



Cities to be tamed? Standards and alternatives
in the transformation of the urban South
Conference Proceedings
Milan, 15-17 November 2012

Planum. The Journal of Urbanism, n. 26, vol.1/2013
www.planum.net | ISSN 1723-0993
Proceedings published in January 2013

(Re)designing land tenure to meet housing needs of the urban poor. Implementing community land trusts in Kenya

Emmanuel Midheme¹

The sheer pace of urbanisation in Kenya today far outstrips the ability of the state to provide housing for the ever-expanding urban population. Implicated in this housing crisis are existing forms of land and housing tenure, which are either inequitable, inefficient or both. Hardest hit by the inadequacies of the housing system are poor households who are rendered incapable of accessing land and housing through formal means. As a departure from conventional land and housing tenure, recent settlement upgrading projects in Kenya have sought to (re)design the institution of land tenure, by adopting communal forms of landholding premised on the community land trust (CLT). CLTs are created specifically to hold land in trust for given communities, in perpetuity. This paper analyses the Tanzania-Bondeni CLT recently implemented in Voi town, and concludes that CLTs are a powerful innovation that can be usefully mobilised in response to the urban housing problem. CLTs however employ an intricate legal framework that can be daunting, while their long-term success requires commitment and effective leadership at the community level, which can be challenging to sustain.

Keywords: Community land trusts, Land tenure, Settlement upgrading, Kenya

¹ University of Leuven, Belgium.
Email: emmanuel.midheme@asro.kuleuven.be

Introduction

In many cities of the Global South, matters land run deep. This is so because access to and ownership of land directly affects people's livelihoods, opportunities and freedoms (Payne, 2001; Blomley, 2008). Yet access to affordable land for the rapidly growing population of developing world cities remains a moving target. Despite an increasing raft of strategies put in place to shore up low-income households in the urban land and housing market, the ability of the poor to access and retain land on a long-term basis largely remains unachieved (Payne and Majale, 2004; Gulyani and Bassett, 2007).

In Kenya today, the sheer pace of urbanisation has far outstripped the ability of the state and the market to provide affordable land and housing for the ever-expanding urban population (Midheme, 2010). While the demand for housing in the country currently stands at 200,000 units per annum, the combined output of the official government and market channels only amounts to 50,000 units a year (World Bank, 2011). As can be expected, the hardest hit by this housing deficit are low-income households who are in effect rendered incapable of accessing land and shelter through formal means. An unavoidable consequence therefore has been the steady proliferation of informal settlements as the poor seek an alternative source of shelter and livelihoods (Midheme, 2010).

Partly implicated in the Kenyan housing crisis are existing forms of land and housing tenure, premised as they are, on individual property (Yahya, 2002; Bassett, 2005). In classical economic-legal theory, individual titles supposedly deliver the highest level of efficiency and freedom to the individual owners, thereby allowing land to be put to its 'highest and best use' (Needham, 2006). However, individual property is also known from experience to have precipitated a wave of dispossession among poor households neither able to meet stringent planning regulations nor withstand the vicissitudes of the land market (Payne et al., 2009; Durand-Lasserve and Selod, 2009). It has thus increasingly become clear that individualised forms of landholding may not work well for the urban poor. Accordingly, alternatives to individual land ownership have been proposed to bolster the ability of low-income households to hold onto land for their long-term sustenance, amidst the cut-throat competition that characterises today's urban land markets (Turnbull, 1983; Payne, 2001; Boonyabanha, 2009). One such proposal involves the use of community land trusts (CLTs) as a means of holding and managing urban land for the benefit of the urban poor (Yahya, 2002; Bailey, 2010).

This paper has two aims. First, I seek to demonstrate that the conventional wisdom of private land tenure presents an obstacle to the provision of sustainable housing solutions to the urban poor in Kenya. Secondly, I examine recent attempts to (re)design the institution of land tenure in Kenya as a response to social exclusion spawned by past policy frameworks. Specifically, I investigate the use of CLTs as an innovative form of pro-poor landholding, employing the case of Tanzania-Bondeni CLT recently implemented in Voi. I highlight the successes and failures of the Voi initiative, together with how the gains made there may be broadened and problems resolved. The aim is to help Kenyan urban planners and policy-makers devise more nuanced, context-aware interventions capable of improving both efficiency and equity objectives of land and housing policies, particularly for the urban poor. In what follows, the paper is organised into four sections. First, I present an overview of land tenure in urban development. I then look briefly at past low-income housing policies in Kenya and how these policies have dealt with the substantive issue of land tenure. Next, I introduce the concept of community land trusts, before presenting the Tanzania-Bondeni case.



