



<http://www.diva-portal.org>

Postprint

This is the accepted version of a paper published in *Urban Studies*. This paper has been peer-reviewed but does not include the final publisher proof-corrections or journal pagination.

Citation for the original published paper (version of record):

Elfvérsson, E., Höglund, K. (2017)

Home of last resort: Urban land conflict and the Nubians in Kibera, Kenya.

Urban Studies

<https://doi.org/10.1177/0042098017698416>

Access to the published version may require subscription.

N.B. When citing this work, cite the original published paper.

Permanent link to this version:

<http://urn.kb.se/resolve?urn=urn:nbn:se:uu:diva-319413>

Home of last resort: Urban land conflict and the Nubians in Kibera, Kenya**

Emma Elfversson and Kristine Höglund

Abstract

Amid expansive and often informal urban growth, conflict over land has become a severe source of instability in many cities. In slum areas, policies intended to alleviate tensions, including upgrading programs, the legal regulation of informal tenure arrangements, and the reform of local governance structures, have had the unintended consequence of also spurring violence and conflict. This paper analyzes the conflict over a proposed ‘ethnic homeland’ for the Nubian community in the Kibera slum in Nairobi, Kenya, in order to advance knowledge on the strategies communities adopt to promote their interests and how such strategies impact on urban conflict management. Theoretically, we apply the perspective of ‘institutional bricolage’, which captures how actors make use of existing formal and informal structures in pragmatic ways to meet their conflict management needs. While previous research focuses primarily on how bricolage can facilitate cooperation, the case analysis uncovers how over time, the land issue has become closely intertwined with claims of identity and citizenship and a political discourse drawn along ethnic lines. In turn, such processes may contribute to the intractability of conflict, causing significant challenges for urban planning.

Keywords:

Informal settlements, urban land conflict, Kenya, Kibera, conflict management

* This is an author’s accepted manuscript of an article to be published in *Urban Studies* (accepted 9 February 2017). To cite, please use the following information: Emma Elfversson & Kristine Höglund (forthcoming). Home of last resort: Urban land conflict and the Nubians in Kibera, Kenya. *Urban Studies*.

* We thank Annika Björkdahl, Karen Brounéus George Kabongah, Ulrika Waarenperä, and Sarah Jenkins for valuable comments on drafts of the manuscript, and Lucy Wambui Ndungu and Carole Kisato for research assistance. The research was funded by the Swedish Research Council 348-2013-118. Equal authorship applies; the order of authors is alphabetical.

Introduction

‘Kibera belongs to the Nubians.’

- *Nubian elder, 2014-11-26a*

‘If [Nubians are] issued title deeds, Kibera will burn.’

- *Government official, 2014-11-24*

What strategies do communities adopt in relation to urban land conflict, and what are the implications for urban planning and conflict management? Today, the rate of urbanization is unprecedented in the developing parts of world (Montgomery, 2008). As a result, there has been a dramatic proliferation of urban slums, and urban populations make up a disproportionately large share of the poor (Davis, 2006). Moreover, in many cities, conflict over land in informal settlements has become a severe source of instability (Barry et al., 2007; de Souza, 2001). Across the globe, such conflicts have led to outbreaks of violence, mass protest, and persistent communal tensions, as marginalized communities in urban areas respond to dismal living conditions, lack of basic service provision, and insecure tenure (Holston, 2008).

Existing research on how to address urban conflict has focused on strategies employed by governments and donor organizations (Bollens, 2008; Björkdahl, 2013). In informal settlements and slum areas, strategies to manage conflict involve upgrading programs, the legal regulation of informal tenure arrangements, and the reform of local governance structures (Lombard and Rakodi, 2016). Yet the policies intended to alleviate tensions have also spurred resistance, violence, and new conflict (Rigon, 2016). Where ethnic diversity intersects with poverty, the capacity for collective action to address conflict is reduced and the risk of violence becomes particularly high (Parks, 2014; Parks et al., 2014). Understanding the

processes through which urban land can take on high symbolic value, even in dilapidated slum settlements, is imperative for successful urban planning in rapidly growing cities. To address the challenges facing attempts to address urban land conflict, we need to know more about how such conflicts are socially and politically embedded, the significance of land to communal groups, and the resultant strategies they use in the pursuit of secure land tenure.

In this paper, we study the origins of local communities' responses to urban land conflict by analyzing the Nubian community's pursuit of an 'ethnic homeland' in Kibera, Nairobi.¹ The Nubians claim to be Kibera's original settlers and seek a communal title deed for the land. This struggle underlies interactions between the Nubian community, other communities, and the state. Connected to this broader issue are conflicts between Nubian landlords and tenants from other ethnic communities, which have frequently arisen around elections, and from time to time manifested themselves violently. To capture how actors make use of existing formal and informal structures, we draw on the concept of 'institutional bricolage.' While previous research mainly focuses on how bricolage can lead to locally negotiated arrangements that facilitate cooperation, this case shows how it can also make conflict more intractable. The analysis uncovers how, over time, the land has become closely intertwined with claims to identity and citizenship and a political discourse drawn along ethnic lines, and how this has in turn exacerbated the conflict. These dynamics also provide a key to explaining the contradictory processes seen in connection with land conflict in Kibera, such as the current resistance of the Nubian community to ongoing slum upgrading in the very areas they claim to rightfully belong to them.

The study contributes to research that seeks to uncover the challenges facing urban governance, planning, and peacebuilding in informal settlements. Much of contemporary

urban growth takes place in the global south and often in the form of informal settlements. Slum upgrading has been seen as a relatively efficient strategy to provide a minimum of basic services (Roy, 2005; Werlin, 1999). However, due to the often overlapping informal claims to the land, the approach also creates major challenges and has been described as ‘dealing with the “unplannable”’ (Roy, 2005: 147). As in many other rapidly urbanizing countries, informal settlements in Kenya suffer from poor housing and sanitation, and tend to be overcrowded (UN Habitat, 2013). Simultaneously, informal rental markets in slum areas make the land valuable and in some cases the basis for lucrative businesses for the landlords who own the housing structures (Amis 1984; Rakodi 1995). These conditions provide fertile ground for inter-group tensions and social unrest, and require attention to be managed efficiently (Murunga, 1999; Obala and Mattingly, 2015; Parks, 2014).

