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**LAND TENURE, SPECULATIVE CAPITALISM, AND THE URBAN  
POOR NEXUS IN THE VICIOUS CYCLE OF SLUM FORMATION IN  
KENYA**

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**ABSTRACT**

This paper reviews the truism that ‘urban slums are created on idle public land, singly, by the poor and also occupied by them’. Instead, the origin of slums in Kenya is traced to the dual policy of ‘control and non-controlled’ spaces. In the ensuing ‘divide’, slum formation begins with a shrewd capitalist, identifying the ‘non-controlled’ zones for investment in the form of low quality shacks. Speculators are aware of the high demand for such shacks by the desperate populous urban poor. The ‘non-control’ land, though desirable, must be identified in the precincts of the urban fringe, for the shacks to be easily accessed. Contrary to the popular theory, the formation of slums is then viewed through the lens of the interaction between the location of ‘non-control’ land, the shrewd capitalist, and the urban poor. Using a case study approach, this nexus was confirmed and the specific roles played by the various actors were found to agree with the proposition advanced in this paper. Due to lack of such knowledge by scholars and policy makers, a vicious cycle of slums occur in the urban arenas undeterred. To break the cycle and eradicate the slum menace in Kenya, the policy-led space ‘divide’ must be harmonized.

**Key words:** *Land Tenure, Speculative Capitalism, The Urban Poor, Nexus, Slum Formation*

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**INTRODUCTION**

Part of the targets of the social development goals is to have cities without slums. However, despite numerous interventions from both country and international policy makers, slums have continued to be a permanent feature in the cities of the global south. The failure to eradicate slums could only imply that the cause of the phenomenon was never well diagnosed and, hence,

the panacea to the pandemic has always been inappropriate. For example, classical theory of slum formation has always asserted that slums are created by the poor, implying that the demand and supply sides of the slum formation cycle are carried out singly by the urban poor. As a result, the prescription for the slum tumor, has always been viewed in a single dose, i.e. that of upgrading and tenure security. This begs the question, if the diagnosis and prescriptions provided for the eradication of slums were both correct, wouldn't all informal settlements be cleared by now and informality transited to the league of the formal city? The persistence of the slum menace to date can only imply that policies have not been effective and equally true is that past theories should be interrogated anew.

### **TOWARDS THE ALTERNATIVE THESIS: A METHODOLOGICAL AND CONCEPTUAL GUIDE**

This paper contends that past theories on slum formation especially those covering Kenya were based on inaccurate diagnosis of the slum phenomenon. Thus, an alternative thesis is advanced which explains slum formation within the context of the colonial era racial segregation policy which created the European and African space divide. The thesis is anchored on six propositions, some of which systematically demonstrate the invalidity of the classical theory while others support the validity of the position advanced in this paper. In the first proposition, it is asserted that ‘the urban poor have no money and power to acquire public land to construct the otherwise expensive slum shack’. To corroborate the foregoing, a second proposition holds that ‘the urban poor cannot be paying rent for the shacks if they constructed them, and if they do, then such shacks are constructed by other actors’.

The third proposition is based on recent observations which show that slums also take place on private land, implying that slums don’t always take place on idle public land (Musyoka, 2004, 2008; Mangira *et al*, 2019). Since classical theory still holds that the urban poor have no income to afford land purchase unless it was free and public, it can then be deduced in the third proposition that ‘shacks on private land were constructed by actors who had money to lease or purchase the land and these could be speculators. A relevant question for example is; who then were these actors that bought land to create slums on private land, and what was their motive? The lack of clear answers to these foregoing questions then prompts the need for an alternative

