

## CAN COMMUNITY LAND TRUSTS ENHANCE URBAN LAND GOVERNANCE IN KENYA?

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### ABSTRACT:

The struggle for land constitutes a major challenge in urban governance in Kenya today. The sheer pace of the country's urbanization far outstrips the ability of conventional state and market mechanisms to accommodate the ever-expanding urban population. Most affected in the ensuing scramble for urban space are the poor. Even when they manage to access urban land, low-income households can hardly retain such land on a long-term basis, owing to market vicissitudes and unfriendly government policies. Accordingly, poor households remain shunted to the fringe of urban society as it were, excluded from systematic access to shelter and livelihood opportunities. To expand the poor's access to urban land and housing, Kenyan planners have experimented with communal forms of property modelled on the community land trust (CLT). By design, CLTs alienate land from the market and assign it to defined communities in perpetuity, thereby aiding long-term shelter provision and community development. The CLT arrangement however brings with it new institutional arrangements that challenge the long-held frameworks of land governance in Kenya. By confronting statutory regimes of land tenure premised on individual property and transferring land management to communities, CLTs facilitate community agency based on social cohesion and associational modes of (re)production that are so crucial in propping up poor households. Using the case of the Tanzania-Bondeni Community CLT recently implemented in Voi town, this paper highlights the institutional bottlenecks to CLT implementation and explores how the new model of land ownership can be mobilized to address the low-income housing problem in the country. Specifically, I address key governance issues that constitute a barrier to wider CLT adoption and explore institutional and other reforms necessary to integrate the CLT approach as a major component of the country's urban land governance framework.

**Keywords:** Community land trusts; Governance, Land management, Low-income housing, Kenya

### INTRODUCTION

In contemporary Kenya, fewer issues are more emotive than that of land and how it is allocated and used (Kanyinga 1998; Syagga 2006; Rutten and Owuor 2009). The struggle for land is particularly intense in cities, where the poor's mundane needs of shelter and livelihoods are oddly stacked against unbridled land accumulation by a powerful political and economic élite emboldened by the apparatus of a neo-patrimonial state (Klopp 2000; GoK 2004; Southall 2005; Syagga 2006). In the unfolding

situation, poor urban households particularly find themselves in a precarious situation. Even when they manage to access urban land, low-income households can hardly retain such land on a long-term basis, owing in part to vicissitudes of the market and unfriendly government policies (Gatabaki-Kamau and Karirah-Gitau 2004; Musyoka 2006). The situation is exacerbated by a rigid, top-down land management system that privileges individual land tenure over communal forms of property (Yahya 2002; Bassett 2005). In the upshot, poor households remain shunted to the fringe of urban society as it were, excluded from systematic access to shelter and livelihood opportunities (Gitau 2001; Gulyani and Talukdar 2008; Midheme 2010). This process of social exclusion is increasingly manifest in the proliferation of informal settlements – a condition further fuelled by rapid urbanization and high rates of household formation currently being witnessed across the country (KNBS 2010).

This paper does two things. First, I document the implementation process of the Tanzania-Bondeni Community Land Trust, while outlining areas of project strengths and weaknesses. Secondly, I address key governance reforms implemented in the recent past that are likely to facilitate further development of the CLT as a major component of urban land governance in Kenya. In what follows, the paper is divided into four sections. First, I present a definition of governance and its role in urban service delivery. I then briefly review the situation of urban land governance in Kenya. Next, I define CLTs, before presenting the Tanzania-Bondeni case. Lastly, I explore the prospects of CLTs on account of recent policy reforms in Kenya.

## **GOVERNANCE AND THE CHANGING FACE OF SERVICE DELIVERY IN CITIES**

Simply put, ‘governance’ refers to organized efforts aimed at managing the course of events in a social system (Kempa, et al. 2005). Governance thus by extension subsumes how the socio-political institutions of a given society exercise power towards the achievement of desired ends (Nunan and Satterthwaite 2001; Lindell 2008). Until the 1980s, the state was largely considered the singular entity with the authority and capacity to govern – to formulate and implement policy and in pursuit of predefined development goals (Rakodi 2001a; Osmont, et al. 2008). This is no longer the case in the current post-Westphalian dispensation typified by the proliferation of non-state actors in governance, both at the infra- and supra-national levels (Kempa, et al. 2005; Burris, et al. 2008). Across the world, there is the increased ascendancy of transnational corporations, non-governmental organizations (NGOs), foundations and religious organizations as important actors in the conduct of governance (Rakodi 2001a). To this list can be added informal and ‘dark networks’ (Kempa, et al. 2005) such as rebels and militia groups, which in their own way have altered the manner in which the business of public affairs is conducted.

