



**MAKING THE COMMUNITY LAND ACT EFFECTIVE: THE CASE OF
MASHIMONI SETTLEMENT IN NAIROBI COUNTY AND KWA BULO
SETTLEMENT IN MOMBASA COUNTY OF KENYA**

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Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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Abstract

Kenya has been urbanizing rapidly similar to many other countries in Africa and Asia. This rapid urbanization has resulted in a number of challenges including the growth and expansion of informal settlements in almost spontaneous manner. As these informal settlements continue to expand, little effort has been put towards spatial planning and provision of the needed basic services. Many informal settlements dwellers are also under constant threat of evictions since their land rights are not legally recognized. As such, informal settlements areas are often overlooked with regard to general development or budgetary allocations by National and County Government authorities. This paper will make a justification of the need to strengthen community organizations towards land claims and occupation in informal settlements as a way of improving their tenure security, access to basic services and infrastructure and inclusion to governments' planning work. It will also provide critical analyses on how these grassroots-oriented tools implementation and partnerships with local government authorities can enhance the implementation of the newly legislated Community Land Act and ensure inclusive policy dialogues. Finally, the authors will offer key recommendations on how these experiences can be used in similar instances within the country and elsewhere.

Key words: Informal settlements, rapid urbanization, evictions, community organizations, land tenure security



Introduction

In Kenya, it is estimated that less than 30% of the land is under the formal cadaster thereby increasingly creating more challenges in terms of spatial planning, land management and high population growth. With the country urbanizing rapidly as is the case in many other countries in Africa and Asia, a number of challenges in urban land management became evident for example growth and expansion of informal settlements in an almost spontaneous manner. As these informal settlements continue to expand, little effort has been put towards spatial planning and provision of the needed basic services. Many informal settlements dwellers are also under constant threat of evictions since their land rights are not legally recognized. The lack of planning in the informal settlements has further been affected by slow and inadequate land regularization programs hence increasing informality and ineffective land delivery mechanisms.

The lack of formal survey coverage for the informal settlements has often led to exclusion and invisibility of informal settlements. As such, informal settlements areas are often overlooked with regard to general development or budgetary allocations by National and County Government authorities. This is because National and County Governments often have plans for other parts of the urban areas considered as ‘formal’ and hence inadequacy in providing vital information for planning and provision of basic services and infrastructure in the informal areas.

Promotion of the provision of individual land titles by some development partners, governments or funding agencies in both existing informal settlements and in planned resettlement colonies usually intends to provide poor households with tenure security which in turn allows them to access services and lift them out of poverty. This is because individual titles enable people to use land as an asset or collateral for example get bank loans for housing or livelihood purposes. Also the tenure system in place in a settlement allows community member to stay in the same place without any dislocation or disruption of their fragile livelihood and social support systems. However, regularizing tenure by granting individual titles to slum-dwellers can be time-consuming, costly and prone to corruption. Individual title may even increase uncertainty by undermining pre-existing land rights that may have existed before (UN-Habitat and UNESCAP, 2008). What is needed is the promotion of the range of rights or the continuum of land rights (UN-Habitat/GLTN, 2012). There is also the likelihood that once such poor communities have valuable and legally sellable assets like land, there may come pressure as a result some crisis to sell out the land and squat somewhere else.



Hence long term collective leases or community land titles to organized communities can help to ensure that low-income settlements are sustained through a collective tenure. Collective tenure rights can act as powerful buffer against market forces, bind communities together and provide structural reason to remain united, where the collectivity of community life can be an important survival mechanism (UN-Habitat and UNESCAP, 2008). Also group tenure can reduce per-household land and registration costs and can help build and maintain social cohesion within a community.

This paper will therefore make justification of the need to strengthen community organizations towards land claims and occupation in informal settlements as a way of improving their tenure security, access to basic services and infrastructure and inclusion to governments' planning work. It will also provide critical analyses on how these grassroots-oriented tools implementation and partnerships with local government authorities can enhance the implementation of the newly legislated Community Land Act and ensure inclusive policy dialogues. The urgent call by informal settlers to "count them in" in the urban landscape must be heard and the paper will provide several arguments why authorities need to do so building from the experiences of the two case studies, Kwa Bulu and Mashimoni informal settlements. Finally, the authors will offer key recommendations on how these experiences can be used in similar instances within the country and elsewhere.