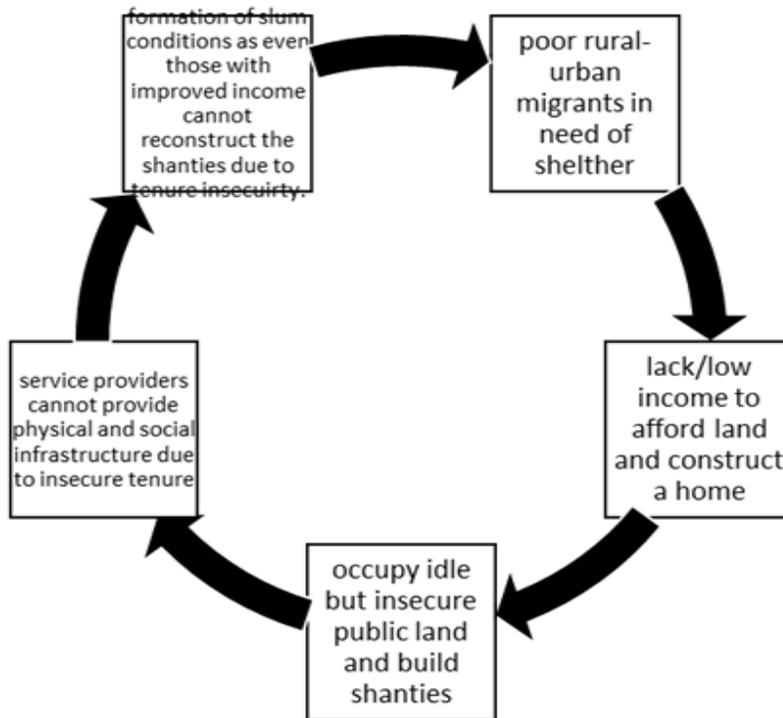
thesis to fill the void. To fill this lacuna, it is contended in the fourth proposition that, ‘slums began in Kenya when the colonial government introduced the policy of racial segregation, which created the ‘control and non-control’ space realms. In the ‘non-control’ zone, speculative capitalists find the opportunity to invest in low quality shacks to harness rent from the huge market of the urban poor.

In the fifth proposition, it is argued that when making such investment decisions, ‘a speculative developer will prefer idle public land as a priority and this finds a convergence with the classical theory. However, if the option of idle public land is not available, the speculative developer shall target ‘non-control’ private land for hire or purchase to fulfill the ambition of investing in shacks. A sixth proposition is advanced that when private ‘non-control’ land happens to be the only option, however, ‘the shrewd investor shall favor land which is in the precincts of the urban fringe’ for ease of accessing the urban poor. But why is ‘non-control’ land the target for this kind of investment? Non-control areas provide the investor with the freedom to shun plan-led costs, and the opportunity to construct low quality shacks since such areas are not the subject of planning and control. To answer the six propositions, the inquiry undertook a desk-based literature review of slum formation processes in Kenya. The answers to the various propositions, which emerge from the review shall form the basis of the deductions regarding slum formation processes in Kenya.

### **SLUMS CREATED BY THE URBAN POOR? REVISITING THE NUMEROUS CONTRADICTIONS IN CLASSICAL THEORY**

It is often argued that the urban poor, for lack of income, construct shanty structures on idle public land. Based on this position, it then follows that slums shall be formed on idle public spaces such as road reserves, river banks, and floodplains. Due to lack of income, it is argued, the poor often construct their houses using old tins, shacks, grass, mud or wattle, thus, creating the slum conditions we see today. It is further argued that due to tenure insecurity, institutions who are responsible for providing slum areas with physical and social infrastructure tend to shy away (World Bank, 2000; UN-Habitat, 2002; Huchzermeyer, 2006; Huchzemeyer, 2008; Syagga *et al*, 2002; Syaggah 2013; Kenya, 2004; Amnesty International, 2009). In the view of the classical theory, therefore, it is the urban poor who create and occupy slums, although land

tenure is counted as the passive actor. In particular, idle public land is viewed to play a dual role in exacerbating the phenomenon of slum formation as follows. Firstly, since idle public land is free of the purchase price, it tends to attract the poor who occupy it without spending any money. Secondly, the insecurity of tenure in such land prevents the poor from improving the shacks, even if they had an improved income (De Soto, 2000; Un-Habitat, 2009). Following the foregoing, the slum process is viewed to take place in a vicious cycle as depicted below (Fig 1.1)



**Figure 1.1: Classical theory version of the slum formation process.**

Source: Author’s Construct 2021

## DISCUSSIONS OF FINDINGS FROM THE REVIEW OF LITERATURE AND CASE STUDIES

The following contradictions seem to emerge from the classical theory presented in (Figure 1.1).