In the global South, Rakodi (2001a) observes that several factors, including practical limitations on state capacity, the emergence of new social forces and ways of doing things, dissatisfaction with government, as well as a retreating state, have all given impetus for the restructuring of governance. Governance has thus increasingly become about horizontal relationships that bridge the gap among the state, market and civil society actors (Rakodi 2001a; Kempa, et al. 2005). Across many jurisdictions of the global South, there has been a steady shift from state sponsorship of economic and social programmes and projects, to the delivery of these through partnership arrangements involving both governmental and non-governmental institutions working in ‘networks’ of non-hierarchical and flexible alliances (Murdoch and Abram 1998; Burris, et al. 2007; Burris, et al. 2008).

Recent developments within and beyond the economies of the South have brought about serious changes in the conduct of governance. While economic liberalization and structural adjustment

programmes may have been potent in meeting the development agenda of the Bretton Woods institutions and other bi-lateral development partners, there is little doubt that these selfsame conditions have exacerbated the yawning chasm between the rich and the poor segments of the population in the developing world. Conditions of the urban poor have plummeted especially in much of sub-Saharan Africa (Beall 2001; Devas 2001; Rakodi 2001a) The situation has further been made worse by the widening grip of globalization that has continued to wrench dry the little left of the urban poor's livelihoods (Kempa, et al. 2005; Nuissl and Heinrichs 2011). At the city level, financial cuts from the state, decentralization and the rise of local NGOs have all changed the way municipal authorities organize the delivery of services to their residents, sometimes with devastating consequences to the urban poor in particular (Devas 2001; Nunan and Satterthwaite 2001; Rakodi 2001b; Lindell 2008).

## **LAND MANAGEMENT AND URBAN GOVERNANCE IN KENYA**

Urban land management remains one of the sticking issues in the overall conduct of urban governance and thereby sustainable urban development (Magel and Wehrmann 2001). Broadly put, land management is concerned with the institutions and processes put in place to govern land tenure, use, valuation and development within any given society (Stuedler, et al. 2004; Mitchell, et al. 2008). In much of the developing world, there is hardly a clear urban land policy that takes into account activities of all agencies involved in land management. At the same time, land administration and urban planning are often over-centralized (Kisare 1999; Magel and Wehrmann 2001). Conventional top-down administrative procedures have been cited as limiting the efficacy of settlement regularization programmes, for example (Magel and Wehrmann 2001; Gulyani and Bassett 2007; Midheme 2010). This situation is further aggravated by limited enabling capacity on the part of central governments; the absence of a clear division of labour among cognate state agencies, as well as among national, intermediate and local levels of government; and duplication of roles and resources between state and civil society institutions (Magel and Wehrmann 2001). Furthermore, there is often a weak institutional and professional capacity to undertake land management, inadequate resources to finance the implementation of urban development plans, and convoluted land administration procedures that greatly hamper the generation of workable solutions to widespread urban development problems (Devas 2001; Mitchell, Clarke et al. 2008).

In Kenya, land management remains one of the sticking issues in the overall conduct of urban governance. For purposes of this paper, I will highlight just two components of the Kenyan urban land management system that paint a picture of disenfranchisement and social exclusion of the urban poor in particular. I will outline how the institutions of land access and ownership, as well as land use planning have contributed to the deteriorating plight of the country's urban poor.

## **LAND ACCESS AND OWNERSHIP**

Officially, land for urban development in Kenya is made available through two main channels: (1) public allocation of alienated government land, or (2) purchase of privately-owned land in the open land market (Musyoka 2006). Under the old constitution (repealed in August 2010), allocation of government land to individuals, groups, institutions and corporate entities was done by the President or the Commissioner of Lands. As the custodian of all public land, the Commissioner of Lands could also allocate such land for various uses, especially as outlined in approved spatial development plans. The relevant laws required the Commissioner of Lands to advertise all government land available for allocation in the Kenya Gazette. In the absence of advertised plots, people may still apply to the

provincial or district plot allocation committees and await the availability of land within their areas of interest (Musyoka 2006, Esho, 2009).

