

Policies and Strategies for Tackling Informal Settlements; Lessons for Kenya

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Abstract

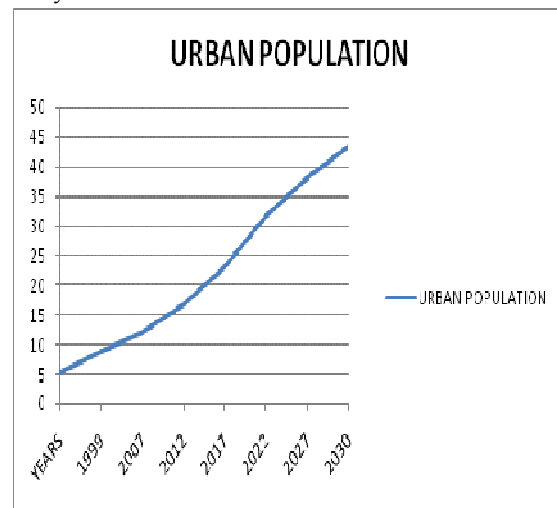
The challenge facing planners today is how to create sustainable cities as the number of people living in cities continue to grow at approximately twice the rate of that in the rural areas. It is projected that the global city population will increase to 5.34 billion by the year 2025, thus exerting greater pressure on the natural environment than ever before. Kenya is rapidly urbanizing at the rate of 4% per annum and is projected to be a predominantly urban country by 2033. Currently, about 30 percent of the population live in urban areas. Every year more than 250,000 Kenyans are moving to cities and former rural areas are becoming increasingly urban (World Bank, 2014). Rapid Urbanization has brought into fore the growing phenomenon of slums. It is estimated that 862.5 million (24%) urban dwellers live in slums. One out of two people in the world live in urban areas, while one out of four people in the urban areas live in slums (IHS, 2013). Every city in Kenya has a slum with Kibera slum in Nairobi being one of the largest. Despite existence of numerous international and local policy instruments including the Millennium Development Goal 7 Target 11, Cities without slums programmes, Urban Areas and Cities Act 2011; Physical Planning Act Chapter 286; and Constitutional and land reforms, mushrooming up of slums continues unabated. This paper identifies causes of informality and recommends both curative and preventative strategies for dealing with slums including; land readjustment, expropriation, inclusionary zoning, Community land trusts, land sharing, land and utilities and street led upgrading.

Keywords: urbanization; sustainable cities, slums and informal settlements

INTRODUCTION

There are various terminologies that have been used pejoratively to refer to slums since it appeared in 1820's including; informal settlements, irregular settlements, *favelas* in Brazil and *gecekondur* in Turkey (Mathenge, 2011, Shidlo Gil, 1990). Slum formation phenomena is associated with urbanization. It was estimated that the global city population increased from 2.76 billion in 1995 and projected to increase to 5.34 billion in the year 2025, thus exerting greater pressure on the natural environment than ever before. Kenya is urbanizing and is projected to be a predominantly urban country by 2033. Twenty years ago Kenya's urbanization level was only 18% per annum. Since then, Kenya's urban population has been rising rapidly with an urbanization rate of 4%. Currently, about 30 percent of the population lives in urban areas. The share of the urban population is set to rise to 37 percent by 2020, and in 2033 Kenya will reach an important milestone, when most of its population will live in urban areas. Every year more than 250,000 Kenyans are moving to cities and formerly rural areas are

becoming increasingly urban (World Bank, 2014). Figure 1.1 shows projected urban population in Kenya.



Source; Kenya Vision 2030 (2007)

Figure 1.1 Projected Urban Population in Kenya

The UN-Habitat operationally define slum with group of individual living under the same roof lacking one or more of conditions including; access to improved water a minimum of 20 liters per person per day costing less than 10% of household income requiring less than 1 hour of effort per day; access to improved sanitation facilities excreta disposal system shared with a reasonable group of people; Sufficient living area not overcrowded fewer than three people per habitable room; Structural quality /durability of dwelling built in a non hazardous location and protecting its inhabitants from the extremes of climatic condition; and Security of tenure or effective protection by the state against arbitrary unlawful evictions(IHS, 2013, UN-Habitat 2013).

In Kenya slum formation is on the increase, with Kibera slum in the city of Nairobi is one of the largest in the country (Figure 1.2).

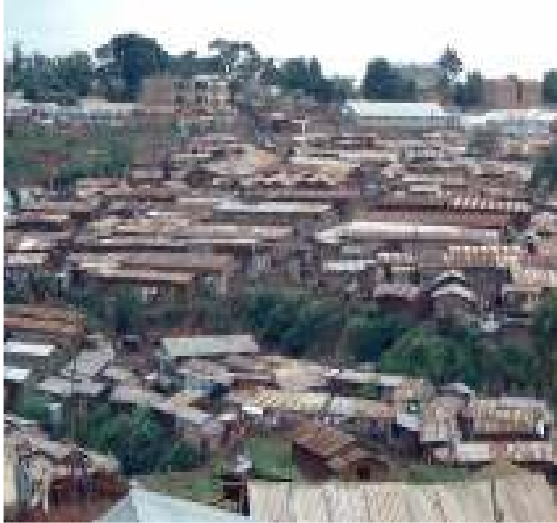


Figure 1.2 Part of Kibera Slum in Nairobi
Source:<http://www.nairaland.com>, October 20/10/2014, 20:21 hours

CAUSES OF INFORMALITY

Poverty

Poverty and underlying global and national macroeconomic factors, especially wealth distribution and job creation, play a central role in determining the process of informal development. Most inhabitants of informal settlements are indeed poor and can therefore neither afford to own or rent decent shelter.