**The poor have no income to construct slums and if they did they wouldn't be paying rent for them.**

The first concern in this inquiry is whether indeed the poor had enough money and the audacity to construct slums on public land. In this connection, a study by Gulyani and Talukdar (2008) found out that a large number of slum residents (73%) in Kenya were below the absolute poverty line defined as an expenditure of Ksh 3,174(USD\$ 32) per month excluding expenditure on rent. In particular, households in the slums of Nairobi reported a monthly per capita income of Ksh 3,705 (Gulyani and Talukdar, 2008), meaning that all slum dwellers in Kenya had an income that could barely cover monthly minimum expenditure. Similarly, a study by Mangira *et al* (2019) in Eldoret also found that slum dwellers engaged themselves in menial jobs which did not provide them with sufficient income to cover monthly expenses, instead, most of them postponed expenditure on non-essentials. For this reason, it is argued, the urban poor had no sufficient income to construct shacks and still remain with extra income to cover the mandatory monthly expenses. Again, invasion of public land in Kenya is often met with the full force of the law and the poor have no such power to prevent, defeat or even circumvent the backlash of the law.

Although the poor are said to have constructed the shacks, there has been evidence that they pay rent for them and this is viewed as a contradiction. For example, studies have shown that Kibera slums had more tenants than land lords, estimated between 80-92% (Rahbaran and Herz, 2014; Syagga, 2013; Gulyani and Talukdar, 2008; Huchzermeyer, 2006; Huchzermeyer, 2008). In the same study covering Kibera slums, Gulyani and Talukdar, (2008) found out that slum residents were in a state of flux, often residing in their units for less than 5 years, although they were reported to have cumulatively lived in the slums for over 9 years (Gulyani & Talukdar, 2008). In a more recent study (Mangira *et al*, 2019), which covered three slum settlements of Huruma, Munyaka and Kamukunji in Eldoret, Kenya, most of the residents were found to be tenants in the ratio of 75.5%, 74.6% and 62.5%. The same study also found out that the upgrading of slums in the form of infrastructure provision and tenure security had led to gentrification. This then begs

the question, why would persons who have constructed shacks for themselves turn around and pay rent for the same and even constantly shift from the houses which they built? Secondly, why would slum owners run away when such settlements are upgraded with infrastructure and the tenure guaranteed? This would prove that the houses did not belong to them and these are the fallacies and contradictions emerging from the poor-led slum formation theories.

What is emerging from the foregoing, is that slums are occupied by the poor who regularly pay rent for them. However, such slums are constructed by other actors whose identity and motive is yet to be known. This evidence is corroborated by the fact that most of the poor (92%) were renting rather than owning the shacks, a clear testimony that they were not the shack owners. Since the classical theory was premised on the now falsified truism that slums were created and owned by the poor, it can be concluded that the pillars which held the theory together have since collapsed and this forms the basis of rejecting it.

### **Slums also occur on private freehold land; if the poor couldn't afford, who then created them?**

This section provides evidence that slums can be constructed on 'non-control' private land, which is not always public and idle as hitherto propagated by the classical school of thought. To elucidate this point, two cases of slum formation on private freehold land are reviewed and these are Langas in Eldoret town and Manyatta slums in Kisumu city. In Eldoret town, a Kalenjin land-buying company purchased a farm measuring 1,050 acres from a white settler in 1974, which they subdivided among the shareholders in proportion to each member's shares (Musyoka, 2004, 2006). In a similar scenario, Manyatta slums in Kisumu had evolved largely on private freehold land (Huchzermeyer, 2006). It is reported that land subdivision in Manyatta was carried out informally without planning and allocated to buyers and heirs in accordance with inheritance customs. Land adjudication processes in this area were also carried out without planning and this resulted in inadequate provision of community facilities.

