

Women, Land and Home Project-Kenya

HIC-HLRN in collaboration with Mazingira Institute and Pamoja Trust



Project Need

Kenya has been undergoing a series of changes that have occasioned gross human violations:

- These include citywide demolitions, evictions, arson attacks
- These were being undertaken on the background of various policy interventions that had been put in place: Land Amendment Act 2016, New Urban Agenda, The Eviction and Resettlement Bill

Project Need (cont'd)

There was therefore the need to:

- Monitor the violations and the implementation of programs
- Assess the actual costs to help in evidence based advocacy
- Form an observatory to monitor these violations
- Focus on gender roles and women



MAMA WESLEY
SHOP

TOP UP
HERE

TOP UP
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TOP UP
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Assessing impacts of dispossession of women's land and homes: Counting the real costs.

Types of losses:

- 1. Wealth – household goods, income, opportunity loss**
- 2. Well-being – Distress, social status**
- 3. Habitat – House, water, sanitation**

Selection of cases

Steps taken

1. Identification of incidents:

- A. Intercommunal conflicts
- B. Infrastructure failure and disaster
- C. Infrastructure development
- D. Military occupation
- E. Land titling, which exclude or diminish women's security of tenure
- F. Customary practices that deny women and widows ownership of property, particularly land and homes

2. Description of incidents and identification of their respective cases. For this, we used the following template:

- Background to general type of incident (50 words max).
- What are the characteristics of the particular incident?
- What are the effects (direct or indirect) of the type or particular incident on women?
- What is the scale of the type or particular incident (any numbers)?
- Mention of specific losses, costs and/or damage for women affected by the incident.

