

Legalization Framework for Informal Development and the Built Environment in Kenya

Wafula NABUTOLA, Republic of Kenya

Key words: informal economy; informal housing; legality; slums; shelter rights; Land use planning; Infrastructure; building materials; building research; housing needs; housing demand; financial resources for housing; Management; Real estate management and Maintenance; Disaster Management; Human Resources Development; Income Distribution; Monitoring and Evaluation; Legislative and institutional framework; Constitution of Kenya 2010

1. INTRODUCTION

In Africa, many parts of the Middle East, Latin America and Asia migrants are leaving farm land which is unable to support them and arriving in cities which are unprepared to deal with them. These people often end up in informal settlements and at worst, slums. A new report (1) says that in 2001 just under a billion people were living in slums – about a third of the world city dwellers, and present trends suggest that 2 billion people could be living in slums by 2030. Dr. Diane Dumashie, UK, 2004

2. SOME DEFINITIONS:

2.1 Informality within urban settings

In “The Challenge of Slums Global Report on Human Settlements 2003” the UN (Habitat) states... ‘Informal’ suggests a different way from the norm, one which breaches formal conventions and is not acceptable in formal circles – one which is inferior, irregular and, at least somewhat, and undesirable. However, research and practice over the years have demonstrated that differences may not imply inferiority. Although an informal settlement may be built on land zoned for industry and is, therefore, illegal, it provides accommodation, location and identity for its inhabitants at a cost that they can probably afford.”.....

On the housing side, the informal sector delivers dwellings and accommodation at a price and in quantities that the formal sector miserably and, perhaps deliberately fails to address. To ptme it is a misconception that ”as profit making is so difficult when low-cost housing and formal –sector institutions coincide, formal housing delivery systems have rarely reached the low-income and non-income groups. The majority if not all-poor households have been housed informally for many years, in many countries in both the cities and the country sides. It is not by chance that this scenario and its status quo remains and is actually expanding. Those whose duty it is to make a difference, at a policy level see no urgency, and I dare say, no importance is attached to this pressing shelter need. That is maybe why the reversal has been slow in coming or worse, may never come. *Wafula Nabutola FIG Congress, 2006, Munich*

- Currently unregistered economic activities (of which shelter is paramount) which contribute to the officially calculated (or observed) Gross National Product.
- Smith (1994, p. 18) defines it as “market-based production of goods and services, whether legal or illegal that escapes detection in the official estimates of GDP.”
- It becomes clear that the informal economy includes unreported income from the production of legal goods and services, either from monetary or barter transactions - hence all economic activities which would generally be taxable were they reported to the state (tax) authorities. In general, a precise definition seems quite difficult, if not impossible as „the informal economy develops all the time according to the 'principle of running water': it adjusts to changes in taxes, to sanctions from the tax authorities and to general moral attitudes, etc. UN Habitat, 2009

3. HOUSING PROBLEMS AND CHALLENGES IN KENYA

Since the early times, man has made relentless efforts to obtain food and shelter. The struggle for these basic needs has increased progressively as the human race advances in numbers and cultural diversity. The Universal Declaration of Human Rights of 1948 recognizes the right to adequate housing as an important component of the right to adequate standard of living.

1. This has been further reaffirmed by subsequent various international instruments including the International Covenant on Economic, Social and Cultural Rights of 1966, the Istanbul Declaration and Habitat Agenda of 1996 and the Declaration on Cities and Other Human Settlements in the New Millennium of 2001. In all these instruments, housing is understood in the broader context of the shelter fabric together with the living environment. 2. Improvement of housing for the Kenyan population is a major concern to the Government. This concern has been influenced by the fact that the improvement in housing stock is a strategically important social and economic investment.
2. In addition, well-planned housing and infrastructure of acceptable standards and affordable cost when combined with essential services affords dignity, security and privacy to the individual, the family and the community as a whole. Adequate shelter also prevents social unrest occasioned by depravity and frustrations of people living in slums and informal settlements. Besides this social function, housing is also an investment good contributing both directly and indirectly towards poverty reduction through employment generation, raising of incomes, improved health and increased productivity of the labour force.

Having regard to these important functions of housing, it is the Government's long term objective to move towards a situation where every individual or family lives in decent affordable housing whether publicly or privately developed to meet the necessary requirements of security, health and privacy. The delivery of housing and associated facilities, however, entails the usage of scarce resources such as land, building materials, labour and finance. Efficient utilization of these scarce resources requires the formulation of an effective housing policy that sets out goals and objectives for all the actors in the entire housing delivery system. However, such a policy must be continuously revised and monitored, as and when necessary to conform to the changing circumstances.

3.1 Historical perspective

Human settlement challenges in the urban areas can be traced from the 1920's when almost all Africans lived in unregulated settlements emanating from the colonial apartheid type policies (NACHU) 1999. The physical development of Nairobi was based on the British Model of the garden city plan. Furthermore, the colonial government had a policy of controlling the African urban population. This was driven by;

- *The desire to keep African wages low*
- *To segregate the African living quarters from the European residential areas*
- *To ensure that reasonable standards of public health among the African population was realized in order to prevent spread of diseases*

This was realized through stratification of human settlements along racial lines. The effect of this 'ethnic tripartition' was the Europeans overwhelmingly occupied the north western and western areas of high rent and high land values, the Asians predominated the north-eastern parts while the Africans were consigned to the densely populated east and south of the city. Moreover the colonial government frowned upon the provision of large scale public housing to discourage influx of Africans into the urban areas save as domestic workers. Indeed to date there still exists some level of racial compartmentalization and since independence further segregation has been along economic considerations.