The problem with the public land allocation machinery is that it has been shrouded in secrecy as many citizens remain unaware of the protracted procedures that govern the nebulous process. Poor households, and especially those residing out of Nairobi, particularly have no easy access to the Kenya Gazette and thus have no way of knowing when plots are available for allocation. Furthermore, even when they do get to apply for plots, the poor have limited chances of success as the plot allocation machinery is itself captive of institutional corruption and clientelism (Klopp 2000; Southall 2005). Besides, much of the stock of government land has run out within most urban areas, as cities expand apace onto land held by entities other than the government (Olima 1997; Olima and Obala 1999; Gitau 2001). The rapidly diminishing stock of public land is further fuelled by irregular allocation of reserves of public land to the so-called 'private developers' – a euphemism for the land grabbing political and economic élite (Klopp 2000; GoK 2004; Southall 2005).

In the Kenyan political discourse, there is a common Swahili saying: *mali ya umma haiumi* (lit. public property does not bite), meaning that public property is nobody's property and can hence be appropriated at will. Owing to poor stewardship over public property (Olima 1997; Omwenga 2001), politicians and other influential individuals have been known to hive off land set-aside for public utilities and other purposes such as low-income housing, social amenities and public utilities for subsequent registration and development under private tenure (Klopp 2000; GoK 2004; Southall 2005). Whereas a plethora of laws exist to guard against the take-over of privately-owned land by the state, there are no clear policies to shield public property from the onslaught of 'private developers'. Today, little remains by way of reserves of public land within the major cities and towns throughout the country. The consequence is that the public land allocation machinery has almost run its course with respect to the allocation of urban plots; unless deliberate efforts are put in place by the state to acquire new land for subsequent servicing and onward allocation to those on waiting lists (Olima and Obala 1999; Musyoka 2006). In the upshot therefore, the public land allocation system may have worked; but only in favour of those with political and economic power or appropriate connections in the state bureaucracy, at the expense of the deserving indigent (Kanyinga 1998; 2000; GoK 2004).

The other avenue for accessing urban land is through purchase in the open land market. While this may have worked for the middle- and upper classes, low income households remain excluded by high cost of land (Olima 1997). Consequently, low-income households remain locked out of the private land market, invariably unable to acquire land in suitable locations and at prices they can comfortably afford (UN-Habitat 2009). They therefore resort to other strategies such as illegal squatting and overcrowding within the ubiquitous informal settlements, as the only alternative way of securing shelter and livelihoods (Otiso 2002; COHRE 2005; UN-Habitat 2009). The result has been a steady proliferation of informal settlements. For instance, over 60% of Nairobi's population today is huddled in informal settlements which occupy less than five percent of the city's total residential, indicating just how distorted and dysfunctional land markets and state regulatory frameworks have become (Lipman and Rajack 2011). Meanwhile, urban property has become an avenue for political claim-making especially as urban space increasingly becomes a site of contestation pitting various interest groups against each other. In Nairobi's Kibera area, for example, lush golf courses and high-end housing estates sit juxtaposed to one of Africa's most notorious slums (Parsons 1997; Joireman and Vanderpoel 2010). Considering the tribulations that slum dwellers in Kibera have to contend with on a

daily basis (COHRE 2005; Gulyani and Talukdar 2008), the trope about the city being a playground for the rich and a battleground for the poor takes a rather chilling, if literal meaning.

Taken together therefore, it is evident that the official mechanisms of land access have proved singularly inadequate in meeting the needs of the urban poor with respect to urban land supply (Gitau 2001; Otiso 2002). What is more, the official land management system is hostile to communal forms of land ownership, meaning that even where they could, poor households are inhibited from leveraging co-operative forms of co-existence to ward off the pressures of the market and hold on to land on a long-term basis (Yahya 2002; Bassett 2005).

## LAND USE PLANNING

Like in many other countries in the region, urban development planning in Kenya is still understood to refer to physical land use planning, typically consisting of three key elements: (1) an overall spatial framework, usually a master (or structure) plan; (2) a set of planning standards, building codes and other development regulations; and (3) a development control system as an enforcement mechanism (Kisare 1999; Esho 2009). Granted, this form of planning is a fundamental tool for urban management and has been relied upon in the pursuit of the stated goals of planning. However, the instruments employed, the procedures followed, and the end product (the plan) over the years have been much less effective than they possibly could (MCN 1999; Esho 2009). As a result, the system has become too complex, excessively bureaucratic, time consuming, elitist and too static to answer to the real needs currently bedeviling the country's fast growing cities and towns (MCN 1999; UN-Habitat 2009). Specifically, plan preparation is highly centralized in the national office of the Director of Physical Planning, who is responsible for the formulation of all physical development plans throughout the country. In this arrangement, local authorities are not in themselves recognized as planning entities, as their role is restricted to mere development control operations within their respective jurisdictions (Bubba and Lamba 1991; MCN 1999). But even this they can hardly do effectively since they lack the capacity in terms of personnel, equipment, financial wherewithal, and political autonomy to do so (Bubba and Lamba 1991; Kisare 1999; MCN 1999; GoK 2009).