Kenya's Land Question

Prior to promulgation of the Constitution of Kenya, land in Kenya was categorized either as government land, trust land or private land. Chapter 5 of the Constitution of Kenya further clarified the categories Community land, Private or Public land¹. Article 63(2) of the Constitution also specifically defines community land as land that is held and managed by communities². The emphasis on the land question was deliberate. Land had been used as a tool that would either reward or subjugate perceived friends or foe. This characterization of land has been seen as one of the major causes of land conflict in Kenya.

As (Kalande 2008) opines, much of the land conflict has been as a result of systemic deficiencies in the land management framework³. He goes on to argue that the colonial regime used land as a mechanism for consolidating power. The colonialists considered the traditional tenure arrangements to be inconsistent

¹ Considering the sensitive nature of the Land Question in Kenya, a whole chapter had to be dedicated to this subject.

² What is however problematic is the ambiguous characterization of a community for purposes of the legislation.

³ Kalande argues that by tracing the tenure-political evolution, it reveals a systemic collapse in the land management order as a result of deliberate action and omission by the colonialists and successive Kenyan governments.



with what was considered to be development and modernization⁴ (Focus on Land in Africa, 2011). National Land Policy asserts this position and appreciates that the colonial and post-colonial land administration has undermined traditional resource management institutions⁵.

After independence, while the public expected redress, the newly formed Government disposed land that was in the so-called White Highlands through the market, mostly benefiting government officials⁶. The Truth Justice and Reconciliation Commission (TJRC, 2013) further noted that the government continued to alienate more land from already affected communities for the benefit of politically privileged ethnic communities and the political elite⁷. Such land injustices also continue to produce perpetual squatters, exacerbate land clashes over grazing areas and watering points and have hit flash points in the form of politically charged land conflicts as was witnessed during the election period in 1992, 1997 and 2007. The violent confrontations resulted in loss of life and property as well as displacement of populations. Such displacements have partly fueled the growth of informal settlements as emigrant populations moved into the cities.

Brief History of Kwa Bulu Settlement

Kwa Bulu is an informal settlement, which is located in Mombasa County in Nyali Constituency, Kadzandani ward. The settlement measures 86.84 acres of land on plot number 391/1/MN, which originally was 181 MN and 187 MN. The land initially belonged to the indigenous owners who are the Mijikenda. They used to stay there under the Land Registration Act. The indigenous owners used the land for farming and mining a quarry as a means of livelihood.

The first registered proprietor of the plot was Emmanuel Bulu who found the Mijikendas on the land and granted them a stay order. The title was transferred to Emmanuel Andrew Bulu on 23rd August 1922 as it was previously issued pursuant to the provisions of Land Titles Ordinance in 1908. The number of residents in the plot increased because they came to work on the farm for Emmanuel Bulu.

On 19th May 1966, Emmanuel Bulu passed on and the title was transferred to Suleiman Bin Ali on 1st September 1967. On 24th April 1980, the title was again transferred to James Mwangi Gacheru and

⁴ This was the basis for declaration of all land in Kenya as Crown Land. To be held in trust for the monarchy in England.

⁵ This is one of the underpinning philosophies of the Sessional Paper No. 3 of 2009 on National Land Policy

⁶ The Truth Justice and Reconciliation Commission (TJRC) documented these Historical Land Injustices in its final report. The controversial nature of the land appropriation resulted in deep resentment for certain communities that were perceived to have unjustly benefited from the government schemes.

⁷ *ibid*



Francis Waita as tenants in common with equal dividend shares. On 23rd September 1981, the title was transferred to the Kenya National Assurance Company Limited, which is a parastatal company in the Government of Kenya. This company collapsed between 2000 and 2001. All its property including the Bima Tower and the plot 397/1/MN went into the Government receivership.

