] Sachs, J. proceeded to hold that determining what is reasonable leads the court to an assessment of whether a reasonable opportunity is offered to members of the public and other interested parties to know about the issues and to have an adequate say.[183] He further stated that what amounts to a reasonable opportunity will depend on the circumstances of each case.[184] Odunga, J. in *Robert N. Gakuru & others v Governor Kiambu County & 3 others*[185] also follows the views of the South African Constitutional Court[186] by holding that the approach to public participation will depend on the nature of what is at hand.

In *Republic v Cabinet Secretary Ministry of Transport and Infrastructure & 4 Others Ex Parte Ali Golle & another,[187]* the case arose from the evictions carried out by NCCG for the purpose of construction of a road through some sections of Mukuru Kwa Njenga by the Kenya Urban Roads Authority (KURA). The affected persons in Mukuru Kwa Njenga instituted a judicial review for the quashing of the decision to construct the road based on the Applicant's contention that there was no proper public participation carried out by the Respondent before the process was initiated. The Applicants further argued that the Constitutional thresholds for public participation had not been met by the Respondents. The Respondents on the other hand argued that the Applicants were mere squatters on the land and had no rights to the affected land hence had no locus to institute the case.[188] In delivering the judgment, Aburili, J. held that where administrative decisions are likely to affect the rights of individuals then those persons must be accorded a hearing before such a decision is made.[189] The Judge further proceeded to state as follows:-

> "*In this case, it is not in doubt or denied that the Applicants as residents of the area which is affected by the intended development are owed a duty by the Government. That duty includes the duty to develop the area infrastructure and other social amenities, being*

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[182] Constitutional Petition No. 305 of 2012, Para. 62.

[183] 2006 (2) SA 311 (CC). Para. 630.

[184] Ibid.

[185] Petition 532 of 2013 & 12, 35, 36, 42, & 72 of 2014 & Judicial Review Miscellaneous Application 61 of 2014 (Consolidated).

[186] He makes reference to Ngcobo, J. and Sachs, J. in *Doctors for Life International v Speaker of the National Assembly and others* (CCT12/05) [2006], Sachs, J. in *Merafong Demarcation Forum and others v President of the Republic of South Africa and others* (CCT 41/07) [2008] and also Ngcobo, J. in Matatiele Municipality and others v President of the Republic of South Africa and others (2) (CCT73/05A) [2006].

[187] Judicial Review No. 146 of 2017.

[188] Ibid para. 16.

[189] Ibid para. 67.

public goods. In the process of performing that duty, the Government must however be conscious of its other duty to involve the residents in decision making process since such development projects affect the residents both positively and negatively. The negative aspects of such development include uprooting the residents from the area.''[190]

The Court in the above matter adopts the language of duty in stating the Government's obligations to the inhabitants of the settlement. A duty is the correlative of a right.[191] The Judge proceeds to assert the existence of a right vested in the Applicants, that is, the right to public participation and involvement in public affairs and decision-making processes.[192] These rights are referred to by the Judge as public rights or interests.[193] This means that the rights can be asserted by individuals as single entities, or collectively as a group. Ultimately, the Court quashed the decision by the Respondents.

Participation is not a monolithic right but is one that is undergirded by the duty to consult the public and the duty to provide them with relevant information and to maintain conditions that facilitate their participation.[194] There is already consensus that meaningful participation will be underlined by provision to the public of adequate opportunities for consultation.[195] According to Odunga, J. consultation is meant to ensure that participation is real and not illusory.[196] The duty to facilitate consultation is placed on the body mandated with participation which is required to facilitate access by the public to as many fora as possible.[197] Activities in the identified fora for participation must be specific to the matters in question with measures being taken to enable both qualitative and quantitative attainment of participation.[198]

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[190] Ibid, para. 75.

[191] See Hohfeld, W. 'Some fundamental legal conceptions as applied in judicial reasoning', (1913) 23 *The Yale Law Journal* 16-59. See also Ojwang, J.B. 'Laying a basis for rights: Towards a jurisprudence of development', (1992) *Nairobi University Press* 7.

[192] Judicial Review No. 146 of 2017. Para. 83.

[193] Ibid.

[194] See Ngcobo, J. in *Doctors for Life International v Speaker of the National Assembly and others* (CCT12/05) [2006].

[195] See *Coalition for Reform and Democracy (Cord), Kenya National Commission on Human Rights v Republic of Kenya* [2015].eKLR. Law Society of Kenya v Attorney General & National Assembly [2016] eKLR.

[196] Petition 532 of 2013 & 12, 35, 36, 42, & 72 of 2014 & Judicial Review Miscellaneous Application 61 of 2014 (Consolidated). Para. 75.

[197] Ibid.

[198] Ibid. see also *In the Matter of the National Land Commission* Advisory Opinion Reference no. 2 of 2014, para.30.

While it may appear that the duty to facilitate public involvement rests with public agencies, a reading of Article 10 of the Constitution would suggest otherwise. This duty is vested in any person whenever they make or implement public policy decisions. The duty will rest on both public and private agencies whenever they undertake decisions that affect the public. A public entity cannot evade the duty by deferring obligations to non-public actors like CSOs. Also, clear and unambiguous information must be provided for there to be meaningful participation. This must be accompanied by facilitation of individuals' right to freedom of expression.[199] In both Kenya and South Africa, the right to information is considered to be a prerequisite right that would enable participation to be meaningful.[200]

What emerges from the Kenyan jurisprudence on participation is that no single regime can define an effective public participation model. Courts have thus acknowledged that a variety of approaches can be employed to achieve public participation. As deliberated in the *Mui Coal Basin* case*,* courts will assess the validity of a participatory program by considering "the bonafide of the public actor, the nature of the subject matter, the length and quality of engagement and the number of mechanisms used to reach as many people as possible".[201] Ultimately, courts gauge how effective the mechanisms adopted for public participation are in assessing whether they meet constitutional muster.[202] However, the effectiveness test appears to only operate *ex post facto* and hence any determinations by the courts will only be corrective.[203] Kenyan courts have already rejected invitations to prescribe designs for public participation while only outlining the elements or principles that any public participation regime must follow. It therefore appears implausible at the moment that the courts would make any interventions that would preemptively prescribe how public participation should be structured.

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[199] Constitutional Petition No. 305 of 2012, para. 97. See also Petition 532 of 2013 & 12, 35, 36, 42, & 72 of 2014 & Judicial Review Miscellaneous Application 61 of 2014 (Consolidated) para. 79.

[200] See Ngugi, J. in *Nairobi Law Monthly Company Limited v The Kenya Electricity Generating Company & 2 others* [2013] eKLR and Ngcobo, J. in *Doctors for Life International v Speaker of the National Assembly and others* (CCT12/05) [2006].

[201] Constitutional Petition No. 305 of 2012, Para.99.

[202] Ibid, para. 97. See also *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another* Tribunal Appeal No. NET 196 OF 2016.

[203] See Nyamweya, J. in *Republic v County Assembly of Kirinyaga & another Ex-parte Kenda Muriuki & Another* Judicial Review Application No. 271 of 2019, para. 56.

5.6.1 The perils of formalist interpretations of the right to participation

While the Kenyan courts have attempted to provide some clarity to the meaning of participation, their approaches have steadfastly lacked the requisite depth in critically proclaiming the conditions-precedent for effective participation. The emerging jurisprudence has been long on rhetoric but short on clearly spelling out the conditions that must be present for participation to be considered as meaningful. Instead, the courts have been engrossed in the logic of formalist interpretations devoid of a contextual grounding. They fail to appreciate participation as part of a wider political process that challenges structural inequalities. Their appraisals of the attendant duties that arise from the right to participation lack nuance. This has seen the courts make decisions that fail to result in substantive outcomes for the excluded.

As illustrated below, a majority of the decisions by the courts fail to address the underlying drivers of inequality that affect individuals' capacity to participate. For instance, unlike their South African counterparts, Kenyan courts have refrained from critically questioning shortfalls in beneficiaries' capacity to participate which is endemic in most spaces for participation, and prescribing measures that duty-bearers must adopt to remedy this.[204] What seems to be missing is a contextually grounded interpretation of the law guided by the lived realities of its indigent and marginalized subjects. It is the missing link which is instrumental in transforming the law's normative prescriptions into substantive outcomes for the marginalized.

There seems to be little guidance on the requisite tools that should be provided to beneficiaries of participation processes to enable their effective participation. Much of the jurisprudence that we see here ends with a view by the courts that the panacea for the ills of exclusions complained of lies in a formalist interpretation of legal doctrines. This means that the courts have continued to gloss over the underlying drivers of inequality such as tenure insecurity which bar meaningful participation. In these jurisprudential traditions, a smooth transition or a linear progress from the normative to lived practices is idealized by the courts where the courts fail to cast these normative assumptions within the material realities of litigants. We see this being true in *Robert Gakuru*

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[204] The Constitutional Court in South Africa appears to have tackled apartheid's legacy in denying citizens the requisite agency needed for their participation in governance processes. See Ngbobo, J. and Yacoob, J. in *Doctors for Life International v Speaker of the National Assembly and others* (CCT12/05) [2006]. Paras. 112, 294.

where the court limits its focus to the *ex post facto* tools for the Petitioner's participation at the point when the Bill is already in a draft form.[205]

Even in *Ali Golle*,[206] where the court makes an order mandating the Respondents to consult the Applicants before constructing a road through Mukuru, it fails to reckon with a key impediment to their capacity to participate, that is, the tenure insecurity questions raised by the Respondents. It thus fails to confront and challenge the factors that produce the Applicants' precarity. "Without land, dignity is compromised,"[207] even the dignity that would stimulate individuals to effectively participate. The distributive injustices that impede participation by the Applicants' in *Ali Golle* cannot therefore be cured by a formalist interpretation of the law. When the Judge adopts a formalist interpretation of the law, she inadvertently obscures the underlying structural factors that bar the Applicants' effective participation. The Court of Appeal has steadfastly failed to acknowledge its place in tackling redistributive questions with a detrimental consequence to the marginalized. In *Kenya Airports Authority v Mitu-Bell Welfare Society*, it bluntly stated that it has no place in redistributing property rights to enable realization of other rights.[208] Such a formalist approach which treats capacity as peripheral forecloses the court's ability to prescribe corrective measures that would facilitate arrival at the desired outcome of meaningful participation. Hence, the courts miss opportunities to proclaim that certain redistributive questions must first be addressed for participation to be meaningful.

In failing to assert that the Applicants' participation should not be contingent on the legality of their occupation of the land, the court in *Ali Golle* enables the abstraction of the beneficiaries' capacity to participate. It fails to consider participation as a continuum that requires the presence of certain minimum conditions at every point.[209] So that what is required of participation in

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[205] In this oft-cited case the court's analysis fails to extend to requisite tools to facilitate participation in the pre-legislative stages of the impugned Act. Instead, it focuses on the *ex post facto* tools for when the Bill had already been drafted.

[206] *Republic v Cabinet Secretary Ministry of Transport and Infrastructure & 4 others ex parte Ali Golle* Judicial Review No. 146 of 2017.

[207] See Ebrahim, S. and Hodgson, T.F. 'Abahlali baseMjondolo: You Can't Stop the Virus while Living in the Mud', quoting S'bu Zikode, *Maverick Citizen* March 27, 2020 available at https://www.dailymaverick.co.za/article/2020-03-27-abahlali-basemjondolo-you-cant-stop-the-virus-while-living-in-the-mud/?fbclid=IwAR0hBEbVlPkU3uC4iNyLNfNt4fhrr6yQ7gvSWoO2K-N56nLZesZPDkrh3wg accessed March 27, 2020.

[208] Civil Appeal No. 218 of 2014.

[209] The same can also be said of the Security Laws Amendment case where the court fails to examine whether Parliament in allowing for participation over a mere five-day period did what it was required to do to facilitate the

'Context A' may be different from that in 'Context B' where individuals experience tenure insecurity. A court's judgment will only be transformative if it appreciates and articulates these peculiarities and provides guidance that would speak to each specific context. Adopting fixed analyses fail to realize that different groups will experience rights and the law differently.

It is such formalist approaches that, Modiri argues, work to de-contextualize rights and lead to interpretation of the law devoid of the subjective experiences and material conditions of its subjects. This ultimately reinforce structural oppressions for the marginalized.[210] Such is the seduction of 'liberal hegemony' which by creating nominal rights renders them meaningless while ignoring "the more radical and fundamental claims" to rights.[211] Transforming the lives of the marginalized will thus be attained with the reorientation of the law to a more egalitarian and transformative direction, and where judges adopt 'morally and politically engaged' forms of judging the law.[212] Modiri urges the application of rights not merely as a legal remedy for the problems suffered by groups but as an emancipatory tool assigning tangible remedies.[213] In the realm of participation, I have suggested that this end will be attained by adopting an agency-conscious orientation which must foreground the courts engagement with the law on participation.

5.7 Conclusion

In this chapter, the normative and theoretical prescriptions on public participation have been discussed while elevating the place of human agency in deliberative processes. We now see how problematic it can be where programs of participation are insulated from accountability safeguards with the consequence being the opening of these spaces to paternalistic imposition of terms by the dominant actors. I have argued that to make these spaces transformative, we must be honest about the faults or limitations of the participatory models adopted and commit to reforming them. I have

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capacity of the participants to participate. See *Coalition for Reform and Democracy (Cord), Kenya National Commission on Human Rights v Republic of Kenya* [2015] eKLR. Granting reasonable opportunity to participate has also been held to be a prerequisite to any scheme of participation as was seen in *R v IEBC exparte NASA Kenya & 6 others* Judicial Review No. 378 of 2017.

[210] Modiri, J. M. 'The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-)Apartheid South Africa', (2012) 28(3) SAJHR, 409.

[211] Porter, L. 'Possessory Politics and the Conceit of Procedure: Exposing the Cost of Rights under Conditions of Dispossession', (2014) 13(4) Planning Theory 390. See also Huchzermeyer, M. 'Informal Settlements at the Intersection between Urban Planning and Rights: Advances through Judicialisation in the South African case', in Deboulet, A. (ed) *Rethinking Precarious Neighborhoods* (2016, Les editions de l'AFD)

[212] Modiri, J. M. 'The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-)Apartheid South Africa', 420.

[213] Modiri, J.M. 'Laws Poverty', 261.

also attempted to show the potential dead ends of participation which could result where underlying distributive issues are not tackled upfront. We have seen how these handicaps become more visible in participatory exercises that uncritically characterize individuals as autonomous actors capable of making choices. The danger lies in adopting arrangements that either overlook questions of agency or deny impoverished groups autonomy to articulate their issues and work towards solving them. Failure to confront the problematic questions of agency and overcome embedded contradictions within participatory spaces ultimately counteracts quests by individuals and groups to take full responsibility in articulating and effecting the changes that they desire. Ultimately, the norms outlined herein must then be tested against the empirical realities in Mukuru. In the next chapter, I reflect on whether the precepts discussed in this section have any bearings on the approaches taken by the SPA.

6   The Trends and Pitfalls of Participatory Planning in the Mukuru SPA

6.1 Introduction

A central claim in this work has been that the Mukuru SPA's participatory nature challenges the boundaries of spatial governance that have been entrenched by an exclusionary practice of urban planning in Nairobi. Previous chapters have illustrated how only those with certain privileges have hitherto been envisioned as participants in spatial governance processes. The discussions in chapters four and five provide a theoretical preface that now enables an in-depth account on how public participation has been tested in Mukuru through the SPA process. In light of those theoretical insights, this chapter and the next provide extensive empirical treatment of one of the main foci of this work, that is, the effectiveness of the SPA as a tool for engendering participatory urban planning. The dynamics of participation in the Mukuru SPA process are documented and assessed against the normative and theoretical precepts discussed in the foregoing chapters. We are therefore concerned with whether the assumptions that inform participation in Mukuru can be validated empirically, or whether they have any bearing on the approaches that are actually adopted by the SPA process. This also means examining the faults or limitations of the models adopted by the SPA and exploring how any internal contradictions in the processes can be remedied.

The aim here, therefore, is to understand the extent to which the SPA is an effective tool for engendering participation in urban planning. By this, the work documents how participation is experienced in the SPA, whether it exhibits the vibrancy and dynamicity required of such processes, or whether what we are presented with here is the familiar being disguised as the novel. This goal will be attained by providing an account on how participation has been approached in the SPA with specific focus on how participants have been formulated in the process, how they participate, and how the process grapples with the questions on agency that are intrinsic in such processes. I will also acknowledge the inadequacies of the law on participation in providing guidance on what a properly structured participatory structure should look like. Some of this is already illustrated in the jurisprudence discussed in the previous chapter. These shortfalls have created space for the emergence of innovative approaches to facilitate participation and this shall be illustrated through the platforms for participation which are adopted in the SPA.

Here I want to suggest that the Mukuru SPA is an invited space for participation which builds on a long history of struggle and transgressions by the inhabitants. The process is now heavily reliant on conceptual apparatuses constructed and grounded in CSOs and NGOs discursive frames. These kinds of collaboration can enable the realization of key outcomes by the marginalized groups as they can potentially facilitate cross-fertilization of ideas. Alternatively, if not properly structured, they can act to produce or sustain the power imbalances pointed out in this work by establishing hierarchical relationships where beneficiary communities are placed at the bottom. As Modiri hints, arrangements that depict groups as impoverished, vulnerable or deprived may end up denying them the agency to be self-representing and self-defining.[1] Such labels may also be advanced by individuals and institutions that want to appropriate community-generated discourses. So, the ability of individuals to act as autonomous entities must not be plainly refuted but must be extensively interrogated. But we must also avoid romanticizing the capacity of the poor to influence change and must be guided by evidence.[2] Overly structured processes can equally eclipse the everyday seemingly mundane acts of participation.[3] In Mukuru these 'mundane' acts could take the form of one person passing information to the next on the SPA process or even through circulating narrated accounts on what the process portends for the settlements.

Naturally, these arrangements can also translate into a layered construction of participants based on the varying levels of influence that each would have in the processes. While this is the case, we also acknowledge that when given a chance and a conducive environment, the excluded are able to 'speak and know their conditions'.[4] I therefore, document how this is manifest within the context of the SPA. I do this by showing how recognition of the collective agency of the inhabitants enables their connection with their interests and legitimizes the proposals developed in the SPA. Additionally, I illustrate the safeguards established to curtail undue influence by powerful actors on the community to ensure that the processes maintain a community-driven orientation. While remaining largely structured within the normative parameters provided for by the law, the SPA

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[1] Modiri, J.M. 'Laws Poverty', (2015) 18(2) *PER/PELJ,* 242.

[2] Hickey, S. and Mohan, G. 'Relocating Participation within a Radical Politics of Development', (2005) 36(2) *Development and Change*, 255.

[3] Kruks-Wisner, G. Claiming the State: Active Citizenship and Social Welfare in Rural India (Cambridge University Press, 2018) 4.

[4] Spivak, G.C. 'Can the Subaltern Speak?' available at http://abahlali.org/files/Can_the_subaltern_speak.pdf accessed April 21, 2020, 78.

process has acknowledged the intrinsic limitations of the law in fashioning a comprehensive framework that a public participation program should follow. It is on this basis that flexibilities are adopted by the various SPA consortia to ensure the widest possible engagement with the community using the limited resources, while at the same time meeting the planning objectives and the statutory timelines stipulated for the processes.

Having provided this introduction, I set out to consider how participants are framed in the SPA. I will examine how the process draws on the existing geographical and leadership structures to establish eligibility for participation. I also look at how the SPA turns to existing saving groups and their memberships to participate in its processes. This will lead to an in-depth assessment of how participation actually happens within the chosen platforms for consultation. I will also reflect on how the SPA falls prey to its own contradictions and fails to live up to what it was intended to achieve. I will demonstrate how the entry of the Nairobi Metropolitan Service (NMS) into the realm of spatial governance in Nairobi potentially paves the way for the resubordination of the SPA inhabitants. I will argue that NMS is an undemocratic institution that carries the ominous seeds of unaccountable spatial governance. It sidesteps the established structures for deliberation in the SPA while systematically wedging itself in Mukuru. Its bureaucratic approaches can act to depoliticize the SPA process and effectively deradicalize claims by the inhabitants. With this background, we will then be able to understand how contradictions in the SPA process cause the reemergence of anti-dialogical attitudes in Mukuru in which bureaucratic entities impose decisions on the inhabitants. I use antidialogical action in reference to oppressive tactics that are employed by a dominant group to conquer, manipulate or maintain control over the oppressed.[5]

6.2 Framing participants in the SPA

With Nairobi City County Government's (NCCG) Declaration of Mukuru as a SPA, the public was invited to participate in developing a Physical Development Plan for the area. In its notice, NCCG did not specify who the public would in this case be. But since the SPA was a project under the NCCG we can conclude that the "public" here adopts the meaning assigned under Section 2 of

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[5] I borrow from Paulo Freire's dialogical approach in which he defines dialogue as "the encounter between men, mediated by the world." See Freire, P. *Pedagogy of the Oppressed,* Translated by Ramos, M. (The Continuum Publishing Company, 1970) 61. According to Freire, "dialogue cannot occur between those who deny others the right to speak their word and those whose right to speak has been denied by them". He thus employs antidialogical action in reference to oppressive tactics that are employed by antidialogical individuals to conquer others. Ibid, 111. 150-51.

The Nairobi City County Public Participation Act. The Act defines the "public" as a resident or any other person with an interest in governance of the County. The Nairobi City County Community and Neighborhood Associations Engagement Act, 2016 additionally defines a resident as 'a person who carries on a permanent business in that locality or neighborhood or shares in the community of interest of any group whose members are not necessarily in the same neighborhood.'[6]

Muungano, who played a key role in community mobilization, seems to have followed this definition by making the eligibility to participate in the SPA contingent on an individual's residence in Mukuru.[7] In doing this, Muungano views the exercise of improving Mukuru as primarily the work of Mukuru's inhabitants who have historically been excluded from planning processes. Having played a key role in stimulating the growth of grassroots participatory structures in Mukuru, Muungano's participation in the SPA would prove to be integral. Being an institutionalized participatory process, the SPA could now easily build on the participatory structures that Muungano, its affiliates and partners had already established in Mukuru. I will discuss below how community saving groups, which is a platform that has in the past been used by Muungano's affiliate AMT, proved useful in the SPA.

Muungano's approach to determining eligibility to participate in the SPA seems to follow the principle laid out in *Mui Coal Basin Local Community,* that those most affected by an action must have a bigger say on the matter and that their views must be more deliberately sought and taken into account.[8] Adopting Muungano's position essentially disqualifies non-residents from participating in the SPA. An analogy is offered by Horn *et. al.* who propose that the SPA process sought to situate the local communities at the centre of planning.[9] This stance informs how participation is approached in the SPA and we are led to two platforms for participation that are used in the SPA. These are: participation based on the geographic location of the inhabitants; and participation within the established savings groups. These will be explained further below.

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[6] The Nairobi City County Community and Neighborhood Associations Engagement Act, 2016. s.2
[7] See Muungano wa Wanavijiji, 'Resident FAQs: Understanding the Mukuru Special Planning Area', available at https://www.muungano.net/mukuru-spa-resident-participation accessed March 30, 2020.
[8] Constitutional Petition No. 305 of 2012.
[9] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 7.

Apart from the Gazette Notice issued by NCCG, there appears to have been no other invitations from the County to the residents to participate. Communication to the residents was largely done by the Coordination, Community Organisation and Communication Consortium (CCOCC or 'the communication consortium') led by Muungano and AMT and this was done in both Kiswahili and English.[10] By leaving this task to the CCOCC, NCCG fell short of discharging its statutory duty to provide and disseminate relevant information to individuals that would be affected by the SPA. The communication consortium was also tasked with mobilizing the community for participation and facilitating the participatory sessions. It has been stated that the consortium "acts as a gatekeeper who controls the community participation process, overseeing who goes to Mukuru and for what purpose."[11]

The danger posed by the influence by the two actors is that the institutionalized practices and structural relations will remain unaltered. This creates imbalances in the platforms for participation. The reservations expressed here are informed by the fact that both organisations have been known to work in Mukuru for many years and are likely to have already established networks and patterns within the community.[12] The existence of these networks may lead to differential access to the platforms for participation posing disadvantages to certain individuals. The presence of these actors is likely to facilitate misappropriation of discourses generated by the communities making them inaccessible to the intended beneficiaries. We shall see further below whether any safeguards are employed to prevent this.

6.2.1 Geographical representation of participants

As noted above, geographical locations represent one of the platforms where participation has been structured to occur. Settlement profiling, which was done as part of the SPA's community mobilization processes, enabled the gathering of data that aided in mapping the community organisation structures within the SPA.[13] From this, existing geographical and leadership structures were identified as these would be used in the participatory processes that would ensue.[14] The mapping done here would also facilitate the geographical organisation of the residents, starting

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[10] Key Informant interview with a member of the CCOCC on October 6, 2020.

[11] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 9.

[12] See Lines, K. and Makau, J. 'Taking the Long View: 20 Years of Muungano wa Wanavijiji, the Kenyan Federation of Slum Dwellers', 407-424, on Muungano's history in Mukuru.

[13] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 10.

[14] Ibid.

from the household level, to the sub-cluster and ultimately to the segment/neighborhood association levels.[15] Adopting this structuring is said to have been driven by the need to put the inhabitants at the center of the participatory processes in these matters that disproportionately affect them.[16] It also ensures that the individuals brought together have similar interests which they would deliberate on. As such, the processes were overtly structured in favor of tenants who are the category of stakeholders that are most affected by the challenges in the settlements. As one member of the CCOCC remarked:

> "*We wanted to develop a structure of representation at the household level as opposed to having organisations doing the representation. This is because we wanted to hear from the households and we wanted to build a representation that speaks to the issues.*"[17]

By orienting participation in favor of the tenants, the process grounds itself to local realities and seeks to undo the historical marginalization that has been occasioned on this group. It puts a group that has historically been severed from urban discourses at the heart of spatial planning and challenges the exclusionary conceptions of the urban citizen. It ultimately enables a collaborative exercise aimed at producing interventions for the identified challenges. As will be seen later, this approach is not deliberately adopted to lock out other participants like structure owners, who instead elect not to participate in the processes. Understanding why such groups voluntarily chose not to participate is also key when analyzing participatory processes. I will discuss this in the subsequent sections. Ultimately, the SPA's foregrounding of the household as the primary unit for participation insulates the process from the monopolization of discourses by other dominant actors.[18]

To ensure participation of the identified household members, the data collectors drawn from the community gathered phone numbers from the households in the settlements. These phone contacts would subsequently be used in notifying the residents on the forthcoming meetings and SPA

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[15] Ibid, 13.
[16] Ibid.
[17] Key Informant interview with a member of the CCOCC on October 6, 2020.
[18] Habermas has urged the strengthening of the bonding forces within the private sphere (such as within households) to enable prevention of monopolisation of discourses. See Habermas, J. *Between Facts and Norms,* 369.

events.[19] Employing community members in the data collection processes demonstrates to the community the depth of their knowledge and acknowledges their capacity to analyze such information.[20] The use of text messaging platforms to disseminate information meant that as many participants as possible could be directly reached. It also potentially excluded many whose phone numbers were not gathered or who could not access phones. By using community members to recruit participants for the project, the SPA effectively sought to achieve access by harder-to-reach-populations that would ordinarily be missed in expert-led recruitment processes.