S. K Gitau quoting Stren and Salau (Wafula Nabutola, Cairo, 2005 – Upgrading Informal settlements in Kenya)

4. POLICY EVOLUTION

The first comprehensive Housing Policy for Kenya was developed in 1966/67 as Sessional Paper No. 5. At that time Kenya's population was just over 9 million people growing at a rate of 3 percent per annum for the whole country and 5 to 6 percent pre annum in the urban areas. The annual housing requirements then were 7,600 and 38,000 new units in urban and rural areas respectively. The policy directed the Government "to provide the maximum number of people with adequate shelter and a healthy environment at the lowest possible cost".

The policy advocated for slum clearance and encouraged mobilization of resources for housing development through aided self-help and co-operative efforts. Emphasis was placed on enhanced co-ordination to increase efficiency in programmes and projects preparation. Other areas addressed in the policy paper included increased research in locally available building materials and construction techniques, and housing for civil servants through home ownership schemes in urban areas as well as institutional and pool housing schemes in remote stations.

5. HOUSING PROBLEMS AND CHALLENGES

Investments in the housing sector since and despite the 1966/67 Policy have been minimal and sporadic. The demand for housing still far outstrips supply. High rate of urbanization, increasing poverty and escalation of housing costs and prices have made the provision of housing, infrastructure and community facilities one of the daunting challenges in the socio-economic development of the country. Research on low cost building materials and construction techniques has been limited thus not providing viable guidance to the development of the sector. Moreover, stringent planning regulations and high infrastructural standards have been an impediment in the housing delivery system.

The high level of poverty has rendered access to decent housing an elusive dream to the swelling ranks of people living below the absolute poverty line. The problem in urban areas is mainly that of acute shortage in the number of habitable dwellings, inadequate infrastructure, community facilities and services, overcrowding and extensive slums and squatter settlements. The situation was aggravated by socio-economic reforms of the mid 1980's especially the Structural Adjustment Programmes (SAPs). On the other hand, the major problem in rural areas is mainly that of poor quality of the shelter fabric and limited access to safe drinking water.

The estimated current urban housing needs are 150,000 units per year. This level of production can be achieved if the existing resources are fully utilized by the private sector with the enabling hand of the Government. It is estimated that the current production of new housing in urban areas is only 20,000-30,000 units annually, giving a shortfall of over 120,000 units per annum. This shortfall in housing has been met through proliferation of squatter and informal settlements and overcrowding. The institutional housing situation for public servants, especially for the Police and Prisons staff has greatly deteriorated over the years. It is alarming that currently a section of the uniformed forces live in deplorable conditions with up to four families sharing a house meant for only one family thereby compromising everyone's privacy.

Various interventions and strategies have been introduced in the past to alleviate the above situation. For instance following the International Year of Shelter for the Homeless in 1987, the National Shelter Strategy to the Year 2000 was formulated to advocate a change in policy. Since the public sector was unable to meet the challenge through direct provision of housing, the solution had to be sought within an enabling approach, where the Government facilitates other actors to invest in shelter.

In 1990, the process towards housing policy review was initiated and the same objective was pursued. It has therefore become necessary to have a critical look into present and future performance of the entire housing sector and formulate a new policy and strategies that will guide the preparation and implementation of future housing programmes. The review of the housing policy is intended to provide a guide in this direction as Kenya, along with other members of the international community, implements the Habitat Agenda and the National Plan of Action on Shelter and Human Settlements to the year 2020. This policy has adopted an enabling strategy, guided by the principles of partnership and participation by all partners in accordance with their comparative advantages. It gave birth to Housing Policy of 2004.

6. POLICY AIMS:

- 1.** Enabling the poor to access housing and basic services and infrastructure necessary for a healthy living environment especially in urban areas.
- 2.** Encouraging integrated, participatory approaches to slum upgrading, including income-generating activities that effectively combat poverty.
- 3.** Promoting and funding of research on the development of low cost building materials and construction techniques.
- 4.** Harmonizing existing laws governing urban development and electric power to facilitate

more cost effective housing development

5. Facilitating increased investment by the formal and informal private sector, in the production of housing for low and middle-income urban dwellers.
6. Creating a Housing Development Fund to be financed through budgetary allocations and financial support from development partners and other sources.

In its commitment to improved housing the Government of Kenya introduced a National Housing Policy that comprehensively sought to address the shelter problem. The Sessional Paper comprises four elements.

- a. Element one is on policy targets and highlights urban housing, rural housing, slum upgrading and vulnerable groups; and proposes solutions, which include poverty alleviation.
- b. Element two is on main housing inputs and addresses ways of managing the housing inputs namely land, infrastructure, building materials, building technology and finances.
- c. Element three covers estate management and maintenance necessary to ensure long lifespan for housing stock, disaster management, environmental impact assessment for major housing projects, human resource development and monitoring and evaluation.
- d. Element four deals with legislative and institutional framework and assigns specific roles to various stakeholders. Under this element the policy also proposes enactment of a Housing Act to strengthen the role of the Ministry in-charge of housing in regulating housing development.

7. GOALS AND OBJECTIVES OF THE HOUSING POLICY

7.1 The goal

The overall goal of the Housing Policy is to facilitate the provision of adequate shelter and a healthy living environment at an affordable cost to all socio-economic groups in Kenya in order to foster sustainable human settlements. This will minimize the number of citizens living in shelters that are below the habitable living conditions. It will also curtail the mushrooming of slums and informal settlements especially in the major towns.