This is when the land was supposed to be given back to the squatters but unfortunately on 26th July 2002, the aforesaid property was vested in Kenya National Assurance, which was a new Limited Company. On 10th November 2005, a sale agreement purchasing the same suit premises 397/1/MN from the Kenya National Assurance to the Kencent Holdings Limited was signed. The company offered a down payment of 8 million, which was ten percent of the given price of Ksh 43, 945, 000 agreed. The terms and conditions in between was to have the suit premises granted to the Kencent Holdings Company after the squatters were evicted from the plot 397/1/MN.

On 4th and 5th days of May 2005, Kenya National Assurance hired a bulldozer to flatten the structures in the *Kwa Bulo* land. The Kenya Police/ Administration police and eventually the private security guards who almost lost their lives in the practice supervised this. About 700 houses were demolished with no legal document from the court orders having been shared to the squatters prior to the date of demolition. On 10th May 2006, the squatters residing in *Kwa Bulo* went to court seeking for rights up on adverse possession allegation on the plot. The case was endorsed as civil suit number 110 of 2006. On 15th November 2011, the squatters received their court order from the Kenya High Court of Mombasa. Since then, the squatters residing in *Kwa Bulo* have been living in suspense, always being threatened of being evicted by the title deed owners of the alleged plot 397/1/MN.

More than 1200 households live in the plot which covers 86.84 acres. Over 1230 houses have been constructed, which are both permanent and semi-permanent and are fully occupied by residents. The area of *Kwa Bulo* is divided into four clusters/ villages:

- EPCO
- Kashani
- Timboni
- Msufini



Brief History of Mashimoni Settlement in Mathare

Mashimoni No. 10 is in Nairobi County and is among the villages situated within the wider Mathare valley. The village is strategically placed between Thika superhighway and Juja Road with a distance of about 3kilometres from the Central Business District. The settlement rests on three land parcels which extends beyond Mashimoni boundaries.

Mashimoni is a Swahili word which means “inside a pit”. During the colonial era, Mashimoni No. 10 was utilized as a stone quarry and was later transferred to the Kenya Defence Force who used the area as a training zone. In the 1970’s the area was slowly encroached after the military stopped using the area for their target practice.

Mashimoni witnessed rapid growth instigated by evictions and demolitions in the neighbouring villages of Mabatini, Mlango Kubwa and Mathare 3C. The village elders of the settlement informally subdivided the settlement under instructions of the area chief into 6 clusters namely A, B, C, D, and F⁸.

For many years, Mashimoni attracted numerous evictions attempts from land grabbers who purported to own the land. Pamoja Trust moved in to Mashimoni to support the community in order to prevent the evictions and land grabbing in the settlement. Working with the community based movement known as Muungano Wa Wanavijiji, Pamoja Trust (PT) was able to carry out a social economic survey to establish the total population of Mashimoni and the boundary extents of the settlement. From the survey, it was established that Mashimoni was home to 1589 households⁹.

Upon identification of the number of households, the Mashimoni community embarked on negotiating for security of tenure with the help of Pamoja Trust. PT sort interventions from the Ministry of Lands and Urban Development (MoLHUD) to have the tenure of Mashimoni settlement regularized. A land search conducted revealed that the land belonged to the Kenya Air force. After Negotiations with different parties and stakeholders, the cabinet passed a resolution in 2012 to transfer the Land to the Community which paved way for the first verification exercise aimed at identifying the genuine residents of Mashimoni No. 10.