Conceptualizing land tenure in urban development

Land tenure refers to the rights, privileges and obligations that individuals and communities have with respect to land (Payne, 2001; Durand-Lasserve and Selod, 2009). These rights in effect define people's ability to occupy, use, develop, inherit and transfer land and its products. It is these rules regarding what one may (or may not) do on a parcel of land that gives rise to property rights in land (Needham, 2006).

In broad terms, urban land can be held under individual (private), public or communal tenure (Payne, 2001; Durand-Lasserve and Selod, 2009). Private tenure permits the greatest freedom with regard to use and conveyance of land and is billed to ensure the most intense and efficient use of landed property (Payne, 2001). However, individualisation also breeds inequity as land tends to accumulate in the hands of the elite, to the disadvantage of the poor and powerless (Krueckeberg, 1995; Blomley, 2008). Public ownership may achieve higher levels of equity than private tenure (Payne, 2001), but invariably suffers from bureaucratic inefficiency and is often captive to systems of patronage and clientelism (Durand-Lasserve and Selod, 2009). Communal tenure on its part is more equitable and sustainable in the longer term (Turnbull, 1983; BSHF, 2005; Bailey, 2010), but is often mischaracterised and shunned, especially in modern Western societies in which people lay premium on autonomy and individual ownership (Libby and Bradley, 2000; Blomley, 2008).

Land tenure and past low-income housing programmes in Kenya: a review

Kenya has gone through three basic responses to informal settlements: demolitions, relocations/sites-and-services and in situ upgrading (Bassett and Jacobs, 1997; Bassett, 2002; Gulyani and Bassett, 2007). Of particular importance to our discussion here is how the question of land tenure and the substantive treatment accorded to it has contributed solutions and generated problems in the course of implementing low-income housing policies in the country. I provide an overview specifically of past sites-and-service and in situ upgrading programmes in the country, and highlight three basic problems that have characterised such programmes, namely: undue emphasis on individual titling, inadequate involvement of targeted communities, and insufficient focus on tenants (Midheme, 2010).

Undue emphasis on land titling

Upgrading projects in Kenya have tended to conflate land regularisation with tenure individualisation (Yahya, 2002; Bassett, 2005). Thus for example, the sole policy option pursued in tenure regularisation initiatives has been to award individual titles as the default form of property. As already pointed out, while individualised landholding may in theory confer the highest possible benefits to the owner, titles have on the flipside precipitated a wave of dispossession and post-project displacement driven by both voluntary and distress sales by poor households (Payne and Majale, 2004). Examples include the Dandora site-and-service scheme in Nairobi, funded through the World Bank's Urban I programme and completed in 1977. Originally meant for the poor, Dandora has since 'transformed into a multi-storey tenement district with profits extracted by middle- to high-income landlords residing elsewhere' (Huchzermeyer, 2008: 27). A similar fate befell Umoja II settlement project, also in Nairobi, where 70% of the original allottees have either sold their units for profit or got displaced owing to their failure to amortise loans and meet other project costs (Otiso, 2003). Further cases of market-induced displacements have been reported in the USAID housing project in Kisumu (Macoloo, 1988) and the Chaani settlement scheme in Mombasa (Macoloo, 1994). These dispossessions ultimately hamper social equity as well as project effectiveness in general (Gulyani and Bassett, 2007).



As a stop gap measure, two strategies have been tried in Kenya to arrest the wave of post-project displacement. The first strategy has been to impose five-year moratorium on sales involving allotted property (Bassett, 2005). Such restrictions are however time-consuming and costly to implement. So much so that over time, the cost of policing the conveyancing process becomes an unnecessary strain on resources and inevitably shifts focus away from the primary goal of settlement improvement (Gulyani and Bassett, 2007). Furthermore, owing to inability to regularly update land records, registers eventually became largely at variance with actual possession and use of land, precipitating a gap between *de jure* rights and entitlements as reflected in official land records and *de facto* rights and entitlements as valorised by users on the ground (Midheme, 2010).

An alternative to sale restrictions has been to adopt inhibitive space and infrastructure standards in project design. In recognition of the fact that upgrading transforms informal neighbourhoods into coveted pieces of real estate overnight, Kenyan planners have sought to dilute outside demand by lowering infrastructure standards. It was thought for example, that communal water points and toilets, open sewers, narrow earth-paved roads, restrictions on the number of developable storeys, limited car access and on-site parking, as well as small-sized parcels would stave off the influx of middle-class 'gentrifiers' (Bassett, 2002; Gulyani and Bassett, 2007). On the contrary, it has been reported that in several low-income settlement projects such as Dandora and Umoja in Nairobi, middle-income buyers simply move in, amalgamate several parcels and put up multi-storey rental tenements, in disregard of regulations put in place by project designers (Muraya, 2006; Huchzermeyer, 2008).