8. SPECIFIC OBJECTIVES

- a) To facilitate progressive realization of the right to adequate housing by all ;
- b) To promote the development of housing that is functional, healthy, aesthetically pleasant and environmentally friendly;
- c) To earmark and set aside land for public housing development in urban areas;
- d) To facilitate access to land and security of tenure for all socio-economic groups;
- e) To eliminate legal and customary barriers, where they exist, to women's equal access and control of land and finance;
- f) To increase the proportion of the exchequer allocation for housing delivery and human settlements facilitation;
- g) To facilitate greater access to funds from the domestic markets by housing developers and to promote innovative ways of mobilizing finances by and for the vulnerable groups;
- h) To assist the low-income earners and economically vulnerable groups in housing

improvement and production;

- i) To improve the quality of existing stock of houses;
- j) To encourage research and popularize the use of appropriate building materials that are locally available and low cost building technologies to reduce the cost of housing;
- k) To contribute to the alleviation of poverty by creating employment opportunities among the poor through building material production and construction processes as well as promote income-generating activities within the built environment;
- l) To provide and improve infrastructural facilities in both the rural and urban areas so as to improve human settlements and living environments ;
- m) To protect the environment of human settlements and of ecosystems from pollution, degradation, and destruction in order to attain sustainable development;
- n) To mobilize resources and strengthen capacity building in order to facilitate increased investment in the housing sector;
- o) To streamline the legal and institutional framework to promote housing development;
- p) To promote inclusive participation of the private sector, public sector, community based organizations, Non-Governmental Organizations, co-operatives, communities and other development partners in planning, development and management of housing programmes.

While all this was being debated inside and outside Parliament, the population was growing; the number of informal settlements was rising. There were evictions and burning of homes.

9. CONSTITUTION OF KENYA 2010 (CoK 2010)

This was the latest attempt at legalizing the elimination of informal settlements. Specific provisions in the CoK 2010 cater for this

- 1) Article 19 (2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.
- 2) Article 20 (1) The Bill of Rights applies to all law and binds all State organs and all persons.
- 3) Article 20(5) In applying any right under Article 43, if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles—
 - (a) It is the responsibility of the State to show that the resources are not available;
 - (b) In allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and
 - (c) The court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.
- 4) Article 21
 - a. It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.

- b. The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43.
 - c. All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.
- 5) Article 22 (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- 6) Article 43 of the Constitution of Kenya 2010 (CoK 2010) provides for **Economic and social rights. Article 43.** (1) Every person has the right—
- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
 - (b) to accessible and adequate housing, and to reasonable standards of sanitation;
 - (c) to be free from hunger, and to have adequate food of acceptable quality;
 - (d) to clean and safe water in adequate quantities;
 - (e) to social security; and
 - (f) to education.
- (2) A person shall not be denied emergency medical treatment.
- (3) The State shall provide social security to persons who are unable to support themselves their dependants.

10. GOVERNMENT YET TO ADDRESS INFORMAL HOUSING IN KENYA: WORLD BANK AND CENTRAL BANK OF KENYA WORKSHOP ON MORTGAGES

DAILY NATION: Thursday, 17 February 2011 14:16

- The informal settlement in Kenya is said to be growing rampantly in major towns across the country with Government efforts to provide adequate and affordable housing in Kenya still a major challenge: -
- It is estimated that the annual unmet housing need in urban Kenya is about 80,000 units, and this is expected to rise to more than 200,000 units in the years to come, as urbanization gathers pace.
- According to a survey dubbed Developing Kenya's Mortgage Market conducted by World Bank in partnership with Central Bank of Kenya, affordability of housing in rural areas is low as income is not high enough for mortgage market to develop, while in urban areas just 8 percent of the population could afford a mortgage product.
- With 2010 Annual housing need estimated at 210,000 and the current urbanization level standing at 39.7 percent (Census 2009) and projected to hit 50 percent by 2030 there is a huge demand for housing in the country. Current supply is estimated at 50,000 and the existing shortfall is 2m houses.
- During a workshop to discuss the survey, World Bank country Director Johannes Zutt said Kenya has been urbanizing rapidly and it will continue to do so. But the country will not get the agglomeration benefits of urbanization unless it also makes its urban centres

work—and this means providing electricity, water, public transportation, and of course adequate and affordable housing.

- “To meet this unmet need, it is vital to ensure we have good-quality affordable living spaces that will enable urban Kenyans to be healthy and productive. We cannot afford to allow the informal settlements that are already evident in all cities in Kenya to grow unhindered”
- “We will soon be presenting to our Board for its consideration a \$100m (Ksh 8 billion) Informal Settlements Improvement project—which will build on an existing \$100m (Ksh 8 billion) Municipal project that we started last year,” said Zutt
- Zutt further said to strengthen the housing sector and to have a thriving mortgage market; the sector needs to have strong partnerships – between the public sector and the private sector, among public sector bodies such as the Ministry of Finance and Ministry of Housing, and within the private sector, between financiers and developers.
- He was echoed by the Central Bank of Kenya Governor Njuguna Ndungu who pledged support to the housing sector saying it does not only contribute 2.5 percent of the GDP but also a key contributor to employment.
- “Construction and real estate are big employers hence has a critical role to play in the economic development of the country, therefore 16,000 mortgage accounts is very minimal and need to be expanded,” said Ndungu.

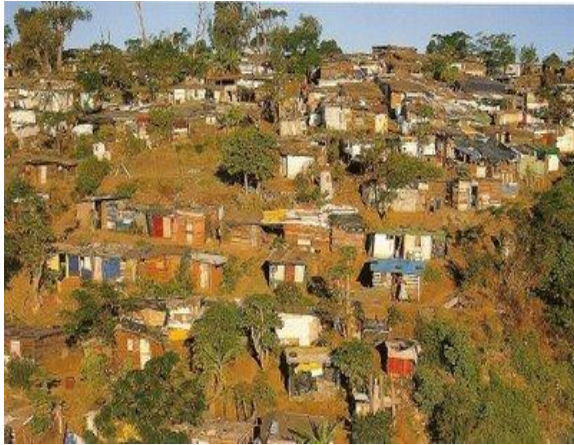
11. ROLES OF CIVIL SOCIETY

CIVIL SOCIETY IS increasingly recognized as being critical to the successful realization of development. Grassroots organizations are regarded as a new panacea for people-centred, pro-poor development. But should this be the case? Low-income communities are subject to division due to unequal access to power, prestige, income and capital. Do such organizations really support their poorest members to increase and achieve development options?