Responding to Urban Land Conflict

Rapid urbanization makes land a scarce resource in already marginalized and densely populated areas (Lombard and Rakodi, 2016). With migration to urban centers, settlement patterns change and areas with high population density become focal points for political mobilization. For groups without a rural homeland, the stakes involved in urban land tenure are particularly high, since access to land may influence the distribution of economic and political benefits. Moreover, when residents draw on a shared communal identity to safeguard their interests, land conflict moves beyond the individual level and takes on ‘collective dimensions’ (Lombard and Rakodi, 2016: 2690). The interconnectedness of territorial, political, and economic issues for identity and conflict formation are, thus, important for understanding conflict and responses to it in informal settlements (Berry, 2009; Bollens, 2007; Geschiere, 2009; Marx, 2016). Here, we conceive of communal identity as subjective

group identification based on, for instance, a common history, culture, or core values (Anderson, 1983; Gurr, 2000).

Institutional Bricolage

National and subnational political, legal, and administrative institutions shape the context where communities seek to address their conflicts. In the broader realm of research on communal land conflict, factors related to institutional choice are forwarded to explain how divergent forms of institutional set-ups may encourage or reduce conflict (e.g. Boone, 2014; Eck, 2014; Wilkinson, 2004). An institutionalist approach highlights how conflict management is facilitated by transparency, clear boundaries of authority, and a codification of rules (Ostrom, 1990). However, the formalization and functioning of institutions are affected by existing power relations, political allegiances, and even corruption, which may undercut formal rights and mainly benefit those with access to the circles of power (Benjaminsen and Lund, 2002: 3).

Recognizing that the institutions relevant for conflict management are socially and politically embedded, research on institutional syncretism, hybridity, and friction has explored how institutions evolve over time and how both formal and informal institutions influence the pursuit of local communities in safeguarding their interests (e.g. Galvan, 2004; German and Keeler, 2009; Tsing, 2005). In this paper, the concept of ‘institutional bricolage’ is used as an analytical point of departure to capture the ‘process by which people consciously or unconsciously draw on existing social and cultural arrangements to shape institutions in response to changing situations’ (Cleaver, 2001: 26). Due to the inertia related to institutions, communities tend to alter their strategies to look after their interests by creatively making use of the institutions present (Lund, 2006). Emerging institutions and practices are legitimized

through recognized symbolism and discursive practice, for instance by employing government symbols such as stamps or uniforms or by reference to tradition or custom (Cleaver, 2002; Cleaver et al., 2013). We adopt this perspective to capture the strategies used by local communities in response to urban land conflict.

Institutions are here understood as sets of norms and rules that regulate behavior. Institutions manifest both as formal arrangements (formal institutions), where the rules and organization are explicit, and informal arrangements (informal institutions), often based on tradition and daily practices, where rules are socially shared but unwritten (Cleaver, 2002: 13). Formality in this sense tends to be closely connected to the state and state governance (Büscher, 2012). Yet, in practice, the formal and informal are difficult to separate. Research on the emergence of hybrid arrangements and ‘twilight institutions,’ and the existence of formal, semi-formal, informal, and *ad hoc* institutions parallel to each other, suggests that the institutional configurations of any society evade simple classification (Lund, 2006). We use the concept ‘hybrid institutions’ to refer to bodies that ‘emerg[e] from interaction between multiple (formal and informal) actors and institutions’ (Büscher, 2012: 485). These institutions also tend to transcend the boundaries between state and non-state, and between the modern and traditional.

Several insights from the literature on institutional bricolage are important for understanding how the institutional landscape exacerbates or alleviates inter-group tensions. In particular, institutional bricolage points to three key dimensions which may determine how communities respond to urban land conflict: 1) how institutions and structures evolve over time; 2) the multitude of actors and fora involved, challenging the binary distinction between formal and

informal institutions and blurring levels of authority; and 3) the importance of power relations inside and outside the more formalized institutions.

First, formal institutions are often perceived as fixed and stable. However, in reality they may be ambiguous and amenable to change due to pressure from within or from the outside (Lund, 2008). Institutional bricolage points to how institutions evolve over time, but also how identities are shaped by the evolution of formal institutions. As an example, certain arrangements may favor some identities over others and thereby serve to strengthen particular identities. Change over time may also tilt the balance of power in society, engendering certain forms of action among groups in conflict while precluding other solutions.

Second, the plethora of actors and institutions involved in addressing land conflict and operating at different levels makes it difficult to establish clear boundaries of authority and influence. A clear division of labor and authority is considered essential for successful conflict management. Yet formal local government institutions tend to coexist with customary conflict resolution mechanisms, which are often described as informal institutions, as well as with NGOs and other civil society actors (Cleaver, 2002). Furthermore, it is difficult to distinguish the local from the national, and how politics in the different spatial domains are connected (Cleaver et al., 2013; Lombard and Rakodi, 2016). Moreover, some state institutions may undermine local norms and practices that regulate conflict (Lund, 2006). These realities contradict the idea of the state as a coherent structure, and highlight how divisions of authority may become blurred. Such grey areas of authority and influence open up for negotiation and manipulation of political space, and provide a multitude of fora where communities can pursue their struggle over land.

Finally, institutional bricolage points to how both dynamics described above are conditioned by power relations. For instance, communities excluded from formal power may seek to promote their interests in other spaces and with alternative means, contributing to the evolution of the institutional landscape. However, power relations also define the parameters within which bricolage is allowed to take place, and the extent to which communities are able to make use of both formal and informal institutions (Cleaver et al., 2013: 175). Hence, the analysis of local conflict should take into account whether and how the groups in focus have ties to central and local politicians, issues of political representation and ethnic voting, and how networks of patronage channel influence and resources (McMichael, 2016; Obala and Mattingly, 2015; Patel 2016).