Inadequate involvement of targeted communities

Another critical failing that has characterised past relocation and upgrading initiatives has had to do with the question of community participation. Settlement upgrading plans in Kenya are typically prepared top-down, with state planners single-handedly taking charge of project design and implementation (Midheme, 2010). Under such institutional arrangements, upgrading initiatives incorporate minimal input from the targeted beneficiaries. The latter are thus excluded from the determination of crucial matters like space and infrastructure standards, project cost-recovery mechanisms, as well as land tenure and administration (Otiso, 2003; Bassett, 2005). In other words, residents are hardly afforded the opportunity to determine the future of their own neighbourhoods, leading, unavoidably, to project failure (Yahya, 2002).

According to Imperato and Ruster (2003), the success of settlement improvement is predicated on a process led by the residents themselves. In designing *in situ* upgrading schemes, it is important to remember that residents have been building their homes and by extension the larger settlement over the years. They thus already have a 'project' of sorts underway. To impose an alien project without reconciling it with the on-going one is thus courting failure. The authors further argue that unbeknown to many external experts, 'residents have their own priorities and visions for the future', if only these have not been conjoined with those of fellow residents into a coherent plan (Imparato and Ruster, 2003: 1). As a point of departure therefore, planners must strive to understand the local dynamics and engage residents when exploring ways of supporting them, thus helping the community sharpen the focus of its latent vision (Midheme, 2010). This is necessary to avoid foisting external solutions that misdiagnose real problems on the ground. Importantly, it would be useful to think of informal settlements as more than just a bunch of hovels and their dwellers. Often forgotten is that undergirding the functioning of these settlements is an intricate set of social relations that need to be harnessed for long-term success of upgrading initiatives.

Insufficient focus on tenants

Like elsewhere around the world, upgrading programmes in Kenya were largely inspired by the work of John Turner in Latin America, particularly in Peru (Turner, 1967; 1968). Important to note is that the situation in Latin America at the time of Turner's writing was such that the majority of the squatters also owned the structures they occupied (Imparato and Ruster, 2003). Under such circumstances, tenure regularisation made plain sense as squatters would, as a matter of course, crave the opportunity to incrementally improve their own dwellings over time.

In Kenya however, studies have consistently shown that the majority of slum residents are actually tenants who are often the poorest of slum dwellers (Amis, 1984; Andreasen, 1996; Kigochie, 2001), paying exorbitant rents to (absentee) 'landlords' (Gulyani and Talukdar, 2008; Huchzermeyer, 2008). In Kisumu – Kenya's third largest city – a mere 14% of slum residents were owner-occupiers in 1998, with the rest being renters and sharers (UN-Habitat, 2003). In Nairobi's slums, an extraordinary 92% of the households are rent-paying tenants rather than home-owning squatters, with 95% of all structure owners living off-site as absentee 'slumlords' (Gulyani and Talukdar, 2008). These revelations constitute a serious challenge to conventional wisdom and settlement upgrading policy. An obvious corollary of this policy oversight is the observation that tenants are often the hardest hit when rents rise in the wake of settlement upgrading. Thus tenants easily become the largest group faced with displacements (Payne and Majale, 2004). Similarly, because they are never recognised as stakeholders in their own right, tenants lack the incentive to actively participate in settlement improvement matters, hence attenuating social capital that would be crucial for community building during and after settlement upgrading (Midheme, 2010). Tenants have thus been excluded from shaping the spaces within which they live and work. This has led to calls for planners to seriously rethink the plight of tenants as a substantive target group in settlement improvement initiatives (Gulyani and Talukdar, 2008).

Among other issues, these inadequacies in past upgrading initiatives call for a serious rethink of the role of land tenure in low-income housing initiatives and bring to the fore serious questions pertinent to both planning practice and scholarship. Can we continue relying as we have done, on the conventional off-the-rack forms of property and conventional planning methods, knowing full well that their uncritical use only exacerbates the very social exclusion that the planning enterprise is set up to reverse? Or do we venture beyond the strait-jacket of prescriptive forms of property and top-down planning, in search of more innovative forms of landholding better attuned to the plight of the majority urban dwellers? It is with these questions in mind that we now turn our attention to the community land trust, a new form of landholding recently piloted in Voi.

Community land trusts: a new frontier of property for the urban poor?