How do NGOs truly support participatory processes?

1. Do their staff use their professional skills and expertise to enable the poor to control development programmes, or does decision-making remain in the hands of a few?
2. Do grassroots organizations and NGOs reduce poverty, or is their role to reinforce dependency, powerlessness and exclusion?
3. And how does the state intervene to influence these organizations and the way in which they are developing?

These are the questions that need to be understood if issues of empowerment and participation are to be addressed.



THE OBTAINING SITUATION



THE IDEAL SITUATION

IN DESPERATION WE SEE MORE AND MORE OF THESE



Military personnel, fire brigade and aid workers search for bodies at the site of the six-storey building that collapsed at Embakasi, Nairobi, on Tuesday. Four people were confirmed dead by Thursday

12. LITIGATION VS LOCAL AUTHORITY

The building that collapsed in Embakasi killing at least four people had been earmarked for demolition by the City Council two years ago. The developer of the building however moved to court stopping the demolition resulting to a battle whose climax was a court order that Town Clerk Philip Kisia be committed to 21 days civil jail. Mr Kisia was at pains on Thursday, to explain the council's efforts to stop the construction of the house in Pipeline estate. The clerk further sent alarm over other illegal buildings in Embakasi-Pipeline, Kahawa West Phase II, Tassia, Umoja Zone 8 and 9, Kayole, Roysambu and Mwiki and cautioned tenants against occupying them. He said council employees had been blocked from inspecting construction work in the estates by illegal gangs.

In Parliament, Local Government minister Musalia Mudavadi was put to task by MPs over his

ministry's apparent laxity in implementing bylaws across the country, resulting in the construction of illegal buildings. Mr Mudavadi assured the MPs there would be "no mercy, no sympathy and no complacency" in implementing bylaws in Nairobi as the council has joined the Provincial Security Committee.

He also admitted the zoning and rezoning of urban centres has in the past been conducted without the involvement and contribution of the public. In the Pipeline estate tragedy, the owner had used the courts to block the council from enforcing the law, it was said. But MPs said such cases were prevalent across the country.

Mr Kisia said council efforts to enforce bylaws for orderly and sustainable urban development have been hampered by the judiciary which often issues injunctions allowing for construction of illegal buildings. "One of the biggest frustrations has come from the judicial arm of the Government which has on many occasions given injunctions and restraining orders against the council whenever it attempts to enforce its by-laws and the physical planning Act provisions against illegal developments," Mr Kisia said.

The clerk said the Judiciary and its officers should be held responsible whenever buildings collapse after they stop the council from demolishing them. Mr Kisia said he council issued enforcement notices against the Embakasi building on One of the biggest frustrations has come from the judicial arm of the government which has on many occasions given injunctions and restraining orders against the council whenever it attempts to enforce its by-laws and the physical planning Act provisions against illegal developments," Mr Kisia said.

The clerk said the Judiciary and its officers should be held responsible whenever buildings collapse after they stop the council from demolishing them. Mr Kisia said he council issued enforcement notices against the Embakasi building on March 31, 2011 and April 19, 2011. The council also tried to block the illegal construction of the building when it started in 2009 but the developers moved to court seeking restraining orders against the council and four others.

The interim orders were issued on April 8, 2009 by Mr Justice Dulo before being extended on June 17, 2009, a thing Mr Kisia said tied the council's hands. The interim orders were issued on April 8, 2009 by Mr Justice Dulo before being extended on June 17, 2009, a thing Mr Kisia said tied the council's hands. Mr Kisia and the other defendants were also later accused of trying to demolish the building and ordered that they be committed to civil jail for 21 days. The council, however, appealed against the orders and thus stopped the arrests. The case was to be mentioned before Mr Justice Aggrey Muchelule on July 28.

The Town Clerk said the council should not be blamed for not stopping the construction of the Embakasi building as the issue was in court. He said the council had warned that the building could collapse and lead to loss of lives. "Citizens need not be so desperate as to shield unscrupulous developers to continue to put innocent citizen's lives at risk."

The public, Mr Kisia said, needs to demand accountability from the developers and landlords to provide certified documents issued by the council and other competent authorities to show that the construction of the building they intend to occupy has undergone vigorous scrutiny,

approval, inspections and is duly certified for occupation.

13. ANXIETY AS KAA ATTEMPTS TO EVICT OVER 400 FAMILIES FROM HOUSES

Updated Wednesday, December 14 2011 at 00:00 GMT+3 By Mutinda Mwanzia

Tension gripped Embakasi area, Nairobi after hundreds of families were threatened with eviction from Kenya Airports Authority (KAA) houses. Confusion reigned as some tenants started to remove their belongings from the houses as others vowed to stay put. Heavily armed police officers cordoned off the over 400 houses and ordered tenants to remove their belongings sparking protests. Embakasi MP Ferdinand Waititu arrived at the scene and urged tenants not to vacate the houses, terming the evictions illegal.

"KAA should stop intimidating tenants," said Waititu. The MP held a closed-door meeting with senior police officers at Embakasi Police Station with sources saying they agreed to withdraw the officers cordoning the houses. KAA officials were unavailable for comment, but senior officers at the scene said the tenants had been served with notice to vacate the houses. Most of those living in the houses are retired KAA officers and their families while others have rented out the houses.

