



Pushing back the frontiers of property: Community land trusts and low-income housing in urban Kenya



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ARTICLE INFO

Article history:

Received 23 October 2012

Received in revised form 10 May 2013

Accepted 19 May 2013

Keywords:

Property rights
Community land trusts
Common property
The right to the city
Kenya

ABSTRACT

Property lies at the heart of the urban development process. While it creates the wealth needed to finance the urban economy, property can also be a source of disenfranchisement, especially among those unable to cope with the rules set by the market and facilitated by government policy. The hegemony of individual property particularly presents a paradox. Whereas individualised tenure theoretically confers the highest possible benefits in the property rights bundle, individualisation can also precipitate a wave of dispossession among poor households unable to neither meet stringent development regulations nor withstand market vicissitudes. This paper explores the possibility of developing alternative forms of property capable of meeting the practical housing needs of the urban poor. Specifically, the paper discusses the community land trust (CLT) as an innovative form of property capable of facilitating low-income housing provision. Based on an analysis of the Tanzania-Bondeni community land trust recently implemented in Voi, we argue that CLTs constitute a powerful innovation for low-income housing provision in urban Kenya. However, CLTs employ an intricate legal framework and institutional design that can be daunting, while their long-term success demands community commitment and effective leadership that may be hard to guarantee.

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Introduction

Access to decent and affordable housing for the rapidly growing urban population of the Global South remains one of the greatest challenges to urban policy makers around the world. Despite an increasing raft of strategies put in place to prop up low-income households in the urban land and housing market, the ability of the poor to access and retain land on a long-term basis largely remains a Sisyphean struggle (Payne and Majale, 2004). Yet, to many low-income households, access to land is a vital prerequisite for subsequent access not only to housing, but also to livelihood opportunities and vital social amenities. Indeed, where land has been made available, even the very poor of urban residents have been able to procure some form of shelter and income, however modest (Ikejiofor, 2006).

In Kenya, like elsewhere in the sub-Saharan region, standard land delivery processes premised on conventional state and market mechanisms have proven grossly inadequate in coping with the

demands imposed by rapid urbanisation (Bassett, 2005; Musyoka, 2006). The result has been a steady proliferation of informal settlements in cities, as households seek alternative housing and livelihood opportunities. In Nairobi, for instance, 60% of the population is huddled in informal dwellings occupying less than five per cent of the city's total residential space (UN-Habitat, 2010; Lipman and Rajack, 2011). The situation is no different in the other major cities of Mombasa (Rakodi et al., 2000), Kisumu (Huchzermeyer, 2009), Nakuru (Post and Mwangi, 2009), and Eldoret (Musyoka, 2006). Meanwhile urban property has turned into an avenue for political claim-making (Syagga, 2006), especially as urban space in the country increasingly becomes a site of contestation pitting various interest groups against each other (Gulyani and Talukdar, 2008; Huchzermeyer, 2008).

At the heart of this property tussle is the hegemony of 'received' forms of landholding, modelled on individual property (Mabogunje, 1990; Kironde, 1992; Watson, 2009). For example, past tenure regularisation initiatives implemented as components of slum upgrading programmes in Kenya have invariably awarded individual titles to households as the default form of property (Yahya, 2002; Syagga, 2011). In neoclassical economic-legal theory, individualised landholding supposedly confers the highest possible benefits in the property rights bundle (Rose, 1986; Dagan and Heller, 2001) – an argument that has long informed most tenure

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individualisation programmes in Africa (Okoth-Ogendo, 2003; Wily, 2008). However, empirical evidence has shown that individual titles often precipitate a wave of beneficiary dispossession and post-project displacement fuelled by distress sales by poor households on the one hand; and speculative land accumulation by the middle class, on the other (Payne and Majale, 2004; Gulyani and Bassett, 2007). Tenure individualisation has therefore not only failed to deliver the benefits predicted by conventional economic theory, in some cases it has dissipated any semblance of tenure security that households might have enjoyed prior to property titling (Payne, 2001; Wily, 2008).

Considering the central role property plays in urban development policy (Mabogunje, 1990; Krueckeberg, 1995; Roy, 2005), this paper seeks to achieve two aims. First, we look briefly at the contributory role of property rights to social exclusion in urban development. Secondly, we explore ways in which nascent land tenure reform initiatives can be nurtured and broadened in order to reverse the trend of social exclusion spawned by contemporary policy frameworks. In that connection, we examine the role of common property systems in seeking answers to the low-income urban housing problem in Kenya. Specifically, we investigate the use of community land trusts (CLT) as an innovative form of pro-poor landholding, employing the case of Tanzania-Bondeni CLT recently implemented in Voi. Data for this paper were collected through qualitative interviews and focus group discussions held with residents and officials of the Tanzania-Bondeni community land trust, between February and May 2010. Besides, key-respondent interviews were conducted with government officials at the Voi Municipal Council and at the Ministries of Lands, and Local Government in Nairobi. These sources were further supplemented by a review of project documents and official government policy on housing and land policy.