Conceptual Framework

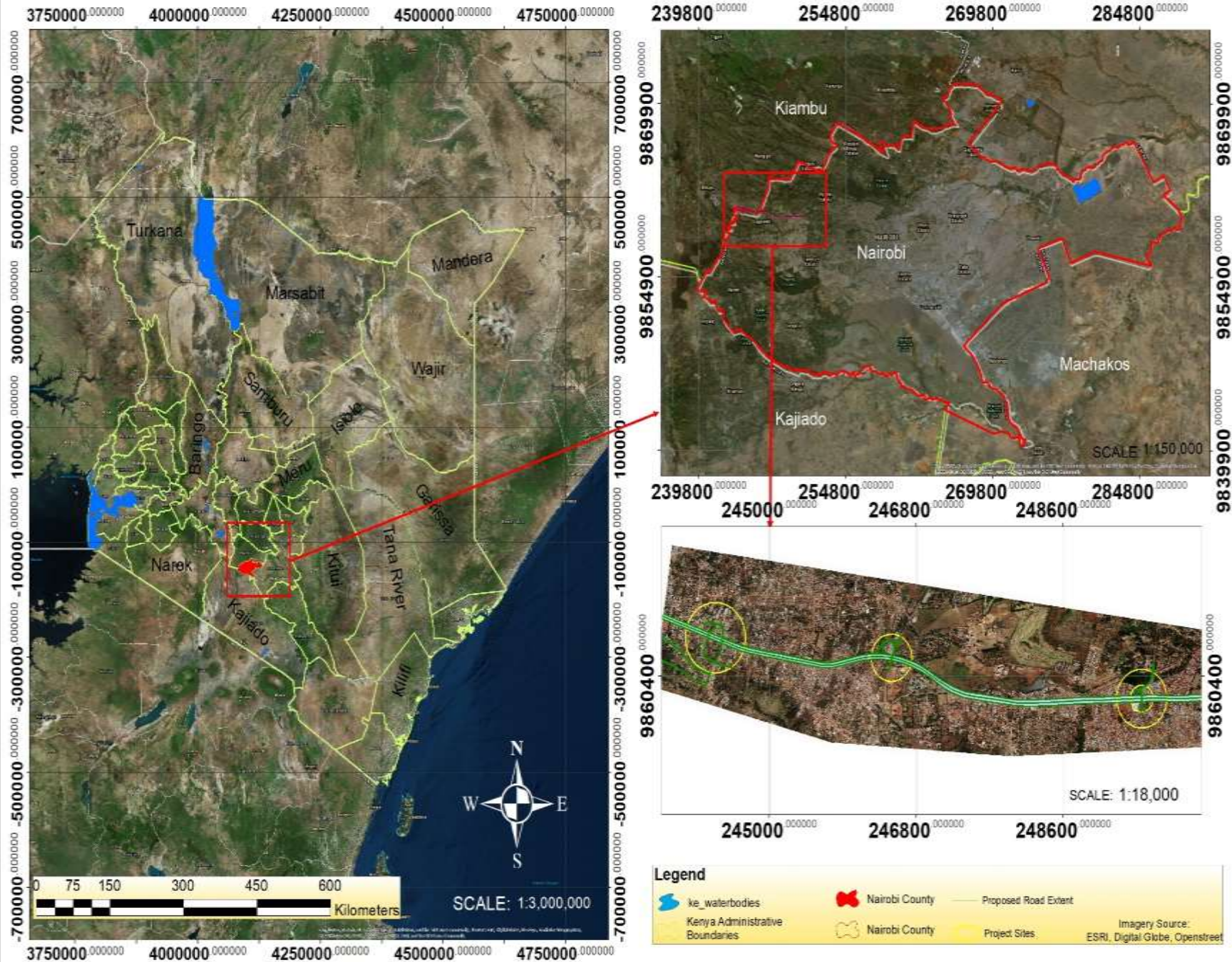
1. Violation Impact Assessment Tool

Violations cause Impacts. These Impacts warrant Redress that, in turn, may Inhibit Repetition of these violations. The forms of reparations are restitution (return, resettlement, rehabilitation), compensation, non-repetition and satisfaction.

2. Questionnaire

- Developed a gendered a baseline assessment tool focusing on the 3 main areas: Wealth, Wellbeing and Habitat loss.