Methodology

In line with the bricolage framework, we depart methodologically from a community-based perspective, where the responses of the Nubian community are the primary interest. To capture the key dimensions highlighted in the bricolage framework, we conduct a qualitative analysis of a range of different sources, including academic studies, NGO reports, news articles, official documents, and interviews with key stakeholders on-site in Kibera (December 2011, February and November 2014). In total 35 local residents, government officials, community workers, leaders, and activists within community-based organizations (CBOs) were interviewed, and additional interviews were carried out with local academics. The interviews were semi-structured with questions about the main actors, institutions (formal and informal), channels of influence, and historical developments. Two local research assistants, with experience from academic and practical work in conflict-affected areas, assisted in identifying relevant interviewees and served as interpreters. We deliberately sought to limit bias in the sample by using multiple entry points to approach the interviewees. The

material emerging from the interviews represents the views of different stakeholders within the Nubian community, including Nubian interest groups, residents, and local government officials. Interviews were also conducted with government representatives of other ethnic origin, intercommunal CBOs, and interest groups and local residents (structure owners and tenants) in Kibera from other communities.

In our analysis of primary and secondary sources, we mapped the Nubian community's responses to urban land conflict based on our theoretical framework which emphasizes actors, institutions (formal and informal), power relations, and changes over time. Thus, in the analysis of the material, we sought to identify: 1) the main actors and institutions involved in addressing conflict over land and the Nubian land claims in particular; 2) the channels Nubians utilize for political influence and their relation to other communities, to capture power relations; 3) information about historical conflicts and how those were addressed, to capture changes over time. For additional contextual information, we also probed into the internal organization of the Nubian community and perceived sources of conflict.

The Nubian Land Question and Inter-group Conflicts in Kibera

Kibera originated as a settlement for Sudanese soldiers who retired from the British colonial forces.² The settlement was founded in the early 20th century, and since then the Sudanese settlers and their descendants have fought a long battle for official recognition of their status and rights to the territory. Originally a small group of ex-servicemen was given the land in return for their loyal service. However, while the Sudanese interpreted this as land rights that could be passed on to their descendants, the colonial authorities did not intend for the settlement to remain permanent and no formal rights to the land were granted. Although not a homogeneous ethnic community, the Sudanese ex-soldiers and their descendants adopted the

Nubian identity in independent Kenya in order to promote their rights in a political system which places strong emphasis on ethnic affinity (Adam, 2009).

Urban Land Conflict

The conflict between Nubians and other communities in Kibera can be traced back to the Nubians' original struggle over formal rights to the land, the continuous influx of migrants, and the politicization of Kibera's ethnic communities.³ The legal status of the Nubians' claims to the land was never settled, and many Nubians faced eviction in the 1970s and 1980s as the government reclaimed parts of Kibera for different purposes (Joireman and Vanderpoel, 2011). Tensions persist to date between the Nubian community and the government, between the Nubians and other ethnic communities in Kibera, and between landlords (both from the Nubian and other communities) and tenants.

Like many other cities in Africa, Nairobi is facing rapid urbanization and 60–70% of its inhabitants live in slums. Kibera's informal and unregulated status has attracted a large influx of migrants from all over the country, and today it is an ethnically divided slum area. Over the years, Kibera's population has also seen a tremendous growth. Although population figures for Kibera are highly disputed, the population is estimated to have increased from 3,000 in 1960 to 287,000 in 1999 (government figures from 2009 put it lower, at 170,000) (APHRC, 2014: xvii). This population is crowded into an area of around 550 acres or 2.2 km² (de Smedt, 2011: 10; Tambo, 2011). Of these 550 acres, around 300 acres are still public land and constitute the land being contested (DPC official, 2014-11-24a).⁴ Although the communities live intermingled, Kibera is divided into settlements or 'villages' which are usually dominated by one ethnic group. No official figures exist, but the Luo are believed to be the largest ethnic

community in Kibera, followed by the Luhya and the Kisii (de Smedt, 2011: 110). A reasonable estimate is that there are around 20,000–30,000 Nubians in Kenya, of whom 10,000–15,000 reside in Kibera (Balaton-Chrimes, 2015: 20).

The struggle for land in Kibera is inextricably linked to the political economy of Kibera's large-scale informal rental markets. Conventional squatting was already in the 1970s replaced by 'unauthorized commercial housing development ... a result of its exceptional profitability' (Amis, 1984: 89). Because of its proximity to central Nairobi, land in Kibera has become a highly valued asset and rental property is a major source of income. Officially the land is state property; however, without any formal authority, local government officials 'approve' housing structures. In this way, 'housing in Kibera is far from temporary and those receiving permission ... to build are acting as landlords' (Joireman and Vanderpoel, 2011: 133). The Nubian community has retained a major share of the housing structures in Kibera and letting housing is their key income-generating activity (Balaton-Chrimes, 2015: 113; de Smedt, 2011).⁵ However, the Kikuyu landlords have surpassed them in numbers, while the majority of the tenants have come from the Luo and other communities dominant in western Kenya (de Smedt, 2011: 101). Because residents and house owners in Kibera who do not have title deeds are considered squatters, they are constantly under threat of eviction (Balaton-Chrimes, 2015: 111; Nubian community worker, 2014-11-27).

The concentration of property in Kibera and the informal rental market also have important political dimensions. It is well-known that many national and local politicians own structures in Kibera (as in other slum areas in Nairobi) and the tenants form key constituencies for political mobilization (Chege, 1981; Kiyu, 2013: 107). For this reason, Kibera has become an important electoral mobilization ground, especially since the early 1990s when Raila Odinga

began to establish himself as a national politician. Odinga, a Luo, has relied on patronage networks to consolidate Kibera as one of his major strongholds. Kenyan politics is organized around ethnic networks which determine access to power and resources (Haugerud, 1995; Lynch, 2011). Thus, violence in the slum can often be traced to the national political arena and the divisions between ethnically mobilized parties (de Smedt, 2009; Kiyu, 2013).