A community land trust (CLT) is a grassroots institution specifically created to acquire and hold land in trust for a given group (Bailey, 2010). The defining characteristic of CLTs is that landed property is split into its two constituent parts: land, and the improvements upon it. Individuals own improvements but lease the underlying land, which is held jointly by all homeowners via a registered trust (Libby and Bradley, 2000). Because they are formed to hold property in perpetuity, CLT land is taken out of the market and separated from its productive use so that the impact of land-value appreciation is 'locked' into the community (BSHF, 2005). This enables long-term affordable and sustainable local development. Since members own their buildings but not the land, gains on resale can be earned only from appreciation in the value of buildings, and those gains are limited to just a fraction of the increase in the buildings' market value (Davis, 2006; Bailey, 2010). A pre-emption right is included in the lease of every parcel, giving the



CLT preferential rights to buy property when owners opt out (Davis, 2006). These conditions are designed to restrict the buyback price so that housing remains affordable to the next buyer, while at the same time allowing for a modest return on individual investments. This way, housing prices can be kept affordable, in perpetuity (Lipman and Rajack, 2011).

The CLT draws its inspiration from among other sources, customary tenures in Africa (Bassett, 2007), the legacy of Henry George (Davis, 2006) and Ebenezer Howard's garden city movement (BSHF, 2005). The US has had the longest experience with CLTs, with the state of Vermont being home to one of the most developed CLTs in the world (Libby and Bradley, 2000; BSHF, 2005). Elsewhere, the CLT is quickly gaining currency as the model is recognised not only as a viable means of overcoming the problem of social exclusion caused by escalating land values, but also as a vehicle for community-building (Kelly, 2009; Bailey, 2010). Despite their immense prospects however, CLTs are yet to be widely adopted in cities of the Global South. To date, the only notable examples of CLTs in the South remain the Maria Auxiliadora CLT in Cochabamba, Bolivia (Lipman and Rajack, 2011), and the Tanzania-Bondeni CLT in Voi, Kenya, to which we now turn our attention.

Implementing the Tanzania-Bondeni CLT, Voi

The Tanzania-Bondeni CLT is located in Voi, a Kenyan town of about 50,000 inhabitants. The project was implemented between 1991 and 2004 as a component of the Tanzania-Bondeni settlement upgrading project (Midheme, 2010). At the launch of the initiative, the settlement hosted some 4370 residents occupying 530 structures (Yahya, 2002). Most dwellings consisted of dilapidated hovels, typically 100 square-foot rooming apartments accommodating household sizes as large as seven persons. Up to 62% of the dwellings were constructed of temporary material. The residents were generally poor, with 70% either unemployed or earning less than US\$8 a month (Bassett, 2005). There were no access roads, water or sanitation facilities. Furthermore, the neighbouring Voi River, on which residents depended for their livelihoods, had been heavily eroded due to uncontrolled sand-harvesting, brick-making and unchecked cultivation on the banks. The river bank had broken at several points, exposing residents to frequent floods. With neither access to financial credit, nor security of tenure, households' prospects for housing improvement were severely limited. Despite the squalid conditions however, the settlement was notably characterised by internal stability. At the onset of the project, up to 47% of the residents had lived on the site for more than 30 years (Midheme, 2010).

Origins of the Tanzania-Bondeni CLT initiative

In early 1991, residents of Tanzania-Bondeni petitioned the Voi municipal council to have their settlement upgraded. The local authority subsequently partnered with the Ministry of Local Government and the German development agency, GTZ, to implement the Tanzania-Bondeni upgrading project (Midheme, 2010).

Project objectives and institutional design for implementation

The project set out to achieve four main objectives: to (1) legalise the settlement by providing tenure security to residents; (2) enhance the delivery of municipal services to the settlement; (3) improve the environmental quality of the project area; and (4) boost the council's land-based revenues through increased land rates (Yahya, 2002; Bassett, 2005). These objectives were to be realised within the framework of certain guiding principles agreed upon at the start of the project, between the community and the other stakeholders. In short, these principles recognised that the upgrade would be a gradual, step-



by-step process to ensure community participation, learning, ownership and long-term project sustainability. It was also agreed that external interventions would be in support of, and supplementary to local efforts, rather than in replacement of it. A consultative forum would also be established to ensure structured communication between the community and the other project partners. Finally, it was agreed that the community would decide on the land tenure system they preferred, in order to enhance sustainable benefits and community-building (Bassett and Jacobs, 1997; Midheme, 2010).

True to the project objectives, the planning process was consultative and actively involved residents working closely with the project planners. A physical layout plan was eventually produced with provisions for residential and commercial plots. A market, schools, health centre, community centre and open spaces were also provided for in the plan. Furthermore, a riparian strip was set aside along Voi River to provide space for subsistence gardening, and to serve as a check against flooding risks. The final plan realised a total of 818 plots, far beyond the number claimed by original structure owners. Once the original claimants got their share, the extra plots were democratically allocated to other residents, with preferential treatment accorded to the elderly, the sick and the very poor; followed by long-term tenants (Midheme, 2010). The layout plan then became the basis for subsequent land surveys and subsequent land administration (Yahya, 2002; Bassett, 2005).

