

**2013 FIG WORKING WEEK ABUJA, FEDERAL  
REPUBLIC OF NIGERIA**

COMMISSION 8 PRESENTATION: "Legalization  
Framework for Informal Development and the  
Built Environment in Kenya (6695)"

by

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**GAME PLAN**

- Introduction
- Some Definitions
- Policy History and Goals
- Elements of Housing Policy
- Case Studies:
  - Newspaper Article 1 – Unmet Housing Needs
  - Newspaper Article 2 – Housing Boom, whose funding?
  - Newspaper Article 3 – Parliament, Demolitions, MP
  - Kibera Slums
  - Conclusions and Recommendations

### A QUOTE FROM A 2004 PAPER BY DDD

- In Africa, many parts of the Middle East, Latin America and Asia migrants are leaving farm land
  - which is unable to support them
  - To cities which are unprepared to deal with them.
- End up in informal settlements and at worst, slums.
- A new report (1) says that
  - in 2001 just under a billion people in slums – about a third of the world city dwellers...
  - Trends 2 billion people could be in slums by 2030.

### INFORMALITY WITHIN URBAN SETTINGS

- 2003 Report - The UN (Habitat) they state... 'Informal' suggests
  - a different way from the norm,
  - one which breaches formal conventions
  - Is not acceptable in formal circles –
    - one which is inferior,
    - irregular and,
    - at least somewhat, undesirable.
- However, research and practice
- Demonstrated that differences may not imply inferiority. A MAN'S HOUSE IS HIS CASTLE

## KIBERA SLUMS – TYPICAL INFORMAL DEVELOPMENT



### POLICY INTERVENTIONS:

- 1966/67 First ever Housing Policy Attempt
- NATIONAL HOUSING CORPORATION (NHC) FORMED
- Investment was low as were incomes, RETURNS NOT PROMISING – RENT AMOUNT/COLLECTION TOUGH
- 1986/87 Poor became poorer, SAP's – Government involvement reduced
- 2004 Second attempt
- Enable the poor to access housing, basic services and infrastructure necessary for healthy living environment especially in urban areas.
- Encouraging integrated, participatory approaches to slum upgrading, including income-generating activities that effectively combat poverty.

## POLICY AIMS

- **Promoting and funding of research in development** of low cost building materials; construction techniques.
- **Harmonizing laws governing urban development** and electric power to facilitate cost effective housing development
- **Facilitating increased investment by the formal** and informal private sector, in the production of housing for low and middle-income urban dwellers.
- **Creating a Housing Development Fund** to be financed through budgetary allocations and financial support from development partners and other sources.

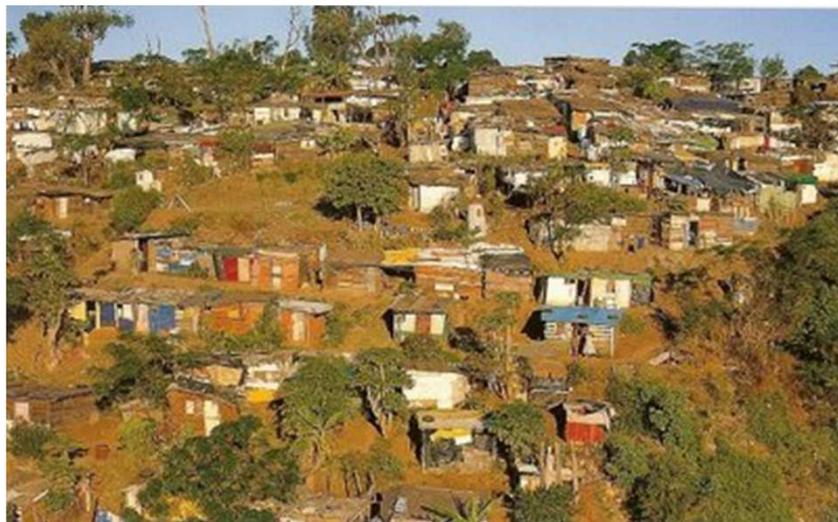
## 4 ELEMENTS OF HOUSING POLICY

- **Targeting/highlighting**
- **Housing inputs :**
- **Estate management and maintenance**
- **Legislative and institutional framework –** Housing Act to strengthen the role of the Ministry in-charge of housing in regulating housing development.
- Cap 117 – Housing Act set up NHC
-

8 % in urban areas



92% end up like this



**IN DESPERATION WE SEE MORE AND MORE OF THESE**



**DISASTERS LIKE THIS**



## **CONSTITUTION OF KENYA 2010 – FUNDAMENTAL HUMAN RIGHTS**

- Article 19 (2) PURPOSE: recognizing and protecting human rights:
  - Fundamental freedoms- Restore and Preserve Human and Community Dignity
  - Promote social justice
  - Realization of the potential of all human beings.
- Article 20 (1) The Bill of Rights applies to all laws and binds all State organs and all persons.
- 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—

## **CONSTITUTION OF KENYA 2010 – STATE RESPONSIBILITY AND COURTS' OBLIGATIONS**

- (a) Responsibility of the State to show that the resources are not available;
- (b) State shall give priority to ensuring the widest possible enjoyment of the right 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.