In this context, violence between Nubians and other communities in Kibera has erupted on several occasions, often connected to broader political dynamics and elections. In 1995 and 2001, there were politically-related clashes between Luo ‘tenants’ and Nubian ‘landlords’. The violence in 2001 was triggered by a visit to Kibera by Raila Odinga, by then a presidential aspirant, who stated at a political rally that ‘the government is the true landlord’ (referring to the fact that the land is formally government property) and argued that Kiberian landlords should be forced to reduce their rents (Joireman and Vanderpoel, 2011: 134; Rosenberg, 2001-12-04). Some commentators suggested the violence was instigated to drive the Nubians out of Kibera; many had their properties destroyed and thousands were reportedly displaced by the violence (IPS, 2001-12-05). Kibera was also affected by the large-scale violence in the aftermath of the December 2007 elections, but the Nubian community escaped most of the violence. Although the violence was to a large extent carried out by Luo and landlords were targeted, it was mainly directed at Kikuyu who were perceived to have ‘stolen’ the election; the Nubians were at this time politically aligned with the opposition (Balaton-Chrimes, 2015: 112).

The Institutional Landscape

The institutional landscape has evolved over time and is currently undergoing transformation due to the new constitution adopted in 2010. Under this constitution, the most important

administrative levels in Kenya are the counties, headed by County Commissioners; the sub-county level, headed by Deputy County Commissioners; the wards, headed by Assistant County Commissioners; and villages or locations, headed by Chiefs.⁶ In rural areas, a location may cover a vast geographical area but in the cities, populations are dense and locations are smaller in size. For instance, within Kibera there are four locations, each with its own Chief (DPC official A, 2014). Chiefs are in charge of maintaining peace and order within their location (Chiefs' Act, 2012 [1998]), and they in turn work with village elders, a position which is recognized by law but is not a salaried position and recruitment is not formalized (for a broader discussion of the political role of Chiefs and elders and how these have evolved over time, see Haugerud, 1995: 122-130).

The new Kenyan constitution, adopted in 2010, has resulted in stronger local government; however, the overall responsibility for conflict management formally still falls under the national administration (Government official, 2011-12-01). Meanwhile, the constitution includes provisions that are intended to reinforce customary conflict resolution in local land conflicts. Importantly, it recognizes community land which is 'held by communities identified on the basis of ethnicity, culture or similar community of interest' (Constitution of Kenya, 2010: Chapter 5, Section 63). It also calls for the 'encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution' (Section 60). In many rural areas of Kenya, this principle was enshrined in the emergence of District Peace Committees (DPCs) during the 1990s and later, intended to deal with local intercommunal conflicts in areas with a limited state presence (Odendaal, 2013: 35-37). After the 2007/8 post-election violence, DPCs were implemented throughout Kenya, including in the urban areas, intended to serve as a link between communities and government (DPC official, 2014-11-24a). The DPCs are hybrid institutions (UNDP Kenya, 2011), which

have a formalized role in the administrative structure, but build on informal community leadership (elders and religious leaders). Many cases that are handled by Kibera's DPC entail mediation over a specific piece of land. In addition to these formal and hybrid arrangements intended to deal with land conflict in Kibera, stakeholders on different sides of the conflict have organized to promote their interests or to mediate in the conflict, including in the form of CBOs, interest groups, or through religious structures.

Institutional Bricolage and the Struggle for an 'Ethnic Homeland'

The Nubian community argues that they, as the original inhabitants of Kibera, should be granted legal ownership in the form of a communal title deed. They consider Kibera their 'home of last resort' (Nubian elder, 2014-11-26b). The main grievance lies with the government who formally control the land. At the same time, the uncertainty of the land issue has created intercommunal tensions. The institutional bricolage framework uncovers how, in the face of different institutional and political developments, the strategies of the Nubian community have added to the complexity of the conflict over time.

Reframing the Political Struggle in Response to Institutional Change

The Nubians' struggle for land rights and recognition illustrates how conflicts are reframed over time to adapt to changes in the institutional context. Within different institutional frameworks, Nubian community leaders have drawn upon different legitimizing discourses to argue their case for title deeds in Kibera, and have altered the specific claims they have pursued. These dynamics have influenced the very nature of the conflict and made it more interlinked with communal identity issues, thereby increasing its salience and intractability.

During the colonial period, the British employed indirect rule in Kenya, whereby ethnic groups were ruled – and, importantly, land allocation governed – through ‘customary’ or tribal institutions. However, the Nubians, who did not constitute a native tribe, fell outside this system. Instead, Kibera was governed through military structures. When these were removed, the Nubian community and its settlement fell into an institutional limbo (Parsons, 1997). In the colonial period, the Nubian campaign for the right to land in Kibera was framed in relation to their special status and the obligations owed to them by the military, and they largely rejected tribal identification (Johnson, 2009).

In post-independence Kenya, the institutional framework around both land rights and citizenship emphasizes tribal identity and belonging. This has made ethnicity and communal belonging highly territorialized (Jenkins, 2012) and has affected the way Nubian community leaders have sought to legitimize their claims. The community has been striving to become the 43rd recognized indigenous tribe of Kenya. Although formally entitled to citizenship, Nubians have faced difficulties in obtaining ID cards, which have both symbolic and practical value for Kenyans (Balaton-Chrimes, 2015: 63-75; Nubian elder, 2014-11-26a).⁷ The Nubians have always been in the category of ‘ethnic strangers’ in Kenya. The 2009 census coded for the first time a number of minorities and sub-tribes that had not previously been officially classified, including the Nubians. Before that, Nubians were recorded as ‘other Kenyans’ or as ‘others’ (Adam, 2009).

Moreover, contrary to many other ethnic communities in Kenya, the Nubians do not have any notion of a homeland apart from Kibera. The lack of a rural homeland creates insecurity, because if they are evicted, they have no other place to go. The notion of a homeland is also important for burial practices and the Nubians have their main burial site in Kibera. This is

often invoked by the community to strengthen the claim that Kibera is theirs (Jenkins, 2012: 581; Community activist, 2014-11-27a; Government official, 2014-11-26). While the land in Kibera is of economic significance, especially for Nubian structure owners, the community is also interested in the land for its symbolic value – ‘a place to call home’ (Nubian community activist, 2014-11-24a; Nubian elder, 2014-11-26a). The symbolism employed to support their claims to become a recognized tribe, such as tribal identity and burial sites as proof of belonging, signifies a realignment with dominant discourses in post-independence Kenya.