- Did a pre-test with 9 respondents. They proposed an affirmative question: **Have you ever been displaced or suffered any other loss of land or home? Yes..... No..... Please describe.**
- Another important question: **Please tell me why you left your original home (and when) and also all the reasons why you have moved subsequently, so we can get the story of your housing history.**

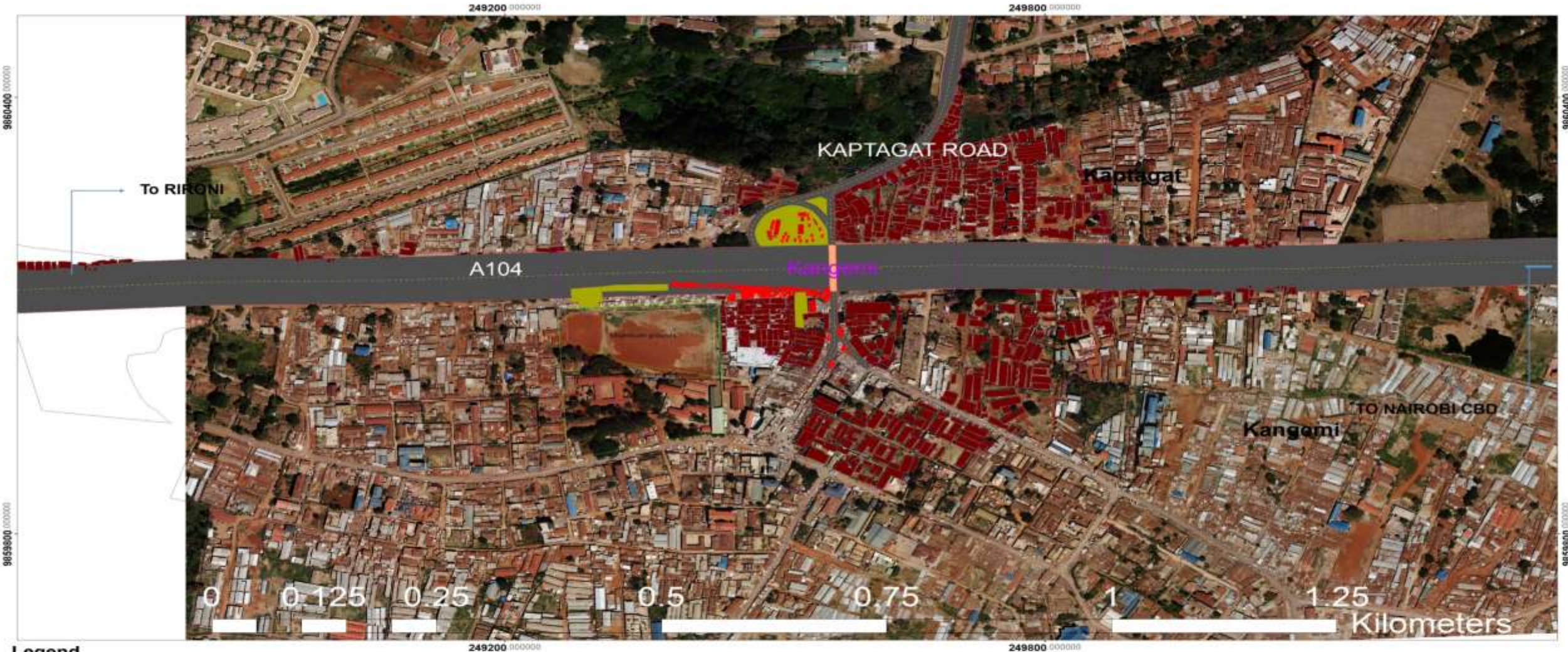
A104 James Gichuru Junction to Kinoo Section, Nairobi County, Kenya