Land tenure and administration

Wary of post-project displacement that had characterised similar initiatives in the past, the Voi project team sought an alternative form of landholding that would deliver sustainable benefits to the community. In keeping with project objectives however, the residents themselves had to decide on their preferred form of landholding (Midheme, 2010). Accordingly, residents were introduced to three tenure forms: a housing co-operative, individual titles, and a CLT (MoLG, 2004). Each form was then presented to the residents, alongside its respective abilities to meet the project goals. A vote was subsequently called, in which 239 out of the 258 structure owners picked out a CLT as their preferred form of tenure (Midheme, 2010). What followed was the design of rules and other institutional organs necessary for CLT administration.

Implementation hurdles and their resolution

Being the first CLT initiative in Kenya (Yahya, 2002; Bassett, 2005), the Voi project had to contend with several practical implementation hurdles. To begin with, the CLT in its classic form could not easily fit within the Kenyan land law and administration system, owing in part to inadequate policy and legal support for communal landholding (Midheme, 2010). A further hurdle concerned the mode of incorporation. In the American system for example, CLTs are incorporated as not-for-profit entities (Davis, 2006). However, incorporation under Kenyan law is ordinarily reserved for profit-making concerns, which would not be a suitable organ for the management of CLT affairs. Yet another major obstacle was presented by the 'rule against perpetuities', which restricts permanent alienation of land from the market in common law jurisdictions such as Kenya (Bassett, 2005; Midheme, 2010). Because CLTs are by design established to hold and manage land 'outside the market', the rule presented a direct threat to the Voi project right from the outset (Yahya, 2002). The project team therefore had its work cut out: to explore alternative avenues of embedding the CLT into the local legal framework, while striving to preserve the model's original objectives as much as possible.

To circumvent the rule against perpetuities, two separate legal instruments were crafted. Residents first organised and registered themselves as Tanzania-Bondeni Settlement Society. Secondly, a trust deed was



drawn outlining guidelines on the appointment of a managing board of trustees. Trustees were subsequently appointed and registered as the Tanzania-Bondeni Community Land Trust (Midheme, 2010). The community then applied for a headlease from the Commissioner of Lands. Through the headlease, the government (who retains the radical title) leases the land to Tanzania-Bondeni CLT. The CLT in turn issues subleases to individual trust members as proof of property-holding within the settlement. For long-term operations, the CLT is administered by a nine-member board of trustees. The board is assisted by a residents' committee, which is responsible for the day-to-day running of the CLT. Thirteen members sit on this committee, with three seats reserved for women (Yahya, 2002; MoLG, 2004). Members are charged annual fees to enable the Trust finance its recurrent budget. The CLT's audited accounts are approved by members during the annual general meeting (Bassett, 2005; Midheme, 2010).

To ensure housing remains within the community, the Tanzania-Bondeni CLT reserves pre-emptive rights of purchase whenever a member leaves. Absentee landlordism is restricted, as homeowners are obliged to reside on their property. Although lessees are required to pay for collective services, such payments are staggered to accommodate individual circumstances. Furthermore, the money so collected is converted into a development fund and reinvested into community projects for long-term development (Midheme, 2010). More importantly, to cushion CLT members from displacements instigated by official building standards, the headlease incorporates conditions that bind the local authority into recognising existing dwellings on as-is basis. The owners are however required to gradually improve their houses to conform to municipal building by-laws, over time (MoLG, 2004).

Taking stock of the Tanzania-Bondeni CLT

Achievements of the initiative

The greatest accomplishment of the Voi CLT has been its ability to help residents gain legal access to urban land that had eluded them for decades. By ensuring protection against market-induced displacements, the CLT has facilitated the poor's access and retention of urban land and housing in a manner that could never have been possible in the open market (Midheme, 2010). The boost in tenure security has since led to increased construction of improved dwellings and social facilities. The upgrading initiative has further created opportunities for on-site employment (Yahya, 2002; MoLG, 2004). Besides, social facilities like schools, playgrounds and dispensary provided under the initiative have substantially contributed to the betterment of the residents' quality of life.