In the three slum areas of Munyaka, Huruma and Kamukunji in Eldoret, land tenure was mainly freehold, consisting of 75-85% (Mangira *et al*, 2019). Since slums are known to occur on idle public land, who then created the two slums on private freehold land and what was the motivating factor? Based on the foregoing contradictions, it is inferred in this paper that the

investment of the shacks on freehold land was carried out by people with money and who perhaps aimed to earn rent from the urban poor. Who then invests in slums and what could be the driving factor? This is explained in an alternative thesis provided below.

**Policy-led ‘control and non-control’ zones as the precursor to slum formation in Kenya:  
The alternative thesis**

During colonial rule, white settlers resided in locations which were far separated from those of the African and Asian population. For example, majority of the white settlers lived in urban areas while others lived in secluded rural areas referred to as ‘scheduled areas’. Africans were barred from residing in urban areas unless they had permission to work as laborers in European homes. Due to this segregation, the African population was clamped into ‘African rural reserves and frontier districts’ and on land which was communally owned (Okoth-Ogendo, 1991). The severity of the laws of segregation could be viewed in the following statement: ‘If at any time it shall be proved to the satisfaction of the Commissioner of Lands that any European plot or part is used solely or partly as a place of residence of an Asiatic or native not being a domestic or caretaker in the employment of the occupier, the Commissioner of lands may declare the lease forfeited’ (Okoth-Ogendo, 1991; Kenya, CAP 134; Kenya, CLO, 1915). Due to segregation, demarcation and distance between one race and the other became apparent and glaringly distinct to the common observer.

In the context of the white and African space ‘divide’, European and Asian quarters were subjected to planning, while African quarters were excluded (Kenya, CLO, 1915; TPA, 134). Local authorities were, for example, authorized to issue Africans with permission to construct temporary houses in the urban locations as follows; “Notwithstanding anything contained in any other rule, it shall be lawful for the local authority to grant permits for temporary buildings on such obligations both as to removal thereof or otherwise and generally upon such terms as may be prescribed and the foregoing rules shall not apply to any building erected under such permit unless by express stipulations” (Kenya, CAP 133, section 20). As a result, African locations were constructed with temporary materials with the understanding that such settlements shall be demolished once Africans returned to their rural homes (Kenya, CAP 133). In contrast to the above, the same rules in section 46 specified that no buildings in the ‘white’ zones could be

approved unless there was a plan presented to the local authority for approval. “Such building shall be of permanent material and in particular, no external wall shall, except with the written permission of the District Commissioner, consist of any temporary erection of wood, cloth, canvas, grass, leaves, mats or any other inflammable or unsightly material” (Kenya, CAP 133, Part III, Section 46). It can then be deduced that racial segregation had sired the ‘control and non-control’ realms, which also created the ‘formal and informal’ space patterns.

The control and non-control space axis can be seen in both the towns and rural areas. It should be noted also that the pre-planned development model in the ‘white’ zones was often accompanied by the provision of social and physical infrastructure (Ayonga, 2012; Laji *et al*, 2017). Thus, in the absence of planning, African settlements were also devoid of social and physical infrastructure. The former non-control zones continue to attract speculative developers who construct low quality shacks as seen below.

### **SPECULATIVE INVESTORS SCOUT FOR ‘IDLE PUBLIC’ AND ‘PRIVATE NON-CONTROL’ LAND: EVIDENCE FROM CASE STUDIES**

#### **Case Review 1: Speculative capitalists create Kibera slums on ‘idle public’ and ‘non-control’ land.**

After the First World War, the Nubian community were allocated land in Kibera by the colonial government. The Nubians were allocated user rights but denied titles because they were not part of the tribes in Kenya (Rahbaran and Herz, 2014; Syagga *et al*, 2002; Amisi, 1984). They therefore could not construct permanent buildings in Kibera due to tenure insecurity and this can be viewed as the first reason for slum formation. In the 1950s, Nubians began constructing more houses in the open spaces to accommodate young African men who had come to towns to seek employment (Rahbaran and Herz, 2014). Later, post-colonial Government declared Kibera area as government land and this removed the notion that it was exclusively Nubian land (Rahbaran and Herz, 2014; Syagga *et al*, 2002). Thereafter, the government posted District Officers and Chiefs to Kibera, who, using their powers, allocated user rights among other Africans and among themselves (Syagga *et al*, 2002; Syagga, 2013; Rahbaran and Herz, 2014). The new entrants to Kibera slums also constructed more and more houses for the poor to rent (Rahbaran and Herz, 2014; Amis, 1984; Syagga *et al*, 2002, Syagga, 2013).