Even more critical is the continued exertion of control over local affairs by the central government, meaning little initiative and participation by local actors is allowed to thrive (Esho 2009; Midheme 2010). The argument here is that local level planning in Kenya is a beleaguered enterprise – by dint of state hegemony; duplication of efforts by concerned actors; lack of genuine participation by communities for whom plans are made; and planners' continued uncritical insistence on unresponsive planning models and standards that exacerbate the ills of social inequity that they are called upon by society to alleviate in the first place (UN-Habitat 2009; Midheme 2010).

Given these practical problems with the existing land governance system in Kenya, there have been calls to seek better ways of managing urban land so as to reduce the glaring inequities and social exclusion that have been emblematic of the current system of urban land governance (Syagga 2006). Accordingly, Kenyan planners recently experimented with the community land trust (CLT) – a form of communal property – as an alternative model of governing urban land, particularly with respect to safeguarding the interests of poor urban households who have hitherto suffered extreme social and spatial exclusion.

## **COMMUNITY LAND TRUSTS: A NEW FRONTIER FOR URBAN LAND GOVERNANCE?**

A community land trust (CLT) is a grassroots institution established to acquire and democratically manage land in trust for a specified group of beneficiaries (Bailey 2010). The defining characteristic of CLTs is the splitting of landed property into its two constituent parts – land, and the improvements upon it. While individual members of the organization may own housing and other improvements on the property, the underlying land is held jointly by all members through a registered trust (Libby and Bradley 2000). Because they are formed to hold property in perpetuity, land held by CLTs is taken out of the market and separated from its productive use so that the impact of land-value appreciation is eliminated and ‘locked’ into the community. This not only facilitates the provision of long-term affordable housing, but also stimulates sustainable local development (BSHF 2005; Lipman and Rajack 2011).

Since members own their dwellings but not the underlying land, gains on resale can be earned only from appreciation in the value of buildings, and these are invariably limited to just a portion of the increase in the buildings’ market value (Libby and Bradley 2000; Bailey 2010). A pre-emption right is further incorporated in the lease terms of every plot of land, giving the CLT preferential rights to buy property when owners opt out (Bassett 2005; Davis 2006). These conditions are designed to restrict housing buyback price so that housing remains affordable to the next buyer, while at the same time allowing for a modicum of returns on individual investments in housing (BSHF 2005; Paterson and Dunn 2009). In other words, the emphasis is put on the use value of the CLT land, by among other things, suppressing the land’s exchange value which would in ordinary circumstances drive up the price of housing over time (Midheme 2010). This way, housing prices can be kept affordable, in perpetuity (Bailey 2010; Lipman and Rajack 2011). The CLT is increasingly gaining currency around the world, not only as a viable means of overcoming the problem of social exclusion caused by escalating land values, but also as a viable vehicle for community-building and sustainable urban land management (Kelly 2009; Bailey 2010; Lipman and Rajack 2011).

### **IMPLEMENTING THE TANZANIA-BONDENI CLT, VOI**

The Tanzania-Bondeni CLT is located in Voi, a Kenyan town of 50,000 inhabitants situated some 350km southeast of Nairobi. The CLT 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 squatters in 530 structures (Yahya, 2002), mostly overcrowded hovels. Poverty was widespread, with 70% of the inhabitants either unemployed or earning less than US\$8 a month (Midheme 2010). The adjacent Voi River perennially flooded into the settlement, exposing residents to frequent displacements, destruction of property and loss of life. Health conditions were further aggravated by the absence crucial municipal services like piped water, garbage removal, or medical facilities. There was thus a high prevalence of malaria, tuberculosis and diarrhoea reported among residents (Yahya 2002). With neither access to financial credit, nor security of tenure, households’ prospects for housing improvement were severely limited. Despite the squalid conditions though, the settlement was notably characterized by internal stability. At the onset of the project, up to 47% of the residents had lived on-site for more than 30 years (Midheme 2010). Owing to this stability, residents had banded together to help ward off the constant threat of eviction (Yahya 2002).