## COK 2010: ARTICLE 21 – PROGRESSIVE REALIZATION

- (1) 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.
- (2) 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.

## ECONOMIC AND SOCIAL RIGHTS. ARTICLE 43.

- (1) Every person has the right to—
- (a) Highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) Accessible and adequate housing, and to reasonable standards of sanitation;
- (c) Be free from hunger, and to have adequate food of acceptable quality;
- (d) Clean and safe water in adequate quantities;
- (e) Social security; and to education.

**GOVERNMENT YET TO ADDRESS INFORMAL HOUSING IN KENYA: DAILY NATION: Thursday, 17 February 2011 14:16**

- Kenya's Informal settlement is be growing in ALL major towns across the country
- Government efforts to provide adequate and affordable housing in Kenya still a major challenge:
  - Unmet housing need in urban Kenya is about 80,000 unit/yr
  - Expected to rise to more than 200,000 units

**NEWSPAPER ARTICLE: KENYA'S MORTGAGE MARKET**

- World Bank and Central Bank of Kenya,
- affordability of housing in rural areas is low
- Income is not high enough for mortgage market to develop,
- Urban areas just 8 percent of the population could afford a mortgage product.
- "Loans for home construction are more prevalent,"
- 3.4% (1.1%) of the top 60% of income earners,
- 3.8% (0.6%) bottom 40 per cent of income earners.



### **WHERE IS THE MONEY COMING FROM?**

- So where is the money being used to build the many new pricey homes in Nairobi and other major urban centres really coming from? Some have suggested that piracy or some other “blood” money is the one financing Kenya’s real estate sector.
- No one knows for certain, for now. But even if that were to be true, it would just be half the story.
- **CORRUPTION, in PUBLIC SERVICE? MONEY LAUNDERING FROM DRUG TRAFFICKING?**

## **MP'S ANTICS AND PARLIAMENTARY "IMPOTENCE"**

- 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.

## **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 pain 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

## **Kibera Soweto east a case study in slum upgrading**

- BY MICHELLE MULCAHY AND MING-RU CHU OF THE EARTH INSTITUTE, COLUMBIA UNIVERSITY: POORISM



## **KIBERA SLUM TOURISM: POORISM**



### **INFORMAL SETTLEMENTS IN NAIROBI**

- Nairobi's 200 slums are among the most dense, insecure and unsanitary in all of Africa, and Kibera—being the worst of the worst.
- The worst slum on the planet.
- Houses between 800,000 and 1.2 million
- Nearly one quarter of Nairobi's population
- On just 630 acres located approximately four miles from Nairobi's central business district

### **THE LIVING CONDITIONS ARE HARSH**

- Profoundly unforgiving. The deprivations people face daily are SCARY:
- 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.

## KENYA SLUM UPGRADING PROGRAMME

- Finally acknowledging the problem's severity and persistence, Kenya's national government took definitive action in 2002 by creating the Kenya Slum Upgrading Up-grading Program (KENSUP).
- Focuses on implementing projects that are **sustainable, inclusive, democratic, accountable, and transparent**
- Provide communities with **improved housing and access to basic services, secure tenure, and opportunities to generate income.**

## A PUBLIC SCHOOL: GOVT FUNDED



## PRIVATE SCHOOL: FEES KES. 1.9M/YR



## HAVES AND HAVE-NOTS JUXTAPOSED



## **KENSUP CHALLENGES**

- **Physical Challenges**
- With between 800,000 and 1.2 million people living on 630 acres Government land
- Intense overcrowding
- Complete lack of infrastructure
- Greatest physical challenges to upgrading.

## **QUALITY OF LIFE**

- 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.

### QUALITY OF LIFE IN KIBERA

- 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.

### ENVIRONMENTAL CHALLENGES

- 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
- Inadequately maintained latrines negatively affect general environment and community health.

## **ECONOMIC CHALLENGES**

- Almost three quarters of Kibera's households earn less than Kenya shillings 10,000/month;
- 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 is a major challenge to upgrading or redevelopment.
- Any fees for water, sanitation, electricity or rubbish collection may further burden households.

## **ECONOMIC CHALLENGES cont'd**

- Taxation on regularized or legally recognized land or shelter increases financial obligations.
- Lack of housing finance is a critical issue.
- Very low incomes, irregular employment,
- Lack of secure land tenure or collateral,
- Lack of property and information
- Prevent Kibera households from accessing loans to finance construction projects, housing improvements or home purchases.

### **Challenges of Historic Ownership Patterns**

- Kenya's highly controlled and constrictive land policy, developed just after attaining independence, 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

### **Land Tenure Challenges**

- Further complicating this layered ownership is Kenya's legal pluralism: land is registered and administered by statutory laws;
- Other lands to traditional, communal land rights;
- Still other parcels are unregistered and subject to informal tenure rules. This plurality makes asserting tenure rights in Kenya complicated.

## 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.

## CONCLUSION: THERE IS MISTRUST

- Systems have faltered, nay, failed to meet the aspirations of the Kenyan people
- 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.

## RECOMMENDATIONS

- More Private Sector Participation in Low Income Housing Provision
- Land Re-adjustment needed to facilitate Infrastructure