Communication was also done through Reuben FM, which is a radio station dedicated for Mukuru. Through this platform, announcements on forthcoming meetings were made. I spoke with an employee of the radio station who described the key role that the radio station plays in disseminating relevant information to the inhabitants. According to him, listeners would call in and ask questions relating to the SPA which would be addressed by various hosts in the station.[21] In the figure below, the various geographical platforms for participation in the SPA are illustrated.

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[19] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 12. It has been indicated that Muungano and AMT set an incentive of USD35 per month for the data collectors. Ibid, p.11.
[20] Mitlin, D. and Thompson, J., 'Participatory Approaches in Urban Areas: Strengthening Civil Society or Reinforcing the Status Quo?', (1995) 7(1) *Environment and Urbanization*, 241.
[21] Interview with a key respondent in Mukuru kwa Reuben on October 29, 2020.

Fig 10: *Mukuru SPA Community Planning Process*[22]

From the figure above, we can see both a vertical and horizontal organization of participation in the SPA. Vertical organization places the inhabitants, through their households, as the starting point for participation. This builds up to the segment level. Horizontal collaboration in the SPA substitutes the traditional top-down approaches. Horizontal structuring is likely to give the processes a communal sense of ownership as individuals in the 'socially autonomous' groups are likely to be driven by a shared purpose.[23] It encourages the development of a common grammar which the inhabitants can use to identify the objectives that they share ultimately enabling the convergence of their preferences. The operation of both the vertical and horizontal platforms also suggests the existence of accountability mechanisms as the individual actors are here guided by

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[22] See Muungano wa Wanavijiji, 'Resident FAQs: Understanding the Mukuru Special Planning Area', available at https://www.muungano.net/mukuru-spa-resident-participation accessed March 30, 2020.

[23] See Pateman, C. *Participation and Democratic Theory*, 41. See also Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 233.

reciprocal duties to each other.[24] Horn *et. al.* have extolled this model for safeguarding residents from undue influence from external actors like structure owners and other entities with commercial interests in the settlements.[25] The various levels also represent the recognized platforms for knowledge production and dissemination that feed into the SPA. With the adoption of these platforms, the SPA signals its valorisation of a decentralised and more inclusive approach to participation.

However, as critiques of such structured approaches would contend, the adoption of rigid structures can have the effect of placing limitations or constrains upon the activities of agents within these spaces.[26] This will particularly be the case where the democratic imperative of building consensus acts as the sole underlying driver of the adoption of a particular structure. Decentralizing decision-making may enable widespread participation but could at the same time prevent actors in these spaces from adopting other models that could be more suited for meaningful participation. Adopting rigid structures can exclude individuals who fail to fit within the defined parameters. For the SPA, adopting the household as the primary point of reference for participation may exclude homeless individuals within the settlements. This means that concerns by these groups will not be addressed by the IDP.

Rigid structures may also act to silence or exclude detractors or individuals that are opposed to the processes. With this, conflicts by the relegated actors become instinctive as they fend off practices that subordinate them. We see this already in the SPA process where a group of village elders representing certain structure owners violently disrupted the community mobilization processes.[27] Resistance by the village elders has been attributed to the fact that the model adopted for community participation made their gatekeeping roles redundant.[28] While the framers of the SPA here sought to balance intra-community power relations, the result was the diminishing of voices from the dominant actors in the settlements and this potentially provides fodder for conflicts.

It could be that the village elders were prompted by the fact that the participatory structures adopted for the SPA ostensibly usurped their traditional authority in the settlements. And true to Saati's

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[24] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 257.
[25] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 13.
[26] See Lukes, S. *Power, a Radical View* (Macmillan, 1974).
[27] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 14.
[28] Key Informant interview with a member of the CCOCC on October 6, 2020.

analysis, the sense of lack of ownership in processes will foster distrust among actors, leading to conflicts.[29] It draws us to the proposition that the adoption of malleable structures which recognize existing power or participatory structures could potentially foreclose such conflicts. Such structuring can provide room for necessary modifications of the participatory spaces as the projects progress hence enabling the widest forms of participation to be attained. My suggestion here follows from Staszowki *et. al's* call for the creation of "platforms or spaces in which different epistemic communities may work together without reproducing hierarchical power relations",[30] or contriving new forms of power relations. For the SPA, we could have a different consultative session that brings together village elders and other individuals in positions of authority. This can still be done without necessarily importing bureaucratic tendencies that are customary with such administrative structures.

Mattern cautions against models that would constrain the elaboration of other human activities which cannot be observed.[31] She insists on the value of designing participatory processes with the genuine desire of making them accessible to 'co-shaping' by its participants.[32] Nevertheless, we expect that these processes will result in "winners" and "losers" and how the SPA navigates these dilemmas has an important bearing on its success. This underscores the importance of transparency in participatory processes and diversification of the community entry points.[33] Legitimacy of these structures can also be obtained where they build on existing administrative structures prescribed by the law including platforms like the village, wards, and sub-counties. It is for this reason that the SPA participation framework also built on existing government structures like the *nyumba kumi* (ten households) initiative to encourage buy-ins of the project from existing government structures.[34] By incorporating *nyumba kumi* in the SPA's participatory model, the convenors

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[29] Saati, A. *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy,* 6.
[30] Staszowski, E., Brown, S., and Winter, B. 'Reflections on designing For Social Innovation in the Public Sector: A Case Study in New York City', in Manzini, E. and Staszowski, E. (eds.) *Public and Collaborative: Exploring the Intersection of Design, Social Innovation and Public Policy* (DESIS Network, 2013) 33.
[31] See Mattern, S., 'Instrumental City: The View from the Hudson Yards, circa 2019', 11.
[32] Ibid, 12.
[33] Liko, C. 'Community Participation in the Face of Gatekeeping: Lessons from Kenya', *OpenGlobalRights* March 1, 2018. Available at https://www.openglobalrights.org/community-participation-in-the-face-of-gatekeeping-lessons-from-Kenya/ accessed March 31, 2020.
[34] Key Informant interview with a member of the CCOCC on October 6, 2020.

signaled a recognition of existing administrative structures which would potentially coax the settlement leadership into embracing the process.

6.2.2 Participation through saving groups: who is invited?

As noted in Chapter four, financial contributions and participation through saving groups has been a key discursive practice that Muungano has over the years adopted in Mukuru. This model is widespread in Mukuru unlike other informal settlements in Nairobi due to the low number of NGOs in Mukuru.[35] NGOs operating in other informal settlements in Nairobi have contributed to the upgrading of various social amenities for the use of the inhabitants in these areas. The burgeoning NGO sector in these settlements means that local communities increasingly become reliant on these entities for provision of basic services. In Mukuru on the other hand, the comparatively lower number of NGOs operating means that the community will be directly responsible for most of the upgrading works in the settlements.[36] Through its affiliate, AMT, Muungano has mobilized its members to make financial contributions and have instrumentalized its utility in negotiating for *in situ* upgrading of the settlements.[37] A similar logic has been used to legitimate formation of new community saving groups and mobilization of existing ones with the anticipation that these groups will ultimately invest in upgrading infrastructure within the settlements.[38] It is also presumed that the 'transient' nature of the inhabitants would dissipate once they acquire a financial stake in the areas that they occupy.[39] Thus, according to a representative from a Mukuru-based social movement;

> "*For you to be an active participant in your residential area, you must have a sense of belonging. For the tenants who don't own the structures, coming to the participatory sessions as a constituency or a group of community savers would mean that they are stakeholders in the settlements*."[40]

Closely related to this is the assertion that enabling participation of the community through platforms like the saving groups helps in generating local expertise and individuals that are able to

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[35] Key informant interview with member of a social movement on October 2, 2020.
[36] Ibid.
[37] Weru, J., *et al.,* 'The Akiba Mashinani Trust, Kenya: Role of a Local Fund in Urban Development', 5.
[38] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 15.
[39] Ibid.
[40] Key informant interview with member of a social movement on October 2, 2020.

confront local challenges rather than look externally for help.[41] Drawing on experiences from SDI and the Asian Coalition on Housing Rights (ACHR) Mitlin *et al*. document the educative roles that community saving groups can play. They argue that these groups can enable the acquisition of new skills by their members and ultimately expand individual and collective capacities of their members.[42] The educative role of saving groups can also be seen where it provides financial literacy to the community.

The existing saving groups in Mukuru have devised internal measures to guide how the business of the groups are to be conducted. This gives members opportunities to practice governance, accountability, and leadership.[43] Community meetings have also been organized under the auspices of these groups as a strategy to avoid scrutiny and possible backlash from structure owners in the settlements. Whenever members met, they would say that the meeting was to discuss the affairs of their saving groups yet in reality they would discuss the ongoing SPA.[44] This shielded them from victimization by structure owners and being punished with threats of or with actual evictions.[45] This approach also foments collective solidarity which Pieterse argues is important in altering the power-relations in which decision-making processes are implicated.[46]

However, the exclusionary perils of using saving groups have already been outlined in chapter four. Anecdotal evidence suggests an uneven distribution of these groups within the settlements with a majority being concentrated in the Gatope area which is largely occupied by traders and individuals having disposable incomes.[47] Also, we seem to be replicating the old patterns of power as we pursue participation through these entrenched discursive frameworks. Muungano's lengthy history of work in Mukuru can already hint at the existence of certain acceptable patterns of behavior and practices. Any new participants invited into the spaces it convenes will thus be expected to participate on terms that already exist and that are deeply embedded in its institutional practices. This points us to the deficits of adopting a singular narrative of practice. Failure to tackle this would produce ideological constrictions on the subjects of participation and act to subvert their

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[41] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 16.
[42] Mitlin, D. *et al.* 'Capital, Capacities and Collaboration: The Multiple Roles of Community Savings in Addressing Urban Poverty', 20.
[43] Key informant interview with member of a social movement on October 2, 2020.
[44] Ibid.
[45] Ibid.
[46] Pieterse, E., *City Future: Confronting the Crisis of Urban Development*, 119.
[47] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 15.

agency. Consequently, a public consultation scheme cannot rest entirely on such platforms. This may be considered exclusionary and so contact with other arenas for participation to make engagements as far-reaching as possible must be maintained.

6.3 How do they participate?

Participation in the SPA was primarily performed within the platforms provided by the seven SPA consortia. Each consortium was tasked with the development of sector-specific briefs and plans.[48] It was anticipated that each of the consortium members would contribute their various expertise to the development of the final IDP. Contributions made by the consortia members were on a voluntary basis with each consortium meeting the costs of the consultation activities that they conducted.[49] NCCG on the other hand did not provide any funds to facilitate public participation as required by the NCCPPA, 2015. This clearly goes against its duty to facilitate public participation and possibly affected the manner in which participation occurred. It has been stated that the only instance where the county facilitated any of the SPA activities was when a retreat was organized to Mombasa (a coastal town and a popular tourist destination) for the experts in the various consortia and some MCAs.[50] Even the notices inviting the inhabitants to participate in the SPA were printed by the consortia without any input from the county which goes to show the extent to which the county abdicated its statutory responsibility to provide information on the SPA.[51] Failure by the various consortia to demand NCCG's presence potentially foreclosed critical opportunities that the Mukuru inhabitants had to hold NCCG to account.

Needless to say, the outputs generated by these consortia included: 1) thematic sector briefs which provided a situational analysis 2) sector plans and; 3) The integrated plan for the entire SPA area.[52] In arriving at these outputs, individual households in Mukuru were approached to give household information.[53] Participation was then conducted at the cell level and ultimately at the segment

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[48] Sverdlik, A., *et. al.,* 'Achieving Scale, Social Inclusion, and Multifaceted Shelter Solutions', (2020) *IIED,* 6.
[49] Ibid, 7.
[50] Key informant interview with member of a social movement on October 2, 2020.
[51] Ibid.
[52] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 17.
[53] See Muungano wa Wanavijiji, 'Resident FAQs: Understanding the Mukuru Special Planning Area'.

level.[54] Participation at the segment level was done along the 7 thematic lines and drew participants from approximately 80 sub-clusters.[55]

Thematic consortium	Members	
Environment	- Stockholm Environmental Institute - The Kenya Air Quality Network - NCCG Departments of Environment and Health - University of California Berkeley	
Health	- Kenya Medical Association - Kenya Red Cross Society - Innovative Canadians for Change - Institute of Urban and Regional Planning, University of California Berkeley - SDI - AMT - NCCG	Mukuru Community
Housing, Infrastructure and Commerce	- SPARC - The University of Nairobi - NCCG Department of Housing and Urban Development	
Water, sanitation and Energy	- Swiss Caritas - OXFAM - NCCG Department of Water	
Land	- Katiba Institute - Muungano wa Wanavijiji - Strathmore University	
Education	- NCCG Department of Education - African Population and Health Research Center (APHRC)	
Finance	- Strathmore University - NCCG Department for Economic Planning	

Table 4: *SPA Consortia members*

This was then followed by consultation in the thematic areas which drew 1 or 2 representatives per sub-cluster for each thematic area, bringing the total participants here to between 80-160 for each of the 5 thematic areas (see fig. 10 for the planning levels). [56] Ultimately the HSC held a total of 13 consultation sessions, drawing around 966 participants. It has however been noted that most

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[54] Ibid.
[55] Ibid.
[56] Ibid.

people approached to participate had little interest in the processes leading to the development of the IDP but were instead concerned with being addressed on how the processes would address the land tenure situation in the settlements.[57] It could perhaps be argued that by posing the questions on land tenure, the inhabitants hint at how deferring answers to the issue affects their ability to meaningfully participate. They seem to acknowledge that their participation has minimal bearing on fundamentally altering the conditions in the settlements for as long as tenure insecurity remains an issue.

As elaborated in this work, landlessness renders the inhabitants powerless and deprives them of the capacity for autonomy. Their ability to exert influence in participatory processes is constrained by tenure insecurity. This arises from the non-recognition of their rights to the land which they occupy. As such, participation in Mukuru is entangled with the social conditions which it aspires to substantively improve. We can deduce this from the inhabitants' preoccupation with the question of tenure security. Indeed, the land question even defined how some of the community consultation processes were structured, particularly when it became evident that the participants were likely to be victimized by their landlords for their participation in the SPA processes. I however urge a reading of public participation in the SPA as a mediating tool. It can bridge the gap that has existed between tenure insecurity and inclusion in spatial planning. By bringing this previously excluded group to the realm of spatial planning, we can confront the precarity of their tenure. By discussing tenure issues and how these affect other facets of their lives, the inhabitants are equipped with strategies that they can use to tackle the land tenure situation.

6.3.1 The compensation-participation nexus

The fact that the SPA participants received 'a small payment'[58] to facilitate their attendance of the consultation forums can tell us something about their willingness to participate and can act to undermine the voluntariness of their participation. A major defect of this approach is its risk of deflecting the attention of participants from critical deliberations on the issues at hand. Instead, participants will, for fear of reprisal, be docile and subservient to the whims of the conveners in anticipation that this will guarantee them receiving their 'payments'. This concern was noted by some of the respondents interviewed who were of the view that some of those tasked with

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[57] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 17.
[58] Ibid, 19.

mobilizing people to attend the consultation sessions would only call their friends and family members whenever they knew that payments would be made at the end of these sessions.[59] It could also be the case that the mobilisers intentionally targeted individuals who they deemed to be reliable and who would actually attend the sessions. However, it has already been noted that issuing cash tokens to the SPA participants attracted many people who had little interests in the actual contents of the consultations.[60] We are led to Arnstein's suggestion that in effect such individuals may have only "participated in participation".[61]

But the predicament here is that we risk falling into a trap that we are dealing with altruistic participants having disposable time to lend to the participatory activities. These kinds of presumptions can work to deepen the inequalities that we seek to address within these impoverished contexts.[62] It is perhaps on this basis that the SPA conveners decided in favor of issuing payments to participants.

SPA Planning timeline

Source: https://www.muungano.net/mukuru-spa
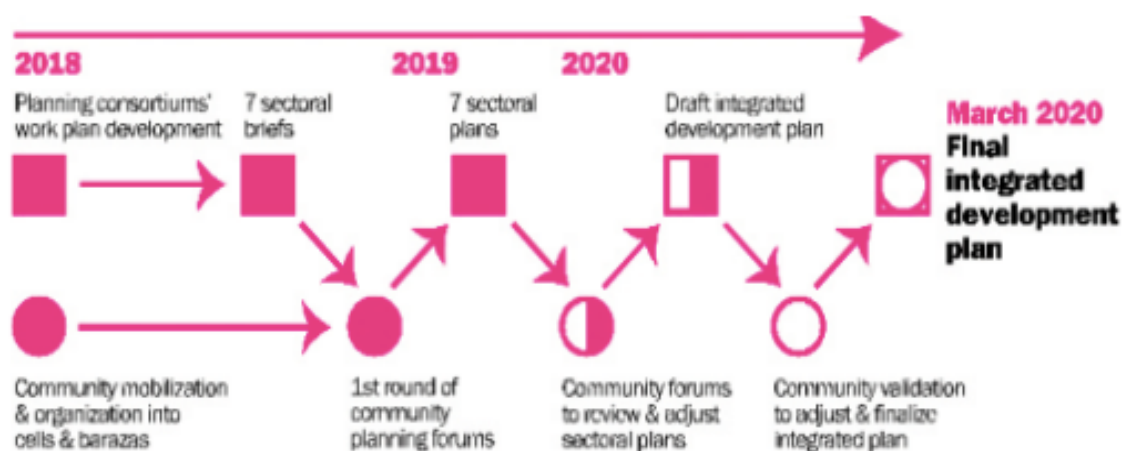
Fig 11: *SPA planning timeline*

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[59] Interview with a key respondent on October 13, 2020.
[60] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 17.
[61] Arnstein, S.R. 'A Ladder of Citizen Participation', 219.
[62] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 11. Largent and Lynch argue that the concern should not even be that payments are made to participants but on how much payment would be adequate for them. See Largent, E.A. and Lynch, H.F. 'Paying Research Participants: Regulatory Uncertainty, Conceptual Confusion, and a Path Forward', (2017) 17(1) *Yale Journal of Health Policy Law Ethics.*

6.3.2 Incorporating flexibilities in the consultation models

Variations in approaches were made based on the needs of the various consortia and the issues at hand. Such variations follow the logic in *Mui Coal Basin Local Community* that no single regime of public participation can be completely adequate hence the need for malleability in approaches.[63] For instance, the Health Services Consortium (HSC) organized 10 community consultation and 3 community validation meetings.[64] During the meetings, the situational analysis generated by the Consortium was presented to the participants who provided feedback on it.[65] In my view, the inception activities leading to the generation of the situational analysis report were meant to facilitate the formation of consensus and delineate issues of common interest for subsequent discussions. The Consortium carried out what it calls 'segment-level dreaming sessions' where it gathered residents' aspirations and collaborated with them to identify priority issues in need of planning interventions.[66] This was followed by the development of a draft sectoral plan for the segment which was then subjected to review and feedback from the community with its revised format feeding into the integrated development plan.[67]

As I discuss further in the next chapter, participation in the HSC drew contributions from a broad range of participants including local health professionals such as pharmacists and operators of traditional medicine centres, community health workers/volunteers (CHWs) and residents.[68] It was observed that during these sessions, participants were able to discuss the various issues affecting them in the settlements and learn from one another on how to tackle them.[69] The scheme here can be equated with what Arnstein referred to as 'partnership'[70] as we can see the adoption of a shared approach to decision-making with safeguards being adopted to ensure that the experts constantly report back to the consulted community.

What was missing in these meetings were mechanisms that would enable the participants to provide their feedback and raise any complaint that they may have without fear of reprisal. This

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[63] See Constitutional Petition No. 305 of 2012.
[64] Key Informant interview with a member of the HSC on October 9, 2020.
[65] Ibid.
[66] Muungano wa Wanavijiji, 'Health Services Consultation: Njenga Segment 3 (Riara), 3.12.2018', available at https://www.muungano.net/spa-materials/2018/12/03/health accessed March 31, 2020.
[67] Ibid.
[68] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 18.
[69] Key Informant interview with a member of the HSC on October 9, 2020.
[70] Arnstein, S.R. 'A Ladder of Citizen Participation', 222.

concern emerged from the conversations that I had with some of the inhabitants who participated in the SPA. Nearly all of those interviewed stated that not all the consortia that were involved in the SPA held data validation meetings and that they were not informed on what would follow from their participation.[71] It points to a design flaw in the SPA as the consortia appear to have carried out public participation in a siloed manner with each consortium employing practices that it deemed suitable. Absence of accountability safeguards provided fodder for disputes especially in the implementation stage. I will illustrate how this is already manifest in Mukuru.

A member of one of the SPA consortia whom I interviewed blamed these incomplete processes on what she termed 'political instability' within the NCCG administration.[72] She maintained that the frequent administrative changes made by the county governor in his administration meant that it was difficult to build and maintain stable relationships with the county administration and to ensure that the SPA processes went on as planned.[73] This exerted a heavy burden on the SPA consortia which had to constantly reassure the inhabitants of Mukuru of NCCG's commitment to the process notwithstanding the latter's absence. It also meant that the consortia would spend considerable amounts of time cultivating new relationships and updating newly appointed NCCG officials on the process and remind them of NCCG's role.[74]

6.4 Navigating internal contradictions in the SPA

Instability in the county's administration was reflected in the community consultation processes and negatively affected them. The perils of NCCG's abdication of its duty to facilitate public participation are already evident as some of the consortia had to remodel their public participation formats to reflect disengagement of NCCG from the process. Leaving such important consultative processes to be entirely driven by non-public entities impaired the inhabitants' ability to demand accountability from NCCG. It also meant that the consortia could now steer the participatory processes in whichever way that they deemed fit since they provided funding for the processes. It potentially produced power imbalances within these platforms and created room for ideological coercion. This serves as a reminder that participation is not a monolithic right, but a right which must be guaranteed at every point and appropriate conditions for its realization constantly

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[71] Interviews with various respondents in Kwa Reuben, Kwa Njenga and Viwandani.
[72] Key Informant interview with a member of the CCOCC on October 6, 2020.
[73] Ibid.
[74] Ibid.

maintained.[75] Hence, NCCG's duties remain binding notwithstanding its non-participation in the processes. We shall soon see how this abdication of duty by NCCG created a conducive environment for subversion of the SPA processes by the NMS.

From a cursory outlook, there seems to have been extensive participation in the SPA process. However, the mere presence of participants within the platforms for participation will tell us little about the quality of deliberations within these spaces and the amount of influence that participants have in decision-making. By just focusing on the numbers and spaces, we could potentially be legitimizing what Saati refers to as an 'empty ritual' of participation.[76] It could be that the numbers are drawn into these spaces in schemes of pacification by the conveners of the processes. Our attention should then be drawn to what actually happens within these spaces which has an important bearing on the effectiveness of the models adopted for participation. This is extensively examined in the next chapter where I engage with how participation occurs under the models adopted by the HSC. We will start at the point of issue identification which should accord with and reflect the lived realities of the participants. In Mukuru, issue identification and validation commenced at the situational analysis stage which entailed the co-production of data by residents, researchers and the consortia members.[77] This signified the SPA's recognition of local expertise and its commitment to develop interventions grounded in the inhabitants' experiences.

In Mukuru, settlement profiling was directed at the identification of existing organizational and economic capacity of the community and to inform them on the forthcoming processes.[78] The approach adopted here followed along the lines adopted by Muungano in its previous work in Mukuru and in other informal settlements.[79] As part of this process, GIS mapping was done in collaboration with representatives from the community enabling the generation of data on the

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[75] See Ngcobo, J. in *Doctors for Life International v Speaker of the National Assembly and others* (CCT12/05) [2006].
[76] Saati, A. *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy*, 33.
[77] See Corburn, J. *et al.,* 'Situational Analysis of Mukuru kwa Njenga, kwa Reuben & Viwandani', (2017) Technical Paper. UC Berkeley, University of Nairobi, Muungano Alliance, Strathmore University and, Katiba Institute, available at 4.UC Berkeley, University of Nairobi, Muungano Alliance, Strathmore University and, Katiba Institute, available at https://www.muungano.net/publicationslibrary/2018/1/22/mukuru-spa-situational-analysis-phase-2-report-mukuru-kwa-njenga-kwa-reuben-viwandani, 4 accessed April 1, 2020.
[78] Key Informant interview with a member of the HSC on October 9, 2020.
[79] Ibid.

settlement boundaries and land ownership.[80] Representatives from the community were able to use their local knowledge in the mapping exercises which enhanced their trust in the processes and this typified the mutuality of their obligations with the participating experts.

However, this form of participation was limited to those who were accorded access to these technologies which will mean that many of the residents are left out. Preoccupation with this approach can potentially lead to its abuse as a placation strategy. This means that few unaccountable community representatives can be handpicked and guided to conclusions already adopted by external experts or community mobilisers.[81] This will especially arise where the external actors have unchecked control of the processes which they can misuse against unwitting representatives from the communities that they work with. This can happen especially where these representatives' capacity to participate is limited by certain dynamics operating within their spaces.