Skewed Resource Distribution

The process of informal access to urban land and housing results in part from factors related to spatial planning of urban areas. The urban management authorities are not able to guarantee sufficient access to affordable serviced land and/ or housing unit in urban areas. Due to niggardly available resources, decision makers have given priority to the well-to-do category of population living in the high income

areas. Urban management authorities have not captured value of unearned increment generated by public infrastructure service provision and changes in land use and development regulations.

Poor Housing Policies

Informal development is also affected by the nature and scope of government housing policies. The concept of social housing is supposed to cushion the poor from being displaced by the rich, and economically powerful people is not known in many developing countries. The Constitution of Kenya 2010 states that every citizen has the right to accessible and adequate housing and to reasonable standards of sanitation (Kenya,2010).As a strategy to attain this ambitious plan, the government targets in its development agenda to construct over 150,000 housing units every year. However, the target is not commensurate with the demand for housing thus forcing many people to seek accommodation in the informal settlements. The Government uses the National Housing Corporation (NHC), a semi-autonomous institution to deliver decent and affordable shelter for Kenyans. In 2013, NHC completed 215 residential units in Nairobi and additional 161 units in partnership with Housing Finance. The ongoing projects as at 31st December 2013 were 45 bungalows in Nyeri, 199 flats in Nairobi, 48 flats in Mombasa and 44 National Police Service Housing units in Nairobi(Kenya).On completion, these housing units are allocated to public servants and the rich and the poor are excluded forcing them to seek accommodation in slums. Access to finance for housing is complicated by too many requirements demanded by many lending agencies to approve mortgage applicants and thus excluding most poor people from access to loans and even too many public housing programs. Repayment of loans advanced to successful applicants is painstaking because of high interest rates.

Formal Market Outcomes

Combined with the unequal spatial distribution of urban infrastructure by the public authorities, the overall process of land and housing delivery through the formal market is characterized by prices that are very high relative to incomes and the high prices carry over to informal developments. Private developers traditionally have not catered for the needs of the urban poor in Kenyan urban areas. In many informal developments, prices for land, property, and rents are high and services such as water supply are expensive. Sometimes informal development processes involve highly profitable informal market operations.

Political Clientelism

The long-standing political manipulation of informal communities through clientelistic practices also encourages more informal developments.

Questionable titles to public land have often been promised by politicians who also have influenced which public areas are to be occupied. In some situations false land titles have been given to the residents or official agents have benefitted from new developments, both financially and politically. The advances of public authorities can thus affect the growth of informality as well as the action of land markets (Fernandes 2011)

Technocratic planning system

A recurrent criticism of urban planning highlights its poor integration of land, housing, environment, transportation, taxation, and budgetary policies. Urban planning and management authorities have failed to promote a more inclusive urban order. Both existing planning laws and the approval of domiciled urban planning regulations based on high technical standards often fail to take into account the socio-economic realities determining the conditions of access to land and housing. In Kenya, the building code that was adopted from British planning system of 1947 is still being used in Kenya and has not been reviewed. A study by Ngetich et al (2014), on the efficacy of planning instruments and practices in Eldoret town, Kenya revealed that 38 % of applicants who were accorded development permission had violated the stipulated planning and development standards thus leading to shanty town character. This is attributed to poor enforcement on the part of Urban management authorities and impunity by developers. Regulations such as large minimum plot sizes, excessive development and construction restriction, and prohibition of services, commerce and small businesses in residential areas have had a fundamental role in generating high land and property prices (Payne et al, 2004 & Fernandes, 2011)

Overlapping Legal Systems

The complicated picture of informality is reinforced by contradictory workings of the overall legal and judicial systems. The combinations of unrealistic technical criteria, financial obligations, inflexible guarantees, lengthy licensing procedure, formalistic contractual rules, obsolete registration practices and inefficient conflict resolution mechanisms has produced a highly prohibitive legal context contributing to informal development (Fernandes, 2011). In Kenya some companies and cooperative societies that purchased the former white settler farms after independence in 1963 ended up disputing in courts. It is estimated that over fifty million acres of land are contested spaces and the legal processes have not provided panacea solutions, leading to illegal occupation of land and proliferation of informal developments. The National Land Commission (NLC) which was set up to sort out land problems in Kenya is at loggerheads with the Cabinet Secretary and the Ministry of Lands over their

jurisdictional mandates. The conflict between these two important land-based institutions is militating against the Government's efforts to provide three million title deeds by 2017.