On Tuesday, the tenants vowed to stay put saying they had nowhere else to go. "The evictions will be resisted at whatever cost. We are going nowhere," said Abel Kinyua, a tenant. He said they were paying Sh2,500 monthly to KAA, adding that it was the wrong time to evict them.

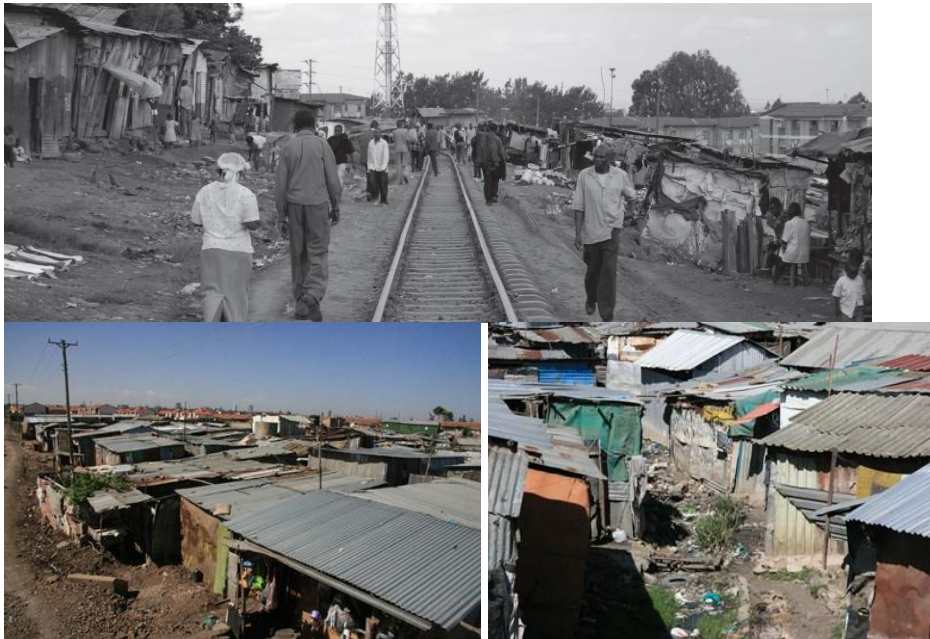
"Many people do not have money at this time of the month to look for alternative accommodation. KAA should be considerate," he said. KAA and the City Council of Nairobi have been tussling over the ownership of the houses with the matter ending up in court.

City Director of Planning Tom Odongo said the evictions were not procedural. Odongo said KAA had not consulted the council, adding that the move was causing anxiety and tension in Embakasi. On Tuesday, business in Embakasi village was disrupted for the better part of the day as traders shut their premises for fear of fights between locals and police. Bulldozers that had been ferried to the scene were withdrawn after locals threatened to set them on fire. Waititu later in the afternoon led representatives of the tenants to City Hall where they met officers from the city planning and legal departments.

Here is a law maker, who finds himself facing a hopeless and helpless, in fighting for his constituents in a no win situation. A Government agency, the Kenya Airports Authority, is evicting people from its residential premises, without following the laid down procedures nor the law, which requires that such people must be given alternative accommodation, and, also given sufficient notice to vacate, after all they have families and require time to make arrangements. Even the City authorities (City Clerk, Town Planning Director) are helpless. Even the Minister of Government is no better off, his instructions can be challenged in court or just ignored. The housing situation has degenerated beyond conventional redemption. Take one aspirin and have a good rest would be a waste of time...we need stronger medicine.

14. POORISM: KIBERA SOWETO EAST A CASE STUDY IN SLUM UPGRADING:

By Michelle Mulcahy And Ming-Ru Chu Of The Earth Institute, Columbia University:



15. INFORMAL SETTLEMENTS IN NAIROBI

Nairobi's 200 slums are among the most dense, insecure and unsanitary in all of Africa, and Kibera—in Nairobi—has the unfortunate distinction of being the worst of the worst. It is regularly described as the worst slum on the planet. It houses somewhere between 800,000 and 1.2 million people—nearly one quarter of Nairobi's population—in just 630 acres located approximately four miles from Nairobi's central business district. The living conditions are harsh and profoundly unforgiving. The deprivations people face on a daily basis are fundamental: severe overcrowding, terrible sanitation, chronic disease, malnutrition, and nighttime insecurity. These conditions have evolved over decades of indifference and neglect by both municipal and national governments.

Various non-governmental organizations, many with the World Bank's help, have sponsored slum upgrading projects over the past several decades with varying degrees of impact and hardly any unqualified success. Finally acknowledging the problem's severity and persistence, Kenya's national government took definitive action in 2002 by creating the Kenya Slum Upgrading Program (KENSUP). This national office focuses on implementing projects that are sustainable, inclusive, democratic, accountable, and transparent and that will provide communities with improved housing and access to basic services, secure tenure, and opportunities to generate income.

KENSUP's pilot projects—the Kibera Soweto Project- is a joint effort between the Kenyan government and UN-HABITAT that focuses on just one of Kibera's 12 "villages" of 70,000. It focuses on the challenges posed by existing conditions, the various elements team members developed to address these challenges, and the initial issues and successes. While the project's benefits remain to be seen, some valuable lessons have already surfaced: communities must

be engaged from the programme's initiation, every effort must be made to maintain affordability throughout a project, and institutional development must occur well before a project is implemented.