The initiative featured strong community participation, with both landlords and tenants alike actively involved throughout the process (Midheme, 2010). Tenant participation was especially enhanced by the fact that all residents (tenants included) are full members of the CLT. Accordingly, tenants too are entitled to housing ownership within the community in the longer term. They are equally protected from arbitrary increases in rents that often characterises conventional upgrading projects. As a result of this inclusive framework, all residents have banded together into one strong community (Yahya, 2002; Midheme, 2010). The CLT has thus been able to foster active participation in the creation of urban space by all users, beyond the landlord-tenant dichotomy ordinarily imposed by individual property ownership. Moreover, by inhibiting post-project displacement, the CLT has further contributed greatly to neighbourhood stability and the maintenance of social cohesion (Midheme, 2010).

From field interviews conducted between March and May 2010, it is clear that residents of Tanzania-Bondeni greatly value social solidarity – those symbiotic relations of trust, reciprocity and obligation among neighbours that are so essential for community life. The CLT has created the incentive for



residents to unite under a one-for-all, all-for-one philosophy designed to prop up each other in times of adversity. To them, the CLT is more than just a form of land tenure. It has provided a basis for the growth of a vibrant community premised on the principles of democracy, inclusiveness and horizontality (Libby and Bradley, 2000; BSHF, 2005). The initiative has further enabled residents to marshal resources from hitherto untapped sources. For example, residents have formed housing co-operatives to assist in housing finance. These co-operatives have formally been linked to the National Cooperative Housing Union (NACHU), from where members have been able to draw funds for housing development (Midheme, 2010). Self-help is also deployed in actual house construction and is premised on Kenya's long standing *barambee* tradition (Ngau, 1987). In essence, residents collaborate rather than compete, and believe that their community is only as strong as its weakest member.

The CLT has also conferred additional unique benefits. Intuitively, homeownership, restrictions on absentee-landlordism and incorporation of all residents into the Trust should all promote wealth accumulation, property maintenance, neighbourhood stability and social cohesion over time (Midheme, 2010). All these contribute to the building of stronger communities. Moreover, the CLT has provided a vital springboard for expanding civic engagement by building upon the bases of social organisation created under the project. This has long-term impacts on social action and community development, besides broadening the range of resources available to residents. Lastly, the CLT has afforded the poor residents an avenue to the coveted status of homeowners, with which comes the satisfaction of 'making it' (Libby and Bradley, 2000), a feat that most households could never have hoped to achieve, unaided.

Today, the housing situation in Tanzania-Bondeni had vastly improved, with the settlement housing close to 8,000 people in decent dwellings. But by the same token, about 20% of the original structures are yet to record any meaningful improvement owing in part to high levels of poverty among the homeowners. This confirms the disparities that exist in household capabilities to improve their dwellings. It is this same reason that reinforces the need for special arrangements to cushion such slow 'consolidators' from the onslaught of 'gentrifiers' seeking to benefit from the windfall of upgrading initiatives (Midheme, 2010).

Project drawbacks and proposals for improvement

There were weaknesses in the Voi initiative that will be pointed out in the hope of improving future initiatives premised on the same model. The first drawback experienced during implementation concerns the legal conundrum that governs CLT operations. As captured in the foregoing discussion, these can be long and unwieldy (Yahya, 2002; Bassett, 2005). Matters were exacerbated by the incongruence between Kenyan land law and principles of the CLT concept. Of particular importance are rules against perpetuities and restraints on land alienation, both of which conflict with the CLT's central concept of setting land aside indefinitely. To facilitate their future development therefore, the legal framework surrounding the operation of CLTs will have to be simplified to facilitate easier administration than is the case now.

Longevity and resoluteness of community participation is another area likely to derail long term CLT sustainability (Bassett, 2005; Bailey, 2010). Essentially, a CLT is a bottom-up edifice whose construction and success depends, on the ability of local residents to build a functional community. It cannot be imposed from above, either by the state or any other external agency. The reason may be simple but is rather a powerful one: external actors do not build communities; residents do. It is upon residents that the task of building and sustaining a CLT must thus be entrusted. This creates a practical problem however – that of managing community dynamics. Fundamentally, long-term sustainability is a major issue for CLTs as it depends on long-term community commitment which, however-rewarding, can be very demanding.



The challenge of longevity and stewardship is thus a real one and may call for long-term institutional support and facilitation from external partners, from time to time.

Conclusion

This essay has been an attempt to articulate an alternative to the hegemony of individual titles as the archetypical form of property, all in the hope that a modicum of land and housing rights may finally accrue to the urban poor. The main argument has been that prescriptive forms of property have yielded lamentable outcomes among vulnerable groups in urban Kenya and that alternative forms of landholding are urgently needed to stem the tide of social exclusion in access to urban land and housing.