Project Scope

- A104 road expansion along 40-km stretch, displacing residents
- Discrimination against victims in informal settlements at Kangemi, Uthiru and Kinoo left out for lack of secure tenure.

A104 KANGEMI INTERCHANGE SECTION



Legend

- Informal Business
- Interchange
- Parcels
- Dam
- Bus Stations
- Settlement_Extent

Affected_Structures use

- Residential
- Business

Proposed Road Extent

- Centreline
- Edge

Proposed Road Type

- Main Road
- Collector
- Service Road
- Overpass



SCALE: 1:1,500

Coordinate System: WGS 1984
Projection: Transverse Mercator
Datum : WGS 1984

Prepared from: Aerial imagery taken on January, 2017

Prepared by : PASCAL ADONGO
PAMOJA TRUST, 2017

Sampling

- Purposive sampling: This is the selection of a sample, based on characteristics of a population and the objective of the study.
- Homogeneous purposive sample is the one selected for having a shared characteristics or set of characteristics.
- Sample size is 120. 30 respondents from each of the 4 categories: single, married, separated, widow.

Mobilisation

- Done by women leaders from the areas
- They got training on Women's land and property rights before embarking on mobilisation
- A project for women, with women. Used the women leaders because they have better knowledge of the area and also we wanted the community to be fully involved

Methodology

- It was largely qualitative, partially quantitative.
- Administered interviews which were done off-site, to avoid tension and confusion in the community
- Interviews were done in 8 days. We had 5 enumerators, each one doing 3 interviews per day, 15 interviews done each day. This made up a total of 120 interviews in 8 days

Case Examples

Muthurwa Estate:

“Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 others”

Background

“The Kenya Railways Staff Retirement Benefits Scheme is compelling Muthurwa residents to vacate their homes despite their lack of alternative housing. They have partially demolished and further threatened to demolish all the houses of the residents, disconnected water supply and demolished toilets and sanitary facilities. This indignity on wananchi is in the name of a private sale, construction of a commercial business park and other commercial developments. The registered owner of the land, LR 209/6502 is still East Africa Railways and Harbours! The residents of Muthurwa Estate include the elderly, persons living with disability, children, widows etc.”