In what follows, the paper is organised into six sections. First, we present a brief overview of the connection between property and social exclusion in urban development. We then introduce the right to the city and common property theory as analytical props for this paper, before delving into the Voi case. We particularly discuss how the gains made in Voi can be broadened, while highlighting some of the problems encountered in project implementation together with their mitigation. Lastly, we underline recent developments in the Kenyan land and housing policy landscape, with a view to identifying opportunities for further development of common property. The aim is to help practitioners and policy makers devise more nuanced, context-aware interventions capable of improving the efficacy and impact of future low-income housing initiatives.

Property, power and social exclusion in urban development

Property is usually conceptualised as a benefit (or income) stream (Bromley, 1992). It is not an object in the sense of the physical thing held – in this case urban land (Blomley, 2004; Helfrich and Haas, 2009; Harvey, 2012). Rather, property is a social relation that defines the property-holder with respect to something of value, against all others (Bromley, 1992; Needham, 2006). It is this social relation that is in practice exercised as property rights – ‘the *de jure* or *de facto* rights of individuals or groups of individuals to a flow of benefits from assets, with at least a partial right to exclude others’ (Grafton, 2000: 504). At the core of the urban development process are societal rules and relations that govern people’s access to and control over land (Needham, 2006). Because urban land carries with it enormous wealth, it follows that property rights over such land confers both economic and political power (De Angelis, 2007; Blomley, 2008; Harvey, 2012). This power however can be a source of inequity and social exclusion, particularly for

those deprived of any systematic access to and use of urban land (Baron, 2006; Watson, 2009).

By their very nature, property rights are a product of political negotiation (Needham, 2006). Moreover, since their assignment affects the distribution of wealth and influence in society, property tends to benefit disproportionately whichever interest groups wield power (Blomley, 2008; Harvey, 2012). Nowhere is the competition over property more manifest than in cities, owing to the premium attached to urban land, (Needham, 2006). Consequently, cities typically are contested sites in which a powerful élite strives for unbridled accumulation of land, usually at the expense of the poor majority (Harvey, 2012). In the upshot, this ‘tyranny of property’ (Christman, 1994; Krueckeberg, 1995; Duchrow and Hinkelammert, 2004; Blomley, 2004; Roy, 2005; Harvey, 2012) breeds social exclusion, with the poor and powerless shunted to the fringe of society, unable to access land for their shelter and livelihood requirements (Roy, 2005; Watson, 2009).

In *The Myth of Property*, Christman (1994) identifies at least nine attributes that constitute the property rights bundle: possession, use, alienation, consumption, modification, destruction, management, exchange, and profit-taking. Christman groups the first seven attributes under the rubric of ‘control’ rights; while the last two constitute ‘income’ rights. These control and income rights correspond, respectively, to the Marxian ‘use’ and ‘exchange’ rights (Krueckeberg, 1995). Whereas use rights are essential for the satisfaction of basic human needs such as shelter, exchange rights mainly facilitate profit-making (Krueckeberg, 1995; Duchrow and Hinkelammert, 2004). Interests in urban land are thus characterised by a dialectical relationship between exchange and use rights. Accordingly, urban space production features a fundamental contradiction between two key interest groups – those who view urban land solely as a commodity to be appropriated for profit on the one hand; and those who consider such land primarily as the basis for the everyday reproductive needs of urban residents (Harvey, 2003; Roy, 2005; Blomley, 2008; Brenner et al., 2009).

Invariably, those who wield power over land prefer to control the full gamut of rights that abound in property – subsuming both use and income rights. It is this pursuit of ‘liberal ownership’ (Christman, 1994; Krueckeberg, 1995) that fuels the widespread fascination with individualised forms of property around the world (Unruh, 2002; Okoth-Ogendo, 2003). To ‘libertarians’, property is at its most valuable when it can deliver earnings for ‘highest and best use’ (Rose, 1986; Needham, 2006). Nevertheless, while the ‘highest and best use’ scenario may make great economic sense, it conveniently ignores the critical social function that land plays in every society (Krueckeberg, 1995; Dagan and Heller, 2001; Alexander, 2009), thereby breeding inequity and social polarisation in the urban development process (Syagga, 2006; Watson, 2009).

The tragedy however is that the planning system, which should ordinarily strive to attenuate socio-spatial inequity occasioned by market imperfections, is itself often complicit in the vice. The planning bureaucracy, particularly where it serves a neoliberal logic (Moulaert et al., 2007; Sager, 2011; Tasan-Kok and Baeten, 2011), can be a source of disenfranchisement against those not strong enough to hold on to what is rightfully theirs (Krueckeberg, 1995; Roy, 2005; Watson, 2009). Regeneration projects for instance, have been used to empty inner-city districts of poor households in order to attract the gentrifying middle-class back into city centres (Blomley, 2008; Sager, 2011). Similarly, zoning regulations have been deployed to protect the value of some housing districts by excluding undesired poor families (Tasan-Kok and Baeten, 2011). The point is that whatever urban development policies are pursued, they ultimately affect individual interests in land, favouring some while harming others (Baron, 2006; Needham, 2006). Irazábal (2009) argues for example, that there has been a pervasive abuse of property rights to further the expansion of capitalist accumulation,

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