On many fronts, there is room to cultivate alternatives to the hegemonic forms of property. However, such alternatives can only find meaning if they are made relevant to the needs of those currently shunted to the fringe by the prevailing state and market mechanisms of access to urban land and housing. As the Tanzania-Bondeni CLT initiative demonstrates, it is possible to creatively (re)design property rights by reconceptualising them to suit evolving social needs and realities of contemporary urbanism. That way, we can innovatively modify the sticks in the property rights bundle towards more socially-just ends. This however will entail a critical push beyond the hegemonic ‘invisible hand of the market’ and the ‘visible fist of the state’ that today characterise the landscape of neoliberal urban development (De Angelis, 2003).

In urban Kenya today, there are fewer issues that are more emotive than that of land (Syagga, 2006). Worse still, if our cities are shrinking in terms of developable land, it certainly is expanding in terms of new claimants to that land (Doebele, 1987; Blomley, 2008; Harvey, 2012). A possible way out of this crisis then, is to support an even broader range of approaches to facilitate access to the growing number of claimants. It is in this light that further development of communal forms of land tenure such as the CLT should be encouraged, recognizing that access to land is ultimately a political issue driven in many respects by concerns for distributive justice and concerns for human dignity (Syagga, 2006; Miraftab, 2009).

References

- Amis, P. (1984) 'Squatters or Tenants: The Commercialization of Unauthorized Housing in Nairobi'. *World Development*, 12(1), 87–96.
- Andreasen, J. (1996) 'Urban Tenants and Community Involvement'. *Habitat International*, 20(3), 359–365.
- Bailey, N. (2010) 'Building Sustainable Communities from the Grassroots: How Community Land Trusts Can Create Social Sustainability'. In Manzi, T., Lucas, K., Lloyd-Jones, T. and Allen, J. (Eds.), *Social Sustainability in Urban Areas: Communities, Connectivity and the Urban Fabric*. pp. 49–64. London: Earthscan.
- Bassett, E. M. (2002) 'Informal Settlement Upgrading in Sub-Saharan Africa: Retrospective and Lessons Learned'. Washington, DC: World Bank/Norwegian Trust Fund.
- Bassett, E. M. (2005) 'Tinkering With Tenure: The Community Land Trust Experiment in Voi, Kenya'. *Habitat International*, 29, 375–398.
- Bassett, E. M. (2007) 'The Persistence of the Commons: Economic Theory and Community Decision-Making on Land Tenure in Voi, Kenya'. *African Studies Quarterly*, 9(3), 1–29.
- Bassett, E. M. and Jacobs, H. M. (1997) 'Community-Based Tenure Reform in Urban Africa: The Community Land Trust Experiment in Voi, Kenya'. *Land Use Policy*, 14(3), 215–229.
- Blomley, N. (2008) 'Enclosure, Common Right and the Property of the Poor'. *Social & Legal Studies*, 17(3), 311–331.
- Boonyabancha, S. (2009) 'Land For Housing the Poor – By the Poor: Experiences from the Baan Mankong Nationwide Slum Upgrading Programme in Thailand'. *Environment & Urbanization*, 21(2), 309–329.
- BSHF (2005) *Redefining the Commons: Locking In Value through Community Land Trusts*. Leicestershire: Building and Social Housing Foundation.
- Davis, J. E. (2006) *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*. Montclair, NJ: National Housing Institute.
- De Angelis, M. (2003) 'Reflections on Alternatives, Commons and Communities; or Building a New World from the Bottom Up'. *The Commoner*, 6, 1–14
- Doebele, W. A. (1987) 'The Evolution of Concepts of Urban Land Tenure in Developing Countries'. *Habitat International*, 11(1), 7–22.
- Durand-Lasserve, A. and Selod, H. (2009) 'The Formalization of Urban Land Tenure in Developing Countries'. In Lall, S. V., Freire, M., Yuen, B., Rajack, R. and Helluin, J.-J. (Eds.), *Urban Land Markets: Improving Land Management for Successful Urbanization*. New York: Springer.
- Gulyani, S. and Bassett, E. M. (2007) 'Retrieving the Baby from the Bathwater: Slum Upgrading in Sub-Saharan Africa'. *Environment and Planning C: Government and Policy*, 25, 486–515.
- Gulyani, S., Talukdar, D. (2008) 'Slum Real Estate: The Low-Quality High-Price Puzzle in Nairobi's Slum Rental Market and its Implications for Theory and Practice'. *World Development*, 36(10), 1916–1937.
- Harvey, D. (2012) *Rebel Cities: From the Right to the City to the Urban Revolution*. London: Verso.
- Huchzermeyer, M. (2008) 'Slum Upgrading in Nairobi within the Housing and Basic Services Market: A Housing Rights Concern'. *Journal of Asian and African Studies* 43(1), 19–39.
- Imparato, I. and Ruster, J. (2003) *Slum Upgrading and Participation: Lessons from Latin America*. Washington, DC: The World Bank.
- Kelly, J. J., Jr. (2009) 'Land Trusts That Conserve Communities'. *DePaul Law Review*, 59, 69–120.
- Kigochie, P. W. (2001) 'Squatter Rehabilitation Projects that Support Home-Based Enterprises Create Jobs and Housing: The Case of Mathare 4A, Nairobi'. *Cities*, 18(4), 223–233.



