Land Rights Practice

Securing Land Tenure for Residents of Nairobi, Kenya's Urban Slums

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Introduction
In Kenyan culture, land is the ultimate symbol of security, well-being and history. It ties each person to a tribal homeland that represents unique traditions, foods, ceremonies and livelihoods. Despite these truths, rapid urbanization across the country has forced many to abandon their homelands for the city. As of 2009, 40% of Kenya's population was living in cities, and it has been estimated that 50% will be living in cities by 2013 (Weru, 2012). As a result, the capital of Nairobi is littered with slums, crammed conditions, and a loss of dignity for those that dwell in such areas – especially in regard to land. 2.65 million people live in slums out of just over 3 million total city residents. Shockingly, the 65% of the population that lives in slums occupies just 1.62% of the city's land area (Weru, 2012). Given these statistics, it is easy to see how significant the issue of land is for Nairobi's poor. Experts agree that granting land rights or land tenure to slum dwellers a significant and necessary step in addressing the conditions in urban slums. Any development or slum upgrading effort in which residents are not given a legal right to the land they occupy will be carried out in vain, because when tenure is granted the people take pride in their home, are able to invest in their community, and no longer have to live with insecurity and fear that they may be evicted. Currently, 90% of slum dwellers in Nairobi are occupying their land illegally (Kariuku, 2012).

Land Policy in Kenya
Historically, the Kenyan government has been known as a violent and oppressive force to slum dwellers. It has carried out forced evictions in the middle of the night at the hands of paid thugs who burn down homes and rape women. It has left families without a place to live and no plan for resettlement. It has stomped out the voices of the poor by establishing policies that work against their well-being and livelihood. However, there is light on the horizon. What seems to be a result of increased pressure from international human rights groups, community based advocacy organizations and slum-dwellers themselves – as well as a realization that their previous efforts have done nothing to curb the growth of slums – the Kenyan government is cleaning up their act.

<u>Policy Timeline</u>

------- *2006: Changes in Forced Eviction Practices*
In 2006, Kenya's Ministry of Lands made a public announcement outlining its plan to create a legal framework for the way in which evictions were to be carried out in Kenya. A national symposium was held where 1,000 community organizations and representatives provided input and signed onto a declaration of eviction guidelines intended to protect the most vulnerable. ("Forced Evictions," 2011).

------- *2006: Millennium Development Goals*
Kenya's Ministry of Housing, in response to the United Nations' Millennium Development Goal number 7, target 11 entitled "Improving the Lives of Slum Dwellers," created a Needs Assessment Report to identify needs and opportunities for carrying out this goal within Kenya based on local information. In that report, the Kenyan government admitted that "Success…will foremost depend on commitment to draw guidelines for regularizing land tenure in targeted informal settlements, countrywide. The ministry of housing has also recently launched the Kenya Slum Upgrading Programme (KENSUP). ("MGD Needs Assessment," 2006).

------ *2011: The New Constitution*
Kenya's new and improved constitution was completed in 2011 and signed by President Mwai Kibaki in early 2012. Among many other important issues, land and housing were addressed in great detail, and new guidelines were established. According to the constitution: "Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—(a) equitable access to land; (b) security of land rights...Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation." ("The Constitution of Kenya," 2010).

------ 2012: Ministry of Lands
Kenya's Ministry of Lands is applying new resources to the issue of land tenure for slum dwellers. First, in October 2012 the Ministry created a Taskforce on Community Land, Eviction and Resettlement Bills that is charged with establishing legislative guidance for "land problems faced by the marginalized, minorities and vulnerable groups" as well as how to justly resettle squatters in case of eviction (Waringa, 2012). Second, they are cooperating with community groups to implement slum upgrading projects. At a recent event organized by a leading land rights organization in Kenya, Pamoja Trust, along with an association of slum dwellers called Muungano wa Wanavijiji, Minister for Lands James Orengo admitted that for the first time in Kenya's history, "the rights to land ownership by slum dwellers has been considered" and that the department hoped to "register all squatter settlements found on public and community land so as to upgrade or develop various areas" ("Ministry of Lands," 2010).