Where we have these kinds of power imbalances, we will end up producing a sense of inferiority among the participants. They may be intimidated by sophisticated technologies through which their participation is mediated. They will be unable to assert their personhood and articulate the issues that are key to them. By overusing these technologies, there remains a possibility of imposing methodological and epistemological constrains on participants.[82] Also, mapping the settlements using GIS technology can prove to be ineffectual considering that the community has invariably been denied access to information on land ownership in the settlements. It underscores the centrality of access to information for effective participation. Mattern's analysis also illustrates the limits of mapping practices in achieving social and environmental change. [83] She calls for the adoption of these together with other tools in plotting more inclusive, engaged and justice-oriented spatial practices.[84] So, the instrumentality of the GIS approaches adopted in the SPA will draw from their augmentation with other channels for participation that inhabitants use in their everyday engagement with the state and other relevant authorities.

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[80] Horn, P., *et al.* 'Participation at Scale: The Mukuru Special Planning Area', 11. Collaboration is here understood as a process by which individuals or organisations work together at the intersection of common goals. See Miessen, M. *The Nightmare of Participation,* 99.

[81] Arnstein, S.R. 'A Ladder of Citizen Participation', 220.

[82] Mattern, S., 'Post-it Note City', 11.

[83] Mattern, S. 'Foreword', in De Souza, S.P., Rehman, N., and Sharma, S. (eds) *Crowdsourcing, Constructing and Collaborating: Methods and Social Impact of Mapping the World Today* (Bloomsbury, 2020) quoted in Mattern, S., 'Post-it Note City', 14.

[84] Mattern, S., 'Post-it Note City', 14.

In the following section, I discuss how some of the design and implementation flaws in the SPA that have been outlined in the foregoing sections have created a conducive ecology for the invasion of the SPA process by bureaucratic entities which now reinvent uneven power arrangements by substituting decision-making for the inhabitants. To begin with, I read the SPA process as a political project with the political end of reorienting power relations in the city and redefining the conditions of urban citizenship. Its goal was the empowerment of the inhabitants and to equip them with the tools necessary to tackle the underlying drivers of inequity. However, there is already some evidence that the SPA process has morphed from being a radical political project which the inhabitants have historically advanced to a technical necessity. It has now abandoned its emancipatory objectives and is solely focused on generating an IDP for Mukuru. Indeed, we already see consultation abandoned by certain consortia which failed to present their plans for validation by the community, hence missing a crucial step in the participation process. Muungano has however stated that the restrictions which were imposed against the backdrop of the Covid-19 pandemic prevented the holding of such validation meetings.[85]

Some of the SPA consortia have collaborated with the NMS, an unelected and bureaucratic entity. I will argue below that this works against the radical vision on social change that the SPA process sought to achieve. It contributes to unequal distribution of political power which will now be a preserve of the few unelected elites. Also, failure by the SPA consortia to mobilize and demand for the presence of NCCG in the various SPA processes closed the opportunities that the inhabitants would have had to apply political pressure and demand for accountability and responsive governance practices. Dropping consultation and embracing technical fixes empties the SPA process of the political realities that shape power relations in Mukuru. It is these power relations and particularly questions of agency which the SPA had initially sought to rescale.

Indeed, by agreeing to be hosted to a retreat by NCCG in Mombasa, which was inaccessible for most inhabitants, the consortia signaled their acquiescence to and legitimized the accountability-evading tactics by NCCG. Removing the conversation from Mukuru and taking it to Mombasa, which is approximately 500kms from Nairobi essentially meant that these important conversations would no longer be accessible to the originally intended beneficiaries. It goes to show that these

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[85] Weru, J. & Njoroge, P. 'Mukuru SPA Update: From Planning to Implementation in 2020', available at https://www.muungano.net/browseblogs/2021/4/7/mukuru-spa-update-from-planning-to-implementation-in-2020 accessed September 9, 2021.

organisations and social movements are not always accountable to the grassroots which they claim to represent. These occurrences are also emblematic of how external actors will often appropriate discourses generated by communities and make them inaccessible to the intended beneficiaries. Additionally, the ease with which the consortia were able to situate themselves in the center of discourses that have emerged from the grassroots reflects on their inherent ability to appropriate and exclude. All these act to diminish the agency of excluded groups.

The consortia also seem to be only keen on meeting the statutory timelines for preparation of the IDP while maintaining some semblance of the involvement of the inhabitants in the processes. Even the implementation of some of its proposals is presently happening to the exclusion of Mukuru inhabitants as I will shortly demonstrate. As cautioned by Hickey and Mohan, approaching participation from this technicist perspective exposes it to the likelihood of elite capture.[86] Ferguson terms such orientations to development as an 'anti-politics machine' which he argues depoliticizes social phenomena while expanding bureaucratic state power.[87] This approach reinforces the marginalization of the poor whose lived realities will be disqualified and substituted with formalist and structured techniques. This is a phenomenon that we now see in Mukuru. It has the potential of weakening the transformative agenda of the SPA process. With these missteps, the SPA effectively lunges towards a political culture that inhibits democracy and radical social change.

6.5 Enter the Nairobi Metropolitan Service (NMS): The impoverishment of participation

On February 25, 2020, at a function at State House in Nairobi, the NCCG Governor signed an agreement whose objective was to hand over certain devolved functions of NCCG to the national government pursuant to Article 187 of the Constitution. Under this provision;

> *(1) A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if-*
> *(a) The function or power would be more efficiently performed or exercised by the receiving government; and*

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[86] Hickey, S. and Mohan, G. 'Relocating Participation within a Radical Politics of Development', 243.

[87] Ferguson, J. *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho* (University of Minnesota Press, 1994) 256.

(b) *The transfer of the function or power is not prohibited by the legislation under which it is performed or exercised.*[88]

With this agreement, the following functions were transferred from NCCG to the national government: county health services; county transport services; county public works, utilities and ancillary services; and county government planning and development. Effectively, a new entity, the NMS, was created and a serving military officer was handpicked by the president as the director general to head it and oversee the delivery of the functions that were transferred from NCCG.

The argument that was advanced to justify this transfer was that service delivery in the city had been ground to a halt and thus the intervention of the national government would ensure that city residents received services efficiently.[89] This reasoning was supported by NCCG's County Attorney who was a Respondent in a suit challenging the establishment of NMS. In this suit, the County Attorney swore an affidavit asserting that it was in the public interest that the functions are transferred to ensure that the residents of Nairobi City County continued to enjoy the services that were transferred to the NMS.[90] She further argued that NCCG was facing some internal constrains which affected the discharge of its functions.[91] NCCG Governor on the other hand challenged the transfer arguing that NMS had no constitutional mandate to take over Nairobi County despite the fact that the transfer agreement was signed.[92]

6.5.1 NMS's managerialism logics and its disempowering outcomes

On its official website, NMS describes itself as 'a citizen-centric public service' with its motto being "*Where efficiency meets effectiveness*".[93] NMS has listed its core values as: passion in service delivery, respect and courtesy, professionalism and integrity, transparency and accountability, impartiality, teamwork, and patriotism and nationality.[94] It is structured into seven Directorates and these are Health Services; Roads, Transport and Public Works; Lands, Housing

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[88] CoK, 2010 Art. 187 (1).

[89] See Office of the Spokesperson, State House, Nairobi. Press Statement on 25th February 2020 available at https://www.president.go.ke/2020/02/25/functions-of-nairobi-county-government-handed-over-to-the-national-government-pursuant-to-article-187-of-the-constitution/ accessed November 9th 2020. See also *Okiya Omtatah Okoiti v Nairobi Metropolitan Service & 3 Others; Mohamed Abdala Badi & 9 Others* Petition 52 of 2020.

[90] *Okiya Omtatah Okoiti v Nairobi Metropolitan Service & 3 Others; Mohamed Abdala Badi & 9 Others* Petition 52 of 2020. Para. 31.

[91] Ibid, para. 35.

[92] Ibid, para. 55.

[93] See https://nms.go.ke/14-2/ accessed July 20, 2021.

[94] Ibid.

& Urban Development; Environment, Water and Sanitation; Treasury and Planning; Compliance, Enforcement and Delivery; and Legal Services.[95]

The establishment of NMS marked the arrival of a new spatial order premised on managerial delivery of results. It also marked the reemergence of authoritarian systems and institutions implicated in the production of space. A system that is devoid of democratic structural safeguards was created. We can tell this from the fact that unlike NCCG, NMS is a unelected body with no established structures that would enable citizen oversight. Indeed, the NMS Director General Lt. General Mohamed Badi has on numerous occasions scoffed at calls for accountability from the NMS, quipping that he is not answerable to any politician or elected representatives in the county and is only answerable to the President who also acts as the Commander in Chief of Kenyan armed forces.[96] The General, often donning camouflage military fatigue, has been a frequent visitor to many of the city's neighborhoods where he inspects ongoing projects that are being carried out by the NMS.

According to him, "managing the city is just like managing the military" and that serving in the military places him at a vantage point when dealing with the city's numerous challenges, particularly the issue of cartels since "dealing with enemies is part of my (Badi's) training…".[97] This language adopted by the NMS leadership can be argued to have an alienating consequence with the goal the reinventing passivity in spatial governance. As will be seen shortly, NMS intimidates citizens with its sophisticated bureaucratic and undemocratic apparatuses. Such entities like the NMS will largely remain inaccessible to the marginalized urban citizens.[98] With this posture, the agency of the city's inhabitants is ignored.

The logics of managerialism have now been fully deployed. They are being systematically established through the militarization of Nairobi. As will be seen shortly, this distinctly antidemocratic endeavor mobilises instruments of violence. It sidelines democratic institutions like

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[95] https://nms.go.ke/about-nms/
[96] The Daily Kenyan Post, 'I only take orders from my Commander in Chief Uhuru Kenyatta, not from courts or silly MCAs- Major General Mohamed Badi tells Sonko', *The Daily Post* July 30, 2020 available at https://kenyan-post.com/2020/07/i-only-take-orders-from-my-commander-in-chief-uhuru-kenyatta-not-from-courts-or-silly-mcas-major-general-mohamed-badi-tells-sonko/ accessed November 9, 2020.
[97] Star Reporter, 'How I deal with Sonko: Major General Badi Speaks', *The Star* October 28, 2020 available at https://www.the-star.co.ke/news/2020-10-28-how-i-deal-with-sonko-major-general-badi-speaks/ accessed November 9, 2020.
[98] Ouma, S. 'Reinventing Undemocratic Spatial Governance in Nairobi', *The Platform* May 31, 2021, 46.

NCCG that are legally tasked with spatial governance. It reinvents structures of domination of the poor. Authoritarianism becomes the principal end and an accepted practice.[99] Indeed, as Klikauer suggests, "…for managerialism, politics and democracy are simply a hinderance on the way to efficiency and competitive advantage".[100]

For Dillow, managerialism will often employ action as a substitute for thought or contemplation.[101] This position has already been adopted by the NMS Director who has on numerous occasions stated that he is uninterested in politics, which he argues forestalls development.[102] In the usual logics of a managerialist, Badi believes that everything, including public administration is planned and that the focus should only be on goals and targets. Hence, for him, the only end is to deliver on the directives that were issued to him by the president within the set timelines.[103] We will see below how efficiency is fetishized by the NMS to mask the ideological scaffolding of the undemocratic project that it heralds. Infiltration of managerialism into public policy spaces potentially signals a power grab by an unelected elite.[104]

6.5.2 NMS- the 'anti-politics machine'

Through such assertions like "I am uninterested in politics", the NMS director works to suspend politics from processes that are fundamentally political. He views urban challenges in Nairobi as requiring technical fixes which are to be conjured up by the bureaucracy which the NMS introduces. With this, the political realities in Mukuru and other places that the NMS operates are displaced from the interventions that the entity proposes. This means that roads and other social amenities will be constructed without addressing the land tenure questions that have prevented the establishment of such critical infrastructure. These kinds of 'apolitical interventions' will be

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[99] Klikauer, T. *Managerialism: A Critique of an Ideology* (Palgrave Macmillan, 2003) 16. Klikauer defines managerialism as a practice which "…justifies the application of managerial techniques to all areas of society on the grounds of superior ideology, expert training, and the exclusive possession of managerial knowledge necessary to effectively run corporations and societies." Ibid, 2.
[100] Ibid, 5.
[101] Dillow, C. *The End of Politics: New Labour and the Folly of Managerialism* (Harriman House, 2007) 23.
[102] Star Reporter, 'How I deal with Sonko: Major General Badi Speaks', *The Star* October 28, 2020 available at https://www.the-star.co.ke/news/2020-10-28-how-i-deal-with-sonko-major-general-badi-speaks/ accessed November 9, 2020.
[103] Nyambega Gisesa, 'General Badi: I am cleaning up the mess in Nairobi', *Daily Nation* September 27, 2020 available at https://nation.africa/kenya/counties/nairobi/general-badi-i-am-cleaning-up-the-mess-in-nairobi--2373372 accessed October 20, 2020.
[104] See Baraka, C. 'Kenya's road to dictatorship runs through Nairobi County', *Foreign Policy* June 26, 2020 available at https://foreignpolicy.com/2020/06/26/kenya-road-dictatorship-nairobi-county-military-metropolitan-services-uhuru-kenyatta/ accessed October 25, 2020.

undertaken by this 'apolitical' entity without seeking the views of the affected communities or providing them with information on the steps to be undertaken during the implementation.

Ferguson asserts that with this kind of systematic erasure of politics from development initiatives, a government of entrenched elites becomes an instrument for empowering the poor.[105] For Nairobi, it means the ubiquity of the NMS in all aspects of spatial governance. In Mukuru, a possible outcome of this will be that any claims that the inhabitants have will need to be navigated through the NMS's established bureaucratic channels. This potentially has the effect of making claims less radical and it also limits the possible outcomes that inhabitants can derive from their demands. This will ultimately impede material alteration of their living conditions.

This is why it becomes critical to question the spatial order that is presently creeping back in Nairobi, to expose its violence and to grapple with implications of its entrenchment. We recall that the struggle for spatial justice in Nairobi has been forged by an oppressed and excluded group of inhabitants who have tried to restore their citizenship in the city. The NMS could be an attempt by an elite class at recapturing space and cannibalizing the gains that have been made in democratizing spatial governance. My view here has been informed by my observation of how the NMS reinvents paternalistic spatial governance practices and deprives citizen decision making powers. This effectively forestalls the complete democratization of spatial governance in the city. It also weakens ongoing struggles by marginalized communities. With the establishment of the NMS, the democracy deficit in the city could potentially be accelerated. Further, what I view as its opaque and militarized posture can act to constrain individuals' capacity to engage with spatial governance processes and to directly control decisions that affect their lives. What then does this portend for the inhabitants of Mukuru SPA and their realization of the right to the city?

6.6 The perils of NMS's anti-dialogical attitudes in Mukuru

The NMS apparatus has now fully descended on and set up camp in Mukuru. For NMS, public participation in the Mukuru SPA is simply politics standing in the way of the 'missing discipline' which it desires to reign supreme in the city. In this NMS 'anti-politics machine', politics must be displaced. Hence for Badi, politics has no place in the NMS' bureaucratic apparatus. By systematically displacing politics from the SPA process, the NMS avoids addressing the structural

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[105] Ferguson, J. *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho,* 66.

causes of the challenges which it ostensibly seeks to address in Mukuru. As I will demonstrate shortly, it instead embraces technical and symbolic fixes like providing water to the residents using trucks which in the long run will not materially alter the inhabitants' living conditions.

The Covid-19 pandemic provided an opportune moment for NMS' entry into Mukuru to commence implementation of the SPA proposals, most of which have a bearing on public health. In implementing these proposals, NMS has avoided participation by the inhabitants. This can particularly be seen from its ongoing construction of roads and sanitation works. To begin with, the NMS has painstakingly perfected an image intended to evoke orderliness which is supposedly portended by its arrival in Mukuru. This is signaled by the signboards that greet you as you enter the settlements impressing upon residents and visitors alike the idea of an emergent urban imaginary organized around what the NMS deems as efficiency.

Fig 12: *A poster erected at one of the main entry points to Mukuru kwa Reuben. On the left is and image of the Kenyan president donning military attire while on the right is the NMS director general.* (Source: Author)

6.6.1 Militarization of poor urban enclaves

NMS has coopted the services of the National Youth Service (NYS) a paramilitary organization that enlists the services of the youth in various matters. NYS recruits have been tasked with implementing NMS' infrastructural projects in Mukuru. NMS's entry can potentially subvert the

logic of participatory governance which was only beginning to take root in Mukuru after a lengthy history of neglect and exclusion. Under this scheme, structures of domination are likely to be reinvented. Such structures will exalt systems implicated in degradation of the inhabitants' lives, in which they are treated as mere objects of spatial governance, passive recipients not active participants. The logics deployed by the NMS can possibly dehistoricize and decontextualize the state of affairs in the SPA. These logics can conceal the political nature of life in Mukuru. Under such structures, managerialism will be adopted as an accountability-evading tactic and to alienate the inhabitants. This feeling of alienation is already widespread in Mukuru, and this will be illustrated shortly.

Romanticization and invocations of 'efficiency', a moniker for unaccountability, and glorification of acts of benevolence can mask the repressive character of unelected institutions. Deploying the language of efficiency here, to borrow from the words of Paulo Freire, could be aimed at 'cloaking the false generosity of paternalism' by an oppressor and will construct the emancipation of the oppressed in the language of the oppressor.[106] This view can conceal the violence that is intrinsic in exclusionary and non-dialogical processes. It threatens the gains that oppressed groups have achieved from their historical struggles for citizenship. It also negates their attempts at constructing their own agency which is fundamental to their quest to realize material outcomes.

Reengaging with undemocratic institutions creates a culture of dependence and subdues the oppressed's agency. Hence, for Freire, it is an oppressor tactic to use dependence to create still greater dependence.[107] The oppressor's aim here will be the ideological legitimation or coercion of undemocratic spatial governance all in the name of efficiency. Inhabitants in the city resume the role of passive spectators in schemes aimed at their dehumanization through the denial of their full citizenship. Indeed, the mirage which the NMS creates is exposed when we recall the brutality of undemocratic spatial governance in the history of Nairobi. Chapters two, three and four have already elaborated on this brutal history of spatial governance and how engagement with undemocratic institutions puts the poor especially in constant risk of state-sanctioned abuses.

The tensions between what ideally should be a democratic space and what in reality adopts a militarized posture have begun to show in Mukuru. Inhabitants have now been rendered passive

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[106] See Freire, P. *Pedagogy of the Oppressed,* 22.
[107] Ibid, 40.

spectators in the NMS-initiated projects whose implementation have overridden the democratic and participatory structures that the inhabitants had previously established. NMS' impulse to leave the inhabitants out of the ongoing conversations is repeated through its opaque projects that are putatively drawing from the proposals made by the SPA consortia. It can be argued that its approach to planning is complicit with the dispossession of the same individuals that it purportedly seeks to empower. When asked about demolitions that have recently happened in the SPA, the Director General indicated that these demolitions and the ongoing roadworks are basically following the plans generated from the SPA process.[108] He further avowed that the NMS consulted the local leadership in Mukuru including its political leadership before implementation of the plans was initiated.[109]

On the contrary, the dominant view from the respondents interviewed for this study was that no consultation happened, and that the NMS has failed to include them in the implementation process. The waning of consultative conventions at this crucial stage presages the erosion of goodwill among the inhabitants to the SPA process. It dashes the hopes of the inhabitants who had anticipated that implementation of the SPA proposals would be done in a cooperative manner and in line with the proposals that they had contributed to coproducing. One inhabitant articulated their frustration with the processes as follows;

> "*What Muungano told us would happen is not what we see being implemented. We didn't know that SPA would come back and haunt us and have our structures demolished. Implementation of the plans has been done in a very undignified manner. I even regret participating in the SPA process.*"[110]

6.6.2 Courting unaccountable spatial governance practices

It is important to elaborate on how opacity is now mobilized in Nairobi through institutions like the NMS and the implications of this on the collective agency of the inhabitants of Mukuru. To begin with, the establishment of NMS can be understood as a manifestation of the discomfort with and disavowal of devolved sovereignty by the political elite in the national government. This is in fact now evident from how the inhabitants of Mukuru have been resubordinated with their views

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[108] See interview here https://www.youtube.com/watch?v=eN7gzc51XAI&t=21s&ab_channel=KenyaCitizenTV accessed November 10, 2020.
[109] Ibid.
[110] Interview with a respondent in Mukuru kwa Reuben on October 13, 2020.

not sought and considered by the NMS whenever projects are implemented. The fact that only the leadership of the settlements have been engaged with by the NMS is clear indication of the absence of any meaningful commitment to foreground spatial governance in Mukuru in the lived experiences of its inhabitants.

So here we could ask, in whose interest then is the NMS acting? A cursory assessment of its inclination to subvert and dismantle the established structures of deliberation in Mukuru would suggest that the NMS is an accessory of the state (and here, the national government) in the latter's goal of maintaining a stranglehold over spatial governance processes. Its establishment signals the elites' denial of governance from below which challenge their monopoly over political power. This elite group has deployed what Goodfellow and Jackman term as 'legal maneuvers' in their pursuit of dominance in the city.[111] Legislative processes can be employed by the elite as a 'strategy for dominance' with the intended goal being a shift of the balance of power between different tiers of the state.[112] These strategies will particularly be effective when compromises are made with other dominant actors that are active within the contexts that the elite seek dominance.[113] Ultimately, struggles by the inhabitants of Nairobi for the right to the city will remain subverted under the order that NMS introduces.

Already, tensions are rife in Mukuru over what one resident termed as 'NMS's heavy-handedness' in demolitions carried out for road and sewer works.[114] One of the interview respondents that I spoke to played a key community mobilization role at the inception of the SPA process where she got as many people as possible to participate in the consultative sessions. With the entry of NMS, she states that threats have on numerous occasions been directed at her person and life as she is now associated with the violent demolitions that the NMS has carried out. She has attempted to

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[111] Goodfellow, T. & Jackman, D. 'Control the Capital: Cities and Political Dominance', 23. They suggest that legal maneuvers can be political (where the central government takes a dominant appointive role) administrative (in which the central government will divest local authorities of responsibilities previously decentralised to them) and fiscal (where the central government will limit tax-raising capacities of local authorities).
[112] Ibid.
[113] Such compromises or coalitions made between powerful groups in the society have been referred to as political settlements. See Khan, M.H. 'Political Settlements and the Governance of Growth-Enhancing Institutions', available at https://eprints.soas.ac.uk/9968/1/Political_Settlements_internet.pdf accessed September 13, 2021.
[114] Interview with a respondent in Viwandani on September 27,2020.

distance herself from the SPA to avoid the anger from structure owners and tenants who have lost their properties in the demolitions.[115]

What can be viewed an antidemocratic posture by the NMS is not incidental but fundamental to the material state and social order which the elite seek to establish through it. The elite seek to recentralize power and perpetually render the governed powerless and invisible. With this, the inhabitants will always be apprehensive about participating in any spatial governance processes whose violence they cannot subsequently contain or escape.

Fig 13: *Demolitions carried out in Kwa Reuben and Viwandani (Source: Author)*

6.7 Confronting undemocratic spatial governance in Mukuru

In Mukuru, the entry of NMS must be situated and assessed against the history of resistance against exclusion by the inhabitants. Such an assessment is important given the potential of undemocratic institutions to stall democratization of spatial governance in Mukuru and to undermine the intended goals of the SPA. Such critical assessment is also important to prevent a situation where the poor are constantly used as the testing ground for antidemocratic concepts which can later be spread to other places. Moreover, confronting an undemocratic spatial governance past means putting on the agenda opaque institutions and their contemporary manifestations. The entry of the NMS in Mukuru potentially heralds an undemocratic spatial ordering whose spread in the entire city is a

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[115] Ibid.

very clear possibility. The danger also lies in unquestioningly embracing the NMS's agenda by institutions that are supposed to act as the bulwark against state-sanctioned violence for the poor and marginalized. In doing so, they could unwittingly be participating in repression and cannibalization of the democratic gains that have been made in Mukuru.

Already, concerns over undemocratic spatial governance that is creeping back have been raised by a member of a social movement present in Mukuru who was interviewed for this study and whose personal view is that the NMS is seeking to redefine public participation.[116] According to the informant, the version of spatial planning that the NMS appears to be in favor of is one which employs the services of paid consultants or experts who will develop plans on behalf of NCCG without being bound by the legal requirements on public participation.[117] A consultant would be paid to generate a consultancy report from whose basis spatial plans would be generated. These technical fixes will in most cases end up sidestepping or erasing the political and structural realities of the challenges whose interventions they seek.

The risks in adopting such opaque approaches which are devoid of structural safeguards for accountability have already been stated and illustrations provided in chapter two. We saw the exclusionary consequences of the colonial government's mandating of consultants with the development of the 1948 Master Plan. Even JICA's formulation of NIUPLAN, which is discussed in chapter three, had exclusionary consequences, notwithstanding that the consultants engaged in some semblance of public consultations. In the present day, the way in which the NMS is structured could potentially have exclusionary outcomes. What this means is that groups that the NMS should ideally be emancipating will on the contrary be resubordinated through its actions.

Among the inhabitants of Mukuru, opinions vary on the now ubiquitous presence of NMS within their spaces. For some, the NMS has delivered on critical infrastructure and services that were previously missing from the settlements. To them, what counts is the actual transformation of their neighborhoods which they can see unfolding because of NMS's intervention. It is easy to understand why this group would readily assume noble intentions on the part of NMS since for them some of the most pressing needs in the settlements are presently being attended to. For others, NMS is the face of an unjust social order that habitually deploys violence to produce marginality

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[116] Key informant interview with member of a social movement on October 2, 2020.
[117] Ibid.

and erase their citizenship.[118] They point to the demolitions that it has carried out as illustration. Both views are valid and must not be discounted. I would suggest that the NMS' altruism must be critically examined. By doing this, we will avert a situation where we possibly end up with what Freire described as a 'malefic generosity' which will always draw sustenance from the subsistence of an unjust order.[119] With an unjust spatial order, community-generated discourses will easily get misappropriated and made inaccessible to the intended beneficiaries.

Fig 14: *An open sewer pit recently constructed in Viwandani and a NMS truck supplying water in Kwa Reuben* (Source: Author)

Additionally, the stopgap measures which the NMS has resorted to in providing the inhabitants with amenities like water can, if not properly structured, be unsustainable and create a culture of dependence. For instance, NMS has been providing free water to the inhabitants using trucks. It has together with The Nairobi City Water and Sewerage Company Ltd (NCWSC) drilled a number of boreholes in Mukuru. Already, there have been complaints in Viwandani about the NMS water projects being hijacked by cartels who conspire with NMS officials to turn off the water while ensuring that provision by the cartels remains uninterrupted.[120] Some of the NMS-initiated infrastructural projects have also stalled and create danger of physical harm to the inhabitants.