- Krueckeberg, D. A. (1995) 'The Difficult Character of Property: To Whom Do Things Belong?' *Journal of the American Planning Association*, 61(3), 301—309.
- Libby, J.M., Jr. and Bradley, D. (2000) 'Vermont Housing and Conservation Board: A Conspiracy of Good Will among Land Trusts and Housing Trusts'. In Geisler, C. and Daneker, G. (Eds.), *Property and Values: Alternatives to Public and Private Ownership*. Washington, DC: Island Press.
- Lipman, B. and Rajack, R. (2011) *Memo to the Mayor – Improving Access to Urban Land for All Residents: Fulfilling the Promise*. Washington, DC: The World Bank.
- Macoloo, G.C. (1988) 'Housing the Urban Poor: A Case Study of Kisumu Town, Kenya'. *Third World Planning Review*, 10(2), 159–174.
- Macoloo, G.C. (1994) 'The Changing Nature of Financing Low-income Urban Housing Development in Kenya'. *Housing Studies*, 9(2), 281–299.
- Midheme, E. (2010) 'Laying the Foundations for the "Just City": Collaborative Spatial Planning and Settlement Upgrading in Voi, Kenya'. *ASRO*. Leuven: KU Leuven.
- Miraftab, F. (2009) 'Insurgent Planning: Situating Radical Planning in the Global South'. *Planning Theory*, 8(1), 32–50.
- MoLG (2004) *Guidelines for Upgrading of Informal Settlements Based on Minimum Intervention Approach*. Nairobi: Ministry of Local Government.
- Muraya, P.W.K. (2006) 'Failed Top-Down Policies in Housing: The Cases of Nairobi and Santo Domingo'. *Cities*, 23(2), 121–128.
- Needham, B. (2006) *Planning, Law and Economics: An Investigation of the Rules We Make for Using Land*. London and New York: Routledge.
- Ngau, P. M. (1987) 'Tensions in Empowerment: The Experience of the "Harambee" (Self-Help) Movement in Kenya'. *Economic Development and Cultural Change*, 35(3), 523–538
- Otiso, K. M. (2003) 'State, Voluntary and Private Sector Partnerships for Slum Upgrading and Basic Service Delivery in Nairobi City, Kenya'. *Cities*, 20(4), 221–229.
- Payne, G. (2001) 'Urban Land Tenure Policy Options: Titles or Rights?' *Habitat International*, 25, 415–429.
- Payne, G., Durand-Lasserre, A. and Rakodi, C. (2009) 'The Limits of Land Titling and Home Ownership?' *Environment & Urbanization*, 21(2), 443–462.
- Payne, G. and Majale, M. (2004) *The Urban Housing Manual: Making Regulatory Frameworks Work for the Poor*. London, UK and Sterling, VA, USA: Earthscan.
- Syagga, P. M. (2006) 'Land Ownership and Use in Kenya: Policy Prescriptions from an Inequality Perspective'. In SID (Ed.), *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives*. Nairobi: Society for International Development (SID).
- Turnbull, S. (1983) 'Cooperative Land Banks for Low-Income Housing', in S. Angel, R.W. Archer, S. Tanphiphat and E.A. Wegelin (eds.), *Land for Housing the Poor*. p. 512–526. Singapore: Select Books.
- Turner, J. C. (1967) 'Barriers and Channels for Housing Development in Modernizing Countries'. *Journal of the American Planning Association*, 33(3), 167–181.
- Turner, J. C. (1968) 'Housing Priorities, Settlement Patterns, and Urban Development in Modernizing Countries'. *Journal of the American Planning Association*, 34(6), 354–363.
- UN-Habitat (2003) *Rental Housing: An Essential Option for the Urban Poor in Developing Countries*. Nairobi: UN-Habitat.
- World Bank (2011) *Developing Kenya's Mortgage Market*. Washington, DC: The World Bank.
- Yahya, S. S. (2002) 'Community Land Trusts and Other Tenure Innovations in Kenya'. In G. Payne (ed.), *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor*, 233–263. London: ITDG.