The shift from a focus on individual title deeds to an emphasis on communal title also reflects an adjustment to the altered institutional framework around land rights. In the 1970s, Nubian MP Yanus Ali advocated individual title deeds for the Nubians. Today, representatives of the Nubian community aspire to a community title. This shift, which took place in the early 2000s, is partly a pragmatic approach since there is not enough land left in Kibera for all Nubians to have private title deeds. There are also concerns that land will be sold if privately owned since it is so valuable. However, the aspiration to a communal land title is intertwined with claims to be recognized as a community with a legitimate right to belong in Kenya (Nubian elder, 2014-11-26b).

This shift has had negative implications for communal relations in Kibera. For other communities residing there, the Nubian claim to a communal title, rather than individual ownership, is not legitimate (Nubian community worker, 2014-02-19). Structure owners in Kibera have mobilized to petition the government on these issues because they fear being evicted if the Nubians are given the land (Kibera community activist, 2014-11-26). National-level statements that title deeds will be issued to Nubians have been met with fierce, and at times violent, protests. There are claims that these protests were not spontaneous, but

organized mainly by Luo and Kikuyu stakeholders (Kibera community worker, 2014-11-25). In December 2013, President Kenyatta reportedly intended to come and deliver title deeds to the Nubian community, but the visit was cancelled for security reasons and the intention to deliver the deeds was later denied (Odunga, 2013-12-08; Ombati, 2013-12-09).

Customary Authority and Urban Land Conflict

The Nubian community in Kibera engages with both formal and hybrid institutions to address everyday level conflict with both the government and with other communities. Yet the violence that from time to time erupts in Kibera highlights the shortcomings of the formal political and security structures to cope with intercommunal tensions, and the significance of customary authority in addressing urban land conflict. Moreover, the case illustrates how customary authority has adapted in the face of an altered institutional context and changed circumstances. For instance, the formalization of the elders is related to the statutory delegation of authority regulating land and conflict management. Yet the position of the elders highlights issues related to representation: the Nubian community is not a unitary actor, but is divided as to how best to pursue its interests.

In Kenya, customary leaders – the ‘elders’ – have historically played an important role in local governance (Haugerud, 1995: 122-130). They have had a key role in both formal arrangements for conflict resolution and informal processes responding to immediate crises (Adan and Pkalya, 2006). This is also the case in Kibera. The Nubian elders are conceived of as the leaders and spokespersons of the community (Government official, 2014-11-24; Nubian community activist, 2014-11-24a).⁸ In this capacity, they are part of the District Peace Committee (DPC), which plays a core function in managing land conflict and intercommunal tensions in Kibera through dialogue and mediation. Whenever a dispute arises, it is referred to

the DPC, where all communities are represented. The DPC has been effective in many cases (Government official, 2014-11-26), but if the parties resist its judgment and the conflict is not settled through the DPC's mediation, the case is referred to the courts. In this sense, there are limits to the authority of this hybrid structure.

In situations of crisis and conflict, the elders have represented the Nubians in intercommunity dialogue (Nubian community activist, 2014-11-24b). For instance, after the 2001 violence, Nubian and Luo elders and spiritual leaders (as well as representatives of other affected communities) sat down together and discussed at length how to address the conflict (de Smedt, 2011: 114; Nubian community activist, 2014-11-24b; DPC official, 2014-02-20). This dialogue was perceived as successful in reducing tensions between the communities. The elders also worked to prevent violence ahead of the 2013 election, when tensions in Kibera abounded. On their own initiative, the Nubian elders went to all the villages in Kibera for peacebuilding purposes (Nubian elder, 2014-11-26a).

Informal institutions such as customary authority adapt and evolve parallel to formal arrangements. Ross (1974) describes how residents in the Mathare informal settlement in Nairobi drew heavily on Kikuyu custom in establishing a committee of elders for conflict management, while simultaneously adapting this institution to enable broader participation as well as cooperation with the urban courts and police authorities. Similarly, the Nubian Council of Elders has evolved both in reaction to local necessities and the national institutional framework. The Nubian elders draw heavily on customary practices within the community as a legitimizing discourse, again reflecting the reframing of the Nubians' struggle in 'tribal' terms. At the same time the Council of Elders has undergone an increasing level of formalization. The practice of elders as community leaders has a long history within the

Nubian community as well as most other Kenyan ethnic communities.⁹ The establishment of a formal Council of Elders whose chairman claims to represent all Nubians in Kenya is more recent and took place around 2000 (Balaton-Chrimes, 2015: 116). Probing the origins of this formalization, interesting tensions are revealed. Representatives of a Nubian community-based organization claim that the Nubian Council of Elders was created by them for conflict resolution purposes, since the elders could meet with the other tribes' leaders to resolve issues (Nubian community activist, 2014-11-27a). Another source claims that the Council was formed during the constitutional review process because of the need for formal representation; since then it has continued as a body (Nubian community activist, 2014-11-27b). Representatives of the Council of Elders describe how they were assisted by an NGO in becoming a more formal organization (Nubian elder, 2014-11-26c).

The formalization of the Nubian Council of Elders has brought the broader problem concerning representation into full light. It is clear that the community does not speak with one voice and has different priorities. First, the status of the Nubian Council of Elders remains contested. While it is recognized to have a key role, not all agree that it speaks for the entire Nubian community (Nubian community activist, 2014-11-27). The administration sometimes chooses to work with other Nubian elders, but these elders are often considered biased (Nubian community activist, 2014-11-27b; Nubian elder, 2014-11-27). Second, there are several other organizations claiming to represent the Nubian community's interests (DPC official, 2014-11-24a). In addition to the Council of Elders, there are organizations such as the Kibra Land Committee, formed in order to pursue the issue of a communal deed (Taylor, 2004: 24) and the Nubian Rights Forum, which focuses mainly on human rights issues but has become increasingly involved in the land question. Third, not all Nubians are interested in a communal title deed: some Nubians who own structures or use the land for commercial

purposes in Kibera aspire to individual deeds (Nubian elder, 2014-11-27). Even among those who aspire to a communal title deed, there is no unity regarding the preferred arrangement for its management (e.g. Kibera community worker, 2014-11-25). Notably, given the way ‘community land’ is regulated in the constitution, the elders would be the custodians of the land and have been the most vocal in the struggle for a communal deed.