History

“Satrose Ayuma & 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 Others”

The century old Muthurwa Estate was developed by the East African Railways and Harbours Corporation (EARHC) to provide housing and amenities to its African workers

Kenya Railways Corporation (KRC) was established by an Act of Parliament and it commenced operations in 1978.

In 2006, KRC via a trust deed, established the Kenya Railways Staff Retirement Benefits Scheme (KRSRBS). It inherited certain assets of KRC and its liability, namely to pay pensions to over 9,000 retirees.

KRC entered into a concession agreement that conceded railway operations to Rift Valley Railways Ltd. (K)

August 2010, the Scheme announced the disposal of Muthurwa Estate, in accordance with the master plan of its assets, composed of three categories: assets for refurbishment, assets for disposal and assets for re-development

The Scheme issued a written notice on 1st July 2010 to all residents, demanding that they must vacate the houses within 90 days

October 2010 Filing of petition by eleven petitioners residing in the Estate

The High Court following the hearing on 13th and 14th February 2012, granted as a matter of urgency, pending full hearing of the case, a temporary injunction from demolishing, evicting, terminating leases or tenancies, transferring or in any way interfering or alienating the premises

claim various violations of fundamental rights and freedoms including the right to accessible and adequate housing; right of access to information held by the State; right not to be treated in a cruel, inhuman or degrading manner; right of every child to be protected from inhuman treatment; right of older members of society to live in dignity and finally rights of persons with disabilities to be treated with dignity and respect,

The eviction order was suspended for proper modalities to be established

Muthurwa Estate - Nairobi



- Muthurwa Estate is located within the larger Kamukunji Constituency,, area is 72 acres
- The Estate is composed of 56 rectangular housing blocks comprising single rooms, about 9 sq. meters in area, with outdoor sanitary units 54 of these have 20 individual housing units and the rest (two) have 10 units each
- 1,324 households. With an average of 3 household members.

Objectives:

- ✖ Describe the basic characteristics of the households,
- ✖ Assess quality of housing conditions & HH amenities,
- ✖ Record goods (movable assets) HH owned & values,
- ✖ Assess one-time cost & duration for relocation of the households due to a potential eviction,
- ✖ Assess the increase in household expenditure for relocation due to a potential eviction.



The HIC-HLRN Eviction Impact Assessment (EvIA) Tool formed the basis of the survey: a central tool and reference for its work in determining the full consequences that persons and households undergo in the process of forced eviction and displacement.

Determines a wide range of losses and costs that typically are associated with forced evictions, but are rarely recognized or documented.

Findings: Additional recurrent expenditure due to displacement

- ✘ *Transport*: total additional cost of relocation per month for 40 households = ksh. 834,540 (€7,620), or ksh. 19,733 (€180) on average;
- ✘ New nursery schools, health facilities, worship spaces, and recreation centers closer to their new location = ksh.12,766 (€117)/month.

Conclusions:

- General loss of well-being: housing & amenities, health, safety, comfort, etc.;
- Since october 2010, loss housing quality (intangible cost);
- Loss of easy physical access to facilities: work, school, healthcare, childcare, recreation and worship, general CBD services (both a tangible and intangible cost);
- Loss of mutual support & benefits of inter-hh relations & social bonds forged over time (intangible cost);
- If HH secure equivalent housing and amenities at same rent, they would have to relocate 20 kms from CBD, & HH expenditure for transport alone increase by average kshs. 19,733 (€160)/month, eventually reducing to kshs. 12,766 (€117)/month (tangible cost) + added travel time (intangible cost).

- ✘ Such displacement would be far beyond the means of the households, driving hhs to places with worse housing conditions and access to facilities and services;
- ✘ The hhs are needy & their displacement will make them make them worse off;
- ✘ This displacement aggravates urban poverty situation of nairobi.
- ✘ However, the findings of this quantification exercise should aid the judge to mitigate that impoverishment through the final court—was expected in march 2013—by determining:

“Such other relief as this honourable court may deem fit to grant.”