From the foregoing historical narrative, it can be deduced that the Kibera shacks were not constructed and owned by the poor as viewed by the classical theory. On the contrary, the shacks were owned by Nubians, chiefs and District Commissioners, who had other houses elsewhere and who had constructed the slums specifically for purposes of earning rent from the poor. This position, therefore, negates the truism in the classical theory that Kibera slums were constructed by the poor on idle public land. The role of capitalism in the creation of Kibera slums is in tandem with the hypothesis advanced in this paper.

It should be noted that some of those who created shacks in Kibera had income and they were capable of constructing better houses than just shacks. The pertinent question then is: why did Nubians and other later day ‘speculative investors’ such as District Commissioners and Chiefs construct houses of low quality in Kibera? This question can be answered within the context of proposition four which connects slum formation in Kenya to the colonial era ‘non-control’ space policy. In the space duality, planning and Town Planning Rules Ordinance (Kenya 1948, CAP 133) did not apply in the African and Nubian zones because Africans in particular were not expected to live in towns. Lack of ‘control’ in Kibera then allowed the aforementioned speculative developers to construct houses of informal materials because there were no zoning regulations to conform to. Secondly, though a minor consideration, the shrewd investors, including the Nubians, were aware that the tenants who would occupy the shacks would indeed be poor, and could only afford houses of the poor quality. However, such considerations were unlikely considering that the same developers were expected to improve the quality of the shacks when the income of the tenants also improved. The implication is that the ‘non-control’ space factor and how it promotes quick returns to the investor remains the main motivation for investing in low quality houses.

Finally, land tenure was an important factor when making investment decisions and since Kibera was government land, it can be deduced that erecting a permanent shack was considered a risk venture. However, Nubians had stayed in Kibera for a period long enough to remove the notion of insecurity of land tenure and construct permanent houses, and, indeed some of whom did so. This leaves the ‘non-control’ status of the land as the only factor which provides a plausible explanation to slum formation in Kibera in line with the thinking espoused in this paper.

From the foregoing, it can be concluded that Kibera slums emerged from the interplay of activities from the speculative capitalist, who had money to invest, and who wanted to earn rent and the presence of 'non-control' idle public land. The capitalist had the freedom to construct houses with temporary material and without incurring the cost of purchase and the urban poor were available to patronize the shacks.

**Case Review 2: Speculative 'Ngwata' invasion on 'idle public' land and the creation of Mulolongo slums.**

Land in Mulolongo was acquired by the government from a white settler in the earlier 1970's, for purposes of constructing a government weigh bridge and for constructing the new Mombasa Nairobi highway. The weigh bridge project failed to take off immediately and this created the impression in the eyes of the public that the land was idle. The weighbridge land and the nearby privately owned quarry land were both invaded and seized by politicians, public servants and business men who used goons in a process referred to as 'ngwata', which has a similar connotation to "grabbing" implying irregular or illegitimate acquisition of land (Kenya, 2004; Klopp, 2000; Olima, 1997). The invaded land was subdivided informally using ropes and it was allocated to individuals. Council officials of Mavoko Municipal council encouraged the beneficiaries of the illegal/irregular land allocation to build their houses at night and over the weekend when government officials were not around. Other officials who were colluding in this process were the District Commissioner, area Land Officer and area Physical Planners. This became the genesis of the Mulolongo slums.