Securing Land Tenure: Differing Contexts
Despite the improvements noted above, the Kenyan government has not abandoned all of its old practices and is certainly not giving land away to slum dwellers. In fact, the most recent forced eviction on government land was held in January 2012, and corruption is a major issue within slum upgrading and land development projects. Because of the diverse nature of land history and legality in different slum communities in Nairobi – as well differing needs and desires in each area – securing land tenure will look different for each settlement. Currently, there is no official process or methodology for securing land tenure released by a government agency, community group or otherwise, perhaps because of the diverse nature of slums in the city. Below, two examples of land tenure processes and potential solutions are offered for Nairobi's Kibera slum and Mukuru slum.

1. KIBERA SLUM

An aerial view shows Kibera's overcrowded housing conditions


Kibera's "Toi Market"

Statistics

Population estimated to be near 800,000 people	**Sub-divided into twelve "villages"**	**Land legality: Public government land previously granted to a specific people group**	**Africa's second largest slum and perhaps the most well-known slum in the world**

Overview
The land that Kibera slum sits upon was originally gifted to the Nubian people who were taken from their homeland in South Sudan and forced to fight for the British colonialists, eventually landing in Nairobi. The

Kenyan government gave the plot of land to the Nubians as a way to thank them for their efforts. However, the Nubians never received any formal documentation that made the land theirs legally. Since that time, rapid urbanization has led people from many of Kenya's tribes to settle in Kibera, ballooning into a massive slum. After Kenyan independence in 1963, new laws were rendered which deemed certain types of housing illegal, and Kibera suddenly became an illegal settlement on government land (Abid, 2012). Enterprising Kenyans (or slumlords as they are sometimes called) built structures on the land and now collect monthly rent from tenants who reside in them. This becomes problematic when government eviction notices are issued, as the notices go to the slumlords that do not pass the messages on to their 'tenants' for fear that they will lose income. Therefore, Kibera residents are often taken off guard by evictions, even when they are said to have been informed (Kariuki, 2012). Next corruption is a major problem throughout Kenyan power structures, and it is no different for government-led slum initiatives. For example, politicians are known to have taken money from slumlords in order to be allowed to build new structures on government land. A UN-Government collaborative housing project in Kibera was estimated to cost 80 million Kenyan Shillngs, but in the end cost 1.5 billion Shillings, since "everyone had to have their cut" (Muturi, 2012).

Map of Kibera's "Villages"
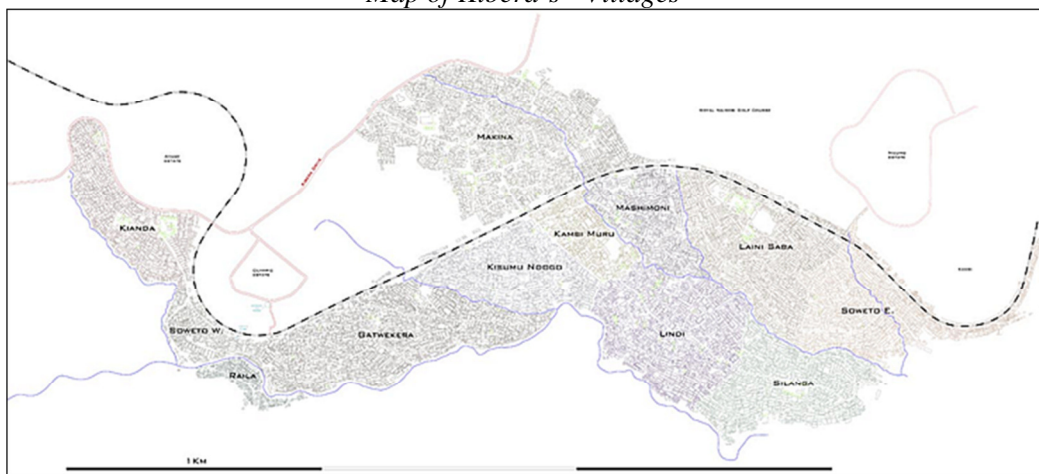
Retrieved from Carolina for Kibera (http://cfk.unc.edu/)

Tenure Process

Since Kibera rests on what is now considered public government land, the government is seen as the entity primarily responsible for providing services to Kibera's residents and granting land tenure. Recently, the government announced a new slum upgrading process in the area, though details at this point are unclear. However, land tenure is rather complicated because the Nubians see Kibera's land as their own and are now suing the Kenyan government to re-possess it. "Nubians have expressed concern over the slum upgrading programme and construction of roads, which they claim was appropriating their land and forcefully displacing them" (Lucheli, 2012). In addition, they are demanding legal recognition in the form of titles for the land they currently occupy, which equals about 700 acres and well over 50,000 Nubian residents. Some Nubians believe they should be granted legality to all of the land they were originally gifted, a total of 4,197 acres. Some of this land now rests outside the borders of Kibera. Nubians claim discrimination as they are denied public services and utilities, and are treated as squatters on their own land (Lucheli, 2012 & Abid, 2012).