The risk in acquiescing to the approaches that are employed by NMS is that the inhabitants of Mukuru are potentially brought into a structure that is arguably designed to exclude. This shows

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[118] Interviews with various respondents in Kwa Reuben, Kwa Njenga and Viwandani.
[119] Freire, P. *Pedagogy of the Oppressed,* 34.
[120] Interview with a respondent at Viwandani on September 27, 2020.

the perils of adopting technical fixes that lack a political programme for empowerment. It also points to the perils of readily embracing symbolic fixes that avoid material alteration of the living conditions of the poor, while on the contrary embedding inequalities. We must then resist co-optation or misappropriation of discursive formulations nurtured in the contextual realities of the excluded. Silvonen acknowledges this and argues that the introduction of new structures of participation will only improve local conditions where these structures align with local practices and changing local needs.[121] Sustainability of any initiatives oriented at improving the lives of poor urban citizens will only be guaranteed where the agency of beneficiaries is safeguarded, and their participation assured in all the stages of such projects.

6.8 Conclusion

It has been the central aim of this chapter to locate how the inhabitants of Mukuru experience the right to participate through the SPA process. The principal argument in this chapter is that the SPA process provides new discursive spaces for the marginalized Mukuru inhabitants to participate in planning. There is potential for engendering public participation in spatial governance through the SPA. I have shown how the SPA was originally designed to enable meaningful participation for the inhabitants. I have argued that the SPA's transformative potential draws from its approaches to community mobilization and its emphasis on co-creation of the various plans by the community in collaboration with other actors. The empirical realities of public participation in Mukuru have been interrogated against the normative and theoretical precepts that are discussed in the previous chapter. I have demonstrated how participants in the SPA are framed and how participation actually happens. This has enabled us to see how "the public" in a public participation process can at times be defined in a narrow way which can lead to the exclusion of certain groups. We have also seen why it may become important in certain contexts to have this limited formulation on who the public is. For the SPA, this limited definition was necessitated by the need to ground the process in local realities and to prevent reproduction of hierarchical power relations which would lead to the monopolization of the processes by dominant actors like structure owners and village elders.

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[121] Silvonen, T. 'One Step Forward, Two Steps Back? Shifting Patterns of Participation in a Former Informal Settlement in Mexico City', (2021) *Environment & Urbanization*, 15.

The chapter also illustrates how participation occurs through platforms like the existing saving groups in the settlements. I provided a cautionary note on the potentially exclusionary nature of this approach. We have also been introduced to the seven SPA consortia which are the spaces through which participation in the SPA is organized. From this discussion, we see how the consortia employ flexibilities in their approaches to take account of any unique needs that arose. Discussions on the different approaches that have been adopted for participation have also provided better understandings on how uncritical approaches may end up transforming participation into codified practices with little or no benefits for the intended beneficiaries. Lastly, the chapter has explored what it considers to be an alienating rhetoric that is creeping back with the establishment of the NMS. Some of the approaches that were adopted by the SPA consortia created a conducive space for the expansion of bureaucratic state power in Mukuru. I have highlighted on how this potentially undoes the SPA's political objectives. I have pointed to the perils of these developments and underscored the prospects of reinventing passivity in spatial governance. With the entry of NMS, the SPA's transformative prospects are threatened by the undemocratic spatial ordering that is established. Notwithstanding this, certain positive outcomes can still be derived from the SPA's participatory nature. It is on this basis that the next chapter examines the potential of participation as structured in the SPA in improving health outcomes in Mukuru.

7   Planning for Health in the Mukuru SPA

7.1 Introduction

In this chapter, I appraise the approaches employed by the Mukuru SPA Health Services Consortium (HSC) to engage with the community and other stakeholders such as formal and informal healthcare providers in Mukuru. I explore how they can advance realisation of improved health outcomes for the inhabitants of the SPA. In developing a health sector plan for the SPA, the HSC held a number of consultation meetings bringing together experts from the HSC, the Mukuru community and stakeholders drawn from NCCG's Department of Health Services, the Kenya Medical Association (KMA), SDI-K, CONCERN Worldwide, Muungano wa Wanavijiji and CHWs from Mukuru.[1] As with its other counterpart consortia, the HSC convened participants in the platforms formulated by the SPA, that is: the households, cells, sub-clusters and segments.

I examine how participation has been employed by the HSC to enable the inhabitants of Mukuru to identify barriers to better health outcomes, set priorities and act on the identified barriers. In this analysis, the inhabitants of Mukuru and community health workers (CHWs) in the settlements are presented as local experts whose experiential knowledge feeds into the SPA planning processes. In the SPA, they are equal research partners who are able to identify, analyze and solve challenges within their localities. My aim in this chapter is to present the approaches employed by the HSC as viable and having potential to accelerate realisation of the SPAs health objectives. I will also examine how the HSC envisages the interventions that are required to address the identified health challenges.

Regarding health in Mukuru, the community has placed itself at the centre of processes that seek to define solutions for the perennial health problems in the settlements. Participatory platforms have thus been deployed with the goal of devising solutions to the pressing health issues such as sanitation-related illnesses, pollution, and lack of access to health care facilities. This approach finds resonance in the capability framework that is adopted in this chapter as a frame of analysis. While focusing on the outcomes that individuals value, the capability approach (CA) calls our attention to the processes that lead to the realisation of these outcomes. Using the HSC as a point

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[1] SDI-Kenya et. al. *Mukuru Health Sector Plan* (Special Planning Area) (NCCG, 2020) 11.

of reference, I will demonstrate how the inhabitants have actively created platforms for dialogue where they document local phenomena and conditions, subsequently using locally generated information to engage with formal actors and to formulate health interventions.

I will undertake this analysis in two broad parts. First, I explore the relevance of the capability approach in explaining the approaches to health planning that are adopted in the Mukuru SPA. In this part, I develop a health capability framework that I will use to analyse the Mukuru SPA. I isolate participation as an integral component of this framework. I explore its contribution towards the expansion of health capabilities and the conversion of these capabilities into outcomes. In the second part, I will assess the approaches that the HSC of the Mukuru SPA adopts in planning for health. I will explore how foregrounding the SPA process in the lived realities of the inhabitants presents them with opportunities to identify the drivers of poor health within their localities and, together with external experts, develop targeted interventions for these challenges. I will then discuss how the HSC together with the community designs interventions to the identified health challenges and ultimately explore the potential of these interventions for improving health outcomes in the Mukuru SPA.

7.2 Realising health through participatory urban planning.

In Mukuru, the inhabitants have identified health as a priority area in need of intervention. They have been involved in processes that sought to gather their views on the areas in need of planning interventions which would be considered in the SPA process. Health was elevated as a central human capability which the inhabitants assign a high value to. How the inhabitants define health and what processes are implicated in generating valued health outcomes will then require our attention. Given the contested nature of the CA, it is important to state at the outset that my analysis here will be guided by the invaluable framework proposed by Amartya Sen. Unlike Martha Nussbaum, who presents a predetermined list of capabilities,[2] Sen argues that arriving at the set of capabilities that individuals value should be the task of a democratic process.[3] Drawing on this, I suggest here that the identification of health as a key area (a capability) in need of planning interventions was the subject of democratic and participatory processes prompted by the SPA

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[2] See Nussbaum, M. *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000). See also Nussbaum, M. 'Capabilities as Fundamental Entitlements: Sen and Social Justice', (2003) 9(2/3) *Feminist Economics* 33-59.

[3] Sen, A. 'Capabilities, Lists, and Public Reason: Continuing the Conversation', (2004) *Feminist Economics* 77-80.

Declaration. This triggered a number of participatory processes that were oriented to coproduce interventions to the health challenges that were identified at the community-level. Some of these processes are examined in this chapter and the nature and extent of the inhabitants' participation will also be assessed.

Participatory urban planning has been cast as an important contributor to realization of better health outcomes by populations, though evidence supporting this assertion remains scant.[4] This gap in knowledge led this study to seek insights on how this plays out within the context of an informal settlement like Mukuru. Here, I will argue that participatory urban planning in Mukuru offers a critical entry point for the advancement of the right to health. The import of this relationship becomes apparent where we see the SPA taking deliberate measures to introduce health considerations in the spatial planning process. Urban planning has been proposed as a preventative medicine. Its effectiveness becomes apparent where health assessments are engendered within urban policy making, developing place-based health indicators, and linking health services with community and economic development.[5]

We must therefore subject urban planning strategies and interventions to critical evaluation to ensure that they address the determinants of health and promote realisation of health equity. Such evaluation must as a necessity be concerned with the identification of what have been framed as a health policy issues, how the issues have been framed, and what proposed interventions have been outlined to address the drivers of inequity.[6] It is only through a critical evaluation of these dynamics that we can assess the potential of participatory urban planning in expanding health capabilities and outcomes. Thus, the accounts that follow in this chapter will be occupied with illustrating how participation is intrinsic to and actuates realisation of the right to health for the inhabitants of Mukuru.

At the international level, the significant link between participation and health is already acknowledged by the UNCESCR which in General Comment No. 14 calls for participation of the population in all health-related decision-making at the community, national and international

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[4] See Halabi, S.F. 'Participation and the Right to Health: Lessons from Indonesia', (2009) 11(1) *Health and Human Rights Journal.*
[5] Corburn, J. 'City Planning as Preventive Medicine', (2015) 77 *Preventive Medicine* 50.
[6] See Corburn, J. and Cohen, A. 'Why we Need Urban Health Equity Indicators: Integrating Science, Policy, and Community', (2012) 9(8) *PLOS Medicine,* 3.

levels.[7] Participation is in effect proposed as an underlying determinant of health. Similar provisions are found in Paragraph IV of the Alma-Ata Declaration which provides that people have the right and duty to participate individually and collectively in the planning and implementation of their health care.[8] In fact, the Alma-Ata Declaration calls upon the member states of the WHO to promote maximum community and individual participation in the planning, organisation, and operation of primary health care. Similarly, the WHO has advocated for participatory governance of urban spaces in its vision for realisation of Healthy Cities.[9] All these calls recognise the important role that community participation plays in advancing better health outcomes.[10] Thus, having a say in local matters is an important step towards enabling the conversion of local resources into wellbeing. I will now explore how participation works to convert health capabilities into functionings or outcomes.

7.3 Participation, capabilities, and health outcomes: a conceptual approach

Using the framework developed in this section, I will explore how participatory planning provides options to participants for alternative health outcomes. My idea of outcomes follows what Kleine defines as the visible manifestation of capabilities in the form of achieved functionings.[11] I will argue that for Mukuru, we are able to predict the potential of participation for improving health outcomes by first looking at the opportunities it provides for expanding the inhabitants' health capabilities and by also looking at some of the outputs produced by the SPA process. In the analysis that follows, I deliberately place more emphasis on capabilities rather than outcomes. At this point, it would be difficult to measure the health outcomes generated by the SPA process since the process is still ongoing and implementation of some of the proposals has not commenced.

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[7] General Comment 14, para.11.

[8] World Health Organisation, 'Declaration of Alma-Ata', International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978.

[9] The WHO has defined community participation within the context of Healthy Cities as;

> "A process by which people are enabled to become actively and genuinely involved in defining the issues of concern to them, in making decisions about factors that affect their lives, in formulating and implementing policies, in planning, developing and delivering services and in taking action to achieve change."

See World Health Organisation, *Community Participation in Local Health and Sustainable Development: Approaches and Techniques* (WHO Regional Office for Europe, 2002) 10.

[10] Rosato, M. et al. 'Community Participation: Lessons for Maternal, Newborn, and Child Health', (2008) 372 (9642) *The Lancet.*

[11] Kleine, D. 'Using the Choice Framework to Situate Cases of Collective Action in Capabilities Thinking: The Example of Public Procurement', (2013) 22 *E-Bulletin of the Human Development & Capability Association*, 15. See also Fleurbaey, M. 'Equal Opportunity or Equal Social Outcome?', (1995) 11 *Economics and Philosophy*, 25-55.

However, I maintain that assessing capabilities can tell us something about outcomes, realised and potential. In this way, I recognise the relevance of 'opportunity' as a frame of analysis.[12] Its application in this work is as follows: Public participation as employed by the SPA provides opportunities for expansion of health capabilities and realisation of improved health outcomes for the SPA inhabitants. My focus will be on the opportunities offered by the platforms adopted by the HSC to expand the inhabitants' health capabilities and to enable their realisation of improved health outcomes. I also suggest that concrete outputs produced by the SPA such as the newly-constructed health care facilities can be used as proxy measure for the health outcomes that can be derived from the SPA process.

Sen defines functionings as those things that a person may value doing or being.[13] An individual could for instance place a premium on the *ability* to be free from avoidable diseases (capability) with the end of *being* healthy (functioning).[14] Capability is thus 'being able to do something' while functioning is 'actually doing something' or being in an achieved state.[15] Following this line of analysis draws us to what Ruger frames as the health capability paradigm which is concerned with an individual's ability to be healthy.[16] Health capability is concerned with the freedom or ability that an individual has to achieve various health functionings. It is an individual's positive power to be healthy.[17] Interestingly, in the Kenyan constitutional framework, it can be argued that this freedom is affirmed and protected by Article 43 of the Constitution which codifies the right to the highest attainable standard of health.[18] As worded in the Constitution, the right to health takes the form of a right whose primary objective is the expansion of individuals' capability to be healthy. The state is under a constitutional obligation to put in place measures that facilitate individuals'

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[12] Sen, A. 'Response to Commentaries', (2002) 37(2) *Studies in Comparative International Development,* 84.

[13] Sen, A. *Development as Freedom* (Anchor Books, 1999) 75.

[14] Barreda, R.L. et al. 'Health Assessment and the Capability Approach', (2019) 30(1) *Global Bioethics*, 21.

[15] Lorgelly, P.K. et al. 'Operationalising the Capability Approach as an Outcome Measure in Public Health: The Development of the OCAP-18', (2015) 142 *Social Science & Medicine*, 73.

[16] Ruger, J.P. 'Health Capability: Conceptualization and Operationalization', (2010) 100(1) Am J Public Health 41-49.

[17] See Sen, A. *Rationality and Freedom* (Harvard University Press, 2002) 586.

[18] Under this provision;

Every person has the right-

(a) To the highest attainable standard of health, which includes the right to health care services, including reproductive health care.

ability to be healthy and to simultaneously eliminate inhibitors to the realisation of the highest attainable standards of health.[19]

Evaluating wellbeing with regard to health requires that we assess individuals' capability to achieve this key functioning. It will also lead to an examination of questions of agency, or an individual's power to make choices, and whether they have adequate opportunities to choose from.[20] The usefulness of the CA as a frame of analysis springs from its explicit reference to outcomes that individuals value and the processes that lead to the realisation of the said outcomes.[21] So with regard to health, the CA draws our attention to an individual's health priorities, the health resources within their reach, and their freedom to convert these resources into valuable health outcomes. These are critical capability inputs whose interaction shall be explored further below. My aim in exploring these connections using a health capability lens is not to disengage with the normative frameworks on the right to health provided by the law or relegate them as subordinate. Instead, I recognise the shadow that the law casts on such processes because it is through the law that problems will be defined, and claims formulated. Being conscious of this, Article 43 is the concrete starting point for the conceptual work I do here. The individual and collective outcomes which I argue for can only be realised when linked to the positive rights prescribed by the Constitution.

7.3.1 A health capability framework for the Mukuru SPA

The CA has been used as a frame of analysis when measuring a variety of health outcomes in different contexts. For instance, Ferrer and Carrasco have explored how the framework can be applied within a clinical context.[22] They identify three intrinsic set of factors in the capability framework which can be extended to our present analysis on participatory planning and health.[23] Firstly, what are an individual's values and goals with respect to health issues? Secondly, what material resources does the individual have available? (i.e. does the individual have an opportunity to access these resources? how conveniently? and at what cost?). Thirdly, what are the individual's

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[19] See *Mathew Okwanda v Minister of Health and Medical Services & 3 others* Petition 94 of 2012. See also Mumbi Ngugi in *Luco Njagi & 21 Others v Ministry of Health & 2 Others* Petition No. 218 of 2013.
[20] Ferrer, R.L. et al. 'Measuring Capability for Healthy Diet and Physical Activity', (2014) 12(1) *Annals of Family Medicine*, 47.
[21] Sen, A. *Development as Freedom*, 86.
[22] Ferrer, R.L. and Carrasco, A.V. 'Capability and Clinical Success', (2010) 8(5) *Annals of Family Medicine* 454-460.
[23] Ibid, 456.

ability to turn the identified resources into real opportunities? Drawing on this framework, we could in our present analysis adapt and ask these questions as follows: To what extent does participatory planning aid individuals in identifying their health priorities? How does participatory planning enable individuals to identify and access the health resources within their localities? and, what potential does participatory planning have in enabling individuals to convert the identified resources into improved health outcomes?

Addressing these questions will enable us to establish the extent to which participatory urban planning can contribute to expanding individual's health capabilities and subsequently how these capabilities can be translated into actual outcomes. Here we are isolating community participation in planning as the critical element which potentially works with other factors to convert resources into health capabilities and ultimately the functioning of being healthy. It does this by enabling individuals to identify resources and other conversion factors[24] (such as their ability to put these resources to use) within their localities and equips them with the ability to convert these into health functionings. Being 'the most adequate means for the expression of agency',[25] participation occupies an important place both as a functioning by itself and also a component of other capabilities (i.e. by acting as a conversion factor).[26] By introducing participation as an integral constituent of the health capability approach (CA) adopted by this work, I underscore the importance of such processes (functionings) that facilitate conversion of capabilities into other functionings (e.g. health functionings).

I acknowledge that actualisation of a certain set of capabilities into outcomes will often be predicated on the existence of a different set of functionings.[27] For instance, improving individuals' health (a potential feature/capability) will often be realized where their participation (an achieved characteristic/functioning) subsists. As a functioning, participation here not only enables the expansion of capabilities but can also facilitate their conversion into outcomes. This is a critical dimension which Barreda *et al.* argue has been missing in the vast majority of empirical

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[24] Robeyns groups these into three: personal conversion factors (i.e. personal attributes like an individual's physical condition), social conversion factors (such as social norms and structures within an individual's context), and environmental conversion factors (e.g. climate and geographical location). These factors, she argues enables conversion of resources into functionings. see Robeyns, I. 'The Capability Approach: A Theoretical Survey', 99.

[25] Gould, C., *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society,* 217. See also Kabeer, N. 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment', 438.

[26] Barreda, R.L. et al. 'Health Assessment and the Capability Approach', 24.

[27] Ibid.

assessments that adopt the CA.[28] They argue that when deploying the CA as a frame of analysis, we should not only be concerned with "inputs and outcomes as the sole dimension of well-being, but the processes that brings about achievement must as well be analysed."[29] The benefits of participatory processes in operationalising the CA should therefore not be overlooked.[30] Drawing on Sen,[31] Ruger[32] and Barreda *et al*,[33] I suggest that we can only assess improvement to health capabilities and ultimately health outcomes by paying attention to its comprehensive inputs which are health resources (e.g. both physical and human resources), the conversion factors (personal, social and environmental) and the processes implicated in their conversion (participation). My approach is Illustrated in Figure 15 below.
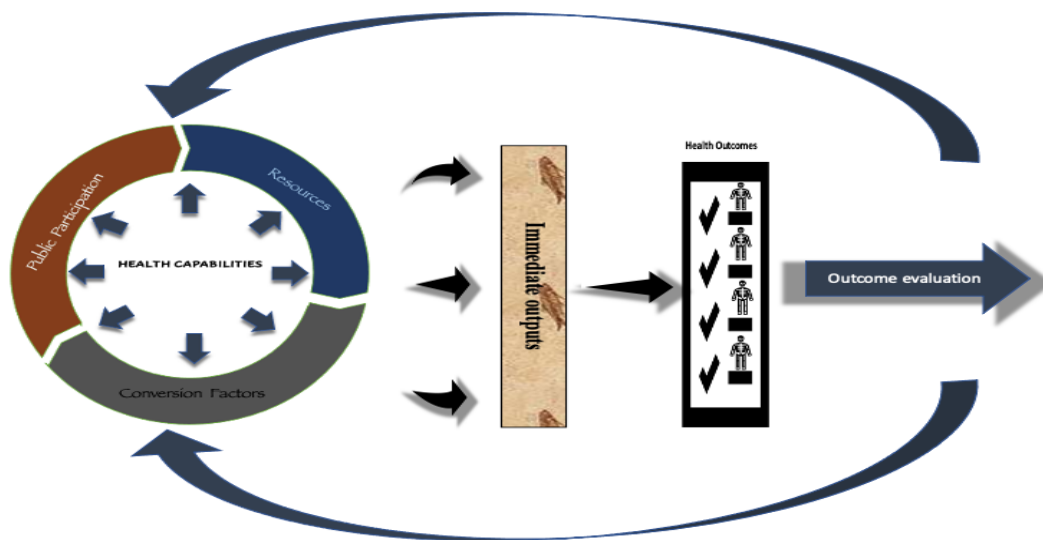

Fig 15: *A health capability framework for the Mukuru SPA.*

The model proposed above views capability as a variable that cannot be precisely measured, hence its portrayal as a potential to be attained rather than as an actualized reality. Its attainment is in turn dependent on the constitutive elements (i.e. participation, resources and conversion factors). The model adapts Mabsout's view of health functionings/outcomes as an output but distinguishes itself by proposing an interlaced relationship of the capability inputs, each feeding into the other

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[28] Ibid.

[29] Ibid.

[30] Lorgelly, P.K. et al, Operationalising the Capability Approach as an Outcome Measure in Public Health: The Development of the OCAP-18', (2015) 142 *Social Science & Medicine* 73.

[31] Sen, A. 'Capabilities, Lists, and Public Reason: Continuing the Conversation', 77-80.

[32] Ruger, J.P. 'Health Capability: Conceptualization and Operationalization', 41-49.

[33] Barreda, R.L. et al. 'Health Assessment and the Capability Approach', 24.

to ultimately expand capabilities.[34] Health outcomes are represented by different sizes to typify Robeyns' view that even people with identical capabilities are likely to achieve distinctive levels of outcomes.[35] It is proposed here that the CA can only be effective in assessing outcomes when the process is subjected to constant evaluation. Hence, the goal is not just the expansion of capabilities and the attainment of certain functionings, but constantly evaluating the capabilities and proposing new interventions to expand them. Once a certain set of outcomes have been achieved then an evaluative process can be undertaken with the achieved outcomes acting as the starting point for such process. Evaluation of outcomes also increases accountability of planning processes.[36]

My goal in this work is not to measure the health outcomes that could result from the SPA process. Doing so is beyond the scope of this work. I only propose the framework above as an illustration of how the SPA process creates conditions for conversion of capabilities into outcomes. By facilitating the assessment of existing capabilities within a given locality, participation enables the identification of practical opportunities for their expansion and conversion into outcomes. It holds a fundamental intrinsic value for individuals who are presented with the opportunity to figure out and articulate what they "have reason to value".[37] In the model above, I suggest that participation is an integral building block of the capability framework. I also view conversion of capabilities into outcomes to be possible where individuals are able to exercise their agency to achieve the desired outcomes. Agency can in turn be exercised at an individual level or collectively. [38] I will then demonstrate how both individual and collective actions operate to enable the realisation of outcomes.

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[34] Mabsout, R. 'Capability and Health Functioning in Ethiopian Households', (2011) 101 *Soc Indic Res* 363. Mabsout treats conversion factors, resources and decision-making processes as different variable that to a large extent work separately towards realisation of health functionings.

[35] Robeyns, I. 'The Capability Approach: A Theoretical Survey', (2006) 6(1) *Journal of Human Development* 101.

[36] Laurian, L. et al., 'Evaluating the Outcomes of Plans: Theory, Practice, and Methodology', (2010) 37 *Environment and Planning*, 746.

[37] Evans, P. 'Collective Capabilities, Culture, and Amartya Sen's Development as Freedom', (2002) 37(2) *Studies in Comparative International Development*, 57.

[38] See Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help', (2006) 7(3) *Journal of Human Development*, 399.

7.3.2 Capability as an outcome of individual and collective actions

When it comes to choosing the life that one values, both individual and collective acts may be implicated.[39] Consequently, realising improved health outcomes can be the product of exercising both individual and collective agency.[40] We can end up realizing improved individual capabilities, collective capabilities or both.[41] Collective capabilities can either be viewed as the sum total of individual capabilities, [42] or as something that can only be achieved socially, that is, a derivative of social interactions.[43] Individual capabilities on the other hand will mainly arise from personal choices. They may also be generated from individual's interactions with social structures.[44]

The ascendancy of a collective capabilities approach has invariably attracted a number of critiques. These includes Sen's.[45] Consider here Sen's counterarguments to Evans' propositions on collective capabilities. Sen has reservations about the suggestion by Evans that we view capabilities which depend on social interactions "as a collective rather than an individual capability".[46] He contends that, "*socially dependent individual capabilities* have to be distinguished from what are genuinely *collective capabilities*."[47] (emphasis mine) For Sen, three categories of capabilities are possible: individual capabilities, socially dependent individual capabilities and collective capabilities. In rejecting Evans' concept of collective capabilities, he argues that socially dependent individual capabilities are those that are derived from social interactions while collective capabilities are those that are beyond an individual's capability or relating to humanity at large "such as the capability of a world nuclear power to kill the entire

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[39] See Evans, P. 'Collective Capabilities, Culture, and Amartya Sen's Development as Freedom', 57.

[40] Alkire, S. and Deneulin, S. 'The Human Development and Capability Approach', in Deneulin, S. and Shahani, L. (eds) *An Introduction to the Human Development and Capability Approach* (Earthscan, 2009) 34. See also Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help', 398.

[41] Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help',398.

[42] Stewart, F. 'Groups and Capabilities', (2005) 6(2) *Journal of Human Development* 185-204.

[43] See Evans, P. 'Collective Capabilities, Culture and Amartya Sen's Development as Freedom', (2002) 37(2) *Studies in Comparative International Development,* 56. See also Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help' 404.