Power Relations and the Limits of Institutional Bricolage

The Nubians make use of a set of arrangements for conflict management with hybrid institutional bodies that transcend the boundaries between formal and informal, state and non-state, in order to avoid intercommunal tensions and manage daily conflicts. However, the ability of the Nubian community to promote its interests is highly influenced by its status as a small minority within Kenyan politics and society. Two points stand out as important in understanding the limits of institutional bricolage in such context.

First, the Nubian struggle for land has been highly influenced by the Nubian minority status and this group’s relationship to a governing political regime characterized by a high degree of asymmetry in terms of power and resources. The Nubians are a small minority which has had limited political influence and representation in formal institutions. There has been only one Nubian Member of Parliament, Yanus Ali, who sat for one term (1969–1974) and who failed to win support for any of the aspirations of the Nubian community concerning land. In Kibera, Nubians are outnumbered by other communities and as such unable to elect ‘their own’ local politicians. Because they have not naturally belonged to any side in the political game, the Nubians have tended to vote for the party in power. Historically, this strategy has yielded

some success for the Nubians. In 1984, the Nubians secured title deeds to the main mosque in Makina village in Kibera by supporting Philip Leakey, a KANU loyal MP from 1979 to 1992 (de Smedt, 2011: 111; Balaton-Chrimes, 2015: 51). The Nubians have also been successful in getting one of their own appointed as local Chief. While the norm in Nairobi is that Chiefs are transferable and do not work in ‘their own’ locations, in 2007 a local Nubian was appointed Chief in Kibera after a petition to the government (Government official, 2014-11-24; Government official, 2014-11-26). And in response to persistent lobbying by the Nubian community, successive governments have made promises of title deeds (Taylor, 2004; Government official, 2014-11-24; DPC official, 2014-11-24b). The issue was discussed during the 2013 presidential debate, and after the election, the Nubians were again promised title deeds, but these promises remain unfulfilled; conflicts between the Ministry of Land, Housing and Urban Development and the National Land Commission have added further uncertainty. From the Nubian perspective, the status quo in terms of the land question has resulted in frustration with the government and a sense of broken promises (Nubian community activist, 2014-11-24b). Perhaps as a result of this frustration, there have been attempts to bring the Nubians’ struggle to the international arena (Nubian elder, 2014-11-26c).

The small and diminishing relative size of the Nubian community has contributed to a sense of urgency in their struggle for land rights. There is also a major concern that the rights of the Nubians are overridden by the interests of politicians, who seek to win the support of the wider Kibera population, and the landlords and business owners (many of whom are politicians and/or reside outside the slum) who see Kibera mainly as an income-generating project (Kiyu, 2013: 107). Thus, in various ways, the politics of land in Kibera and the assurances granted the Nubians of secure tenure cannot be separated from either national-

level or local-level politics. While siding with those in power has served the Nubian community to a certain extent, the fact that they have no strong allies in the political center means that their interests become subordinate to other, more pressing political agendas. As a metaphor, one informant referred to the Nubians as a ‘step child’ of political patrons, who will prioritize the interests of their own ethnicity first (Kibera community worker, 2014-11-25). In the Kenyan context, this makes them vulnerable, since patronage through ethnic networks is a standard means through which to secure land.

Second, while there are many divisions within the Nubian community, Nubians are united in their awareness of the community’s dependence on government institutions. This dependency creates highly contradictory processes. Against the backdrop of the community’s intense lobbying for land in Kibera, it may seem paradoxical that the government’s focus on slum upgrading has been met with suspicion by the Nubians. The Kenya Slum Upgrading Program (KENSUP), supported by the government and UN Habitat, began in 2001 but progressed very slowly (Kiyu, 2013). In 2014, the President accelerated slum upgrading in Kibera, which was undertaken by the National Youth Service (NYS). In only a few months, the face of Kibera changed, with roads being constructed, the sewerage system cleaned up, and toilet facilities built. However, both with regards to KENSUP and the NYS-run upgrading, the Nubian community has complained about a lack of inclusion and consultation in the planning and launching of the programs (Balaton-Chrimes, 2015: 96; Government official, 2014-11-24; Nubian community activist, 2014-11-27b).

The Nubian community views the slum upgrades as a threat to its struggle for land rights. While the programs have provided much-needed employment for young people, the community is concerned that this is a first step to final dispossession (Government official,

2014-11-24). According to one of the key Nubian community organizations, the community has communicated to the government that it should be given title deeds before anything else is done. Despite this, slum upgrading was started, prompting angry reactions and threats to physically prevent the work (Nubian community activist, 2014-11-24b). One community activist explained how they are responding to the ongoing government-driven slum upgrading, which they partly benefit from but at the same time see as a threat: ‘There have been court cases. However, we will not make a legal injunction against the [new] road because we need it. We have not been consulted about the roads and toilets. Some of this we need, like the roads, but the building of toilets we reject. They are building for non-Kiberans. But we have legal documents backing our case’ (Nubian community activist, 2014-11-27a).

There is also a political realization that the government may not issue title deeds because the land is so valuable. As one informant stated: ‘it is the business people, structure owners and the big tycoons who want to buy it, not the commoners’ (Nubian community activist, 2014-11-24a). The legal provision for both ‘community land’ and private land provides a foundation for this uncertainty, since claims based on both types could be viewed as valid. This legal uncertainty means that access to formal power and informal political networks are more likely to determine the outcome than legal processes.

Conclusions

The Nubian conflict in Kibera is in many regards a very typical conflict over entitlement to land and tenure. In Africa and elsewhere, in-migration to informal settlements in urban areas pit newcomers against already established communities (Scambary, 2013). The informal nature of such settlements makes growth, development, and security difficult to control. At the same time they are politically significant, due to the large number of people residing there.

The institutional bricolage perspective contributes to uncovering how institutional change, multiple avenues of influence, and power dynamics have shaped the Nubian community's approaches to the conflict. Specifically, while previous research has primarily focused on how bricolage facilitates cooperation and conflict management, this study demonstrates how community responses to the formal and informal institutional arrangements intended to address the conflict can make it more difficult to solve.