16. PROJECT OVERVIEW

The stated objectives of the Kibera Soweto Pilot Project are to promote and facilitate the provision of (1) secure tenure, (2) improved housing, (3) income-generating activities, and (4) physical and social infrastructure. Currently, construction crews are building a road into the village as well as off-site housing blocks intended to shelter Soweto residents temporarily while new housing is constructed within the village. However, there are already questions concerning affordability, the appropriateness of the housing and unit type, and the community participation process. Project leaders from UN-HABITAT have worked with village leaders to establish an institutional structure and facilitate the process; this places the Nairobi City Council at the core of implementation. However, the council has not yet proven its capacity and ability to fulfill its responsibilities.

17. CHALLENGES

17.1 Physical Challenges

With between 800,000 and 1.2 million people living on 630 acres of sloped government land, the intense overcrowding and the complete lack of infrastructure present the greatest physical challenges to upgrading. In Soweto East—the focus of the Kibera Soweto Pilot Project—70,000 residents live on 52.8 acres. The approximately 2,880 structures in Soweto East are served by only 100 toilets, 50 baths, and no vehicular infrastructure of any kind. These highly congested living conditions profoundly increase health risks and diminish quality of life for Kibera's residents.

With a large majority of households averaging five people living in single rooms of less than 10 square meters, infectious and skin diseases spread easily and food contamination is common. Families burn wood, charcoal and kerosene indoors for cooking and lighting, which contributes to a high incidence of upper respiratory infection and irritation. Children play in roads and dump areas for lack of adequate open spaces. Together, these circumstances create an incredibly stressful living environment.

17.2 Environmental Challenges

Kibera is limited from expanding to the south and east by the Ngong River and Nairobi Dam, and to the north and west by the rail line to Kisumu. The terrain is hilly and sometimes steep, which can complicate the building process. Residential structures encroach on the riparian areas of the river. Residential and commercial dumping of solid waste, human waste, medical waste, and wastewater cause perpetual degradation of the environment and water quality. Some pit latrines are located inappropriately close to water sources, causing black water to seep into these sources, while inadequately maintained latrines negatively affect the general environment and community health. Dust pollution from unpaved roads and footpaths causes skin and eye irritation. The accumulated effects of these problems are direct, long-lasting, and urgent.

17.3 Economic Challenges

Almost three quarters of Kibera's households earn less than Kenya shillings 10,000 per month; with an average of five people per household, this translates to approximately one dollar per person per day—the U.N. standard of poverty. Maintaining housing affordability remains a major challenge to any upgrading or redevelopment project. Any fees for water, sanitation, electricity or rubbish collection may further burden households. Taxation on regularized or legally recognized land or shelter increases financial obligations even more. Lack of housing finance is a critical issue to resolve. A series of factors, including very low incomes, irregular employment, lack of secure land tenure or collateral, and lack of property and informational records prevent Kibera households from accessing loans to finance construction projects, housing improvements or home purchases.

17.4 Challenges of Historic Ownership Patterns

Kenya's highly controlled and constrictive land policy, developed decades ago just after attaining independence, has contributed to the continued growth of slums, particularly in Kibera. While Kenya was under British control, the British colonial administration claimed large tracts of land as its own which it then transferred to the Kenyan government after independence, making the new government one of the largest landholders in the country. Instead of periodically selling land to developers, thereby facilitating a housing market, politicians began to give away parcels of this public land to private individuals in exchange for political support. This corrupt practice came to be known as "land grabbing" and reached its height in the 1990s, though it persists today.

Migrants settled illegally on uninhabited government land that was often later transferred into private hands in one of these informal transactions. Once an individual took control he could either raze the slum, which displaced the impoverished residents, or he could claim ownership of the structures and begin to collect rent. Because of their connections to government, the absentee landlords pay no taxes on the rent they collect and are not legally bound to provide any services. They have no incentive to improve conditions and, viewing the slums as a continuous source of income, are generally opposed to any upgrading projects.

17.5 Land Tenure Challenges

Further complicating this layered ownership is Kenya's legal pluralism: some land is officially registered and administered by statutory laws; other land is subject to traditional, communal land rights; and still other parcels are unregistered and subject to informal tenure rules. This plurality makes asserting tenure rights in Kenya complicated. The Kibera Land Committee (KLC) is complicating the situation in Soweto East further, by trying to register a communal title for the four original Nubian villages that settled on the land after World War I. Residents have organized and carried out the physical enumeration of structures to record ownership and resident status, which will allow the government to regularize titles. However, before title regularization can occur, structure owners and tenants must reach some kind of consensus that also successfully negotiates the complex terrain that is Kenyan land law. Consequently, securing land tenure is a critical issue in almost all upgrading projects, and it is a particularly challenging and politically sensitive one in Kibera.

17.6 Social Challenges

Over the course of decades, slum dwellers have developed a general distrust of government, in part because of disappointment over government-promised upgrading projects that never materialized. In the past, upgrading projects often displaced the original residents, leaving many skittish about future government action. Current and future administrations must overcome this mistrust by promising only what they can implement. Facilitating a truly participatory process and carrying out residents' identified priorities will also assuage people's mistrust. This can prove particularly difficult in slums where people's schedules, obligations, and continuous involvement in community affairs may make participation impossible for many residents. It is often those higher up the economic ladder who have time to participate, which can skew what gets expressed as a community's needs and desires. On a daily basis, poor accessibility—created by an organic urban pattern with narrow, uneven roads and footpaths that are prohibitive to vehicles—makes policing difficult. Coupled with an absence of street lighting, crime is a significant issue after dark. Several sources indicate that it is extremely unsafe to be on the street after dark.

17.7 City Governance Challenges

The Nairobi City Council (NCC) provides a range of services, and it partners with other government agencies and private sector organizations to provide additional services. However, high rates of urban population growth, limited revenue sources, and uncoordinated, ineffective partnerships have historically resulted in a meagre delivery of services. The performance of the NCC, which is a key partner in all efforts aimed at resolving the problems in informal settlements, has been poor.