⁸ Clusters established during a socio-economic and spatial research conducted in 2009 with the support of Pamoja Trust

⁹ Pamoja Trust enumeration data 2009



Implementation of the Social Tenure Domain Model (STDM)

Social Tenure Domain Model (STDM) is a pro-poor land information management tool embedded on an open source Geographical Information Systems (GIS) platform; Quantum Geographical Information Systems (QGIS), which can be used to support land administration of the poor in urban and rural areas. It is based on the ISO Standard Land Administration Domain Model supported by many professional organizations and civil society organizations (Lemmen 2012). The information tool, based on open and free software packages, was first tested in the Municipality of Mbale Uganda that focused on the community-led process of enumeration and mapping in close collaboration with local government authorities (Antonio et.al, 2014). The tool can also be linked to Cadastral system thereby integrating all the information. STDM was developed by Global Land Tool Network (GLTN) with support from UN-HABITAT and other key professional organizations (e.g. University of Twente, FIG) who then supported Pamoja Trust (PT) to implement the tool in the informal settlements of Mashimoni in Mathare No.10 in Nairobi County, KwaBulo in Mombasa County and other settlements.

PT uses the STDM process to collect data and map out facilities within informal settlements on land-people relationships. This is aimed at capturing all the realities on the ground in terms of tenure relationships and promoting their recognition thereby improving security of tenure, improving capacities in conflict resolution, limiting forced evictions and helping the poor to engage with the land industry in undertaking land management such as city wide slum upgrading.

STDM PROCESS IN KWA BULO

The Mombasa County requested this process of enumeration in *Kwa Bulo* after a successful project in Mnazi Moja within the county. However, in Kwa Bulo, the county specifically requested that the process be geared towards *resettlement of the community*. The process was to end up with production of certificate of occupancy for each squatter which would be used later to identify legitimate squatters for resettlement. The process began in December 2014 and has been ongoing up until April 2016. Data for this process was captured through enumeration and mapping process as explained below;

Enumeration Process

The process involved the use of questionnaires to capture socio-economic information of the residents. The enumeration was conducted within the four clusters and the summary of each cluster was as follows:

Cluster/Village	Successful	Pending	Total	Percentage	Percentage
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	entries	entries	entries	accomplished	pending
EPCO	315	93	408	77%	23%
KASHANI	284	40	324	87%	13%
MSUFINI	280	18	298	93%	7%
TIMBONI	291	17	308	94%	7%
TOTAL	1170	168	1338	88%	12%

The reasons as to why there was a 12% pending (incomplete) persons' detail entries were;

- a) Unresolved sales disagreements
- b) Family disputes
- c) Persons not available to provide and verify their details and ensure their parcels are mapped

Mapping process

The survey was participatory and actively engaged Kwa *Bulo* community members. Individuals accompanied the geospatial engineer along their parcel boundary as he sketched the parcels on the aerial imagery as it was on the actual ground. The sketched parcels were then digitized to create a cadaster.

The *cadaster* was printed out in form of a map with parcel numbers and displayed publicly for community members to verify the location of their parcels, which was aided by the aerial imagery base map, parcels in the neighborhood (abuttals), number of buildings visible within a parcel and shape of the parcel.

The parcels were given unique numbers *to ease identification*. The social-economic data was organized in *excel database* while the parcel data was organized in a *spatial database* (Quantum GIS software). The *Verification* exercise involved verifying of personal details, personal photo and whether the respective parcel(s) had been mapped (surveyed).

Outputs of the STDM Process in Kwa Bulo

From the STDM data base the following was able to be generated;

- i. A report listing details of all the persons captured and the approximate sizes of their parcels.



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3BHH_HEAD_OTHER_NAMES	QBHH_HEAD_PHONE	QBHH_HEAD_ID_NO	Q1DOWNER_SURNAME	Q1DOWNER_OTHER_NAMES	Q1DOWNER_PHONE	OWNER_ID	Q0TYPH_HEAD_GENCEE	PHOTO	MAPPING
TIORI KALAMA	723636415	4988111	WEDA	TIORI KALAMA	723636415	4988111	MALE		DONE
TWALIRALI	700933833	21825753	BAKARI	TWALIRALI	700933833	21825753	MALE		DONE
JOSPH NGALA	722800646	5030621	KADENGE	JOSPH NGALA	722800646	5030621	MALE		DONE
EVANGOMAG	717482932	13328611	KUMENDA	EVANGOMAG	717482932	13328611	MALE		DONE

Excerpt of Excel database showing persons details

- ii. Certificate of occupancy showing a person's details, photo and the parcel drawing and abuttals. This certificate will be issued to parcel owners captured within the database.