First, the analysis shows how institutional developments affect the ways in which urban land conflicts evolve over time, and how they may become increasingly multilayered. While the shift from a focus on individual rights to a communal deed was highly rational in light of the Kenyan post-independence institutional context, this shift had negative implications for intercommunity relations in Kibera. From being primarily an issue of title deeds, the importance of the land for the Nubian identity became increasingly emphasized and complicated matters vis-à-vis other ethnic groups residing in the area.

Second, the recourse to multiple and hybrid conflict management mechanisms can be seen in the light of the institutional uncertainty concerning land ownership in Kibera, which is at the heart of the problem. But multiple arenas for conflict management may also compound uncertainty and benefit some actors to the disadvantage of others (Cleaver et al., 2013). As Büscher (2012: 486) points out, hybridity often results in 'strongly contested governance.' As an example, the District Peace Committee favors and empowers customary authority and representation of the elders. Yet its role as a representative of the Nubian community is contested and creates dividing lines within the Nubian community.

Third, the analysis shows how simultaneous processes of urban development, on the one hand, and delegation of authority to ‘customary’ institutions and communal identity groups, on the other, can exacerbate conflict by increasing the symbolic and political value of land. The Nubians’ limited political influence implies that they are painfully aware of the need to side with the government, while remaining skeptical and even outright opposed to slum upgrading due to the unfulfilled promise of title deeds. In summary, the social and political embeddedness of urban land conflicts presents difficult challenges to urban planning and slum upgrading programs. To deal with these challenges requires in-depth understanding of the way that urban land conflict relates to issues of recognition, political influence, and identity.

Notes

¹ Kibera is also referred to as Kibra; the original name in Kinubi. Nubian and Nubi are both used to refer to the community; in this paper we use the former, which has been the main term used in previous research.

² See Parsons (1997) and de Smedt (2011) for accounts of the history of the Kibera Nubians.

³ For an extensive account of the Nubians' struggle for recognition and land rights, see Balaton-Chrimes (2015).

⁴ The 'Nubian village' would comprise Makina, Lindi, Kisumu Ndogo, and Mashimoni (Government official, 2014-11-24); by another account also Karanja, Kambi Muru, and Laini Saba (DPC official, 2014-11-24b).

⁵ Many live in extreme poverty, further exacerbated by sociopolitical marginalization. Among Nubians across Kenya, the average daily income per household is just 4USD, with about 70% unemployed (OSJI, 2011a).

⁶ The structure of local government, and partly terminology, changed with the 2010 constitution. Previous divisions correspond to the current wards; the previous districts to the sub-counties. The previous 8 provinces have been replaced by 47 counties.

⁷ An ID card is a requisite for employment, higher education, opening a bank account, and other crucial services. To obtain ID cards, ethnicity and district of origin have to be declared. Motivated by security concerns, vetting procedures were introduced in the 1980s for all Kenyan Somalis, but also for other marginal groups, including the Nubians. According to one report (OSJI, 2011b), 44% of Nubians asked were screened as part of the application process for an ID card.

⁸ The conception of elder status, although based on age, is fluid. One informant stated that elders are usually older than 60 years (Nubian community activist, 2014-11-24b), while another suggested that they are above 40 or 50 years old (Nubian elder, 2014-11-26c).

⁹ While they build on traditional communal practices, councils of Elders are not always ethnic councils. Especially in mixed areas, they may draw their members from different ethnic groups (Ross, 1974).

References

- (2010) Constitution of Kenya [Rev. 2010]. Nairobi: National Council for Law Reporting with the Authority of the Attorney General.
- (2012 [1998]) Chiefs' Act Nairobi: National Council for Law Reporting with the Authority of the Attorney General.
- Adam AH (2009) Kenyan Nubians: Standing up to statelessness. *Forced Migration Review* 32: 19-20.
- Adan M and Pkalya R (2006) *The Concept Peace Committee*. Nairobi, Practical Action.

- African Population and Health Research Center (2014) Population and Health Dynamics in Nairobi's Informal Settlements: Report of the Nairobi Cross-sectional Slums Survey (NCSS) 2012. Nairobi, APHRC.
- Amis P (1984) Squatters and tenants: The commercialization of unauthorized housing in Nairobi. *World Development* 12(1): 87-96.
- Anderson B (1983) *Imagined Communities*. London: Verso.
- Balaton-Chrimes S (2015) *Ethnicity, Democracy and Citizenship in Africa: Political Marginalisation of Kenya's Nubians*. Farnham: Ashgate.
- Barry MB, Dewar D, Whittal JF and Muzondo IF (2007) Land conflicts in informal settlements. *Urban Forum* 18(3): 171-189.
- Benjaminsen TA and Lund C (2002) Formalisation and informalisation of land and water rights in Africa. *European Journal of Development Research* 14(2): 1-10.
- Berry S (2009) Property, authority and citizenship. *Development and Change* 40(1): 23-45.
- Björkdahl A (2013) Urban peacebuilding. *Peacebuilding* 1(2): 207-221.
- Bollens S (2008) Urbanism, political uncertainty and democratisation. *Urban Studies* 45(5&6): 1255-1289.
- Bollens SA (2007) Urban governance at the nationalist divide. *Journal of Urban Affairs* 29(3): 229-253.
- Boone C (2014) *Property and Political Order in Africa*, Cambridge: Cambridge University Press.
- Büscher K (2012) Urban governance beyond the state. *Urban Forum* 23(4): 483-499.
- Chege M (1981) A tale of two slums: electoral politics in Mathare and Dagoretti. *Review of African Political Economy* 20: 74-99.
- Cleaver F (2001) Institutional bricolage, conflict and cooperation in Usangu, Tanzania. *IDS Bulletin* 32(4): 26-35.
- Cleaver F (2002) Reinventing institutions. *European Journal of Development Research* 14(2): 11-30.
- Cleaver F, Franks T, Maganga F and Hall K (2013) Institutions, security, and pastoralism. *African Studies Review* 56(3): 165-189.
- Davis M (2006) *Planet of Slums*. New York: Verso.
- de Smedt J (2009) 'No Raila, No Peace!' Big man politics and election violence at the Kibera grassroots. *African Affairs* 108(433): 581-598.
- de Smedt J (2011) *The Nubis of Kibera: A social history of the Nubians and Kibera slums*. Leiden University.
- de Souza FAM (2001) The future of informal settlements: Lessons in the legalization of disputed urban land in Recife, Brazil. *Geoforum* 32(4): 483-492.
- Eck K (2014) The law of the land. *Journal of Peace Research* 51(4): 441-454.
- Galvan D (2004) *The State Must Be Our Master of Fire: How Peasants Craft Culturally Sustainable Development in Senegal*. Berkeley, US: University of California Press.
- German LA and Keeler A (2009) "Hybrid institutions". *International Journal of Commons* 4(1): 571-596.
- Geschiere P (2009) *The Perils of Belonging*, University of Chicago Press.
- Gurr TR (2000) *People Versus States*. Washington D.C.: USIP Press.
- Haugerud A (1995) *The Culture of Politics in Modern Kenya*. Cambridge: Cambridge University Press.
- Holston J (2008) *Insurgent Citizenship*. Princeton: Princeton University Press.
- IPS (2001-12-05) Gov't accused of instigating tribal violence. *Inter Press Service*. Rome.
- Jenkins S (2012) Ethnicity, violence, and the immigrant-guest metaphor in Kenya. *African Affairs*: 576-596.