## ORIGINS OF THE CLT INITIATIVE

In early 1991, residents of Tanzania-Bondeni petitioned the Voi municipal council to have their settlement formalized (Midheme 2010). After preliminary negotiations between resident representatives and municipal officials, the local authority entered into a tripartite agreement with the Kenyan Ministry of Local Government (MoLG) and the German development agency, GTZ to implement the Tanzania-Bondeni upgrade (Bassett 2005). The initiative had four main objectives: to (1) legalize the informal settlement by providing tenure security, (2) enhance the delivery of municipal services to the settlement, (3) improve local environmental quality, and (4) boost municipal revenues through improved collection of land rates (MoLG 2004). To facilitate the realization of these objectives, a number of guiding principles were agreed upon among the key stakeholders – the donor (GTZ), MoLG, Voi municipal council and the local community. First, the project team sought a gradual, step-by-step process that would ensure residents' full participation, learning, long-term ownership and community sustainability (Yahya 2002). Secondly, it was agreed that the planning process would be dialogic, with full involvement of the community. Third, all external interventions would be in support of, and supplementary to local efforts, rather than in replacement of it. Fourth, a consultative mechanism would be established to ensure structured communication between the community and the other project partners. Finally, community members would be accorded the opportunity to decide for themselves, a preferred form of land ownership and subsequent management (Bassett and Jacobs 1997; Midheme 2010).

## PROJECT IMPLEMENTATION AS A MULTI-STAKEHOLDER AFFAIR

From the outset, the Voi upgrade was conceived as a multi-stakeholder project involving several actors pursuing a single purpose of providing security of tenure and decent accommodation to the residents of Tanzania-Bondeni (Bassett and Jacobs 1997; Bassett 2005). To begin with, the land on which the settlement sat was owned partly by the government, and two corporate entities – Kenya Railways Corporation and Voi Sisal Estates Ltd. The latter two therefore became important stakeholders with whom intense negotiations had to be carried out in order to acquire the land for the intended purpose (Yahya 2002; Midheme 2010). To facilitate project success, further partnerships were forged with among others, the Kenya Wildlife Service, the National Co-operative Housing Union (NACHU), the National Water Conservation and Pipeline Corporation, the University of Nairobi's Housing and Building Research Institute (HABRI), the Voi branch of Barclays Bank, Kituo cha Sheria (a national legal NGO) and other local NGOs active in the project area (Bassett and Jacobs 1997; Yahya 2002).

Unlike conventional settlement upgrading projects often characterized by top-down planning and project implementation (Midheme 2010), the design and implementation of the Voi initiative adopted a multi-disciplinary and multi-sectoral approach, bringing together spatial planners, land economists, civil engineers, community development experts, public health officers, lawyers and other specialists drawn from the state, civil society and the corporate world, in executing various project components (Bassett and Jacobs 1997; Midheme 2010). Each stakeholder had a specific contribution to make. For example, while HABRI developed cheap building materials to facilitate affordable housing development, NACHU supplied residents with cheap loans with which to finance housing consolidation. Complex legal matters pertaining to the CLT implementation were on the other hand handled by Kituo cha Sheria, while Barclays Bank oversaw the management of the bank accounts into which project funds contributed by residents were deposited (Yahya 2002; Midheme 2010).

## COMMUNITY INVOLVEMENT IN THE PLANNING PROCESS

True to the project objectives, the planning process in Voi was consultative and actively involved residents working closely with the project planners. A physical layout plan was eventually agreed upon, with provisions for residential and commercial plots. A market, schools, health centre, community centre and open spaces were also provided for. Furthermore, a riparian strip was set aside along Voi River to provide space for subsistence gardening, and to serve as a buffer against flooding risks. The final plan realized 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 adjudication and administration (Yahya, 2002; Bassett, 2005).

## LAND MANAGEMENT

Wary of post-project displacement that had characterized 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, the residents themselves were allowed to choose their own preferred form of landholding (Midheme, 2010). Accordingly, residents were introduced to three tenure forms: 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 who took part in the exercise 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 land management under the CLT framework.