Mitu-Bell Welfare Society v Attorney General & 2 Others

Background

- The dispute over the land measuring 163.67 hectares pits KAA, the commissioner for lands and the attorney general against mitu-bell welfare society and mitumba village residents.
- Mitumba village was located near wilson airport, in 1992 the occupants had been moved from the vicinity of mombasa road by the ministry of roads and taken to their present site by the government(airport authority).
- Consequently, the government tried to demolish their structures but they obtained a court order stopping the demolition.
- Despite the court order, the government proceeded to do the demolition.
- Subsequently, the occupants filed contempt proceedings.

Mitu-Bell in High Court

- Any forceful eviction or demolition without a relocation option is illegal,” Judge Mumbi Ngugi said, adding that those who carried out the demolition had disrespected both the court order and the squatters.
- She rejected the argument of the government’s submission that socio-economic rights were not actionable and further held the villagers were entitled to compensation from the government for the loss of property.
- The court endorsed the application of international rules governing eviction: it deplored the lack of consultation with the community and failure to give them reasons for eviction.
- In granting the orders prayed for, she emphasized even if the evictees did not own the land, they were citizens of Kenya and hence were not depleted of their rights in the eviction process.
- The High Court directed the government to resettle 15,000 residents whose shanties were demolished in 2011.
- Ngugi gave the Attorney General 60 days to file an affidavit on state policies on provision of housing to slum dwellers

Mitu-Bell in High Court

- **“Granted, also, that these rights are progressive in nature, but there is a constitutional obligation on the state, when confronted with a matter such as this, to go beyond the standard objection that the petitioners have not demonstrated a right to the land, or how their rights have been violated. Its obligation requires that it assists the court by showing if, and how, it is addressing or intends to address the rights of citizens to the attainment of the social economic rights, and what policies, if any, it has put in place to ensure that the rights are realized progressively, and how the petitioners in this case fit into its policies and plans.”**
- **“That the respondents do engage with the petitioners, Pamoja Trust, other relevant state agencies and civil society organizations with a view to identifying an appropriate resolution to the petitioners’ grievances following their eviction from Mitumba village.”**

But in the Court of Appeal...

- The court of appeal overturned the high court decision ordering Kenya Airports Authority (KAA) to compensate 15,323 residents who were evicted from an area near Wilson Airport.
- “The trial court erred in abdicating its judicial function and bestowing the same to persons and entities not vested with the constitutional mandate to identify and determine appropriate relief and resolution to the petitioners’ grievances.”
- “It is advisable to bear in mind that in interpretation of the constitutional articles on socio-economic right, it is not the role or function of courts to re-engineer and redistribute private property rights. Re-engineering of property relationship is an executive and legislative function with public participation. In the absence of a legal framework, courts have no role in the guise of constitutional interpretation to re-engineering, take away and re-distribute property rights.”
- It’s at the Supreme Court!

Where do we go from here?