- Johnson DH (2009) Tribe or nationality? The Sudanese diaspora and the Kenyan Nubis. *Journal of Eastern African Studies* 3(1): 112-131.
- Joireman SF and Vanderpoel RS (2011) In search of order: State systems of property rights and their failings. In: Joireman SF (ed) *Where There is No Government*. Oxford: Oxford University Press, 129-152.
- Kiyu GM (2013) *Politics and Slum Upgrading in Kenya: A Case Study on the Influence of Slum Upgrading in Kibera*, Frankfurt: Peter Lang.
- Lombard M and C Rakodi (2016) Urban land conflict in the global south. *Urban Studies* 53(13): 2683-2699.
- Lund C (2006) Twilight institutions: Public authority and local politics in Africa. *Development and Change* 37(4): 685-705.
- Lund C (2008) *Local Politics and the Dynamics of Property in Africa*. New York: Cambridge University Press.
- Lynch G (2011) *I Say to You: Ethnic Politics and the Kalenjin in Kenya*. Chicago: University of Chicago Press.
- Marx C (2016) Extending the analysis of urban land conflict: An example from Johannesburg. *Urban Studies* 53(13): 2779-2795.
- McMichael G (2016) Land conflict and informal settlements in Juba, South Sudan. *Urban Studies* 53(13): 2721-2737.
- Montgomery MR (2008) The urban transformation of the developing world. *Science* 319: 761-764.
- Murunga GGR (1999) Urban violence in Kenya's transition to pluralist politics, 1982-1992. *Africa Development* 24(1): 165-198.
- Obala LM and Mattingly M (2015) Ethnicity, corruption and violence in urban land conflict in Kenya. *Urban Studies* 51(13): 2735-2751.
- Odendaal A (2013) *A Crucial Link: Local Peace Committees and National Peacebuilding*. Washington, DC: USIP Press.
- Odunga D (2013-12-08) Tension over Uhuru Kibera visit. *Sunday Nation*. Nairobi.
- Ombati C (2013-12-09) Esipisu: Uhuru Kibera visit claims false. *The Standard*. Nairobi.
- OSJI (2011a) Nationality and Discrimination: The Case of Kenyan Nubians. New York: Open Society Justice Initiative.
- OSJI (2011b) Nubians in Kenya: Numbers and Voices. New York: Open Society Justice Initiative.
- Ostrom E (1990) *Governing the Commons*. New York: Cambridge University Press.
- Parks MJ (2014) Urban poverty traps: Neighbourhoods and violent victimisation and offending in Nairobi, Kenya. *Urban Studies* 51(9): 1812-1882.
- Parks MJ et al. (2014). Applying neighborhood-effect research to a global south city. *Global South*, 8, 119-138.
- Parsons T (1997) "Kibera is our blood": The Sudanese military legacy in Nairobi's Kibera location, 1902-1968. *International Journal of African Historical Studies* 30(1): 87-122.
- Patel K (2016) Sowing the seeds of conflict? Low income housing delivery, community participation and inclusive citizenship in South Africa. *Urban Studies* 53(13): 273-2757.
- Rakodi C (1995) Rental tenure in the cities of developing countries. *Urban Studies* 32(4-5): 791-811.
- Rigon A (2016) Collective or individual titles? Conflict over tenure regularisation in a Kenyan informal settlement. *Urban Studies* 53(13): 2758-2778.
- Rosenberg MJ (2001-12-04) At least 12 killed in clashes in East Africa's largest slum. *Associated Press*. New York.

- Ross MH (1974) Conflict resolution among urban squatters. *Urban Anthropology* 3(1): 110-136.
- Roy A (2005) Urban informality. *Journal of the American Planning Association* 71(2): 147-158.
- Scambary J (2013) Conflict and resilience in an urban squatter settlement in Dili, East Timor. *Urban Studies* 50(10): 1935-1950.
- Tambo JA (2011) *Understanding Kibera Slum in Nairobi*, Bungoma: Kelpat Press.
- Taylor WE (2004) Property rights—and responsibilities? The case of Kenya. *Habitat International* 28(2): 275-287.
- Tsing A (2005) *Friction: An Ethnography of Global Connection*. Princeton: Princeton University Press.
- UNDP Kenya (2011) *Community Peace Recovery & Reconciliation*. Nairobi: UNDP, ACORD & NSC.
- UN Habitat (2013) *Country Programme Document 2013-2015: Kenya*. Nairobi: UN Habitat
- Werlin H (1999) The slum upgrading myth. *Urban Studies* 36(9): 1523-1534.
- Wilkinson SI (2004) *Votes and Violence*. Cambridge: Cambridge University Press.