## PRACTICAL IMPLEMENTATION DIFFICULTIES AND THEIR RESOLUTION

Being the first CLT initiative in Kenya (Yahya 2002; Bassett 2005), the Voi project had to contend with practical implementation hurdles. To begin with, the CLT in its classic form could not find easy fit within the Kenyan land law and administration system, owing in part to inadequate policy and legal support for communal landholding (Yahya 2002; Midheme 2010). Ordinarily, the Kenyan statutory laws privilege individual over communal tenures (Syagga 2006). Hence, not more than a few individuals may be registered as proprietors of a parcel of land, even where a whole village or large family owns such land jointly (MoLG 2004). A second 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, in any circumstance, be a suitable organ for the management of CLT affairs. A third obstacle was presented by the 'rule against perpetuities', which restricts permanent alienation of land from the market in common law jurisdictions like Kenya (Bassett 2005). 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. Lastly, the Kenyan land administration bureaucracy is ordinarily accustomed to issuing individual titles under standardized provisions. Any significant deviation from this beaten path was therefore sure to attract bureaucratic apathy (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, the project team crafted two separate legal instruments. Residents first organized and registered themselves as Tanzania-Bondeni Settlement Society, under the Societies Act. 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, under the Trustees (Perpetual Succession) Act (Midheme 2010). The community then applied for a head-lease from the Commissioner of Lands. Through this head-lease, the government (who holds the radical title) leases the land to Tanzania-Bondeni CLT. The CLT in turn issues sub-leases 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 affairs. 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 and 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 recognizing 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**

### **KEY ACHIEVEMENTS OF THE INITIATIVE**

The greatest achievement of the CLT initiative has been its ability to aid poor households gain legal access to urban land that had eluded them for decades. By cushioning residents against market-induced displacements, the CLT has facilitated the poor's access and retention of urban land and housing in a manner they could never have hoped to, through conventional means (Midheme 2010).

Secondly, the CLT framework has fostered a strong sense of community participation among residents. Both tenants and landlords alike played active roles in project implementation (Midheme, 2010). Tenant participation was particularly enhanced by the fact that all residents (tenants included) have been absorbed as members of the CLT. Accordingly, tenants too are entitled to housing ownership within the community in the longer term. Moreover, tenants are protected from arbitrary increases in rents that often characterize conventional upgrading projects (Bassett 2002; Gulyani and Bassett 2007). In Voi, communal landholding under the CLT has offered more than just a model of land tenure; the CLT has provided the basis for residents to unite under a one-for-all, all-for-one philosophy, designed to prop up each other in times of adversity. The result has been the growth of a vibrant community premised on the principles of democracy, inclusiveness and horizontality (BSHF 2005; Bailey 2010).

Thirdly, the CLT has facilitated the residents' systematic access to housing finance and other resources hitherto unavailable to them. Inhabitants have formed housing co-operatives to finance housing development. These co-operatives have subsequently been linked to NACHU, from where members are able to draw funds to finance housing consolidation (Midheme 2010). This has been of

tremendous use to the poor households. As observed by Lipman and Rajack (2011), the urban poor often lack the wherewithal to assemble housing at once. Instead, they build their homes incrementally, adding vital components gradually as resources permit. And this they do without access to formal financing as they are often shunned by banks (Midheme 2010). It is for this reason that we need diverse housing solutions for those at different rungs on the income ladder.

Additionally, there are other less obvious benefits that have accrued to the residents. Ordinarily, homeownership, restrictions on absentee-landlordism and incorporation of all residents into the membership of the land trust should intuitively promote property maintenance, neighbourhood stability and social cohesion, over time (Bailey 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 nurtured under the project. This has long-term impacts on social action, collective agency and community development, besides broadening the range of resources available to residents. Additionally, the CLT has afforded residents of Tanzania-Bondeni an avenue to the coveted status of homeowners. With this comes the satisfaction of 'making it', a feat most households could never have hoped to achieve, unaided (Midheme 2010; Lipman and Rajack 2011).

Today, the housing situation in Tanzania-Bondeni has improved tremendously, with the settlement housing close to 8,000 inhabitants in decent dwellings. But in the same token, about 20% of the original structures are yet to record substantial improvements, owing in part to high levels of poverty among the homeowners. This confirms the disparities that exist in households' 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 settlement upgrading initiatives (Gulyani and Bassett 2007; Midheme 2010).