COUNTY GOVERNMENT OF MOMBASA
CERTIFICATE OF OCCUPANCY

CONSTITUENCY: NYALI	
WARD: KADZANDANI	
NAME OF SETTLEMENT: KWA BULO	
CLUSTER: EPCO	
STRUCTURE NUMBER: E001	<small>OCCUPANT SIGNATURE/THUMBPRINT</small>
OCCUPANT OTHER NAMES: THOYA KALUME	
OCCUPANT SURNAME: KAMBI	
IDENTIFICATION NUMBER: 24803352	



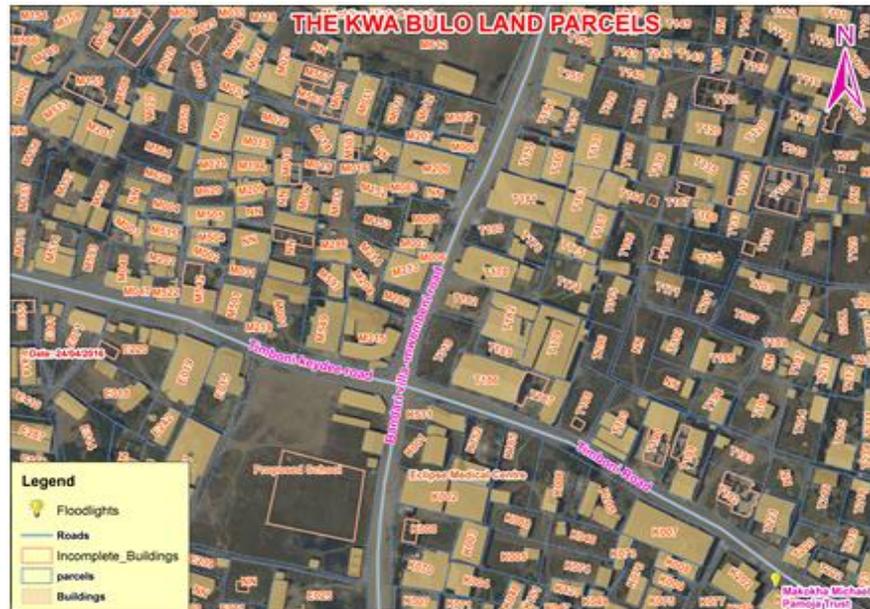
CEO - LANDS HOUSING AND URBAN DEVELOPMENT
COUNTY GOVERNMENT OF MOMBASA

DISCLAIMER: THIS IS NEITHER A CERTIFICATE OF ALLOTMENT NOR A TITLE BUT A CERTIFICATE OF ENUMERATION

Sample Certificate of occupancy



- iii. A map detailing all the parcels of Kwa Bulu settlement equivalent to a Registry Index Map (RIM).



Cadastral map

- iv. Intra-settlement grievances and inter settlement grievances emerged during the exercise. The community constituted a grievance committee supported by PT and authorized by ministry of lands housing and urban development of Mombasa County.

Public Utilities

- There are five churches in the whole settlement and two mosques
- There are two private schools and one open space that was designated for a public school
- Two health facilities (private Clinics) serve the people in *Kwa Bulu* settlement.
- There is no playground for the children and no public social space

Water and Sanitation

There is no sewer system. Majority of the people use pit latrines. Those using internal toilets have constructed septic tanks to collect faecal waste. There is no plan of emptying these septic tanks after filling up, instead they are covered and new ones are dug. Since the community relies on wells/boreholes



as the main water source, the filled septic tanks pose a direct sanitation threat. Waste management question has not been thought out hence, there is no waste management plan for *Kwa Bulo*

Infrastructure

There are two main roads crossing the settlement and acting as demarcation of the four *Kwa Bulo* clusters/villages. One of the roads was renovated recently with cabro blocks. However, there was need to plan for access roads within the settlement, because, what exists as access roads are mostly foot paths that cannot be used by vehicles.