[44] Ibrahim, S. 'Collective Capabilities: What are they and why are they Important?' (2013) 22 *E-Bulletin of the Human Development & Capability Association*, 5.

[45] Sen, A. 'Response to Commentaries', 85. See also Alkire, S. 'Using the Capability Approach: Perspective and Evaluative Analyses', in Comin, F., Qizilbash, M., and Alkire, S. (eds) *The Capability Approach: Concepts, Measures and Applications* (Cambridge University Press, 2008) 26-50.

[46] Sen, A. 'Response to Commentaries', 85.

[47] Ibid.

population of the world through nuclear bombing".[48] Despite this, Sen returns to the idea that human capabilities are socially related and must be examined within their social contexts.[49] It is also clear that Sen still believes that individuals immersed in a societal context can "identify with others and remain individuals." [50]

The arguments advanced by both Sen and Evans are central to this chapter. I explore the harmony between individual capabilities and collective capabilities and the potential of each for enhancing the other. Adopting this approach necessitates an examination of how both individual and collective action work to convert capabilities into outcomes.[51] I suggest that participation acts as our bridge to a unified framework on health capabilities. Indeed, the WHO Commission on Social Determinants of Health (CSDH) has already identified the role of collective action in reinforcing the capacity of vulnerable people to control the factors that shape their opportunities for health.[52] It recognises the state's duty to create spaces and conditions for participation which can enable vulnerable and marginalised groups to achieve control over material, social and political determinants of their well-being.[53] It is by bringing together of individual and collective interests that we are able to see their potential to transform health outcomes.

In remaining conscious of the limitations of employing individual and collective capabilities as disparate analytical frameworks, particularly within our current context of the Mukuru SPA, the goal here is to present a harmonised view as to how both will act to improve health outcomes. By pursuing this line, I refute the view that the capability framework is overly individualistic. This is because we can see that the individual goals are highly dependent on societal and environmental

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[48] Ibid. See also Ibrahim, S.S. 'From Individual to Collective Capabilities: The Capability Approach as a Conceptual Framework for Self-help', 403.

[49] Sen, A. *Development as Freedom*, 253.

[50] Davis, J. 'Commitment, Identity, and Collective Intentions', (2013) 22 *E-Bulletin of the Human Development & Capability Association*, 13.

[51] Ariana, P. and Naveed, A. 'Health' in Deneulin, S. and Shahani, L. (eds) *An Introduction to the Human Development and Capability Approach* (Earthscan, 2009)234. See also Ruger, J.P. 'Health Capability: Conceptualization and Operationalization', 41-49.

[52] Irwin, S.O.A., 'A Conceptual Framework for Action on the Social Determinants of Health', (2010) 2 *Social Determinants of Health Discussion Paper*, 59, 60.

[53] Ibid, 59.

factors.[54] The harmonisation suggested here is also an affirmation of the collective struggles and solidarities which we have already seen in chapters four and six are the pillars of the SPA process.

Even when we maintain the individual as the unit of analysis, we still recognise that individuals often function within a societal context and are influenced by the collective values and goals within their societies. In fact, Sen has detailed how preference formation is the outcome of social interactions which lead to the emergence of shared values and commitments.[55] In Sen's analysis the individual is immersed within their overall social contexts leading him to draw the conclusion that individual capabilities are dependent on collective capabilities.[56] Similarly, an individual taking action to improve his/her condition may unwittingly end up advancing collective goals.[57] It is through the immersion of individuals into a societal context that collective norms or values are generated and acted upon. These kinds of interactions facilitate generation and dissemination of knowledge which individuals can use in determining what is best for them.[58] Hence, we find mutually reinforcing concepts here.

7.3.3 The intrinsic and instrumental value of collective deliberation

By locating individual actions within the context of their association with a wider group, I will demonstrate how health capabilities in Mukuru are identified and pursued by dint of the inhabitants' participation in the SPA. Through coordinated collective deliberative processes in the SPA, individuals identify those capabilities that they value and join with others in their pursuit. This illustrates how collective action is valuable both instrumentally by bringing individuals together and intrinsically by facilitating their formulation of "values and beliefs".[59] For Mukuru, both Sen's and Evans' arguments are compelling and compatible with my analysis. This is

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[54] Robeyns, I. 'The Capability Approach: A Theoretical Survey', 108. On criticisms of the capability approach as being too individualistic see Stewart, F. 'Groups and Capabilities', (2005) 6(2) *Journal of Human Development* 185-204.

[55] Sen, A. *Development as Freedom*, 253. See also Sen, A. 'Response to Commentaries', 78-86.

[56] Evans, P. 'Collective Capabilities, Culture, and Amartya Sen's Development as Freedom', 56. See also Volkert, J. 'Concepts of Agency, Sustainable Human Development (SHD) and Collective Abilities (2013) 22 E-Bulletin of the Human Development & Capability Association, 10.

[57] Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help', 404.

[58] Sen, A. 'Response to Commentaries', 79.

[59] Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help', 406. See also Ibrahim, S. 'Collective Capabilities: What are they and why are they Important?' 5.

because, as this chapter establishes, both individual and social processes are implicated in generating health outcomes for the inhabitants.

It is as a result of this interconnectedness that we see some of the interventions that are designed for health in Mukuru being targeted at both individual and population health. This fits with Mason Meir's assertion that health is a shared public good with individual and collective goals often overlapping and complementing each other.[60] We also note that human rights, like the right to health, are characteristically exercised at the individual level but may in certain cases best be enjoyed through collective action.[61] When understood this way, the underlying determinants of health in Mukuru will need to be addressed either through interventions targeted at individuals or through changes in the wider social context that the individual operates.

7.3.4 Capability and agency

The environmental contexts in which individual and collective actions are located must also be examined to determine whether individuals are offered real opportunities in their quests to expand health capabilities and realize improved outcomes. Environmental contexts particularly influence the agency of individuals and groups.[62] This is why Ruger argues for an approach that views health capability as influenced by both internal and contextual factors.[63] She explores how individuals can draw on their understanding of these factors to personally take control of improving their health outcomes.[64] This is important given that the framework that we adopt above is heavily reliant on guaranteeing individuals agency in their quest to realize improved health outcomes.

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[60] Meier, B.M. and Mori, L.M. 'The Highest Attainable Standard: Advancing a Collective Human Right to Public Health' (2005) 37(101) *Columbia Human Rights Law Review,* 135. See also Meier, B.M. and Fox, A.M. 'Development as Health: Employing the Collective Right to Development to Achieve the Goals of the Individual Right to Health', (2008) 30 *Human Rights Quarterly* 259-355. See also Meier, B.M. 'Advancing Health Rights in a Globalised World: Responding to Globalisation through a Collective Human Right to Public Health', (2007) *Global Health Law, Ethics, and Policy*.
[61] Meier, B.M. 'Advancing Health Rights in a Globalised World: Responding to Globalisation through a Collective Human Right to Public Health', 550-51.
[62] See Deneulin, S. and Stewart, F. 'A Capability Approach for Individuals Living Together', paper presented at the Conference 'Justice and Poverty: Examining Sen's Capability Approach', cited in Ibrahim, S.S. 'From Individual to Collective capabilities: The Capability Approach as a Conceptual Framework for Self-help', 402.
[63] Ruger, J.P. 'Health Capability: Conceptualization and Operationalization', 41-49. Internal factors include levels of health knowledge that individuals possess, individuals' health values and goals, an individual's ability to make health decisions, their health seeking skills etc while external factors are largely environmental factors that are mostly outside an individual's control such as their material circumstances, social networks and social capital for achieving positive health outcomes, social norms, enabling public health and health care systems etc.
[64] Ibid.

Accordingly, individuals and groups can be empowered to comprehend their local conditions and existing resources and subsequently deploy this understanding to eliminate hazards and any structural barriers to their attainment of the highest possible standards of health. A health CA which takes cognisance of agency considerations will guarantee individuals the freedom to act collectively and individually to attain outcomes that they value. From this standpoint, beneficiaries of planning interventions must, as a precondition, be engaged as indispensable partners in arrangements that value knowledge exchange and expands their agency. When given an opportunity, individuals understand their ability to shape health outcomes.[65]

Participation plays an integral role in enabling conversion of capabilities into outcomes. This is because of its appeal as both an outcome of empowerment and as a tool for empowerment.[66] Regarding the latter, participation will enable individuals and communities to understand their situation and increase their control over factors that affect their lives and ultimately enhance their wellbeing.[67] This is an important manifestation of agency which forms an integral part of the CA.[68] Participation enables realisation of agency by vulnerable groups and it is pertinent in stimulating their collective agency. It connects them with their interests while also equipping them with the relevant tools that they can deploy towards addressing challenges within their localities. High levels of participation that promote active and meaningful engagement, involvement, and empowerment should, therefore, be pursued in the quest to realise improved health in the city.[69]

Care must, however, be exercised to ensure sensitivity to local capacities to effect the envisioned changes.[70] Proceeding from this standpoint means that underlying inhibitors of agency must first be eliminated to enable effective participation by individuals. Individuals and communities must be equipped with appropriate levels of knowledge to enable their effective participation. Approaching planning from this perspective enables us to recognise that beneficiaries of planning

[65] Halabi, S.F. 'Participation and the Right to Health: Lessons from Indonesia'. See also Smith, B.C. 'The Decentralisation of Health Care in Developing Countries: Organizational Options', (1997) 17 *Public Administration and Development,* 399.

[66] World Health Organisation, *Community Participation in Local Health and Sustainable Development: Approaches and Techniques,* 12.

[67] Ibid. Participation also increases the sense of ownership of programmes by the communities and in effect enable their sustainability. See Ibid, 13.

[68] Alkire, S. and Deneulin, S. 'The Human Development and Capability Approach', 32.

[69] Dooris, M. and Heritage, Z. 'Healthy Cities: Facilitating the Active Participation and Empowerment of Local People', (2011) 90(1) *Journal of Urban Health: Bulletin of the New York Academy of Medicine,* 76.

[70] Halabi, S.F. 'Participation and the Right to Health: Lessons from Indonesia'.

interventions are not unreflecting spectators in expert-driven processes, but instead are rich repositories of knowledge who can actively use their 'local-knowledges' to meaningfully impact on planning interventions.

In the sections that follow, I will illustrate how participation by the inhabitants in the Mukuru SPA provides them with opportunities to expand their health capabilities and how this potentially feeds into their realization of improved outcomes. For instance, I will show how the SPA seeks to influence individual health through its adoption of initiatives meant to improve the inhabitants' knowledge on health matters and initiatives that place the inhabitants at the center of decision-making. Additionally, by joining together in taking stock of existing local resources and identification of gaps, the inhabitants collectively commit to expanding capabilities which can be converted into valuable health outcomes.

7.4 Advancing health capabilities in Mukuru through the SPA

In this section, I explore how the capability framework that has been proposed above resonates with the approaches to health planning adopted in the Mukuru SPA. I identify the various approaches taken by the SPA which present opportunities for the expansion and exercise of the inhabitants' health capabilities. This will entail taking stock of the opportunities for participation that are presented by the SPA for the inhabitants which could enable them to act on expanding their capabilities, and assessing how participation actually occurs on these platforms. My argument is that it is easier at this point to assess the "opportunities" for advancement of capabilities and realisation of outcomes, rather than assessing the achieved outcomes. Assessing the latter presents some practical difficulties given that the Mukuru SPA process is yet to be completed with implementation of most of the proposals yet to commence. For us to get a fuller picture of health outcomes in the settlements, a more extensive study would be required. Such a study would need to examine the health conditions before the SPA and after the completion of the process and the full implementation of its proposals. Nonetheless, the robustness of the participatory processes that have already been undertaken can tell us something on what to expect once all the proposals are implemented.

In England, Wong *et al.* have developed indicators that can be used to demonstrate the outcomes of spatial planning. They view outcomes as "the combined effects on socio-economic and

environmental changes brought by the planning system to achieve the planning objectives."[71] They however contend that measuring outcomes can be a challenging task as it is difficult to isolate those impacts that can be directly attributable to planning.[72] Notwithstanding this, the outputs of spatial planning processes can in certain cases be used as a measure of the anticipated outcomes particularly where there is a relationship between the outputs and the potential outcomes.[73] The term 'outputs' is used by Wong *et al.* in reference to the direct effects of spatial planning policies.[74] In Mukuru, a few of the proposals outlined in the SPA have already been implemented or are currently being implemented by various agencies. We can, therefore, identify certain outputs that have been generated from the SPA process and these will be discussed in the subsequent sections.

The scope of this work has been limited to appraising the potential of the SPA process as currently structured and implemented. Hence this chapter draws inspiration from Sen's recognition of the relevance of "opportunity" as a frame of analysis and argues for its pertinence when inferring capabilities and outcomes.[75] Understanding what opportunities exist is critical as a first step in assessing whether the actual goals sought can be met. Having said this, I remain cognisant of the inadequacies of an opportunity assessment approach.[76] This caution is important given that conversion of health capabilities into outcomes or achievements will in most cases occur unevenly and will be dependent on the means and freedom that each individual has.

7.4.1 Settlement enumeration and mapping of health resources and needs in Mukuru

Settlement profiling and enumeration, which are both community-led processes, have been widely adopted in Mukuru to generate data on the most pressing issues in the settlements. Enumeration entails having the beneficiary community lead in information gathering processes and this helps build the capacity within poor communities to engage with formal actors while acknowledging the

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[71] Wong, C. et al. *Outcome Indicators for Spatial Planning in England- Framework Report* (University of Manchester, 2007) 18.

[72] Ibid.

[73] Wong, C. et al. Measuring the Outcomes of Spatial Planning in England- Final Report (The Royal Town Planning Institute, 2008) 27.

[74] Wong, C. & Watkins, C. 'Conceptualising Spatial Planning Outcomes: Towards an Integrative Measurement Framework', (2009) 80(4/5) *The Town Planning Review,* 486.

[75] Sen, A. 'Response to Commentaries', 84.

[76] See Fleurbaey, M. 'Development, Capabilities, and Freedom', (2002) 37(2) *Studies in Comparative International Development,* 71-77.

communities' place as repositories of local knowledge.[77] It is a key tool which has traditionally been used by SDI and its affiliates like Muungano, and it facilitates profiling of the communities.[78] Profiling entails generating data on the available resources within their contexts while giving visibility to the community needs which are effectively taken into account during planning and service delivery.[79] Through the enumeration process individuals within the community present external experts and government agencies with concrete data explicating their local conditions and priority areas in need of intervention.[80]

In Mukuru, this has facilitated gathering of data on the social determinants of health at the household level and also the distribution and quality of healthcare resources within the settlements.[81] Preparation of these inventories by the communities also plays the important role of generating household situational analyses which can facilitate development of targeted interventions for each unique case.[82] Ultimately, community-led enumeration and profiling processes challenge the idea that the inhabitants of Mukuru are helpless actors unable to articulate their needs or act upon them. This co-production of data promotes local buy-ins of participatory processes by communities which is integral for their sustainability. It also acts to eliminate practices which have traditionally resulted in their exclusion such as the use of consultants to identify challenges within communities that they are not members of.

7.4.2 Employing community knowledge to develop a Situational Analysis for the SPA

Prior to the inception of the SPA process, several initiatives had been undertaken with the aim of improving the state of health in Mukuru. Some of these were meant to provide a profile of the informal settlements and to gather evidence on among others, the nature, ownership and control of

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[77] Bradlow, B. 'Out of the Garden of Eden: Moving Beyond the Rights-Based Agenda in the Urban Sector', (2011) 11(1) *Sustainable Development Law & Policy,* 48.

[78] Key Informant interview with a member of the HSC on October 9, 2020.

[79] See Know Your City, 'SDI Rituals: Profiling and Enumeration through the Vusi Ntsunthsha project', available at https://knowyourcity.info/2019/11/sdi-rituals-profiling-enumeration-vusi-ntsuntsha-project/ accessed May 25, 2020.

[80] Lines, K. and Makau, J. 'Taking the Long View: 20 Years of Muungano wa Wanavijiji, the Kenyan Federation of Slum dwellers', 419.

[81] Muungano wa Wanavijiji, 'Unlocking the Poverty Penalty and Up-Scaling the Respect for Rights in Informal Settlements in Kenya', available at https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/58604/IDL-58604.pdf?sequence=2 accessed May 25, 2020, 20.

[82] See Karanja, I. 'An Enumeration and Mapping of Informal Settlements in Kisumu, Kenya, Implemented by their Inhabitants', (2010) 22(1) *Environment & Urbanization*, 217-39.

basic services and the complexities underlying provision of these services, while others sought an understanding of interactions between formal and informal institutions within the settlements.[83] For instance, the first technical report generated and which preceded the SPA declaration offered an initial profile of Mukuru through what is said to have been a participatory data collection process involving the inhabitants.[84]

Participation in focus groups aimed, among others, at understanding provision of services and the inhabitants perceptions on service provision and also to appreciate the challenges in provision of the services, opportunities, and recommendations.[85] Its focus was largely on healthcare infrastructure and it ultimately identified the typologies of health facilities within the settlements, the providers, cost, location and management of these facilities.[86] Subsequently, upon the SPA declaration, an Inception Report was drafted to guide preparation of the envisioned IDP. It is through this Inception Report that the various consortia, including the HSC and their work plans were constituted.[87]

A situational analysis was also conducted by a number of institutions in collaboration with the inhabitants of Mukuru. The goal of this was to identify the dynamics on service delivery and shortfalls within the settlements.[88] A transdisciplinary methodology was adopted during this stage with a participatory self-assessment being conducted with the aim of reaching consensus on the priority areas in need of intervention.[89] Data used in generating the baseline of living conditions in Mukuru was co-produced by residents, researchers and each contributing organisation.[90] At the

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[83] See Akiba Mashinani Trust, 'Improving Access to Justice and Basic Services in the Informal Settlements of Nairobi: A Profile of the Mukuru kwa Njenga and Mukuru kwa Reuben Informal Settlements (First Technical Report)', (2013) Akiba Mashinani Trust. Khan describes informal institutions as 'rules that are systematic enough to be identified but not officially written down or implemented by the state, and formal institutions as laws, regulatory frameworks and government policies', see Khan, M. 'Political Settlements and the governance of Growth-enhancing Institutions', (2010) SOAS Working Paper, 10.

[84] Ibid, iii-iv. The Technical Report states that the research was undertaken in four components: (1) community access and preparation (2) research team training (3) data collection, and (4) data analysis.

[85] Ibid, 9.

[86] Ibid, 71.

[87] Key Informant interview with a member of the CCOCC on October 6, 2020.

[88] See UC Berkeley *et. al.,* 'Mukuru Settlement 2017 Situation Analysis', available at https://static1.squarespace.com/static/58d4504db8a79b27eb388c91/t/5a65fbd653450a34f4104e69/1516633087045/Mukuru+SPA+Situational+Analysis+2017+Phase+2.pdf accessed 9th October 2019.

[89] Key Informant interview with a member of the CCOCC on October 6, 2020.

[90] See UC Berkeley *et. al.,* 'Mukuru Settlement 2017 Situation Analysis', available at https://static1.squarespace.com/static/58d4504db8a79b27eb388c91/t/5a65fbd653450a34f4104e69/1516633087045/Mukuru+SPA+Situational+Analysis+2017+Phase+2.pdf accessed 9th October 2019. 4.

core of these data-gathering initiatives has been a pressing need to guarantee the involvement of locals at every stage.[91] The latter's indispensable contributions have been augmented by existing strong social networks at the local level which enables them to draw on local knowledge on hazards and resources within the community to devise mechanisms that they use to tackle their challenges.[92]

However, it is unclear whether these local networks have had any bearing on the health outcomes of individuals.[93] It is accurate to estimate that the existence of these networks means that the communities already retain some capacity that can be leveraged when assessing health needs and in developing health interventions. Taking a cue from Ruger, we can conclude that individuals can rely on these social networks to create conditions in which their health outcomes can be improved.[94] The SPA process takes heed of Minkler and Wallerstein's proposition on the importance of considering the social networks in which the communities are embedded during the development of a community's capacity to participate.[95]

One of the objectives of participatory data collection employed by the SPA was to ensure that the experiential knowledge of the community on health matters fed into and informed the planning processes. This reflects what some studies have referred to as 'barefoot' epidemiology where the beneficiary communities play lead roles in the collection and interpretation of health data.[96] Once the local knowledge repositories have been identified in the SPA, the participatory processes aid in the creation of discursive spaces where local knowledge feeds into the collaborative processes with external experts. In this case, the community and its "barefoot epidemiologists" (local experts) will work with external experts to identify local health problems and address them through interventions that are ultimately proposed.

Participation plays the integral role of aiding in the identification of existing capability shortfalls and areas in need of planning interventions. It further enables the identification of local resources

[91] Key Informant interview with a member of the CCOCC on October 6, 2020.
[92] Ibid, 49.
[93] Wallerstein, N. 'Empowerment to Reduce Health Disparities', 73.
[94] Ruger, J.P. 'Health Capability: Conceptualization and Operationalization', (2010) 100(1) Am J Public Health 41-49.
[95] Minkler, M. & Wallerstein, N. 'Improving Health through Community Organization and Community Building Perspectives from Health Education and Social Work', in Minkler, M. (ed) *Community Organizing and Community Building for Health and Welfare* (Rutgers University Press, 2012) 47.
[96] See Leung, M.W. et al. 'Community-based Participatory Research: a Promising Approach for Increasing Epidemiology's Relevance in the 21st Century', (2004) 33(3) *International Journal of Epidemiology* 502.

that can be used to address challenges and to transform capabilities into health outcomes. In Mukuru, the Situational Analysis enabled the generation of concrete data explicating local conditions and priority areas in need of intervention. According to a key informant interviewed for this study;

> "*The Situational Analysis developed for the SPA placed heavy reliance on settlement mapping and enumeration. Together with the community, we mapped out all the available services and the challenges that the community is facing which enabled us to understand the nature and quality of services that are available.*"[97]

The priority areas in need of intervention that were identified are illustrated below.
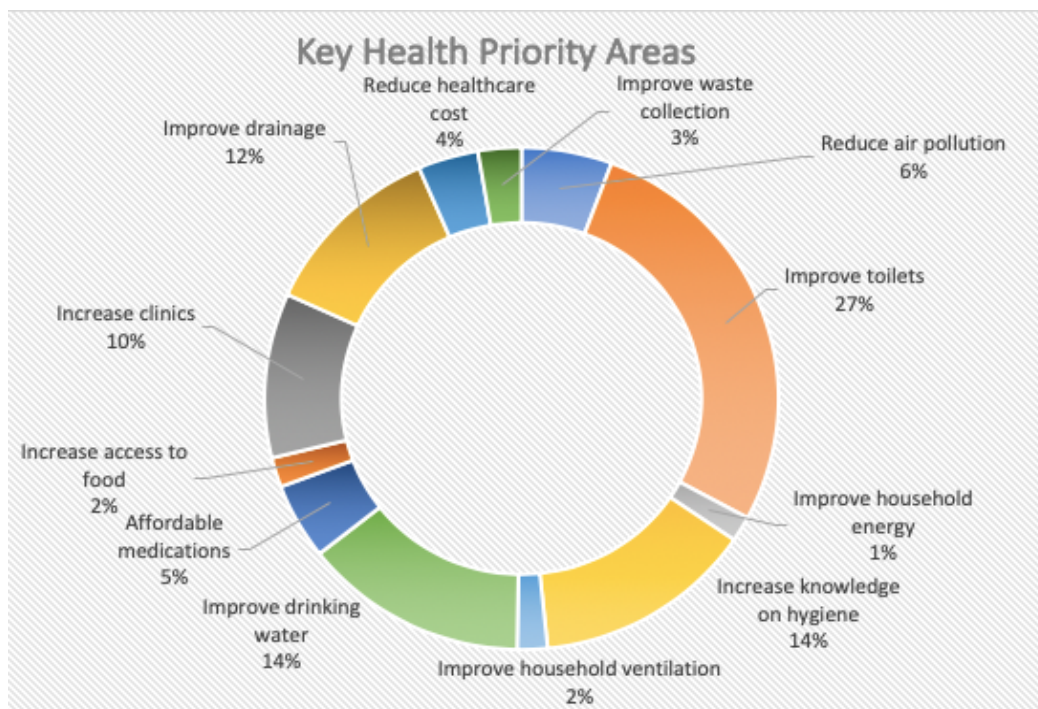
Fig 16*: Figures from Health Services Consortium Presentation in Mombasa, June 25-26, 2017.*

The above figure shows the health priorities that were outlined by the inhabitants. Formation of these priorities starts with the identification of goals at the individual and household levels. This information was also collectively generated at the cell, subcluster and segment levels during the SPA's community consultation sessions. It is on these platforms that health values were identified

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[97] Key Informant interview with a member of the HSC on October 9, 2020.

which provided an important discursive framing for the issues and triggered the search for appropriate interventions. Here, we find shared health values and commitments which are generated from a participatory process that brings together individual actors with possibly diverse personal choices. This resonates with Sen's theoretical specifications outlined in the previous section that preference formation can result from social interactions.[98]

Also clear from the above figure is that participation enabled the identification of individual/internal, societal and environmental factors that inhibit health capabilities. This is important since it is through participation that the inhabitants were presented with options and opportunities for adopting interventions that would enable the expansion of their capabilities. I will proceed to then look at how the SPA provided opportunities for the identification and generation of local knowledge and how this fed into the inhabitants' capabilities.

7.4.3 Local knowledge in Mukuru as an existing capability

In numerous research models, data collection tends to be left to 'experts' who will scarcely collaborate with those affected by the issues being studied.[99] This tendency by researchers often overlooks the advantages that can be drawn from coordinating their actions together with that of the disadvantaged groups. The outcome of such prejudices has been fraught relationships between the communities and the professionals guiding the studies. It also results in the reproduction of hegemonic knowledge that such expert-driven processes have produced within target communities. The law now demands the involvement and engagement of ordinary people in designing, implementing, and evaluating planning, particularly in cases where health interventions are sought.[100] These groups are known to be better equipped to understand existing risk factors within their localities with this knowledge forming an important social capital which they can use to advance their causes.[101]

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[98] Sen, A. 'Response to Commentaries', 79.

[99] Minkler, M. 'Using Participatory Action Research to Build Healthy Communities', (2000) 115 *Public Health Reports* 192.