## PROJECT SHORTCOMINGS AND PROPOSALS FOR IMPROVEMENT

Beyond the positive achievements, a number of issues marred the Voi initiative. These will be pointed out in the spirit of improving future initiatives premised on the CLT model. The first glaring hurdle experienced during project 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 the Kenyan land law and CLT principles. 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 need simplifying to facilitate easier administration than is the case now.

Secondly, longevity and resoluteness of community participation is an issue capable of derailing 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 residents to assemble functional community institutions. These 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 (Libby and Bradley 2000; Bailey 2010). 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 (BSHF 2005; Lipman and Rajack 2011).

Thirdly, given the innovative bent of the CLT, the initiative met with little enthusiasm in the ranks of the Kenyan land administration bureaucracy (Yahya 2002). This observation is borne out by at least two facts: the project's long gestation period (implementation lasted a whole 13 years), and the fact that no meaningful uptake has followed the Voi initiative 21 years down the line (Midheme 2010). According to Syagga (2006), the Kenyan land administration system has in the past provided opportunities for unscrupulous government officials and politicians to extract rents, particularly during the award of individual titles to land. Because the CLT dispensation greatly diminishes such rent-seeking prospects (Bassett 2005), it is in the interest of these groups to resist the institutionalization of the new model. Thus, beyond the emotional exhortations and political rhetoric that characterized project implementation, no meaningful initiatives have been made to parlay the gains made in Voi to date, despite the government adopting a guideline to facilitate further dissemination of the CLT some eight years ago (MoLG 2004).

### **PROSPECTS FOR COMMUNITY LAND TRUSTS IN KENYA: IMPROVING URBAN LAND GOVERNANCE**

As is evident from the foregoing discussion, the CLT has been a powerful innovation in the Kenyan urban land governance arena. The model has for the first time, changed the order of doing things by radically improving the level of community participation in settlement upgrading and opening up the institutions of land management to other stakeholders beyond the traditional state and market actors. In the recent past, several changes have occurred in the Kenyan land policy and legal framework, which have a direct bearing on further development of the CLT and general improvements in urban land governance in the country.

To begin with, the new constitution promulgated in August 2010 (GoK 2010) sets out (in chapter five) broad principles of land policy. Under these principles is guaranteed equitable access to land by all citizens. The constitution avows to protect and enhance the right of all Kenyans to human dignity. It further promises to eliminate historical socio-cultural, economic and political inequalities by equitably diffusing wealth and political power for the good of all citizens. To this end, the supreme law mandates the state to tailor the instruments of land governance to the interest of social equity by calling for appropriate legislation to ensure that investments in property benefit local communities and their economies. Various clauses of the new law further imbue property with a social function and, for the first time, provide for communal ownership of land (section 63).

To correct past inefficiencies in the land governance system, the constitution vests the task of land management in the National Land Commission (NLC), which will have policy and oversight responsibilities over land use planning and land administration throughout the country. Importantly, the constitution mandates the NLC to ensure that land in Kenya is managed in a manner that is equitable, efficient, productive and sustainable. Worth pointing out is the fact that the new constitution for the first time prescribes a participatory system of governance premised on the devolution of power and responsibilities from the central government to the newly-created 47 counties. With respect to land governance, the county administrations are expected to implement land management policies of the national government as recommended from time to time, by the NLC. The NLC is further expected to set up county offices and to establish County Land Management Boards to handle matters pertaining to land management. Thus for once, the institutions of land use planning and land administration have been taken closer to the people in keeping with the principles of subsidiarity (GoK 2009).

Fundamentally, the NLC is also mandated to manage public land on behalf of the national and county governments. This is expected to protect public land, much of which has been open to abuse by the powerful élite through irregular/illegal allocations (Kanyinga 1998; GoK 2004; Southall 2005). To speed up dispute resolution in the land governance system, the constitution further envisages the establishment of a system of environment and land courts devolved to the counties in a bid to bring justice closer to citizens.

These constitutional provisions are further elaborated in the national land policy adopted in December 2009 (GoK 2009). The new land policy decries tenure individualization, which it blames for the inequity in land access and disruption of indigenous structures of social security among vulnerable groups. As a remedy, the document promises to pursue a plural mix of tenure arrangements in order to reconcile the differences between individual and common property, while taking into account the various interests, values and passions that land excites among Kenyans of various social standing. In addition, a new housing policy adopted in July 2004 further commits the government to streamlining the acquisition of land for low-income housing. Under the housing policy, the government undertakes to adopt appropriate tenure reforms and planning standards conducive to the special needs of the poor (GoK 2004).