Major Economic Activities

The rare end of the settlement bordering Bamburi is a quarry where construction stones are mined. Youth and a few adults mostly do the mining of stones using simple tools like mallet, cold chisel et al. These stones are used in the construction of houses within the settlement thus explain the presence of many stone houses. Some are sold outside the settlement in Lorries. One shaped stone costs Ksh.20/-. The mining area has been significantly depleted and stone miners were encroaching into Bamburi Land from underground, leaving behind hanging caves which is a looming disaster. The depressions left behind are being quickly taken over by individuals who have begun setting up structures. There was presence of banana plantations within the mine depressions indicating efforts of land reclamation. The residents also engage in other economic activities include running kiosks, bars and other small businesses.

STDM process in Mashimoni

Social Tenure Domain Model (STDM) in Mashimoni came at a time the community was faced with frequent fire outbreaks which were linked to planned eviction. The fire outbreaks resulted to constant loss of community information that was recorded in books and was in custody of the community leaders. STDM was seen as a tool that would aid in organizing community information and assist in pushing for security of tenure for the Mashimoni residents.

The community was mobilized for a sensitization forum on STDM and pamphlets explaining STDM in a simple way were circulated in the settlement. In addition, the community selected 5 members who were trained on STDM and have been charged with the responsibility of updating settlement information under authority of the Settlement Executive Committee (SEC).



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Enumeration Process

Mashimoni community conducted a socio-economic survey in 2009 and established that Mashimoni was home to 1589 households¹⁰. This household information was distributed as follows:

Cluster	No. of Households
A	273
B	358
C	266
D	253
E	224
F	215
Total	1589

This information was retrieved from Pamoja Trust which had kept copies of the same as back up. With the advent of STDM, the community converted their data into the format of STDM, they conducted verifications and took photos of the genuine settlement residents which ensured that residents for Mashimoni were recognized by other community members.

Mapping Process

Mapping of Mashimoni entailed structure numbering using unique codes that had been developed during the data collection. The codes were used to link the socio-economic information to spatial map. Development of map entailed generating a cadastral map from a high resolution aerial image. Field identification of individual structures and confirmation of structure numbers were conducted using cadastral maps.

¹⁰ Pamoja Trust enumeration data 2009



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Output of the STDM process

1. The STDM process in Mashimoni brought about transparency where real structure owners were verified by the Settlement Executive Committee and their photo cards taken.
2. The verification of photo cards as well as the socio-economic and mapping data guaranteed generation of Certificates of Occupancy and residents are looking forward to completion of the exercise.
3. The community with the help of PT formed a grievance committee which handles conflicts of ownership. Widows benefited from the grievance committee as they were recognized and their properties protected.
4. STDM ensured that an individual did not lose out their original space during incidences of fire breakout where some residents would claim more space that they previously occupied. STDM, has an accurate measure of space.
5. Mashimoni community was recognized by the Nairobi City County in their efforts to have the Mashimoni land regularized. As a result the settlement benefitted from the Kenya Informal Settlement Improvement Program (KISIP) which focused on infrastructure development within the settlement. Mashimoni community was able to benefit from KISIP since STDM enabled them have a defined security tenure.



6. The Cabinet passed a resolution for the Government to hand over the land to the Mashimoni community which has further facilitated planning of the settlement and the plans have been approved by the Nairobi City County.

Public Utilities

Mashimoni has one public toilet while the others are privately owned. There are no public school nor a public health facility in the area. The area does not have access to play grounds or social halls. There are several small churches in the area.

Water and Sanitation

At the time of enumerations and mapping, Mashimoni had one public Toilet which was not connected to a sewer line. The STDM data made it possible for PT to secure funds that led to the construction of toilets that were connected to the sewer line. The area does not have a Waste management programme in place which contributes to its dirty environment.