There are several layers of tensions between people of various religious, ethnic and socioeconomic groups that play into the land tenure situation in Kibera. In addition to being of differing ethnic groups, Nubians are primarily Muslim and Kenyans of other tribes are primarily Christian. Tribal tensions also come into play as most of the structure owners in Kibera are from the Kikuyu tribe and most of the tenants are from the Luo tribe – the two groups that clashed during the 2007 and 2008 post-election violence. Recently, the most prominent Luo politician told his people to stop paying rent to their Kikuyu structure owners, causing

violence and chaos. Furthermore, structure owners do not want to see land rights for their tenants, or they would be out of a job.

While these tensions exist, there is no public space for discussion and the voicing of concerns. The land tenure process in Kibera must first and foremost include reconciliation and peace-making between groups where there is a forum for everyone's voice to be heard. Since it is near impossible to parcel land to all the residents, one option is through the establishment of a Community Land Trust or cooperative where *"(1) land is owned by a registered Trust that leases it out to the families who live there; (2) the house and other structures put on the land are owned by the individual families; (3) each family can sell its house but at a regulated price by the Trust and (4) governance is shared between the Trust representatives (families who live on the land) and other stakeholders (public officials)"* (Syagga, 2011). Rather than individual titles, a land trust ensures security of tenure through a group system of trust and accountability.

2. MUKURU SLUM

A Mukuru resident after her home was demolished in a forced eviction

A view of Mukuru slum

Statistics

Population estimated to be near 600,000 people	Sub-divided into eight "villages"	Land legality: Privately-owned land	Most residents find work in neighboring "industrial area" for very low pay

Overview
Mukuru is settled on privately-owned land. In the 1990's when President Moi was in power, the people attempted to overthrow him. Having come to the realization that him reign may soon end, Moi took vast plots of public land throughout Kenya and began divvying it up among his friends and family members. Nearly all of Mukuru was converted to private land in this way. Yet there were already people living on the land at the time, and the numbers continued to grow. Today, the government does not have the ability to provide services or slum upgrading projects in Mukuru. Some residents even have the money to build permanent, safe structures, but are unable to for fear of demolition (Muturi, 2012). In addition, tens of thousands of households are under imminent threat of eviction by the land owners (Weru, 2012). The current owners of the land plots range from wealthy business owners to powerful politicians. These men own multi-billion shilling corporations yet they are fighting over tiny plots of land in Mukuru, which can only be attributed to sheer greed (Kariuki, 2012).

Tenure Process
In an area where slum dwellers squat on private land, grassroots advocacy mixed with high level networking to access the powers may be required in order to secure land tenure. Because the wealthy, private owners have likely never stepped foot on their own land, they remain completely unattached and

unaware of the conditions on the ground. The following narratives present two possible solutions that are currently underway in Mukuru.

Approaching the Powerful

The staff at Akiba Mashinani Trust (AMT) in Nairobi are deeply invested in land issues within Mukuru slum, working closely with the residents as well as those in positions of power. In a recent interview with one of AMT's staff members, he told the story of a rich and powerful Kenyan business tycoon who owned a small plot of land in Mukuru. AMT was able to get a meeting with the man since they are a well-respected organization with a lot of knowledge about Mukuru. The man asked AMT to help him determine the numbers of homes and people living on his land. AMT suggested the man go to see it for himself, but he refused. So AMT went in and trained the community members to do surveying that would get the information he wanted, as well as take photos. It so happened that the night before the surveying was conducted, a man had been killed on the plot of land during the night while using the toilet. He was defecating into electrocuted water that power lines had fallen into and died. Those on the ground captured photos of the dead man with his pants halfway down, as well as photos of the garbage heaps and open sewage lines that marked the area. The AMT staff returned to the rich land owner to give him the information and show him the photos. He was so disgusted by what he saw, that he immediately declared that he wanted nothing to do with the piece of land and was ashamed at what he was perpetuating. Therefore, he gave up his land to the government. While the residents still do not have land tenure, this was a major step in achieving security. Furthermore, this rich man may be able to influence other Mukuru land owners – especially since it is likely that none of them have ever stepped foot on their land either.