[100] Nayak, S.K. et al. 'Community Participation for Health Systems Strengthening- A Decade of Experience in Sustaining Community Interventions in NHM, Odisha', (2020) 15(1) *GIS- Business*, 149.

[101] Jigyasu, R. 'Reducing Disaster Vulnerability through Local Knowledge and Capacity: The Case of Earthquake Prone Rural Communities in India and Nepal' PhD Thesis (Norwegian University of Science and Technology, 2002) 16.

Local knowledge has been described by Schröder to consist of "....*knowledge and practical capabilities which emerged from local conditions and natural and social surroundings, and which have often been tested into a larger cultural context*."[102] As illustrated in chapter five, it is now a legal requirement in Kenya that individuals must be involved in making decisions on matters that affect them. Academics and social justice activists have also increasingly acknowledged that provision of more equitable spaces for knowledge generation can advance social justice causes.[103] Hence by referring to local knowledge, we recognise that local communities can comprehend what affect them and clearly articulate the issues when given an opportunity.

We must recognise the unique strengths and shared responsibilities that permeate partnerships between external experts and beneficiary communities. These can be taken into account to enhance the quality of the processes and produce outcomes that advance social justice.[104] Knowledge production as an outcome of these partnerships has the potential of either entrenching or redressing inequalities and injustices.[105] Two drivers of these partnerships become the subject of our analysis here: the need to recognize communities as repositories of knowledge on health; and the goal of empowering local communities to be active agents in identifying and addressing local health problems. The dual incentives have far-reaching implications for the Mukuru SPA and its goal of improving health outcomes within the settlements. I will show how the HSC foregrounded local experiences of community members and their "barefoot epidemiologists" to develop proposals for improving health outcomes.

As a starting point, collaborations with affected communities usually aim at employing strategies and interventions that have been developed by the communities themselves. The logic here is that within these communities, there are individuals who have a better understanding of the local phenomenon and certain dynamics of their communities. By feeding their knowledge into the processes driven by external experts, these individuals can enable the improvement of health and

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[102] Schmuck, W.H. *Facing the Jamuna River- Indigenous and Engineering Knowledge in Bangladesh* (Bangladesh Resource Center for Indigenous Knowledge, 2001) 1.

[103] Mitlin, D. et al. 'Knowledge Matters: The Potential Contribution of the Co-production of Research to Urban Transformation', (2019) 039 Global Development Institute Working Paper Series 8.

[104] Israel, B.A. et al. 'Review of Community-Based Research: Assessing Partnership Approaches to Improve Public Health', (1998) 19 *Annu. Rev. Public Health*, 177.

[105] Mitlin, D. et al. 'Knowledge Matters: The Potential Contribution of the Co-production of Research to Urban Transformation', 9.

well-being within their localities.[106] Engaging these groups also signal to the communities that answers to their challenges can come from within and not entirely from the outsider experts.[107] We therefore recognise that there are certain individual, collective and environmental variables that the communities themselves can influence without need for external intervention. Adopting this posture requires 'starting where the people are' which is an affirmation of faith in the communities, empowers them and is a guarantee that the issues that become the subject of interventions are the ones that really matter to them.[108]

External experts pursuing this approach are usually cognizant of the existing hidden transcripts within these communities that can contribute to unlocking local challenges. Genuine engagements with communities also safeguard such processes from the dangers of adopting what Musila has referred to as the 'single-lens reliance on the authority of conventional modes of knowing' by the external experts which is counterproductive in understanding local realities.[109] Studies commissioned by external experts who take up lead roles from identification of issues to when interventions are formulated often fall into this trap. Because of the overly structured nature of these studies, it is easy to overlook contextual or social factors that would importantly explain local phenomena.[110] In an informal settlement like Mukuru, there could exist some 'insider knowledge' which could perhaps help elaborate how variables like tenure insecurity influence the behaviour of individuals within the settlements. It would only be through extensive engagements with members of the community that such information might be revealed.

Starting where the people are is an acknowledgment of Spivak's assertion that in the presence of appropriate conditions, 'the oppressed can speak and know their conditions'.[111] It recognises their autonomy and ability to alter the conditions that affect their health. This perhaps becomes more relevant when interventions are proposed to respond to the identified determinants of health. The

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[106] Ibid.

[107] Ibid, 21.

[108] See Nyswander, D.B. 'Education for Health: Some Principles and Their Application', (1956) 14 *Health Education Monographs* 65-70.

[109] Musila, G.A. 'Navigating Epistemic Disarticulations', (2017) 116(465) *African Affairs* 696. See also Minkler, M. and Hancock, T. 'Community Driven Asset Identification and Issue Selection', in Minkler, M. & Wallerstein, N. (eds) *Community-based Participatory Research for Health: From Processes to Outcomes* (John Wiley & Sons, 2008) 154.

[110] Leung, M.W. et al. 'Community-based Participatory Research: a Promising Approach for Increasing Epidemiology's Relevance in the 21st Century', 500.

[111] Spivak, G.C. 'Can the Subaltern Speak?' available at http://abahlali.org/files/Can_the_subaltern_speak.pdf accessed May 20, 2020, 78.

success of these interventions will largely be determined by the nature of individuals' internalization of their local conditions.[112] Such internalisation also enable the communities to identify the variables which they can readily influence and prompt them to act on them. It explains why Fawcett *et al*. have emphasized on the 'fullest possible reliance on indigenous recourses' especially during the situation analysis stage of health planning.[113]

One key reason for this, I suggest, is that extensive groundwork will in most cases have already been laid by the target communities who only lack the requisite tools to act on the challenges that they have identified, or who may lack the appropriate terminologies to articulate their known challenges. So here, the external experts will be affirming their faith in the capacities of local communities as collectors and repositories of relevant knowledge that feed into the studies. Acknowledging this has not only been established to improve the quality of the data generated, but also elevates the levels of trust that the communities have in the studies, their likelihood to buying-in, and also reinforces their commitment to a research project.[114] Hence, it puts the projects on a sustainable path which pays off during their implementation and evaluation.

In Mukuru, these dynamics are already at play. Not only was the community's participation witnessed during data collection, but the history of their involvement can be traced much further back as illustrated by the inhabitants' numerous attempts at getting the health situation in the settlements on the agenda. Thus, as observed by a member of the SPA CCOCC;

> "*Even before the SPA declaration, the dire gaps in provision of basic needs led to a campaign by women in the settlements for the improvement of sanitation. Their campaigns were informed by the provisions of the Public Health Act. The women were asking for an inquiry to be made by the Ministry of Health into the nature and shortfalls in service provision.*"[115]

This signals the existence of an understanding amongst the inhabitants of the health issues that affect them and their ability to engage on these issues with the relevant authorities. Indeed, all the

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[112] See Bjaras, G. et al. 'A new Approach to Community Participation', (1991) 6(3) *Health Promotion International* 199-206.377.

[113] Fawcett, S.B. et al. 'Evaluating Community Initiatives for Health and Development', (2001) *WHO Regional Publications, European Series* 242-62.

[114] Leung, M.W. et al. 'Community-based Participatory Research: a Promising Approach for Increasing Epidemiology's Relevance in the 21st Century', 503.

[115] Key Informant interview with a member of the CCOCC on October 6, 2020.

inhabitants of Mukuru that were interviewed for this study indicated an understanding of the local health conditions and possible interventions for the identified challenges. It was common to hear respondents pinpoint specific health problems that are prevalent in the settlements and identify their possible drivers. Participants were also able to name the health facilities within their localities and even articulate some of the barriers that they face when accessing healthcare from these facilities. In one instance, a woman stated simply;

> "*I used to find it hard to go to Mareba Health Center whenever I was sick because the people there were rude and would compel patients to remove their shoes and wash their feet before accessing the facility. Additionally, the facility had a deaf receptionist, and it was difficult to communicate with her.*"[116]

The existence of health knowledge among the inhabitants revealed opportunities that could be used by the HSC when formulating possible interventions to the health challenges in Mukuru. By bringing the inhabitants together to articulate their concerns, the HSC played a key empowerment role as it facilitated the inhabitants to be active agents in identifying and addressing local health problems. The inhabitants were thus provided with an opportunity to decide the meaning of their lives and to propose solutions to their health challenges. In this way, participation also played the role of strengthening the existing health systems in Mukuru. The community collectively devised mechanisms to eliminate some of the barriers to accessing healthcare services.

7.4.4 Empowering SPA inhabitants to identify health challenges

Empowerment as an outcome of participation has already been discussed in chapter five. Its relevance has been seen when considering the sensitivities of individuals and groups towards processes that are oblivious to their capacity to participate and exercise autonomy. Hence, where it is established that there exist certain factors that affect the individuals' ability to identify, mobilise and address problems, then it becomes imperative that strategies are put in place to build their capacity to respond to the identified health concerns.[117] The aim of such strategies should be to increase individuals' and communities' control over the factors that affect their health.

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[116] Interview with a resident of Mukuru Viwandani on September 27, 2020.
[117] Minkler, M. and Hancock, T. 'Community Driven Asset Identification and Issue Selection', 46.

Empowerment aims at fostering ownership of programs and accountability to the communities. It also challenges the power imbalances between external experts and communities.[118] As Corburn and Makau have noted, involving communities in generating knowledge that is to be used in devising interventions for their local conditions gives these groups the opportunity to reclaim power over the interpretation of data and shaping of decisions.[119] A clear link thus exists between recognizing communities as repositories of health knowledge, and their empowerment in collaborative processes. Empowerment will result where individuals are substantively involved as primary sources of information and in deciding priorities for the problems to be addressed.[120] It enables them to take personal responsibility for improving their health conditions using the knowledge that they possess.

The important role that empowerment plays will be manifest where long-term measures are deployed to gauge the outcome of participatory interventions. Sustainability of these interventions will only be underwritten by an empowered group of beneficiaries who, to quote Wallerstein, have gained "mastery over their lives".[121] With regard to empowerment as an intermediate outcome of participation, Wallerstein draws a link between increased empowerment and improved health outcomes for communities.[122] Alicia Yamin has also shown the central role that empowerment plays in operationalising the right to health.[123] Its potential to equip communities with requisite skills and knowhow to confront the conditions that affect their health shall be explored further in this chapter.

In Mukuru, the SPA continues to be a key contributor to the empowerment of the inhabitants to tackle the health challenges which they have identified. Involving the community in planning for health has had profound impacts on how they view their health situation and the possible ways through which the identified health challenges can be addressed. Participation of the inhabitants

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[118] Ibid, 38. See also Wallerstein, N. 'Empowerment to Reduce Health Disparities', (2002) 30 *Scand. J Public Health* 74.

[119] Corburn, J. and Makau, J. 'Coproducing Slum Health in Nairobi, Kenya', in Corburn, J. and Riley, L. (eds) *Slum Health: From the Cell to the Street* (University of California Press, 2016) 185.

[120] Brown, E.R. 'Community Action for Health Promotion: A Strategy to Empower Individuals and Communities', (1991) 21(3) *International Journal of Health Services* 445.

[121] Wallerstein, N. 'Empowerment to Reduce Health Disparities', 73.

[122] Ibid. 75.

[123] Yamin, A. 'Defining Questions: Situating Issues of Power in the Formulation of a Right to Health Under International Law', (1996) 18 (2) *Human Rights Quarterly* 398-438.

in identifying health challenges can elicit within the community a sense of ownership of interventions that are proposed. Most of the respondents interviewed for this study alluded to the fact that their participation in the SPA enabled them to become aware of the possible ways through which each inhabitant can contribute to their personal health and to that of their communities.[124]

With the SPA, the inhabitants have observed an upsurge of household and neighbourhood clean-up exercises which in many ways contribute to their wellbeing.[125] Women groups have particularly played key roles in ensuring that water providers in the settlements consistently provide water for households to use for clean-up exercises.[126] Residents' empowerment has also resulted in increased demands for accountability from the relevant government agencies. This, according to one resident means that; "…*consultations in the SPA played a key role in spreading awareness among the inhabitants on their rights*."[127] This view is echoed by a Key Informant and a member of the HSC who reported that;

> "*In one of the meetings that we had in Viwandani, public health officers from Makadara came and this is when the community started talking about the issues that they face whenever they visit the facility at Mareba. There were so many issues being faced in Mareba including undignified treatment of patients in the form of being forced to remove shoes at the facility, insufficient operational hours of the facility (10am-3pm). One of the immediate changes effected as a result of these complaints was the upgrading of the facility. The community also pushed to have their representation in the health committee for the facility and this was effected by the authorities.*"[128]

From the illustrations above, we are able to identify the important role that collective deliberation can play in effecting changes that ultimately leads to improved health outcomes. Through the platforms provided for such deliberations, individuals unite to confront the driver of inequality within their localities. In India, Sen has attributed the growth of life expectancy to the existence of avenues of public discussion and criticism of the health services. He contrasts China to India and argues that despite China having a faster economic growth than India, life expectancy in India has

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[124] Interviews with various respondents in Kwa Reuben, Kwa Njenga and Viwandani.
[125] Interview with a resident of Mukuru kwa Reuben on September 29, 2020.
[126] Ibid.
[127] Interview with a resident of Mukuru kwa Njenga on September 29, 2020.
[128] Key Informant interview with a member of the HSC on October 9, 2020.

grown about three times faster than China due to the existence of democratic avenues of critique and deliberation in India.[129]

7.4.5 Community health workers/volunteers and their role in generating and mobilising health capabilities in Mukuru

While recognising its already existing capacity, the community in Mukuru has drawn on the expertise of its Community Health Workers (CHWs) who constitute an important frontline health asset and play critical roles in community mobilization and resource mapping.[130] This group consists of volunteers drawn from the community who have an understanding of local cultures and community values with their roles ranging from distribution of medication and health information to raising awareness around important health issues such as water contamination and disease outbreaks.[131] In Kenya, the Community Health Strategy developed in 2006 provided for the establishment of Community Health Units (CU) to provide health services to hard to reach areas and informal settlements.[132] Its inauguration was in recognition of "the central role that individuals occupy in making decisions and taking actions that influence their health."[133] Under the Strategy, a CU is defined to comprise of "approximately 1,000 households or 5,000 people who live in the same geographical area, sharing resources and challenges."[134] For Mukuru, we would have approximately 10 CUs for the entire settlement. The Strategy establishes Community Health Committees (CHC) to which CHWs report and it tasks them with the following health promotion mandates:[135]

CHCs	CHWs
♦ Identification of community health priorities through regular dialogue ♦ Planning community health actions ♦ Participating in community health actions	♦ Teaching communities how to improve health and prevent illness by adopting healthy practices ♦ Treating common ailments and minor injuries ♦ Tending to the CHW kit

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[129] See 'Amartya Sen: A More Human Theory of Development', available at https://asiasociety.org/amartya-sen-more-human-theory-development?fbclid=IwAR38zixWhGFCSizgSjztBOVsWs_AY3IxWwu9xYaDWSRlWzu3ZmPkh9zSL_8 accessed August 31, 2021.

[130] UC Berkeley *et al.,* 'Mukuru Settlement 2017 Situation Analysis', 52.

[131] Ibid.

[132] See Government of Kenya, *Community Strategy Implementation Guidelines for Managers of KEPH at the Community Level* (Ministry of Health, 2007).

[133] Ibid 14.

[134] Ibid, 5.

[135] Ibid 6-17.

♦ Monitoring and reporting on planned health actions ♦ Mobilizing resources for health action ♦ Coordinating CHW activities ♦ Organising and implementing community health days ♦ Reporting on priority diseases and other health conditions ♦ Leading community outreach and campaign initiatives ♦ Advocating for good health in the community	♦ Referring cases to the nearest health facilities ♦ Promoting care seeking and compliance with treatment and advice ♦ Visiting homes to determine the health situation and dialogue with household members to undertake the necessary action for improvement ♦ Promoting appropriate home care for the sick ♦ Participating in monthly CU health dialogue ♦ Being available to the community to respond to questions and provide advice ♦ Being an example and model of good health behaviour ♦ Motivating members of the community to adopt health promoting practices ♦ Organizing, mobilizing, and leading village health activities ♦ Maintaining village registers and keeping records of community health related events ♦ Reporting to the Community Health Extension Worker (CHEW) on the activities they have been involved in and any specific health problems encountered that need to be brought to the attention of higher levels.

Table 5: *Roles of CHCs and CHWs*

In Mukuru, CHWs continue to impact positively on the inhabitants' health outcomes. Since they are embedded within their communities, CHWs are a trusted source of information for the community. CHWs also assist the community members navigate the often-inaccessible healthcare systems. They employ the training that they have received from NCCG, the national government and NGOs to create awareness among the inhabitants on vital health issues and convey illness prevention and mitigation strategies to their communities.[136] During the SPA consultations, CHWs were taken for visits to other estates in the city where they learnt from their hosts about various mechanisms that they would deploy to tackle challenges in their neighbourhoods. The benchmarking sessions played an important role in equipping the CHWs with knowledge that they would transfer to their communities. It also allowed them to effect some changes like regular neighbourhood clean-ups without the need for external intervention.[137]

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[136] See Wairutu, J. et al. 'Mapping Community Health Services in Mukuru, Kenya', available at http://www.ariseconsortium.org/mapping-community-health-services-mukuru-community-kenya/ accessed 29 July 2020.

[137] Key Informant interview with a member of the HSC on October 9, 2020.

Benchmarking enabled the CHWs to realize the interconnected nature of many issues within their settlements. For one CHW, "*benchmarking a different neighbourhood led me to realize that lack of roads also has some effects on the state of health in the settlements*."[138] She was able to realize how some of the challenges that they face in their work like the inability to access patients in need of urgent medical care, or the inability to access individuals that need first aid whenever there are fire outbreaks can be remedied by providing a better road network in the settlements.[139] This demonstrates how participatory research can play the critical role of amplifying residents' insights into their settlements thus enabling them to grasp the linkages between 'everyday' disasters and other shortfalls in provision of basic services.[140]

CHWs have also been engaged in distributing healthcare supplies and protective equipment during disease outbreaks.[141] This role became more pronounced during the Covid-19 pandemic whose impact would be felt most in informal settlements where huge gaps exist in the provision of basic services.[142] In Mukuru, CHWs have been instrumental in educating the inhabitants on the importance of adopting better hygiene practices. Interestingly, because of this, there was a drop in the number of cholera cases reported in the settlements in 2020.[143] CHWs have carried out door-to-door campaigns to educate the inhabitants of the safeguards that they need to undertake to prevent spread of Covid-19.

Even before the pandemic, CHWs had been actively involved in water, sanitation, and hygiene (WASH) programmes given that cholera outbreaks had been prevalent in the settlements and these activities signal the existence of substantive capabilities among them.[144] CHWs have developed community sensitization capacities based on these previous initiatives, which now prepared them to deal with the Covid-19 pandemic.[145] It could perhaps be argued that the drop in cholera cases

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[138] Key Informant interview with a CHW at Mukuru kwa Reuben on October 13, 2020.
[139] Ibid.
[140] International Institute for Environment and Development, 'Grassroots Insights into Urban Risk and Resilience', available at https://www.iied.org/grassroots-insights-urban-risk-resilience accessed October 3, 2020.
[141] See Gojobe, K. et. al. 'Covid-19: Reflections from Mukuru's Community Health Volunteers (CHVs)', available at https://spark.adobe.com/page/IB4lfx7xNJUXd/ accessed 29 July 2020.
[142] Corburn, J. et. al. 'Slum Health: Arresting COVID-19 & Improving Well-being in Urban Informal Settlements', (2020) Journal of Urban Health
[143] Key Informant interview with a CHW at Mukuru kwa Njenga on September 29, 2020.
[144] Ibid.
[145] See Muungano wa Wanavijiji, 'Community Health Volunteer Reflections- Margaret from Lunga Lunga', available at https://www.muungano.net/browseblogs/2020/5/14/muungano-kyctv-film-community-heath-volunteer-reflections-margaret-from-lunga-lunga accessed March 19, 2021.

resulted from the numerous campaigns on sanitation that were undertaken by CHWs during the Covid-19 pandemic. Mitlin suggests that the rapid processes seen in Mukuru in relation to gathering and dissemination of Covid-19 related information is an indication of the substantive capabilities in Mukuru and within the organisations that work there.[146]

CHWs have been identified as well situated to bridge existing gaps in healthcare provision, especially in areas with inadequate provision, and they also play a key role in facilitating engagement between their communities and healthcare systems.[147] They have presented community grievances to the relevant health authorities and ensured that these grievances are acted on.[148] For instance, with regard to the complaints raised by the inhabitants about the undignified treatment that they are accorded at Mareba, CHWs played an important role in bringing this to the attention of the health facility administrators and ensuring that the issues were redressed.[149] Their close proximity to their communities also enabled them to effectively convey community perspectives and priorities in the SPA. They have also promoted positive health behaviours[150] within their communities and facilitated effective management of diseases by the members.[151]

For instance, a CHW indicated that she has on numerous occasions encouraged women who have been verbally abused at healthcare facilities during maternity to report these abuses and to continue visiting hospitals and clinics during pregnancy.[152] These critical roles played by CHWs arise from the fact that for many inhabitants CHWs will be the first point of contact that they have with the healthcare system. It is a role that many CHWs readily embrace as evidenced by the following description of their roles given by a CHW;

> "*We as CHVs are the first point of contact for most in the settlement. We visit the household and monitor the wellbeing of the inhabitants and ensure that they visit health facilities*

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[146] Mitlin, D. 'Community Mapping in Kenya Improves State Covid-19 Response', available at https://www.african-cities.org/community-mapping-in-kenya-improves-state-covid-19-response/ accessed May 27, 2021.

[147] Rachlls, B. et al. 'Community Perceptions of Community Health Workers (CHWs) and their Roles in Management for HIV, Tuberculosis and Hypertension in Western Kenya', (2016) 10 PLOS One, 2.

[148] Key informant interview with a CHW at Mukuru kwa Reuben on October 13, 2020.

[149] Ibid.

[150] This has been defined to encompass the activities undertaken to maintain good health, prevent ill health, as well as dealing with departure from a good state of health. See MacKian, S. 'A Review of Health Seeking Behaviour: Problems and Prospects', (2003) Health Systems and Development Programme.

[151] Rachlls, B. et.al. 'Community Perceptions of Community Health Workers (CHWs) and their Roles in Management for HIV, Tuberculosis and Hypertension in Western Kenya', 7.

[152] Key informant interview with a CHW at Mukuru kwa Reuben on October 13, 2020.

when they are required to. We also act as the first responders whenever there are fire incidents in the settlements. We give health talks to the inhabitants especially during this Covid-19 pandemic where we have given numerous talks on maintaining hygiene. We mount a loudspeaker on an ambulance and go spreading health information around in the villages."[153]

Fig 17: *An ambulance stationed at Reuben Health Centre and used by CHWs in their different roles* (Source: Author)

The role of CHWs has particularly been salient in advancing behaviour change strategies through interventions like WASH programmes and provision of nutrition education in poorly serviced areas.[154] Employing these strategies is important for empowering communities to improve their health especially where this is accompanied by provision of appropriate amenities that the communities can access. This shows the critical role that CHWs can play in addressing preventable health issues within their communities. It explains why their participation in the SPA was considered to be integral with this informing their inclusion in nearly all of the SPA consortia. CHWs were considered to be indispensable in mobilising the community to participate in the processes since as alluded to by a member of the HSC;

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[153] Ibid.

[154] Aseyo, R.E. et al. 'Realities and Experiences of Community Health Volunteers as Agents for Behaviour Change: Evidence from an Informal Urban Settlement in Kisumu, Kenya', (2018) 16(53) *Human Resources for Health*, 2.

"…if there is one group of people that the community is always comfortable with, it is the CHVs. They are often called to tackle all manner of things in the settlements, not just health matters. We have on numerous occasions even intervened to ensure that parents take their children to school as required by law. "[155]

These strengths and knowledge were transmitted to the SPA process where CHWs acted as the main mobilisers for the HSC while also participating in the consultation sessions. During these sessions CHWs raised complaints about the challenges that they go through in providing their services. These include; their inability to access most places in the settlements, especially when attending to emergencies, due to the poor state of roads in Mukuru; the poor state of drainage in the settlements which contributes to high cases of waterborne diseases; and the fact that they do not receive proper training and are unremunerated for the critical work that they do.[156] Indeed, as would later be seen, contributions from the CHWs informed some of the interventions that are already being implemented in Mukuru. This fact was acknowledged by one of the CHWs interviewed who stated that;

"Since the SPA we now see that many drainages have been cleared. Our ambulance can now easily access many locations as a result of the improved roads… We recently had a fire incident in the village and the fire trucks were able to access the place where the fire had started. When the truck ran out of water, it did not have to go far but it was refilled at one of the recently drilled boreholes."[157]

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[155] Key Informant interview with a member of the HSC on October 9, 2020.
[156] Key informant interview with a CHW at Mukuru kwa Reuben on September 29, 2020.
[157] Key informant interview with a CHW at Mukuru kwa Reuben on October 13, 2020.

Fig 18: *Ongoing road and drainage works in Kwa Reuben* (Source: Author)

Notwithstanding the significant place of the CHWs in the SPA process and in promoting the inhabitants' health, there was a consensus among the interviewed CHWs that their contributions to improving health in the settlements is not adequately recognised. Many alluded that their work largely goes uncompensated, and they are not provided with equipment that they can use.[158] Additionally, their current number cannot effectively serve the large population in Mukuru and there is need to recruit more CHWs. One of the CHWs interviewed stated "…*each of us has more than 150 households to take care of, which is too much work for an unpaid role.*"[159]

A majority have also raised issue with the way some of the SPA proposals have been implemented and especially what they term as their exclusion in the implementation processes which has been occasioned by the entry of NMS. It was the view of one CHW that the SPA's success would only be underwritten by direct and extensive consultations with the community during the implementation of the proposals. According to her, limiting consultation to the leaders in the villages as is currently the case will undo the goodwill that the community had extended to the process.[160] She also stated that this will present difficulties during the implementation stage as inhabitant would oppose interventions that they were not involved in designing.[161]

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[158] Key Informant interviews with 13 CHWs at both Kwa Reuben and Kwa Njenga.
[159] Key informant interview with a CHW at Mukuru kwa Reuben on September 29, 2020.
[160] Key informant interview with a CHW at Mukuru kwa Reuben on October 13, 2020.
[161] Ibid.