Major Economic Activities

Majority of the residents in Mashimoni engage in casual labour and small roadside businesses. Many women in the region are domestic workers, while others work in the Export processing zone as casuals. The men engage in different types of casual jobs in the industrial area while others depend on skills such as carpentry, masonry among other blue collar jobs.

Towards the Community Land Legislation

After the 2007/2008-post election violence, Kofi Annan, the former Secretary General to the United Nations, mediated a National Peace Accord that among other things proposed a raft of measures, including land reform. The hotly contested 2007 elections awakened deeply seated animosity over land and precipitated violent clashes in sections of the country. One of the areas that the Accord focused on was Land Reform¹¹. The mediation team, among other things, prioritized constitutional review to address fundamental issues of land tenure and land use; strengthening local level mechanisms for sustainable land rights administration and management; establishment of a transparent, decentralized, affordable and

¹¹ These ideas were also contained in the National Land Policy, which was ratified by Cabinet in 2009



efficient GIS-based Land Information Management System and GIS land registry at the Ministry of Lands and at local authorities; and the Finalization of the draft National Land Policy¹².

However, progress towards realization of the prescribed reforms was slow and in particular, the National Land Policy faced stiff resistance from politicians and other powerful individuals (Katiba Institute, 2009). The Policy noted past abuses in the context of the Trust Land Act (Cap 288) and the Land (Group Representatives) Act (Cap 287)¹³. Part of the remedial measures proposed in the National Land Policy included the documentation and mapping of all forms of communal tenure. The Policy also appreciated the unique challenges posed by urban informal settlements and directed that the government should take an inventory of genuine squatters and people who live in informal settlements. More importantly, the Policy recommended the development of legislative frameworks as a precursor to dedicated legislations on community land.

The Community Land Act was accented into law in 2016 after lengthy deliberations. The Act establishes governance institutions and principally defines the manner in which community land can be managed, while prescribing procedures for conversion from one form to the other and proposes dispute resolution mechanisms should conflicts arise. The Bill emphasizes the principle of equality and provides for registration of all members of the community and that all members of the community shall be allowed to benefit in equal measure. In this regard, Article 10(1) lays the ground for the registration process and characterizes the contents of a valid land register¹⁴. The Act provides a window for engagement in planning by allowing registered communities to submit plans for the development, management and use of the land¹⁵.

Giving Life to the Community Land Act in the Context of Urban Slums

The ambiguity in defining the “Community”¹⁶ for purposes of the Community Land Act leaves open its interpretation within an urban setting. While slum dwellers could be defined as a community of socio-economic or other similar common interest¹⁷, such a definition would assume that they are a homogenous

¹² See the Kenya National Dialogue and Reconciliation Accord

¹³ These abuses have been described in article 65 of the National Land Policy

¹⁴ Article 10 (1) provides that there shall be maintained for each registration unit, a community land register... which shall contain- (a) a cadastral map showing the extent of the community land and identified areas of common interest; (b) the name of the registered community; (c) a register of members of the registered community which shall be updated annually;

¹⁵ Article 19(1)

¹⁶ The Act defines a community as consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes- (a) common ancestry; (b) similar culture or unique mode of livelihood; (c) socio-economic or other similar common interest; (d) geographical space; (e) ecological space; or (f) ethnicity

¹⁷ Article 2(C)



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entity, with similar aspirations. This, in most instances is not the case. Yet, the paradox is that, without such a characterization, it would be difficult to reconcile the varying interests of stakeholders in the slum settlements (Syagga 2012) to allow for tenure regularization. It is therefore critical for such communities to ingrain in themselves a sense of purpose in the road to tenure regularization. The Act defines a land register. These ideals can be taken further.

There are many kinds of ways community members in Mashimoni and Kwa Bulu can participate in the process of resolving problems of land, housing, livelihoods and access to basic services. This is because they are the ones who directly face them and they therefore have the greatest understanding of these problems and the most powerful motivation to solve them. These include (i) participation through full ownership where communities are in control of decision-making and the government enters into initiatives as required by the community; (ii) participation through cooperation where the government and communities cooperate on working towards a shared goal, with a strong form of community decision-making, often facilitated by NGOs as in the case with Mashimoni and Kwabulo where Pamoja Trust has facilitated such participation; (iii) participation through consultation where communities are provided a forum to share their views on a planned intervention; and (iv) participation through information in a transparent manner by not just giving information but allowing room for expressing opinions and influencing change.