According to a Cordaid report, Commentators on the management of NCC are invariably in agreement on this point ... the NCC, was ranked the fifth most corrupt public sector organization in a recent survey by Transparency International. This poor performance by the NCC has had a negative impact on the large population of people living in Nairobi's informal settlements. Thus, any efforts to improve the lives of slum dwellers must also address the poor governance and performance of the Nairobi City Council in terms of service delivery to the urban poor.

There is hope that with the advent of devolution the Governor and the new team have their work cut out for them. Still there are many obstacles, not least of which is the perception most people have of the local authorities. It is many years of misgovernance and abuse of office.

18. QUALITY OF LIVING INDEX: "THE SEARCH FOR HAPPINESS"

In an impoverished society, the focused quest for material gain as conventionally measured typically makes a lot of sense. Higher household income (or higher Gross National Product per capita) generally signifies an improvement in the life conditions of the poor. The poor suffer from dire deprivations of various kinds: lack of adequate food supplies, remunerative jobs, access to health care, safe homes, educational opportunities and safe sanitation and water. As incomes rise from very low levels, human well-being improves. Not surprisingly,

the poor report a rising satisfaction with their lives as their meagre incomes increase. Even small gains in a household's income can result in a child's survival, the end of hunger pangs, improved nutrition, better learning opportunities, safe childbirth, and prospects for ongoing improvements and opportunities in schooling, job training, and gainful employment.

Now consider the opposite end of the income spectrum. For most individuals in the high-income world, the basic deprivations have been vanquished. There is enough food, shelter, basic amenities (such as clean water and sanitation), and clothing to meet daily needs. In fact, there is a huge surfeit of amenities above basic needs. Poor people would swap with rich people in a heartbeat. Yet all is not well. The conditions of affluence have created their own set of traps.

Most importantly, the lifestyles of the rich imperil the survival of the poor. Human-induced climate change is already hitting the poorest regions and claiming lives and livelihoods. It is telling that in much of the rich world, affluent populations are so separated from those they are imperiling that there is little recognition, practical or moral, of the adverse spillovers (or "externalities") from their own behavior. Yet the problems of affluence also strike close to home. Affluence has created its own set of afflictions and addictions. Obesity, adult-onset diabetes, tobacco-related illnesses, eating disorders such as psychosocial disorders, anorexia and bulimia, and addictions to shopping, TV, and gambling, are all examples of disorders of development. So too is the loss of community, the decline of social trust, and the rising anxiety levels associated with the vagaries of the modern globalized economy, including the threats of unemployment or episodes of illness not covered by health insurance in the United States.

Mercer conducts this survey annually to help multinational companies and other organizations compensate employees fairly when placing them on international assignments. Mercer's Quality of Living reports provide valuable information and hardship premium recommendations for many cities throughout the world. Mercer's Quality of Living index list covers 221 cities, ranked against New York as the base city. Mercer's City Infrastructure Ranking 2012 is based on measures of: Electricity, Water Availability, Telephone, Mail, Public Transportation, Traffic Congestion & Airport Effectiveness. The cities — 221 in total — were evaluated on 39 factors including political, economic, political, personal safety, health, transportation and other public service factors. Cities were compared to New York City which was given a base score of 100.

19. THE QUALITY OF LIFE IN CITIES AROUND THE WORLD

The 16th edition of the World Bank's World Development Indicators 2012 is packed with international statistics on development and the quality of life in various countries. Below, a journey through Kenya by numbers. The list is not absolute.



1. **580,000 sq km:** Kenya's surface area. Total area including areas under inland bodies of water and some coastal waterways.
- 41 million:** The estimated population in 2010 (In 2000 it was 31.3 million) with a density of 71 people per square kilometre and average annual growth of 2.6 per cent.
- 3.5 million:** The population in the capital city of Nairobi in 2010.
2. **134:** The United Nation Happiness Report 2012 conducted by the Earth Institute of Colombia University ranked Kenya at position 134 out of 156.
3. **72%:** The proportion of privately owned dwellings as a percentage of total dwellings in the country in 1999. Privately owned and owner-occupied units are included.
4. **1.9 per cent:** Kenya's Military expenditure as a percentage of GDP in 2010 (In 2005 it was 1.7 per cent), the armed personnel numbered 29,000 while arms imports was 73 million (Sh6 billion).
5. **1.3 per cent:** Contribution of natural resources to gross domestic product in 2010, made up of mineral rents (0.1 per cent) and forests rents.
6. **402,900:** The refugees in the country in 2010.
7. **67.2:** The percentage of the population living below the international poverty line of \$2 (Sh170) a day, the median poverty line for developing countries in 2005. In 1997 it was 42.7 per cent.
8. **15.5 million:** The number of people from 15 and above engaged actively in the labour market, either by working or looking for work during 2010 as compared to 11.9 million in 2000. This includes both the employed and the unemployed.
9. **48 per cent:** Land under agriculture by 2009. This is permanent pastures, arable land, and land under permanent crops. Permanent pasture is land used for five or more years for forages, including natural and cultivated crops.

10. **2.5m**: The thousands of hectares of land under cereal production by the year 2010 compared to 1.8m hectares in 1992. The cereal yield was 1,613 kg per hectare in 2010.

11. **Child labour at 14.1 per cent**: Number of children aged between seven and 14 that were employed for at least one hour in a week and not attending school, in 2000.

12. **Female-headed households at 34%**: Between 2007 and 2010, 34 per cent of total households had a female head.

6.1 **children**: Fertility rate in 2010. This is the number of children that would be born to a woman if she were to live to the end of her child-bearing years and bear children in accordance with the current age-specific fertility rates. In 1990 the figure stood at 6.0.