Interventions

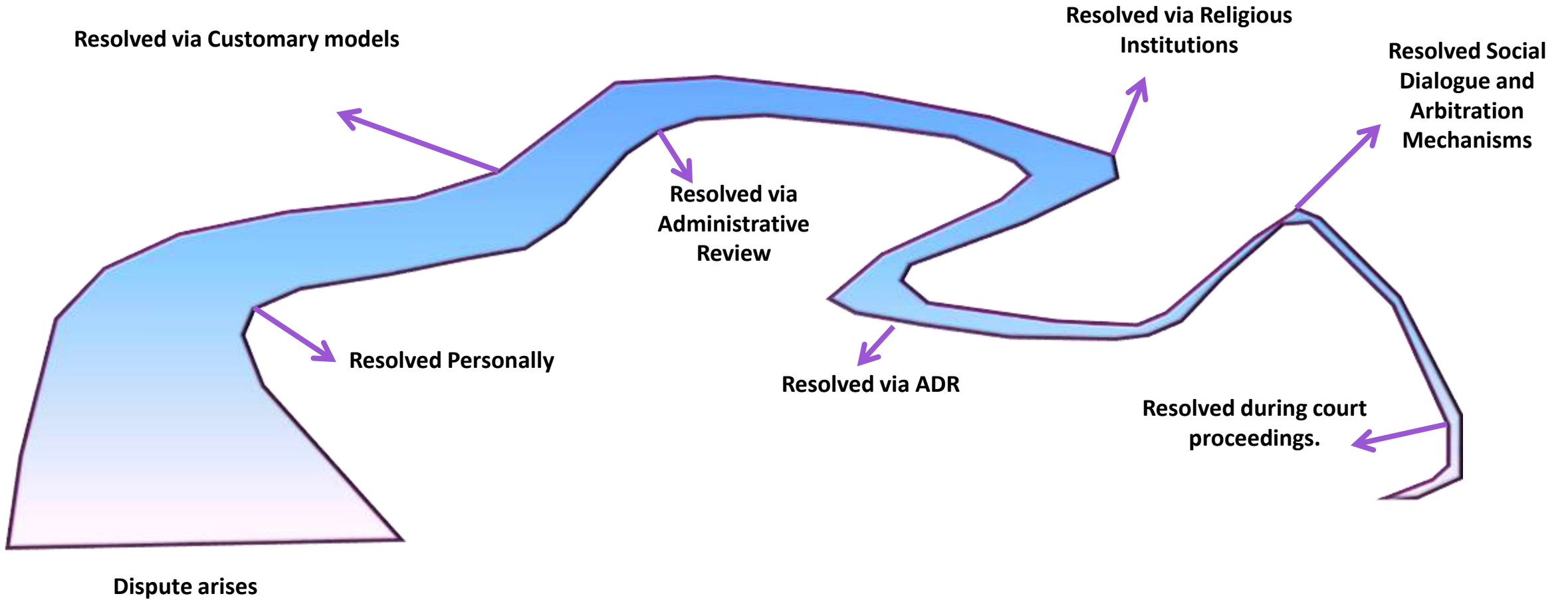
- At the Trust, we have begun to organize the women into a women land rights movement to play an effective role in advocacy toward gender equality in ownership to land and home and also against acts that dispossess the citizens especially women.
- These women continue to be trained on transformative leadership for women's rights to build their capacity to effectively engage in legislation and policy dialogues that will help to protect their rights.
- The Trust will continue to undertake monitoring and reporting of these incidents in the hope of getting the government to stop perpetuating these violations.
- Through evidence building the Trust seeks to deter further perpetuation of these incidents and to seek remedial measures for the urban poor against whom such incidents have been perpetuated.
- We have resorted to Alternative Justice Systems to seek reparations for the affected women.

A quote to start us off on AJS:

“How can human rights be sufficiently universal to make them appropriate subjects for meaningful international regulation and yet consistent with, and appropriate to, the world's diversity? Can international organizations effectively promote and protect universal rights and yet respect and accommodate local preferences reflecting genuine cultural, political, religious, and moral diversity? Should they?”

Douglas Lee Donoho, “[Autonomy, Self-governance, and Margin of Appreciation](#),”
Emory International Law Review , Vol. 15 (2001)

The River of Justice in Kenya



Five Imperatives for AJS

- ***Effectiveness***: the lived realities of most Kenyans
- ***Social engagement***: the disaffection with Kenyan state institutions
- ***Legal imperative***: the Constitution commands legislation
- ***Efficiency and comparative advantage***: the court carrying capacity and access to justice
- ***Competence***: the courts lack technical competence to ascertain customary law

Actors	Judiciary	Stakeholders	AJS Mechanisms
Pillar	Protect[uphold]	Respect[maintain]	Transform
Need	Measures by the Judiciary to ensure that third parties (individuals, states, lawyers, various levels of courts, etc.) do not deprive right-holders of their access to justice that is possible under AJS.	Duty not to take regressive action diminishing AJS mechanisms and processes	Duty to facilitate AJS Mechanism to meet the core contents expressed in Article 159 (3)
Action	<ul style="list-style-type: none"> • Framework for due diligence • Sanction • Regulation • Adjudication 	<ul style="list-style-type: none"> • Addressing adverse impacts 	