Other ways for promoting positive change in their situations include focusing on a wide range of issues that affect them or on many fronts by initiating many activities at the same time as a way to keep their movements alive. If a community organization depends on a single issue, one crisis, or one pilot project to sustain its mobilization process, that puts too much pressure on that issue to be resolved or that pilot to be successful – if this does not happen, people will lose heart and the organization will collapse (UN-Habitat, 2011). Other strategies include building partnerships with local governments and other stakeholders since problems related to land, housing and services are often too big and too complex to solve alone. One of the principles of any good partnership is finding a way for each partner to do what it does best, and letting the others do what they do best, so the parts all add up to a workable whole (UN-Habitat, 2011).

This is why Pamoja Trust is experimenting with the Social Tenure Domain Model (STDM) to increase secure tenure for the informal settlement residents that also facilitates provision of the needed infrastructure. This is because security of tenure of people in areas like Mashimoni and Kwabulo rely on forms of tenure that are different from individual free hold since most off register rights and claims are



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based on social tenures. GLTN partners support a continuum of land rights, which include rights that are documented as well as undocumented, from individuals and groups, from pastoralist, and in slums which are legal as well as illegal and informal (Lemmen, 2013). Such social tenure rights generally cannot be described relative to a parcel calling for more innovative tools like the STDM. This is because STDM is a pro-poor land information management system that can be used to support the land administration of the poor in urban and rural areas, which can also be linked to the cadastral system in order that all information can be integrated.

STDM was developed as a response to the existing gap in the conventional land administration systems in which customary and informal tenure relations cannot be easily handled. The concept of STDM is to bridge this gap by providing a standard for representing ‘people – land’ relationships independent of the level of formality, legality and technical accuracy. In its application, STDM allows for encoding Land Information Management Systems, but also in community organizing, reversing asymmetrical power relationships between communities and those in authority and developing a body of knowledge on informality in Kenya.

Pamoja Trust uses STDM as a formidable instrument of community empowerment and a sign of attempts to formulate a new fraternity, which lays the foundation for a shared ideal of equality in the country¹⁸. The link here is that, a community of interest can be built if the members are able to understand and appreciate their individual and collective relationships. While the conventional land tenure framing is primarily hierarchical; That is, a determination of who can use what resources for how long, and under what conditions. What STDM offers is a relational framework, to the extent that land tenure is about a bundle of rights¹⁹, who can enjoy them and to what extent. It is the results of these experiments that Pamoja Trust would like to form the basis for conversations around how the Community Land Register ought to look like.

Since the land in both Mashimoni and Kwabulo has to a large extent been adjudicated in favour of the community through participatory enumeration and use of the STDM, the Community Land Act can be used as an important step in guaranteeing the beneficial interests of the community members, first by protecting tenure rights using available community land governance mechanisms like the SEC.

¹⁸ Pamoja Trust’s interpretation of STDM implies a framework that breaches the perceived inequalities and lack of transparency in the management of Land Information.

¹⁹ These would include ownership rights, access rights, occupancy rights etc.



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Also, based on the lessons derived from using the STDM tool, Pamoja Trust is experimenting with the Adaptive Settlements Planning Model (ASPM), which uses the STDM database to spur discussions on settlement planning and upgrading. ASPM puts people at the center of settlement planning by defining various interests and enabling spatial and financial planning. The approach allows for integration of these interests to the urban space while bearing in mind the principles of equity. The differentiator of this approach is that citizens are able to use their socio-economic and spatial data to project a utopian view of their settlements. Considering that such planning is jointly done between informal settlements and their County Governments, the model proposes a pragmatic approach to resource allocation based on what is and what it can be.

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