Taken together, these provisions should offer the necessary impetus for the reform of urban land governance and further development of the CLT framework throughout the country. Given the high rates of urbanization currently underway in Kenya, the provisions should be seized by all actors concerned to cure the institutional weaknesses that have long characterized urban land governance in the country (Midheme 2010).

Beyond these developments in official policy, the craft of governance in Kenya is increasingly being modified by the growing role of non-state actors such as international corporations, donor agencies and development partners, NGOs, and religious institutions. Besides, there are also the 'dark networks' (Kempa, et al. 2005; Burris, et al. 2008) such as the Al Shabaab, the Mungiki and other local youth militias that have in their own way, altered the conduct of urban governance in the country. Whereas the Al Shabaab threat emanating from across the border in war-torn Somalia has altered the manner in which the state and other stakeholders handle security matters, the Mungiki and other local youth militias have waged wars aimed primarily at combating structures of social exclusion of young Kenyans from systematic access to land, employment and livelihood opportunities (Kagwanja 2005; Wamucii and Idwasi 2011; Forti and Maina 2012). With the new participatory ethos propagated by the new constitution, it will be important to seek a broader framework that considers particularly the inclusion of young people even as we seek to steer the ship of urban governance. In this regard, there is already an impressive development in the increasing number of local NGOs such as Pamoja Trust, Muungano Support Trust, Umande Trust, Shelter Forum and their federated allies of the grassroots *Muungano wa Wanavijiji* (federation of the homeless) networks, all of which have put up a spirited fight for improved access to urban land, shelter and livelihood opportunities for the poor and the youth (Weru 2004; COHRE 2005; Karanja 2010).

## CONCLUSION

The literature on urban governance in the global South is littered with discourses of 'urban pathology' characterized by dysfunctional systems of governance and aberrant forms of urbanization crying out for urgent fixing (Midheme 2010). It is also true that such discourses are often obsessed with retrofitting what is broken, ostensibly to bring cities of the South to acceptable levels of conventional

urban development. In this debate, cities are treated merely as geographical facts, ignoring in the process the social structures that undergird the system. Whenever this happens, there is a tendency to treat the symptoms rather than the real problems of urban development (Rakodi 2001b). In order to improve the institution of urban governance therefore, it will be imperative to reassess the role of various stakeholders in delivering public services to city residents. In other words, it will be necessary to appreciate that urban governance is by definition a dynamic system, which must evolve to accommodate the contribution of various stakeholders in a negotiated process intended to improve the affairs a polity (Rakodi 2001a; Osmont, et al. 2008).

With particular respect to urban land governance, it will be necessary to adopt a more nuanced view that not only acknowledges the spatial unevenness of the urbanization process currently underway in the South, but also treats urban residents as active agents in constructing meaningful lives for themselves, rather than simply as passive supplicants of inexorable structural forces that lie beyond their purview – with the state, the market and other external actors. Such an approach however, must be premised on the understanding that urbanization is a complex, multifaceted, and sometimes contradictory process that encompasses multiple pathways without a privileged, common end – point predictable beforehand. To think of multiple pathways is thus to challenge the claims to singular universal models of governance that supposedly evolve through recognisable stages along a linear path (Osmont, et al. 2008). It is on the other hand to acknowledge the wide spectrum of needs and socio-political realities and power geometries that exist in various cities and to institute innovative measures that seek to recognize and valorise for what they are, the peculiarities that such variety breeds (Rakodi 2001a; 2001b). This is the promise that innovative land governance frameworks such as the CLT herald in a future urban Kenya.

As demonstrated by the Voi experience, CLTs are admittedly complex. They require sound institutional and legal framework, mutual trust and commitment among stakeholders and flexibility on the part of those involved in their implementation. With regard to possibilities for their replication, an arrangement that has the support of a defined, fairly homogenous and development-conscious community; a sympathetic local authority; committed guidance of shelter professionals; and financial backers, is best poised for success. This combination however must be backed up by a receptive legal regime and a state bureaucracy genuinely interested in reforms that better the lot of the urban poor (Midheme 2010). Finally, the availability of public land can help, but that is only one element since the stocks of public lands are rapidly diminishing anyway (Olima 1997; Yahya 2002; Musyoka 2006). In any case, ensuring adequate living space for the poor will in future depend increasingly on our ability to design new ways of owning and sharing property, as well as new ways of designing and implementing human settlements development initiatives (Syagga 2006; Midheme 2010).

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