Figure 1: Based on the Report to the AJS Taskforce by Hon. Prof. Joel Ngugi & Dr. Steve Ouma Akoth , 2017

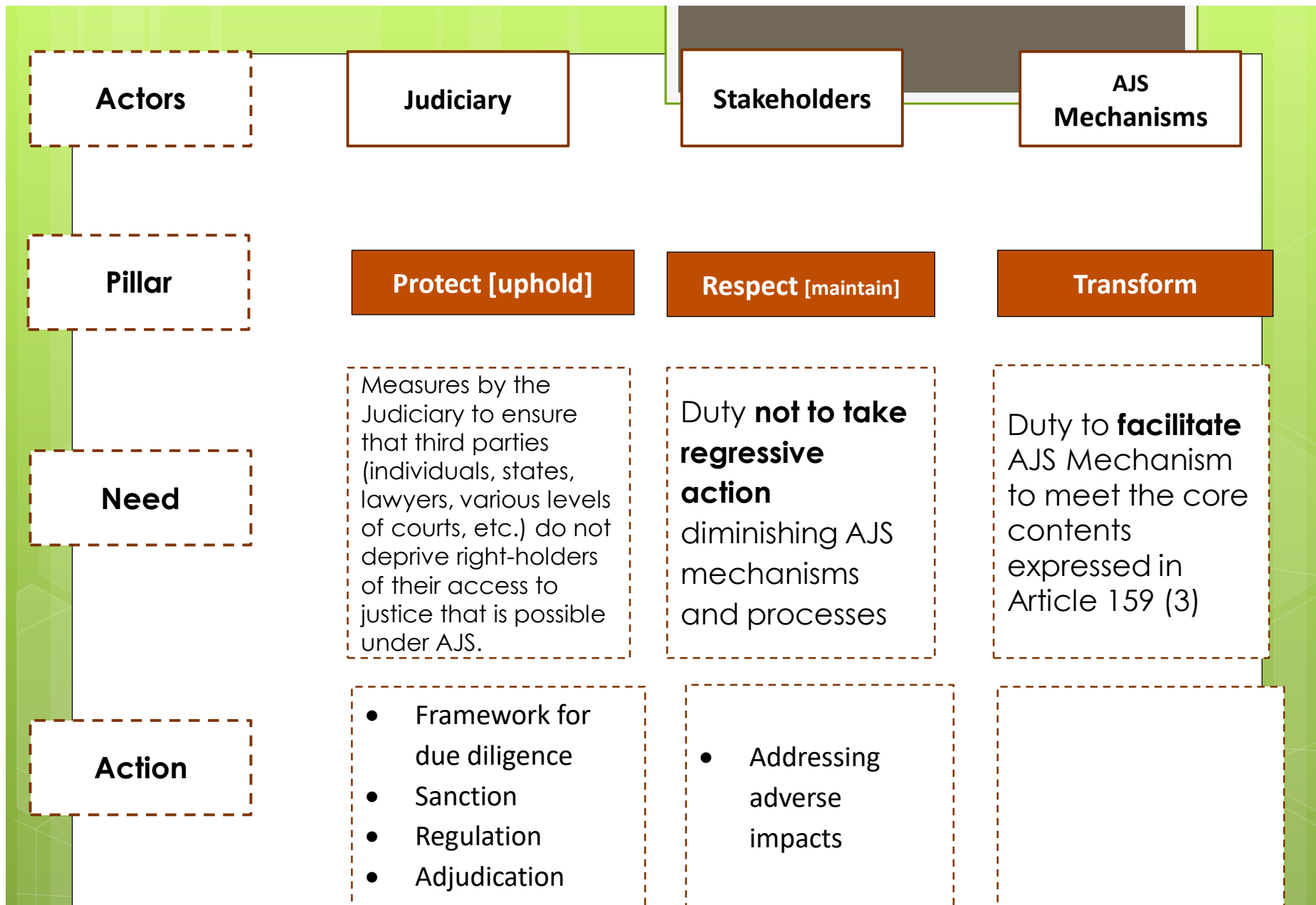
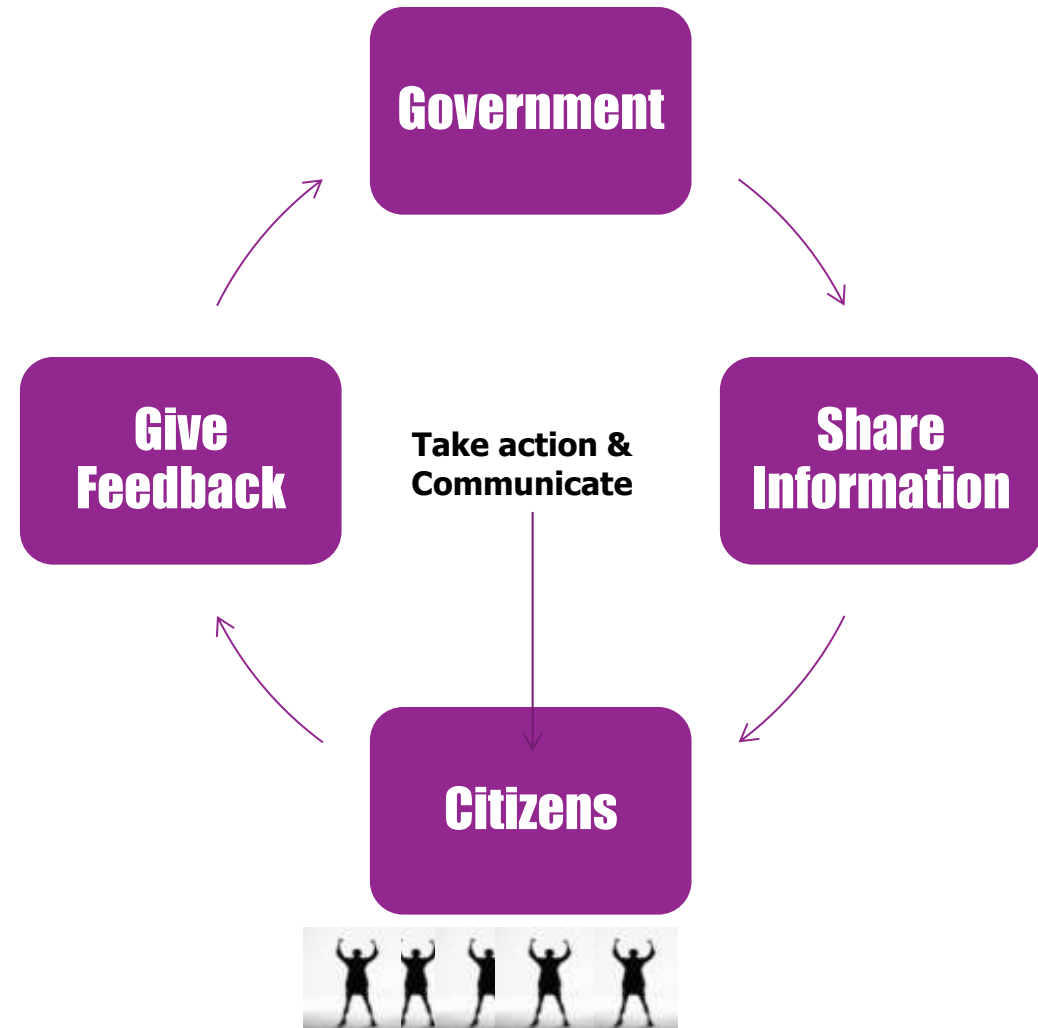


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Engaging Users/Citizens- How?

- Consult citizens in designs
- Involve them in implementation/monitoring
- Share information with them and explain their entitlements
- Get their freedom routinely
- Address their grievances
- Provide incentives to respond to their needs
- Create a culture of 'serving clients'



***A man (woman) travels the world over in search of what
he needs, and returns home to find it.***

George A. Moore