In recognising the critical role of CHWs, the HSC mapped the CHWs to determine the scope of their coverage in the SPA and identify the areas that were inadequately served.[162] The data generated would then be used to make proposals on CHWs which will be discussed further below.

7.5 Designing the interventions: A health sector plan for the Mukuru SPA

Once consensus on the health priority areas was reached in the SPA, the next stage was to develop a health sector plan for the settlements. This was a very consequential stage of the SPA process since the sector plan would form the basis of the health interventions to be co-produced by the community and other actors. To start with, a Rapid Health Impact Assessment (RHIA) was undertaken to assess the health impacts of the existing conditions in the settlements and proposed potential planning interventions.[163] The RHIA however, limited its focus to environmental determinants of health while narrowing its findings to environmental health risk concerns such as: industrial hazards; flooding and soil contamination; and poor sanitation.[164]

Effectively, its recommendations were restricted to the appropriate interventions for addressing the identified environmental hazards.[165] All these preliminary situation analyses and reports played the important role of empowering the inhabitants and elevating their understanding of their situation and local contexts. The preliminary activities expanded the inhabitants' knowledge and confidence in articulating the challenges within their contexts and the possible planning interventions that would be necessary, essentially activating them to become meaningful agents of the envisioned changes. Thus, the processes increased the inhabitants' ability to articulate their issues with clarity as this would be integral in formulating the sector plan.

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[162] SDI-Kenya et. al. *Mukuru Health Sector Plan* (Special Planning Area) (NCCG, 2020) 44.

[163] University of California Berkeley *et al.*, 'Mukuru Special Planning Area Rapid Health Impact Assessment', (2018) Institute of Urban and Regional Development, 5. The purpose of the Rapid Health Impact Assessment was to: (1) Link data on existing environmental conditions in Mukuru to potential human health impacts. (2) Address key health concerns raised by the Mukuru community (3) Develop clear and actionable environmental health pathway diagrams (4) Offer key indicators to measure and track the impact of any future interventions, particularly those emerging from the SPA, on the health and well-being of Mukuru residents and all people living in that region of Nairobi.

[164] Ibid.

[165] Ibid, 6.

Guided by its community consultation mandate, the HSC has engaged the community in gathering their views related to health service provision which has fed into its sector plan.[166] The HSC sector plan is one of the seven plans that inform the SPA's IDP. In developing its sector plan, the consortium carried out consultation meetings in each of the 13 segments that the Mukuru SPA had been demarcated into. According to the HSC sector plan, a total of 10 community consultation and 3 community validation meetings were held bringing together a total of 966 community members.[167] Locally generated evidence gathered during the meetings was used to identify the health priorities in the settlements and to empower the communities to take appropriate action.

In effect, the consultations aimed at enabling the communities to prioritize their own needs which would then form the basis for the interventions outlined in the sector plan. The HSC has noted that the consultation processes provided the consortium with proposals on health infrastructure, financing, service delivery and behaviour change which were incorporated in the health sector plan.[168] In the table below, some of the findings generated by the HSC during its consultation meetings are outlined. These findings are encapsulated in the HSC sector plan which also outlines a raft of proposed interventions to the health challenges in Mukuru.

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[166] Muungano wa Wanavijiji, 'SPA Consultation Recap: Health Services Consortium Mukuru kwa Njenga Segment 2 (Wape Wape), 28.11.2018', available at https://www.muungano.net/spa-recaps/2018/11/28/health accessed 9th October 2019.
[167] SDI-Kenya et. al. *Mukuru Health Sector Plan*, 12, 78.
[168] Ibid 12.

Table 6: Summary of HSC Findings[169]

Settlement	Healthcare resources	Household level findings	Proposed interventions
Mukuru kwa Reuben	• 70 health facilities in Reuben. Include, chemists hospitals, herbal clinics, dispensaries and faith-based clinics. • 68 of the above are privately owned while 1 faith-based organisation and 1 NGO-owned. • 50 facilities do not have any form of registration and 20 are registered. • Only 5 facilities are NHIF compliant • 6 facilities lack sanitation facilities. • 10 facilities rely on illegal electric connections. • In cases of power outage candles are used within the facilities. • 119 CHWs • Health facilities are understaffed. • Access roads to Reuben Center clinic are poor.	• Diarrhoea, fever, headache, coughing and chest pains were the common diseases affecting the residents • Diseases mainly caused by environmental factors. • 43% of women in Mukuru are affected by HIV/AIDS and require a lot of care for their health. • Flooding leading to cholera.	• Improving and maintaining the available sanitation facilities • Treating drinking water. • Awareness on maintaining hygiene standards • Improving all community drainage systems. • Reverting land back to the community for the construction of health facilities. • Construction of health facilities in the area by the national and the county governments. • Construction of sewer line and proper disposal of waste. • Improving water piping systems to pass through channels that are safe.
Mukuru kwa Njenga	• 85 health facilities in the area. • Only 24 are registered. • 84 private, 1 faith-based organisation. • Most of the healthcare service providers are unqualified. • 145 CHWs • Health facilities are understaffed.	• Air pollution from nearby industries • Poor housing structures which lead to leaks into the house and dampness • Sleeping on cold floor • Congestion in the houses • Neighbours who smoke cigarettes • Hanging wet clothes inside the house. • Poor nutrition	• Community members to report unprofessional doctors • County government to put systems in place to ensure doctors perform their tasks • Community members to advocate for provision of specialised hospital equipment • County government to increase toilet facilities • Community members to identify unlicensed clinics and prompt action from county government

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[169] See Muungano wa Wanavijiji, 'SPA Recaps', available at https://www.muungano.net/spa-recaps accessed 17 October 2019. Also documents in file with author. See also SDI-Kenya et. al. *Mukuru Health Sector Plan* (Special Planning Area).

		• Improper handling of food by vendors • Contagious location where food vending occurs, near sewer lines and poor sanitation areas. • Unqualified health personnel leading to poor/negligent handling of patients • Lack of specialised hospital equipment • Poor maintenance/ insufficient toilets • Unlicensed clinics • Poor drainage • Poor sanitation in toilet facilities • Mushrooming of houses • Dirty drinking water • No health facilities in the area accept NHIF	• Construction of sewer lines • Community members to involve local NGOs in increasing awareness on sanitation matters • Community to involve NGOs in conducting sensitization • Community members to give space for construction of properly ventilated structures. • Community members to ensure that water pipes are raised above the ground and pass above households instead of underground. • Members to participate in clearance of drainage systems.
Viwandani	• 16 healthcare facilities • Inadequate medical facilities and medication • Congestion in hospitals • Discrimination by medical personnel • Inadequate emergency response services • 124 CHWs.	• Poor hygiene in homes and common facilities • Lack of sufficient quantities of treated water • Inadequate sanitation facilities • Congestion in homes • Poor personal hygiene and general cleanliness of the environment • Lack of balanced diet • Drug abuse • Poor personal hygiene and general; cleanliness of the environment • Inadequate and improper housing facilities • Lack of balanced diet due to inadequate finances and lack of knowledge • Insecurity • Domestic violence • Improperly ventilated housing structures	• Government to provide sufficient medicines • Community demonstrations to compel govt to provide hospitals with adequate staff • Government to inspect the health facilities and ensure fairness and equality • Household elders and community leaders to sensitize people on proper personal and general hygiene and proper handling of food • Members boiling and treating water before consumption • Building and structure owners to construct adequate and clean sanitation facilities • Members to ensure proper ventilation through opening windows and doors in their homes • Promotion of personal and general cleaning of the environment at the personal level • Government to provide adequate medical facilities and medication • Government to provide more medical care facilities

				• Community to adopt proper waste disposal measures
				• The government and community to collaborate in provision of properly planned housing facilities
				• Individuals to access balanced diet and to be educated on the importance of this.
				• Community and water suppliers to be educated on the importance of proper sanitation.
				• Building and structure owners to provide well ventilated housing units.
				• Cooking to be done outside housing units.
				• Households to properly treat water before consumption and properly dispose waste.

7.6 Towards improved health outcomes in the Mukuru SPA

Under its sector plan, the HSC has enumerated proposals to address some of the challenges that have been outlined above. It can be seen from the table above that some of the proposed interventions operate at a personal level while others require external actors like NCCG and other government agencies to implement. A number of these interventions such as the need to develop strategies to ensure universal health coverage (UHC) for the Mukuru residents are realisable in the long term. Some, like adopting proper waste disposal measures, can be realised immediately. It is this latter category that I will explore here.

To begin with, regarding the shortfalls in provision of healthcare facilities, the HSC identified sites within the settlements that were best suited for the construction of health facilities.[170] It designed appropriate models of health facilities that fit within the SPA's unique characteristics. Indeed, the HSC's proposal that a level 3 health facility should be constructed in each of the three settlements is currently being implemented by the NMS.[171] The NMS has constructed a facility in Rurie village

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[170] SDI-Kenya et. al. *Mukuru Health Sector Plan*, 51.
[171] Under the Health Act (No. 21 of 2017) a level3 health centre shall provide the following functions- Out-patient care; Limited emergency care; Maternity for normal deliveries; Laboratories, oral health and referral services; Preventative and promotive services; and In-patient observations. First schedule, s. 25.

in Kwa Reuben and one in Kwa Njenga.[172] It is also exploring plans to construct a hospital in Viwandani.[173] In constructing these new facilities in Mukuru, the state through the NMS takes an important step towards meeting its constitutional obligation to avail healthcare facilities.[174] This has a significant bearing on realisation of the right to the highest attainable standard of health for the inhabitants of Mukuru. The images below are from a facility that is currently being constructed in Kwa Reuben.

Fig 19: *Ongoing construction of level 3 health facility (Mukuru kwa Reuben, Rurie village) (Source: Author)*

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[172] Nairobi News, 'Uhuru Commissions Five New Hospitals in Nairobi', *Nairobi News* July 7, 2021 available at https://nairobinews.nation.co.ke/news/uhuru-commissions-five-new-hospitals-in-nairobi accessed July 21, 2021.
[173] See Kimatu, S. 'Dozens to be Relocated in Mukuru to Pave Way for New Hospital', *Nation* February 5, 2021 available at https://nation.africa/kenya/counties/nairobi/dozens-to-be-relocated-in-mukuru-to-pave-way-for-new-hospital--3279760 accessed March 10, 2021. See also Cheruiyot, K. 'Uhuru Commissions Sh210 Million NMS Slum Hospital Project', *The Star* August 10, 2020. Available at https://www.the-star.co.ke/news/2020-08-10-uhuru-commissions-sh210-million-nms-slum-hospital-project/?utm_term=Autofeed&utm_medium=Social&utm_source=Twitter#Echobox=1597084886 accessed March 21, 2021. See also https://www.youtube.com/watch?v=ANTUqKsIbWU&ab_channel=KenyaYaendelea.
[174] This is a duty bestowed under Article 43 (1)(a) but also under the ICESCR to which Kenya is a signatory.

The sector plan also envisions that improving the road networks in the settlements will enable optimal use of health facilities within the settlements and those that neighbour Mukuru.[175] It can then be estimated that the ongoing road and related infrastructural works in Mukuru, which are the direct outcome of the SPA process, can facilitate the attainment of this goal. These kinds of infrastructure have an important bearing on health inequities and outcomes. Indeed, as indicated by a CHW interviewed for this study, poor roads in the settlements inhibit effective response to medical emergencies. The state is under Kenyan law mandated with ensuring accessibility to health facilities, goods and services particularly for the most vulnerable or marginalised sections of the population.

In *MAO & another v Attorney General & 4 others*, the High Court held that the state has a duty to guarantee accessibility to health facilities by among others ensuring that they are physically accessible.[176] With improved roads in Mukuru, it becomes easier for an ambulance to access patients and transport them to facilities within the settlements or to refer them to a facility like Mama Lucy Hospital, which is the nearest referral hospital from Mukuru. By improving the roads in the settlements, the state takes a crucial step towards meeting its legal obligations and this brings the inhabitants closer to the goal of realising improved health outcomes. It explains why the WHO views addressing of such social determinants of health as fundamental for improving health and reducing longstanding inequities in health.[177]

Closely connected to this are the ongoing sanitation works that are currently being implemented in Mukuru. As indicated in table 6, the inhabitants of the SPA identified improved drainage, improved toilets and improved drinking water as some of their health priorities. Through their participation in the SPA, they have been able to formulate interventions to remedy the shortfalls in these areas and to meet their sanitation needs. Proposals on the identified sanitation challenges are currently being implemented in Mukuru. The NMS has constructed boreholes in the three

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[175] SDI-Kenya et. al. *Mukuru Health Sector Plan*, 57.
[176] Petition No. 562 of 2012, para. 138.
[177] World Health Organisation, 'Social Determinants of Health', available at https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1 accessed March 29, 2021.

settlements from which the inhabitants are now able to access water 'at no cost'.[178] Inhabitants can now channel the resources that they could have used to purchase water towards other needs like the purchase of food. Additionally, drainage and sewer works have been undertaken by the NMS to connect Mukuru to the city's sewer lines. It is anticipated that the inhabitants through the structure owners, will connect their premises to the established sewer network to facilitate the evacuation of any waste and hazards that may endanger health in the settlements. In the figures below, we can see how the SPA envisions realisation of the inhabitants' sanitation goals and how those proposals are currently being implemented in Mukuru.
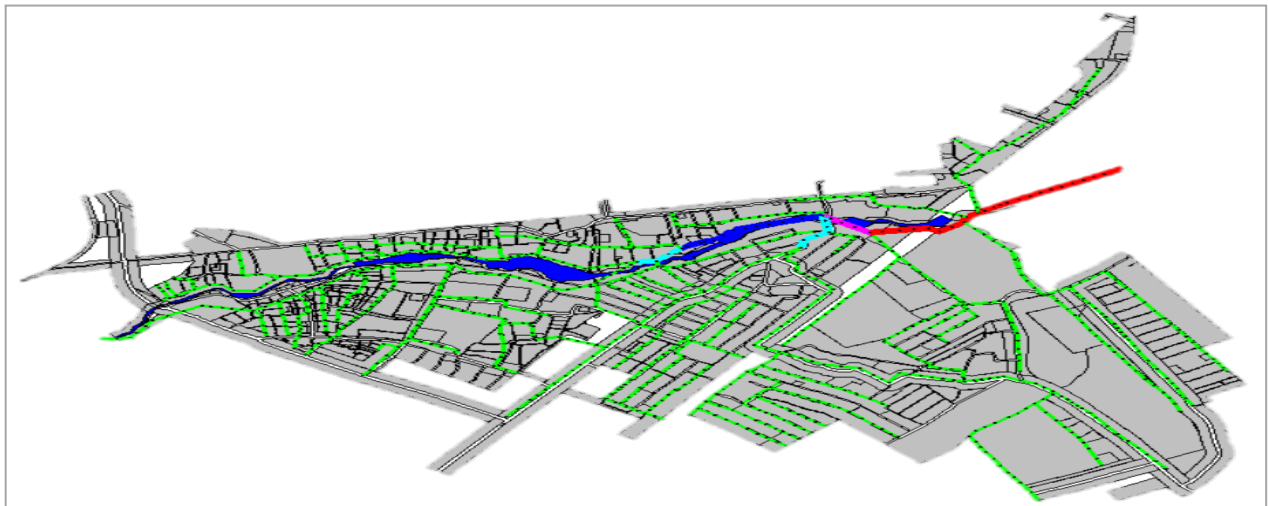
Fig 20: *Proposed sewer network in the Mukuru SPA* (Source: Mukuru SPA Water, Sanitation and Energy Consortium Sector Plan)

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[178] Kinyanjui, M. 'How Free Borehole Water has Relieved Slum Dwellers', *The Star* February 21, 2021. Available at https://www.the-star.co.ke/counties/nairobi/2021-02-21-how-free-borehole-water-has-relieved-slum-dwellers/ accessed March 21, 2021.

Fig 21: *An elevated water tank at a borehole drilled with the onset of the COVID-19 pandemic, a sewer line is also being constructed in the foreground* (Source: Author)

CHWs have in the sector plan been identified as a key health resource in Mukuru. The sector plan observes that CHWs are an underutilised resource and that there are currently no measures to track their distribution in Mukuru.[179] It further notes that CHWs have a positive impact on the health outcomes of the inhabitants of informal settlements. The sector plan has thus recommended the implementation of electronic tracking of CHWs to enable identification of underserved areas.[180] It then recommends that NCCG develops appropriate training models for the CHWs and that it also develops a compensation framework for the CHWs. As noted in this chapter, the Covid-19 pandemic saw increased engagement of CHWs who played an important role in disseminating public health knowledge. Muungano wa Wanavijiji, one of the HSC members, presented evidence on the shortfalls in access to CHWs in informal settlements before the Kenya COVID-19 Taskforce. This has seen the Ministry of Health recruiting more CHWs to serve informal settlements.[181] The HSC has also engaged CHWs to educate the inhabitants on the practical opportunities for healthy behaviours.[182] Already, this has had a significant bearing on certain

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[179] SDI-Kenya et. al. *Mukuru Health Sector Plan*, 64.

[180] Ibid.

[181] Muungano wa Wanavijiji, 'The Power of Data in a Pandemic: Repurposing Muungano's data-collection Expertise to Fight Covid-19 in Kenya', available at https://www.muungano.net/browseblogs/2020/9/24/the-power-of-data-in-a-pandemic-repurposing-muunganos-data-collection-expertise-to-fight-covid-19-in-kenya accessed March 20, 2021.

[182] Key Informant interview with a member of the HSC on October 9, 2020.

public health concerns like cholera whose cases have dropped.[183] This together with the other examples that have been outlined above shows how locally developed strategies and coproduced interventions can contribute to the realisation of better health outcomes for the inhabitants of Mukuru.

7.7 Conclusion

This chapter has studied the approaches adopted by the HSC of the Mukuru SPA in order to assess their potential for advancing realisation of improved health outcomes for the SPA inhabitants. The chapter challenges the common mischaracterisation of impoverished communities as passive actors requiring the intervention of external experts to identify and frame their local issues. On the contrary, we are able to see through the evidence documented herein that there exists among these communities concrete data explicating their conditions and individuals that are able to explain local phenomena and co-produce interventions with external experts. Through the platforms employed by the HSC, the inhabitants have been able to examine and explain their local conditions and design interventions to the identified challenges. The participatory processes have enabled them to put their health situation under a magnifying glass like never before. It is through these processes that the inhabitants were able to identify health as a key area in need of planning interventions. Participation was oriented at co-producing interventions to the identified health challenges with the ultimate goal of creating conditions for realisation of valued health outcomes.

The SPA process has equipped the inhabitants with skills that have enabled them to negotiate with the state for provision of critical health resources. It affirmed their right to the city and to access resources that would facilitate their wellbeing as urban citizens. By identifying the priority health areas, the inhabitants were able to guide the state in prioritizing resources towards addressing the identified challenges. Hence, interventions have now been introduced in Mukuru to address the needs identified by the HSC together with the Mukuru community. Ongoing interventions have focussed on provision of missing healthcare infrastructure, expanding access to basic services such as sanitation, water, and expansion of related infrastructure like roads. By providing these critical resources, the state takes a step towards meeting its constitutional duty. It also presents the inhabitants with practical opportunities to improve their health outcomes. The interventions have

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[183] Key informant interview with a CHW at Mukuru kwa Reuben on October 13, 2020.

also been oriented at influencing behaviour change among the inhabitants and this is a role that has been played by CHWs whose integral roles in the SPA have been documented here.

In the SPA, participation plays a dual role of enabling the expansion of health capabilities while also facilitating conversion of capabilities into achieved outcomes. Regarding the former, we for instance see that it is through participation in the SPA that the inhabitants are able to demand for the establishment of some critical infrastructure like healthcare facilities, sewer lines, drainage and boreholes to supply water. Presence of these facilities means that the inhabitants can utilize them and potentially improve their health. However, this does not mean that the resources are now available in sufficient quantities. On the contrary, there are still glaring shortfalls in provision of basic services and healthcare resources. The fact that NCCG is yet to construct a county hospital in Viwandani as proposed in the sector plan means that a population of around 150,000 people remain underserved by the existing health facilities. Additionally, as highlighted in chapter six, some of the boreholes that have been drilled are not always functional leaving the inhabitants reliant on informal water providers. There is also much that needs to be done to ensure that water is reticulated to the household level instead of requiring the inhabitants to obtain it in jerry cans from a centralised place.

However, the establishment of the resources that are outlined above is a crucial step towards realisation of improved health outcomes. The importance of this should not be underestimated given the history of social exclusion and non-provision of basic services in Mukuru. Indeed, participation in Mukuru has already resulted in realisation of certain outcomes by the inhabitants. The drop in cholera cases in Mukuru could perhaps be the direct result of the public health campaigns that have been rolled out by CHWs. Most of the respondents that were interviewed for this study readily attributed the better hygiene practices that they had adopted to their participation in the SPA and the sensitization initiatives that were conducted by CHWs. By participating in the SPA, individuals were able to understand their situation and increase their control over factors that affect their lives. This ultimately contributes to their wellbeing. It demonstrates the nexus between individuals' exercise of agency and their ability to realise improved health outcomes. Ultimately, through their participation in the SPA, the inhabitants of Mukuru are individually and collectively presented with a path towards realisation of better health outcomes.

8   Conclusion

This thesis set out to examine how public participation has been structured and employed in the Mukuru SPA. It also sought to assess whether participation in the SPA can enable the realization of improved health outcomes by the inhabitants of Mukuru. It mobilized a body of theories in understanding how marginality in Mukuru has been produced and in understanding how the SPA provides a useful context for reclaiming urban citizenship by the inhabitants. It then proceeded to examine how participation has been framed in the SPA, how it is actually employed and the extent to which the SPA is an effective tool for engendering participatory urban planning and improving health outcomes in Mukuru. In this concluding chapter, I reflect on some of the themes that have emerged from this study and locate this study's place in the wider scholarship on the urban condition in Africa.

This work assessed the ways in which land tenure insecurity fosters exclusionary spatial planning in Nairobi; the effectiveness of the SPA in engendering participatory urban planning; and whether the process has been properly structured to enable realization of improved health outcomes by the inhabitants of Mukuru. I traced the history of urban planning in Nairobi and illuminated on the exclusionary logics that have informed planning in the city. Reckoning with the historical contexts in which the marginality in Mukuru have been produced facilitated an understanding of the contemporary manifestations of inequalities in the settlements. This eventually led to an assessment of the SPA as an attempt by excluded urban inhabitants to redefine urban citizenship which has historically acted as a gatekeeping tool in urban planning. It ultimately assessed the transformative potential that the SPA's approaches to public participation have, particularly with reference to health outcomes.

I argued that participation by the inhabitants of Mukuru in the SPA process signals the recognition of their voices and perspectives in the creation of the city. By participating in the SPA, the inhabitants open spaces for urban citizenship which they have hitherto been denied. It is through participatory processes like the one that the SPA undertakes that inhabitants shift from invisibility to visibility. This is partly attained when previously inaccessible resources are availed for them.[1]

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[1] See Mitlin, D. 'Beyond Contention: Urban Social Movements and their Multiple Approaches to Secure Transformation', 569.

The SPA's engendering of public participation as a key guiding principle enabled it to produce an ecology in which previously excluded groups attempt to redesign and reconstruct urban citizenship in a more equitable form. It enabled their entry into official domains of participation from where they can undo an entrenched regime of discriminatory spatial governance, selective planning, and unequal citizenship. It also provided them with practical opportunities to improve their health outcomes. It could also be argued that the ongoing infrastructural developments in the SPA have acted to strengthen the inhabitants' de facto tenure as it affirms the legitimacy of their occupation of space within the settlements.

However, the transformative potential that the SPA process has is threatened by some internal contradictions which arise from the way the process was configured and subsequently implemented. These contradictions shall be recapped below. As discussed in this work, social identity or membership does not automatically guarantee access to rights especially where a weak identity has been constructed.[2] Citizenship claims in Mukuru have for a long time been negotiated and deployed within a framework where access to rights in the city is pegged on ownership of land or some other form of legally recognized occupation. The inhabitants of Mukuru are considered by the state as unlawful occupants of the land which renders them powerless against the grantees who have legal title to the land, notwithstanding the defectiveness of some of these titles. What this means is that even though the inhabitants may have formal citizenship, they are still bound to suffer the inequities entrenched by a formal citizenship that is inegalitarian in orientation.[3] When looked at through the lens proposed by Marshall and Lefebvre, 'full' or 'substantive' citizenship seems to be a status whose attainment remains elusive for most of the inhabitants.

The SPA's sidestepping of the land question is a failure on its part to interrogate the material power relations that constrain the inhabitants' capacity to participate. This leads to the production of an abstract right of participation in which the inhabitants' influence on the processes remains limited. Its deflection of the land question has made meaningful participation to be elusive for the inhabitants as the power relations in Mukuru remain largely unaltered by the inegalitarian conditions that the SPA preserves. For as long as the inhabitants continue to experience tenure

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[2] Lund, C., 'Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa', 74.

[3] Holston, J., *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil* (Princeton University Press, 2008) 7.

insecurity, their participation will be limited, and they will be unable to exert much influence on spatial governance processes.

We should note that the SPA process did not have land tenure reform as its precursor but instead pursued tenure reforms concurrently with other processes aimed at developing the Mukuru IDP. Delays in addressing land concerns denotes a fundamental flaw in the SPA and works against the radical social change that the SPA could have achieved. Until now, the land problems in Mukuru have not been unlocked and title remains with the grantees who continue to benefit from their speculative holding of the land. Even the NMS has been unable to evade the obstacles presented by unaddressed land tenure questions in its attempts at implementing some of the SPA proposals. Some of the grantees have threatened legal action against it based on the latter's demolition of certain properties in Kwa Reuben to pave way for the construction of the R7 Wape Wape access road.[4] We can then see here how deferring solutions to the land question in Mukuru presents a handicap to the successful implementation of the SPA proposals. Here, we also see how articulation of the right to the city by the marginalized will always 'butt heads against the much more entrenched legal principle of private property',[5] especially where there are competing claims to land.