13. **56 years**: Life expectancy at birth in 2010. It is the number of years a newborn infant would live if prevailing patterns of mortality at the time of its birth were to remain the same throughout its life (In 1990, it was 59 years)

6.2 **per cent**: Total health expenditure as a percentage of GDP. It is the sum of public and private health expenditure covering provision of preventive and curative health services, family planning activities, nutrition activities, and emergency aid designated for health but does not include provision of water and sanitation.

\$37 (Sh3,100): Health expenditure per person in 2010. This is the sum of public and private health expenditure divided by total population. In a recent study by the World Health Organization (WHO), one of the most fascinating outcomes was that the USA spends more on healthcare than the total GDP of the United Kingdom, and the average expenditure per person is about USD 8,500.00 per year. Compare with USD37.00 for Kenya. Has the National Hospital Insurance Fund (NHIF) discharged its mandate? When will it cease being a political entity and focus on its core mandate, if it knows its primary responsibility.

1.4: The hospital beds available per 1,000 people by 2010.

488 deaths: Maternal mortality ratio in 2010. This is the number of women who die during pregnancy or within 42 days of pregnancy termination and childbirth, per 100,000 live births.

298 people: The estimated number of new Tuberculosis cases per 100,000 people in 2010. In 2009 the TB treatment success rate of new registered cases was 86 per cent.

48: The percentage of population with advanced HIV infection by 2010 that received this treatment. In 2009, 6.3 per cent of people aged from 15 to 49 were HIV prevalent.

Education

47:1: Primary school pupils to teacher ratio in 2010. This is the number of pupils enrolled in schools divided by the number of teachers, regardless of their teaching assignments.

87: The percentage of adults aged 15 and over who could, with understanding, read and write a short, simple statement on their everyday life by 2010.

92 and 94: The respective percentages of male and female youth who were literate in 2010. This is the percentage of people aged from 15 to 24 who can, with understanding, both read and write a short, simple statement about their everyday life.

Infrastructure

14.3: Percentage of paved roads in 2009. This is the length of those surfaced with crushed stones and hydrocarbon binder or bituminised agents, with concrete, or with cobble stones as a percentage of all the country's roads.

23: The number of motor vehicles per 1,000 people in 2009. These are road motor vehicles, other than two-wheelers, intended for the carriage of passengers and designed to seat no more than nine people (including the driver).

61,945: The kilometers of road network in 2009. This is the total length of motorways, highways, main or national roads, secondary or regional roads, and other roads. Road density — kilometres of road per 100 sq kilometres of land area was 11.

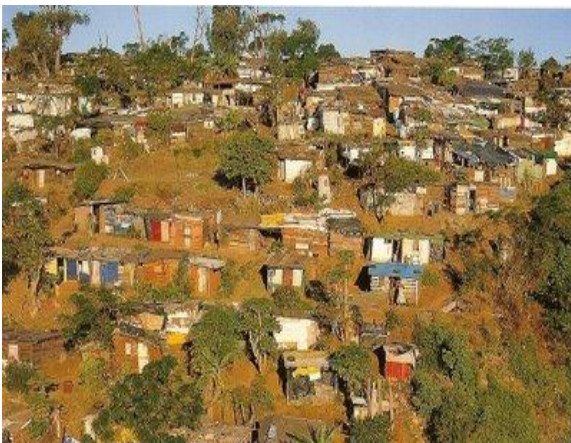
1,917: The kilometres of rail line by 2010. It is the total length of railway route available for train service, irrespective of the number of parallel tracks.

25.9: The number of Kenyans per 100 who had access to the internet in 2010.

62: Mobile Cellular subscription per 100 people in 2010, while the population covered by mobile cellular network stood at 89 per cent. The telecommunication revenue as a percentage of GDP was 6.3 per cent.

28: Percentage of households that owned television sets in 2010. By 2009, there were 56 researchers per a million people while the country had 291 scientific and technical journals articles published.

4.8 per cent: Total health expenditure as a percentage of GDP. It is the sum of public and private health expenditure covering provision of preventive and curative health services, family planning activities, nutrition activities, and emergency aid designated for health but does not include provision of water and sanitation.



20. CONCLUSION

There is an accumulation of challenges, and frustration which cannot readily and easily be dealt with by policy nor even legislation alone. So much water has flowed under the bridge since the first policy in 1966/67, when Kenya's population was under 10million. Even with that first policy, its implementation appears to have been fatally stalled. The first set of public housing for civil servants was completed, in those days civil servants were automatically housed, wherever they were posted, save for the first ten days (later increased to fifteen days) when they were granted an allowance to stay in temporary hotel accommodation, before their predecessor vacated the residence. Social housing too was developed by the National Housing Corporation (NHC) in most of the major towns and cities. These were then managed by the respective local authorities, who collected rent on behalf of NHC. Things have since changed a great deal. Unless something is done urgently and with the greatest importance, there will be a catastrophic implosion.

21. RECOMMENDATIONS AND WAY FORWARDS

- 1) Adopt and implement the Constitution of Kenya 2010, in toto. Craft policies that have an in-built implementation framework, complete with a timeline and budgets and strategies for execution. Make legislation to realize what was envisaged in the Constitution of Kenya 2010, and what is contained in the policies
- 2) Adopt and implement the National Land Policy as it was envisaged, prior to Parliament diluting it beyond recognition.

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CONTACTS

Wafula nabutola
MyRita Consultants
P. O. Box 8824
NAIROBI, 00100
KENYA
Tel. + 254 722 617 444 or +254 735 328 359
Fax + 254 20 352 5515
Email: wafulaluasinabutola@gmail.com
Web site: www.myritaconsultants.kbo.co.ke