Because of the hurry to construct, developers used all sorts of unorthodox building materials such as iron sheets, wattle, canvas, grass, timbers which thus created the slum character seen in some areas of Mulolongo today. Mulolongo land subdivisions were not guided by any plans and this resulted in narrow and winding road networks and areas for public purposes were not set aside. Powerful people later forced the government to enter into negotiations with those who had grabbed the land in order to have the ownership regularized and because it was during national elections, the government of the day succumbed to blackmail since they wanted votes. Eventually, the ownership of the grabbed land was regularized and the beneficiaries identified for issuance of title deeds.

Mulolongo slum was, thus, formed by speculative capitalists who mainly targeted idle public land and they had knowledge on where such land was located, its acreage and even the delimits of the boundaries. The poor were fronted as the land owners during the invasion, but the user rights had later reverted back to the true beneficiaries, who in this case were the rich speculators. The capitalists had the power to shield themselves from the law and negotiate with the government to have the land formalized among the beneficiaries. The Mulolongo case then brings into fore the speculative capitalist as the initiator of the slum formation process and the urban poor as the willing tenant due to poverty. In any case, as soon as the land ownership was regularized, maissonnetes and flats were constructed to replace the shanties. This means that the urban poor were used by capitalists as shields to acquire the land but were replaced and pushed to other locations as soon as the land was formalized. No wonder then that Mulolongo slums later sired *ngwata* 1, 2, 3 and so on. The only thing which remains glaringly unaddressed and which is evidence of informality in Mulolongo today is the missing physical and social facilities, land use conflicts, lack of connectivity and congestion.

**Case review 3: slums on ‘non-control’ freehold land within the precincts of urban fringes.**

The ‘non-control’ African zones, resulting from the colonial era racial segregation policy then provided the opportunity for speculative investors to construct low quality shacks to earn rent from the urban poor. Areas which were the subject of planning during colonial era continue to benefit from planning even during post-colonial era and the land tenure is predominantly leasehold. Land speculators avoid these zones because land use is specified through zoning and developers are forced to conform to building standards when they seek for development permits which is often a requirement in leasehold areas. It is for example noteworthy that those who constructed shacks in Manyatta and Langas (Musyoka, 2004, 2006; Huchzermeyer, 2006) avoided providing essential infrastructure such as water, toilets, electricity, drainage and waste disposal as well as minimizing on the quality of the shacks. This model of development could only be tolerated on non-controlled ‘freehold land’ which was not the subject of planning and development control. Speculators are shrewd because they seek locations of freehold non-control land within the precincts of the urban fringe. The urban poor often opt for low quality houses because poverty makes them vulnerable. The Langas Munyaka, Kamukunji and Manyatta

slums are among cases that show clearly that slums can form on private land and not always on idle public land. This is testimony that the new slum formation phenomenon cannot be explained within the context of the old classical theory.

### **Using the alternative thesis to predict slum distribution in Kenya**

The alternative slum formation model is premised on the assumption that slums occur on 'idle public spaces' and 'non-control' private land. The various case studies reviewed so far agree of an existing 'slum-land tenure nexus. In Kenya, the areas that were excluded from control are as follows:

#### **African locations in class A and B towns**

All category A and B towns in Kenya were used as provincial and District headquarters during colonial and early years of post-colonial rule and most of them were planned along racial segregation. In Nairobi for example, areas were set aside for Europeans, Asians and Africans. Since Africans were considered transient, their locations were excluded from planning and their houses were constructed with informal materials such as sacks, mud, grass, iron sheets, and timber. Some of the African locations in Nairobi such as Kibera, Pumwani and Mathare have remained slums to date.

#### **African periodic markets and class C towns**

The construction of informal houses were permitted in all African towns including periodic markets. As a result, these towns evolved slums which have persisted to date (see Fig 1.2).

#### **All African rural areas**

All African rural areas were not subjected to planning and land was communally owned. During post-colonial era, communal land was converted and allocated to Africans as private freehold. However, African rural areas were again excluded from planning until 1998 when the Physical Planning Act (Kenya, 1996, cap 286) came into operation. However, planning has remained ineffective in the former African areas even after the new law.

#### **The peri-urban zones**

While seeking 'non-control' freehold land, speculative developers do not travel deeper into the rural spaces, instead, they prefer the precincts of the urban fringes. This then explains the

presence of large slum colonies in the peri-urban areas (Ayonga, 2017, 2019). The zones where slums are rampant in Kenya, therefore, tend to follow the above scenario provided by the new ‘slum predictor model’ (see Fig 1.2 below).