Failure to tackle the land question as a precursor to the other SPA processes also means that a weak form of citizenship is incubated from the SPA process.[6] A weak form of citizenship will be unhelpful in the quest to realize targeted socio-economic rights such as the right to health. Indeed, for feminist theorists like Iris Young, inequality and exclusion are best addressed when we engage with both the politics of recognition as well as the politics of redistribution.[7] For Mukuru, 'full citizenship' rights will therefore be realized where inhabitants' claims are pegged on the existence

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[4] Key Informant interview with a member of the CCOCC on October 6, 2020. See also
https://www.youtube.com/watch?v=cCZkqoLycRQ&ab_channel=KBCChannel1
[5] Bhatia, G. 'The Delhi High Court on Forced Evictions, Adequate Housing, and a "Right to the City" available at
https://indconlawphil.wordpress.com/2019/03/21/the-delhi-high-court-on-forced-evictions-adequate-housing-and-a-right-to-the-city/ accessed August 12, 2021.
[6] A key informant that was interviewed for this study argued that the exigencies of the situation in Mukuru could not allow for the adoption of the approach proposed in this chapter, that is, dealing with land tenure questions first. According to her, the urgencies occasioned by the constant disease outbreaks, inadequate housing and other social amenities prompted the adoption of the approach taken by the SPA. She argued that adopting a different approach would mean postponing solutions to the immediate challenges that plagued Mukuru. Key Informant interview with a member of the CCOCC on October 6, 2020.
[7] Young, I.M. *Justice and the Politics of Difference* (Princeton University press, 1990).

of some material outcomes from where they can propel their claims to other rights. What this means is that certain fundamental decisions on redistribution must first be made to enable realization of 'full citizenship' which is a precondition to meaningful participation.[8] For the SPA, it would be difficult to attain sustainable outcomes without a coherent approach to tackling the land question. Proposals on how this can be approached have already been made and what remains is the adoption of decisive measures to implement them by NCCG.[9]

This study in chapters five and six documented how public participation is envisioned and effected in the SPA process. As I argued in chapter four, the SPA enables the entry of previously excluded groups into domains of participation from where they can undo an entrenched regime of discriminatory spatial governance, selective planning, and unequal citizenship. In this regard, the SPA has been understood herein as a political project with one of its ends being the reorientation of power relations in the city and redefinition of the conditions of urban citizenship. I underscored how community action now largely gravitates towards pragmatic alternatives which enable expeditious delivery of socio-economic entitlements. The inhabitants deploy transgressive strategies as complementary alternatives to legal and democratic strategies in their quests to address their needs. In certain cases, legal approaches are decentered, and transgressive strategies employed instead whenever the inhabitants seek the immediate elimination of conditions of precarity.

I have also illustrated how the inhabitants resort to the law whenever it becomes appropriate as they recognize that transgressive acts do not represent unimpeachable avenues for effecting social change. For this group, the law will sometimes be used to advance their transgressive claims. They have located some of these claims in positive law and occasionally presented them before courts for adjudication. The limitations posed by legal strategies in undoing an inegalitarian order have already been highlighted. Using tools like litigation has sometimes left litigants worse off than before they approached the courts. The publicity that accompanies strategies like litigation can

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[8] Foweraker, J. and Landman, T., *Citizenship Rights and Social Movements: A Comparative and Statistical Analysis* 15.
[9] See Ouma, S. *et al*. 'Exploring Options for Leaseholds in the Mukuru Special Planning Area', Paper Presented at the "2019 World Bank Conference on Land and Poverty", The World Bank- Washington D.C. March 27, 2019.

also end up undoing the continued practice of subversive acts.[10] It is why this work has called for a strategic use of both transgressive and legal strategies by groups and communities.

In chapter six, I discussed how the inhabitants collaborated with external experts in the eight consortia in developing the various sector plans. Participation in the SPA was effected through the platforms that were adopted by the consortia which meant that the inhabitants were consulted at the household, cell, subcluster and segment levels. Additionally, the SPA consortia engaged with the inhabitants on platforms like the saving groups that already existed in the settlements. This is one of the innovative approaches adopted for participation with the goal of ensuring that as many people as possible were reached. The risks of exclusion that this platform for participation presents have been highlighted. I also detailed the role played by organisations like Muungano in disseminating information on the SPA and mobilizing the community to participate in the various activities. The discussions also elaborated on how participation was organized on both vertical and horizontal platforms and how this signified a recognition by the SPA of local or decentralised platforms for participation.

The internal contradictions that are inherent in the SPA process and which could potentially negate its transformative vision have also been discussed. To begin with, it is evident from the discussions in this work that NCCG abdicated its legal duty to facilitate public participation in the SPA. It instead relinquished this duty to the SPA consortia that now had to finance the processes, mobilize the community to participate and convene the public participation sessions. This foreclosed any opportunities that the inhabitants would have had to hold NCCG accountable and to demand action from it. It also hindered the consortia's ability to mobilize the community for participation. The consortia's ability to reach more people in the settlements was potentially curtailed which is detrimental to the SPA's empowerment objectives.

Clearly, NCCG's abdication of its constitutional duties created the necessary conditions for the usurpation of its mandate by the national government. Through NMS, the national government has taken over certain powers that are legally reserved for NCCG. NMS's intrusion in the SPA process has already transformed the process from the radical political project that the inhabitants envisioned to a technical necessity. Under this scheme, the SPA's underlying political questions

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[10] Mitlin, D. 'Beyond Contention: Urban Social Movements and their Multiple Approaches to Secure Transformation', 567.

are systematically evaded. NMS continues to sidestep the established structures of deliberation within the settlement. It instead substitutes decision-making for the inhabitants who are already aggrieved by how it is implementing some of the projects in Mukuru. With its establishment, we can already see the shifting levels of the inhabitants' participation in SPA-related activities. This decline can be attributed to NMS' antidemocratic attitudes.

Drawing on Ferguson's study of development in Lesotho, I have argued that the NMS is an 'anti-politics machine'[11] which acts to evacuate the history of power relations in Mukuru from the SPA and to depoliticize the process. The anti-dialogical attitudes that have been enacted by the NMS in Mukuru unmasks it as an undemocratic institution which reintroduces undemocratic spatial governance. Its establishment signals the expansion of bureaucratic state power into spaces where power should in reality be devolved. It has been repeated in this work that the SPA process was conceived as a project with the political goal of reorienting power relations in the city and redefining the conditions of urban citizenship. This political project is now threatened by NMS's managerialist approach in which it employs technical fixes. These act to displace political and structural causes of marginality from Mukuru and in other areas of the city where it operates. We can see this for instance in its implementation of projects in Mukuru where social amenities are established without challenging the underlying drivers of marginality.

The Mukuru inhabitants have been transformed into mere consumers of the outcomes from the SPA processes rather than active agents in the making and implementation of these interventions. We have already seen how approaching interventions in Mukuru from this 'apolitical' orientation that the NMS pursues has already invited numerous grievances from the community and even threats of legal action by some of the grantees. Its outcome has been the abandonment of the political project that could have been delivered by the full involvement of the inhabitants in the processes. Consequently, the two key drivers of marginality in Mukuru, that is insecure land tenure and exclusionary spatial governance, are still maintained. With this, the task of democratizing spatial governance remains a challenge.

Some of the SPA consortia have been coopted by the NMS and have adopted practices that are inimical to the community's concerns. For instance, failure to involve the community in the

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[11] Ferguson, J. *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho,* 66.

implementation of the infrastructural projects currently being established in the settlements reaffirms the status quo in which communities are alienated from development processes. Such failure signals the abandonment of the radical rhetoric on participation and inclusive spatial governance which these organisations often claim to stand for. I contend that in acquiescing to the approaches that are employed by NMS, the consortia brought the SPA inhabitants into a structure that is designed to exclude.

On their part, the organisations that have collaborated with the NMS have argued that the latter is providing the much-needed basic services to the SPA inhabitants and termed their collaboration with NMS as pragmatic and grounded on lived realities within the contexts that these social movements operate.[12] To them, any practical solutions to the identified challenges and needs are welcome regardless of the manner that they are implemented. This reflects some of the approaches which the social movements involved in the SPA often take when dealing with government agencies. In order to advance the interests of the poor, some of these movements will avoid conflicts with government agencies or wading into contentious politics.[13] While these compromised bear the potential of averting conflicts between the various actors, they can also act to displace politics from processes that are inherently political. This can especially arise in the absence of adequate safeguards that guarantee the participation of beneficiary communities that may lack institutionalized power. The ramifications of these kinds of political compromises on spatial processes and outcomes must then be investigated as a matter of urgency. Such an inquiry would potentially look at the influence of compromises between NCCG, NMS and social movements like Muungano on the development trajectories in Nairobi and on patterns of inclusion and exclusion in development processes.

Notwithstanding the highlighted shortcomings, the SPA still has the potential of transforming health outcomes in Mukuru. The study has documented how, through the SPA, the inhabitants of Mukuru collaborated with external experts to identify, analyze and formulate interventions for the health challenges in the settlements. The SPA inhabitants have been presented in this work as local experts whose experiential knowledge feeds into the SPA planning processes. I employed Sen's

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[12] Key informant interview with member of a social movement on October 2, 2020.

[13] Mitlin, D. and Patel, S. 'The Urban Poor and Strategies for a Pro-poor Politics', 305. Muungano for instance continues to collaborate with the NMS. Katiba Institute, which is a civil society organization, has on the other hand refused to be involved in any projects that has NMS as a partner.

capability approach in arguing that public participation as employed by the SPA provides opportunities for expansion of health capabilities and realization of improved health outcomes for the SPA inhabitants. Illustrations on how such opportunities are presented to the inhabitants have been provided. I have for instance argued that involving the inhabitants in settlement enumeration enables them to gather concrete data explicating their local conditions. They then presented the evidence to the relevant governmental and other agencies so that interventions to these challenges are effected.

The study has also shown how the process presents the inhabitants with platforms to transmit local knowledge in identifying drivers of poor health outcomes and in co-producing interventions to these challenges. We have seen how the community draws on its local health resources such as CHWs whose expertise feeds into the SPA. The SPA provided the inhabitants with opportunities to co-design interventions to the identified health challenges. It equipped them with skills that have enabled them to negotiate with the state for the provision of critical health resources like health facilities which have now been constructed in two of the three settlements. By providing these critical resources, the state affirms the legitimacy of the inhabitants' claims to the right to the city and presents them with practical opportunities to improve their health outcomes. For the inhabitants of Mukuru, participation in the SPA has confirmed their place in the city and placed their realisation of improved health outcomes in the horizon of possibilities. However, a more extensive outcome evaluation assessment would be appropriate upon the ultimate completion of the SPA processes. Such an assessment must be guided by a properly devised evaluation framework(s). It would ideally commence with an evaluation of the nature of the implementation of the SPA proposals before proceeding to measure the outcomes that it generates.

I end with a reminder on the messy realities which underlie the Mukuru topography, and which continue to produce marginality in the settlements despite the interventions that the SPA has initiated. Mukuru still remains a marginalised urban enclave where existing basic services are underprovided creating room for unfavourable arrangements that the inhabitants are bounded to enable their access to basic services. Its inhabitants remain powerless against the state and the land grantees. This creates conditions for their poverty and marginalisation. As such we must refrain from fetishizing the transformative potentials of the SPA process. We can now assess the nature

of its implementation and reflect on its transformative potential. We can conclude that the SPA process, particularly its implementation phase, has not fully realised its empowerment goals.

The ordinary inhabitant of the settlements remains largely unaware of the SPA process and what it means for them. When navigating their local realities, these inhabitants will still draw on their familiar tools such as unauthorised occupations and use of vacant land and establishing utility connections where none exist. They will use these tools to proclaim and expand their spatial claims and to confront inegalitarian systems.[14] The multidimensional strategies for tackling local challenges which have been outlined in this work form an important asset in the hands of the Mukuru community. The inhabitants can always use these in place of slow-paced mechanisms which valorise realisation of material outcomes through formal engagements with the state within closed spaces. We must then exercise caution in tying marginalised groups' claims to bureaucratic institutions like the NMS and the closed spaces that it introduces. We should instead safeguard the myriad strategies and tools that are within the communities' reach from integration or cooptation into such closed spaces.[15] Failure to do so will limit the range of options that are available to the communities. It might also deradicalise and depoliticise their inherently political claims.

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[14] See also Kimari, W. ''Nai-rob-me' 'Nai-beg-me' 'Nai-shanty' Historicizing Space-Subjectivity Connections in Nairobi From its Ruins', 143.

[15] Samara, T.S. *et al.* 'Locating Right to the City in the Global South', 16.

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Appendices

Appendix 1: Information and Consent Form

Information Sheet

![Cardiff University logo]

TITLE OF RESEARCH:	**Inclusive Urban Planning for Improved Health Outcomes in Informal Settlements**
RESEARCHER:	**Smith Ouma**
CONTACT DETAILS:	Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email Address: oumaso@cardiff.ac.uk

Who is doing the research?

Smith Ouma, PhD researcher from Cardiff Law in the United Kingdom is carrying out the research.

What is the purpose of the research?

This research will be of use to me when writing my PhD thesis which principally examines participation in Mukuru. Thus, the aim of this research will be to feed into the gaps that my literature review has established. Second, and most importantly, this research is aimed at addressing the two research questions that my study explores, that is: To what extent is the SPA an effective tool in engendering participatory urban planning? And, has the SPA process been properly structured to enable the realization of the right to health by the inhabitants of Mukuru?

Effectively, the study will provide incisive insights into the manner in which public participation has been structured in the SPA and the inhabitants' perception of the process. This will enable an understanding as to whether there now is a perception of inclusion in spatial governance processes among the inhabitants and how this influences how they interact with the spaces that they inhabit. It will also provide an understanding of whether the inhabitants are now equipped with the relevant skills to enable them identify and deal with the drivers of health inequities within the spaces that they occupy.

Who is being invited to participate?

Interviews will primarily be conducted with the inhabitants of the Mukuru SPA. Additionally, the study will interview certain experts and civil society organisations that have played a role in the SPA planning processes. I will also conduct interviews with certain key respondents within the informal settlements. The organisations identified at this point include: Slum Dwellers International, Akiba Mashinani Trust, Katiba Institute, Hakijamii and, Nairobi City County Government.

What is the type of information gathered during interviews?

The information collected during the interviews will include both written and recorded data collected from the research participants during the interviews. The nature of this information will be guided by the questions referred to in the research instruments that will guide the interviews and the discussions. Other information which may be collected from observations made by the interviewer will also be recorded.

What happens if I wish to withdraw?

Should you wish to withdraw from the interview, the interview will stop immediately. I will record that fact, communicate it to you, and abide by your wish. I will ask if you wish to have any of the information shared (prior to withdrawal) used, or completely deleted. Any notes taken will therefore be deleted or used in accordance with your wish. If information given before withdrawal is allowed by you to be used, it will be completely anonymised. Should you decide to withdraw before the interview, I shall abide by your wish and not mention any information that refers to you. Should you want to withdraw after the interview, then I will record that fact and communicate it to you and ask of you the following: whether the information given by you should be completely deleted or used with anonymity. I shall abide by your wish. Should I wish to withdraw my data from the project, I will notify the researcher as soon as possible and in any case within one (2) months from the date of the interview.

Confidentiality and privacy: what will happen to my data?

Your data will be recorded in written form on a computer. It will be stored on a registered Cardiff University computer that will be password controlled and will be used for research purposes only. You will only be identified in the research if you give consent for this to happen. Data will be stored in accordance with the General Data Protection Regulation in force in the United Kingdom. Where permission is given, data will be respectively non-anonymized or pseudo-anonymized. Where permission for this specifically is not given it will be fully anonymized. Data collection will be conducted in accordance with applicable Kenyan statute and Constitutional provisions on confidentiality, consent and privacy. It will be stored in accordance with the General Data Protection Regulation in force in the United Kingdom. Where a pseudonym is used to conceal your identity, it could still lead to revealing your identity if the pseudonym accompanies your designation/organisational affiliation or when combined with other data. Someone may be able to piece information together from the research which may lead to your identification. This is called the risk of jigsaw identification. I will try and mitigate the risk of your identification until it is remote. Anonymity through the use of pseudonyms therefore, will not be confined to concealing only your name but shall extend to the avoidance of any materials liable to lead to your identification. Your personal details and information will not be placed in the public domain. When reference is made to your interview, it will be cited in the document as, for example, 'Interview 1' and in the appendix the reference to the interview will only mention your designation that we will agree upon. For example, such reference will indicate 'Community organiser', 'Youth leader', 'County Government Officer', or 'Nairobi-based NGO representative'. Such referencing will minimise the possibility of your identity from being disclosed. Your interview transcript will not be shared publicly, and it will not contain any reference to your name or such

designation that will lead to your identification. Further no mention will be made to interviewees of who the other research participants are.

Additional Contact Information	
Researcher's Supervisor	Professor Ambreena Manji Room 2.20 Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email: manjia1@cardiff.ac.uk
Cardiff School of Law and Politics Research Ethics Committee (SREC)	This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 03/07/2020 (Internal Reference: SREC/200520/04). The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at: School Research Officer Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email: LAWPL-Research@cardiff.ac.uk

Consent form

TITLE OF RESEARCH:	**Inclusive Urban Planning for Improved Health Outcomes in Informal Settlements**
RESEARCHER:	**Smith Ouma**
CONTACT DETAILS:	Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email Address: oumaso@cardiff.ac.uk

Research Overview

This research aims at understanding the potential for the realization of the right to health through urban planning processes that engage the inhabitants of informal settlements in participatory processes. In essence, I am investigating whether the Mukuru SPA process has any potential of improving the health of the inhabitants of the settlements. The study entails an assessment of the public participation models adopted for the Mukuru Special Planning Area (SPA) which are aimed at including previously excluded groups in planning processes. It aims at mainstreaming health discourses in urban theory debates while calling for the elevating of the roles of beneficiaries of planning processes. Ultimately, the project seeks to underscore how public participation as structured in the Mukuru SPA is an embodiment of the right to the city and the potentially of this entrenchment in expanding the ability of the inhabitants of the SPA to identify the key drivers of health inequity and collectively develop requisite interventions.

Involvement in Research

The information and insights you share will be recorded in this research. If you agree, interviews will be recorded via a digital recording devise or in written form on a computer. Data will be stored on a registered Cardiff University computer that will be password controlled, and will be used for research purposes only. You will only be identified in the research if you give consent for this to happen. Information shared will be analysed by the researcher and discussed in his PhD thesis and at academic conferences.

The researcher intends to present and publish the results from this research at academic conferences and in academic journals.

Interview Consent Form

I understand that my participation in this project will involve an interview about public participation in the Mukuru SPA.

I understand that my participation in this study is entirely voluntary and that I can withdraw from the study before, during or after the interview, without giving a reason. I understand that should I wish to withdraw I will notify the researcher as soon as possible and in any case within two months of the date of the interview.

I understand that upon my withdrawal of consent, the researcher will destroy any information that I will have already provided and not use the information in any study.

I understand that I am free to ask any questions at any time. If for any reason I experience discomfort during participation in this project, I am free to withdraw.

I understand that the information I provide will be held anonymously such that only the interviewer can trace this information back to me individually. The data will be stored in accordance with the UK Data Protection Act (2018).

Please indicate whether you agree with the following statements, please initial box:

	Initials
I have read and understood all the information provided and have received adequate time to consider all the documentation.	
I have been given adequate opportunity to ask questions about the research.	

I am aware of, and consent to the written and/or digital recording of my discussion with the researcher.	
I consent to the information and opinions I provide being used in the research.	
I agree to be identified as a research participant. My name and organisational affiliation will be listed in the thesis.	
I wish to remain anonymous.	

Interviewee Declaration

I consent to participate in the study conducted by Smith Ouma, Cardiff School of Law and Politics.

Signature:

Print Name: …………………………………………….   Date: …………………….

Additional Contact Information	
Researcher's Supervisor	Professor Ambreena Manji Cardiff School of Law and Politics Cardiff University.
Cardiff School of Law and Politics Research Ethics Committee (SREC)	This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 03/07/2020 (Internal Reference: SREC/200520/04). The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at: School Research Officer Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email: LAWPL-Research@cardiff.ac.uk

Appendix 2: Interview guides

Guide for inhabitants

Inclusive Urban Planning for Improved Health Outcomes in informal Settlements

Date	
Location	
Village	
Name of Interviewer	Smith Ouma

Part A: Bio-data
- Name of respondent: (optional)
- Do you hold any representative office in Mukuru. **Y**. [ ]   **N**. [ ]

Part B: Household Information
- How long have you lived in the area?
- What is the number in your household?
- Do you own or rent your house? **Own** [ ]   **Rent** [ ]   **Other** [ ] Please explain
- For what purpose do you use the land/premises for?

Part C: Land and Access to Basic Services
- Have you witnessed/ experienced any incidences of evictions in the past 2 years? **Y** [ ]   **N** [ ]?
- Does your household have access to water? If yes, please explain how you get access
- Are you aware of any existing healthcare facilities within your area? If yes, could you name the facility? Is it public or private? How far is it from your home?
- Please outline the health challenges affecting your household and the drivers of the identified challenges

Health challenge	Driver(s)

Part D: Participation in Planning
- Are you aware of any physical planning initiatives that have been undertaken in your area? If yes, please outline them
- Have you participated in any of these initiatives? Please explain
- Do you feel that you are properly equipped to participate in these processes? Please explain
- Are there any barriers to your participation in these processes? Please explain

Part E: Resident's Perceptions on SPA Participation Framework
- Are you aware of the Mukuru SPA Declaration?
- How did you become aware of this?
- How easy was it for you know of the process?
- Has there been adequate sensitization on what the Declaration entails? Please explain
- Were you sensitized on participating in the SPA processes? If yes, please explain
- Who undertook this initiative?

- Were you informed on when and where public participation would be held? If yes, please explain how and by whom?
- What was the nature of your participation in the SPA processes?
- Were you given a chance to express your views? f yes, please explain how?
- Were your views recorded?
- Were you given an opportunity to review the deliberations at the end of each session? If yes, please explain how this was done
- Were you informed of the next processes after each participatory sessions? If yes, please explain how this was done
- Are there things that you would have wished to be discussed which were not discussed? Please explain
- Were you given a monetary token for your participation (**optional**)?
- On a scale of 1-8 (**1-Bad**, **8- Excellent**) how would you rate participation in the SPA? Please explain
- Do you think the SPA will tackle the health challenges that you have identified? Please explain
- Are there any changes (**Emphasis on health related**) that you think can be implemented by the inhabitants?
- Has participating in the SPA equipped you with skills to tackle any of the health challenges identified? Please explain
- Has participating in the SPA informed any behavioral changes (**eg. healthy practices**) on your part? Please explain
- What changes/improvements would you recommend to the public participation model adopted by the SPA?

Guide for HSC Key informants

Background

- Why was health isolated as a major area in need of intervention?
- What are some of the health challenges that you think are encountered by the inhabitants of the SPA?
- Has the Mukuru community been involved in identifying these priority areas (Y)….(N)
  - If yes, please explain how and to what extent they have been involved?
- Did the HSC find any existing knowledge among locals on the health situation within the SPA?
- Are there systems that have been put in place to ensure community ownership of the processes? please explain.
- Were community members involved in the development of the research instruments which would subsequently be used in gathering data?
- Were the research objectives and methodologies collaboratively developed with the community?
- What are the identified indicators of success for the HSC?

Developing the Sector Plan
- What processes informed the development of the HSC Sector Brief?
- Was the Mukuru community involved in its development?
- Who led the participatory sessions which led to the development of the brief?
- How were participants identified?
- What tools did the HSC deploy to gather health data in the SPA?
- Was the community involved in the development of these tools?
- Please explain how settlement profiling and enumeration have been used to generate health data.
- What has been the role of Community Health Workers/ Volunteers in the SPA process?

- In your opinion, do you think involving the Mukuru community has enriched the HSC participatory processes?
- Are there any lessons that you learnt from collaborating with the community? Please explain.

Proposed Interventions in the Sector Plan
- What processes fed into the development of the HSC Sector Plan?
- What are some of the interventions that have been identified for the health challenges in the SPA?
- Are the proposed interventions applicable settlement-wide or are they unique for each village?
- Have any systems been established to ensure community ownership of the identified interventions upon completion of the SPA process?
- Are there any community-level measures of outcomes? (Y)….(N). If yes,
    - What are the immediate indicators?
    - What are the intermediate indicators?
    - What are the long-term indicators?
- How were the above measures formulated?
- How will sustainability of the proposed interventions be guaranteed (monitoring and evaluation)?
- Who will primarily be tasked with implementing the identified interventions?
- Does the community have any role to play in this?
- Will the County or any government agency be involved in the implementation of these interventions? Please explain.
- Are there any behavioral changes (community, household or individual) which have been induced by the SPA process?
- Have any significant health-related developments taken place since the SPA's inception?

Guide for CCOCC members

Background
- What informed the Declaration of Mukuru as a SPA?
- Are the public participation initiatives in the SPA guided by any legal frameworks?
- Has the Mukuru community been involved in identifying these priority areas (Y)….(N) If yes, please explain how and to what extent they have been involved?
- Are there systems that have been put in place to ensure community ownership of the processes? please explain.
- Has SPA built on any previous initiatives from the Mukuru community?
- Were community members involved in the development of the research instruments which would subsequently be used in gathering data?
- Were the research objectives and methodologies collaboratively developed with the community?

Developing the Sector Plans
- Who led the participatory sessions that led to the development of the various SPA plans?
- How were participants identified?
- Was there civic education prior to the actual public participation sessions?
- Did the fact that Muungano was responsible for mobilization of participants affect participant demographics?
- Does paying participants to attend affect their participation?
- How were the interests of vulnerable groups (women, youth and the elderly) represented?
- How has participation through the saving groups worked? Do you think it is exclusionary?
- How was information relayed to the community to facilitate their participation?
- Did the Nairobi County Government facilitate any of the public participation sessions?
- Was the community involved in the development of the research tools?
- Please explain how settlement profiling and enumeration have been used to generate data.

- In your opinion, do you think involving the Mukuru community has enriched the SPA participatory processes?
- Are there any lessons that you learnt from collaborating with the community? Please explain.
- How would they rank participation on a scale of 1-8 (-ineffective 8-very effective)?

Appendix 3: List of Interviewees

1. CCOCC members- 5 (including employee of Reuben FM)

2. CHWs in Kwa Reuben and Kwa Njenga- 6

3. HSC member- 1

4. SPA inhabitants 28

    - Viwandani: 8.

    - Kwa Njenga: 10.

    - Kwa Reuben 10.