An aerial view of Mukuru slum

Purchasing Land Together

In another example, a group of Mukuru residents have banded together to purchase their own plot of land. With organizing support from Akiba Mashinani Trust, the Rockefeller Foundation and Muungano wa Wanavijiji, 2,000 Mukuru residents have pooled their small, daily savings from a period of four years and have secured 60 million Kenyan Shillings (KSH). The group has raised enough to buy a 23-acre plot adjacent to the slum from its private owner, has secured the land title, and obtained a mortgage through a local bank. "'The government officials were not happy at first. We were even arrested by the police. They did not want us to populate the area, but we didn't stop,' said Robert Mironga, chairman of the project." The group plans to build 3,000 permanent, affordable housing units where tenants will pay just 10 KSH per day (about 12 cents) in order to fulfil their dream of having a safe, secure place to live (Aarhus, 2011). This model could be replicated by others in areas where slum dwellers live on private land. Either the residents purchase land from its owner (if he/she is willing to sell it), or land plots near their home slum area, and are fully in charge of deciding the housing structure and design.

While only two examples were provided above, a huge number of slums exist in Nairobi, all of which have varied histories, legal statuses and needs of the community. Though each of these situations is unique, there are common principles to be practiced across all of them. The chart on the following page provides an overview of these processes and principles as they apply to the city of Nairobi.

Land Rights Processes and Principles – Nairobi, Kenya

Organize: Organize community members; establish forum for hearing concerns of all groups affected

Plan: Determine the best approach based on expressed needs, desires and capacity

Collaborate: Use collaborative efforts of NGOs, community groups, churches, slum residents, other

Network: Network among the most powerful to connect to the most vulnerable (directly or indirectly)

Hold Accountable: Hold leaders accountable to promises made; address corruption

A note on Networking: Muungano/Akiba Mashinani Trust, one of most successful groups advocacy and land rights groups in East Africa, has admittedly been accused of "sleeping with the government" and other powerful actors. Yet they recognize the power in connecting effective grassroots activism (by the people) to the powers that be (media, government, business) in order to create lasting change.

Plan — Execute — Evaluate — Adjust
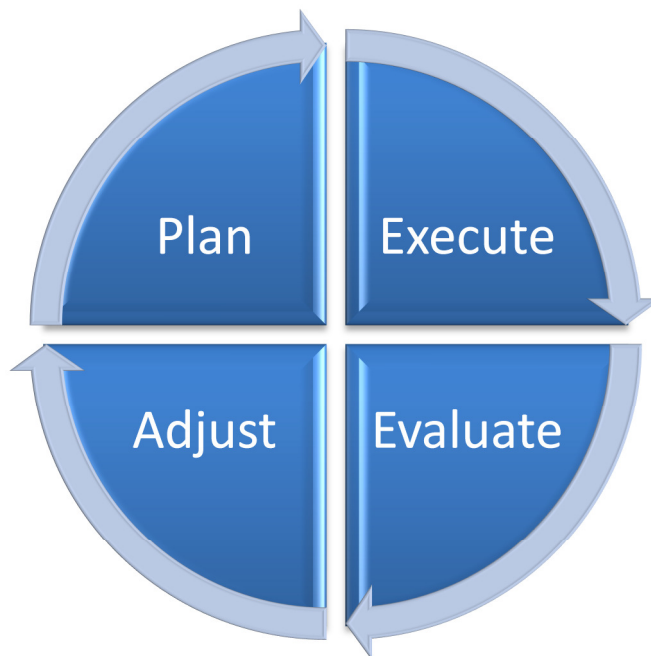
Those involved in advocacy and land tenure work must be prepared to constantly evaluate efforts, given the volatile nature of situations on the ground. While advocacy work can be painstaking and can take years for results to be realized, when it is done correctly the outcomes can be life-changing for slum dwellers.

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