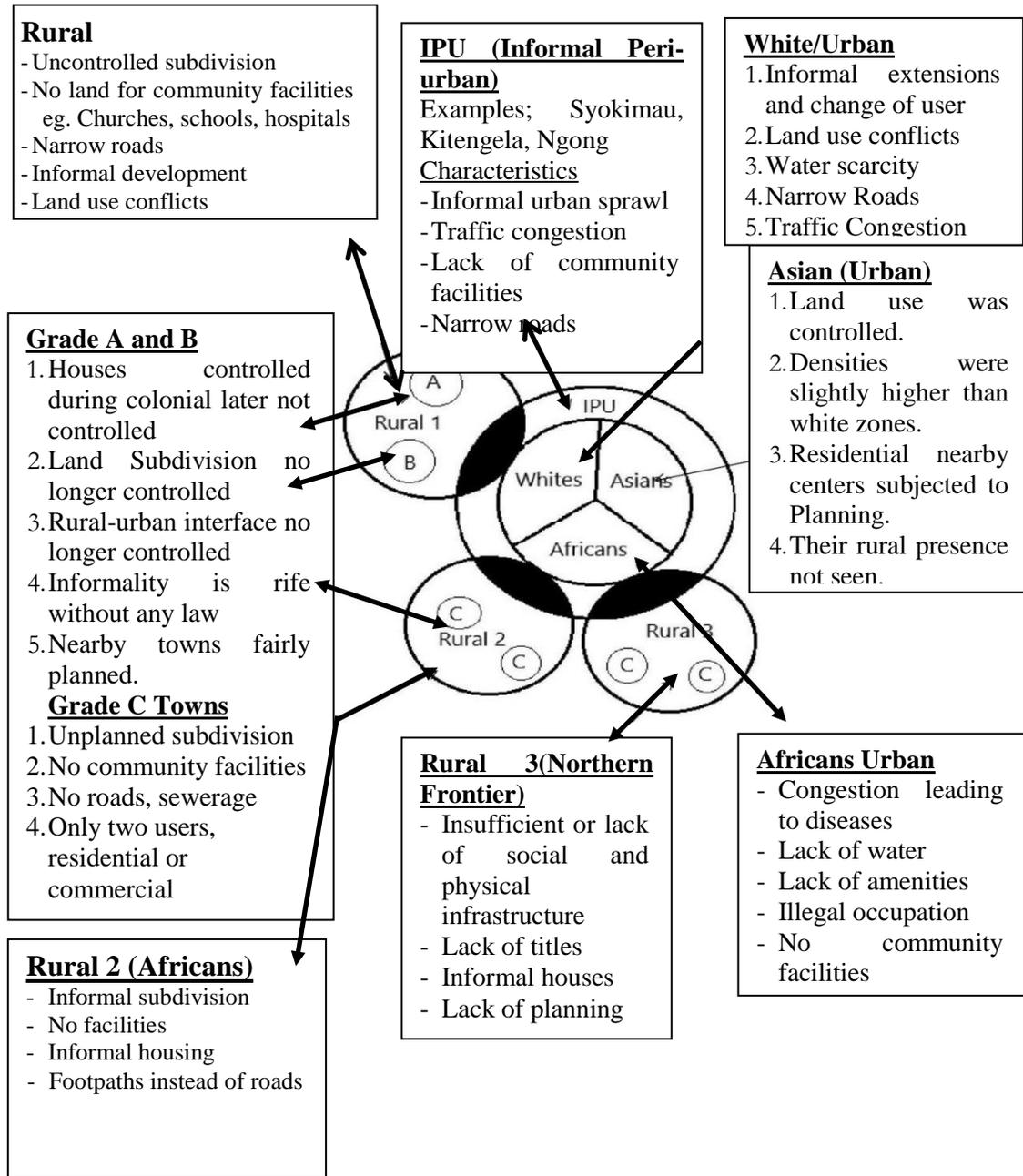
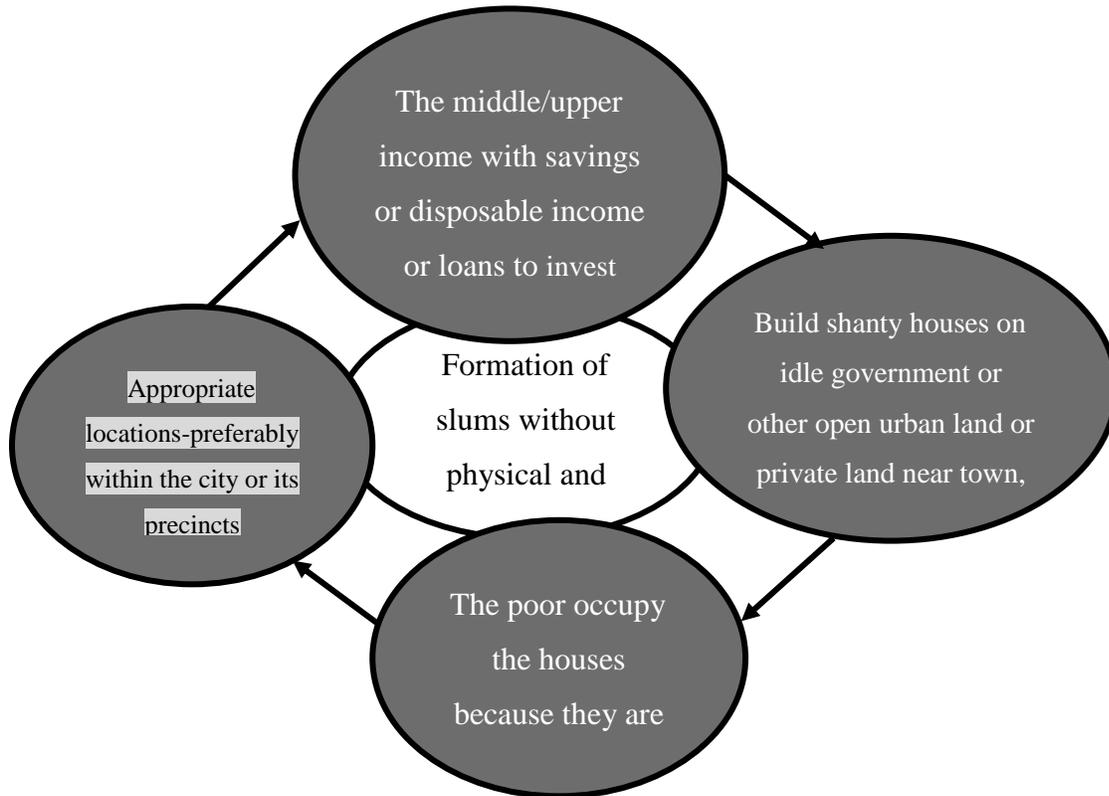


Figure 1.2: Slum predictor model and the distribution of slum hot-spots in Kenya

**SUMMARY OF FINDINGS: WHO THEN CREATES SLUMS IN KENYA? FOUR ACTORS IDENTIFIED IN THE ALTERNATIVE SLUM TRAJECTORY MODEL**

Evidence from the various case studies indicate that, contrary to popular theory, slums in Kenya are not initiated by the urban poor. Instead, slums are constructed by speculative capitalists on idle public land and ‘non-control’ private land with the aim of earning extra income from the vulnerable urban poor. The speculators are, however, keen to identify such land within the urban precincts in order to ensure that the shacks are easily accessible to the urban poor. Therefore, slum formation in this paper is viewed through the interaction between the capitalists and the urban poor in one hand, who play an active role and the land tenure and the location of such land, which play a ‘passive’ (see Fig 1.3). To eradicate slums in Kenya, the current ‘control and ‘non-control’ space dichotomy must be harmonized.



**Figure 1.3: Four actors in the alternative slum formation and trajectory model.**

*Source: Author’s Construct 2021*

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