Penalties of Informality

Informal development is harmful to cities, to the overall urban population and the people of informal settlements themselves. The penalties of informality can be better examined from the dimensions of legal, social, environmental political and economic aspects.

a) Legal issues

Informality connotes a lack of security of tenure which makes the residents living in informal settlements to be liable to eviction by public authorities and land owners. Forced evictions in Kenya have been done following court orders. The lack of fully recognized land title deeds means that residents in informal settlements have no basic citizenship rights. It is not possible for residents in the informal settlements to get loans and credits owing to lack of collateral security.

b) Social issues

Communities in informal settlements are denied access to infrastructure and services such as water and sewerage systems. The cultural stigma attached to informal settlements also means that residents are often excluded from the formal labour market and their communities are sometimes literally walled off from adjacent areas. The socio-economic vulnerability of the communities has made them earn targets for predators, including drug – related and organized crimes in cities (Fernandes, 2011).

c) Urban – Environmental implications

Informal settlements are associated with many forms of health and safety hazards environmental degradation, pollution and inadequate sanitary conditions. The living environment in informal settlements is characterized by narrow streets, overcrowding, precarious construction, difficult access and circulation, lack of ventilation, lack of sanitation, and lack of public spaces. Occupations of areas near water reservoirs are susceptible to landslides and flooding .Figure 1.3 depicts blockage of natural water drain by buildings.

d) Political Issues

Informal settlement is a political issue whereby politicians make electoral promises to resolve the problems affecting informal settlements and have tended to perpetuate informality. In Kenya, communities living in informal settlements have used the power of ballot to negotiate with politicians for regularization of settlements (Musyoka, 2006 & Fernandes, 2011).In some instances title deeds and other forms of tenure security are issued to squatters during the election periods.



Figure 1.3. Encroachment by buildings on the natural water drains in Maili Nne area in Eldoret Town

e) Economic and Fiscal implications

The informal development generates inefficient cities and costly urban management. It has been noted that regularization programs and re-trofitting of services costs up to three times more than planned urban development. It is believed that water vendors sell water to slum dwellers much more expensively than conventional piped water supply systems in Kenya.

Informal settlements are excluded from official property tax systems, resulting in a loss of potential revenue for urban administration. In some informal settlements such as in Langas, Eldoret, Kenya, residents are charged property tax by the county government despite their lack of valid land titles. In other cases, residents have sought to pay property tax as a means of strengthening their legal hold over the land (Musyoka, 2006, Fernandes, 2011).

Strategies for Tackling Informality

Many countries in the world have adopted different strategies to address the problem of growth of slums and to increase housing supply. The efficacies of these strategies are governed by the realities on the ground.

Expropriation

Expropriation is a land instrument of structure zoning. Expropriation may be viewed in terms of; Expropriating land owners to build a road; Expropriating a large land owner to distribute the land to poor peasants; Expropriating a peasant to regularise land tenure of urban settlers ;and Expropriating a peasant to distribute plots to poor migrants so they can build their houses.

At a wider scale expropriation involves acquisition of rights of way and funding is done through development rights and betterment charges. Expropriation is done by way of current use value. The infrastructure is built on stages and is paid by land holders as development charges for development

rights. The land tax (ground rents) is changed to urban values while development rights are transferred to green areas. In Kenya Expropriation is viewed in the context of compulsory land acquisition whereby the Government invokes the power of eminent domain to take over private land to be earmarked for public purpose. Compulsory land acquisition order has been criticized for being a violation of a right to own property. Compensation for acquired land is usually low as it is based on Government land current land values as opposed to the future use value. Land acquisition is resented and contested by the land owners with such cases taking long to be resolved in the accustomed way.

Inclusionary Zoning

Inclusionary housing is about using planning to create affordable housing and foster social inclusion capturing resources created through the market place. Inclusionary Zoning promotes economic integration of the city which is undergoing new development. A minimum compulsory uses (forbidden and conditioned) per basic zone is maintained. Percentages of plots for the poor depending on income structure and middle class, other non profitable uses such as parks and amenities are provided.

In inclusionary housing, developers of market rate rent are required to set aside a small portion of their outfits, usually between 10-20%, for households unable to afford housing in the open market. In Kenya inclusionary housing is not in the urban planning and development norms. There is need to consider incorporating this new dimension in the review of planning policies and instruments at the National and the County Government level.

Land Readjustment

Land readjustment is a method of recovering the transaction costs by coordinating property exchanges in land assembly. It involves instigated land for land swapping, or property exchanges. Land readjustment generally has four components, project initiation, community support development, land re-subdivision and servicing, and land reallocation. The use of eminent domain or compulsory purchase is used to deal with unwillingly owners into selling their property. Figure 1.4 depicts Expropriation in relation to Land Readjustment.

In Kenya, Land Readjustment can be used to make areas which were poorly planned to be attractive and vibrant. In many urban areas, development is stifled by poor road connectivity; irregular orientation and layout of plots; and lack of public facilities such as the parks. Land readjustment can be used as a tool for realignment of properties, enhance accessibility as well as releasing land for public use.

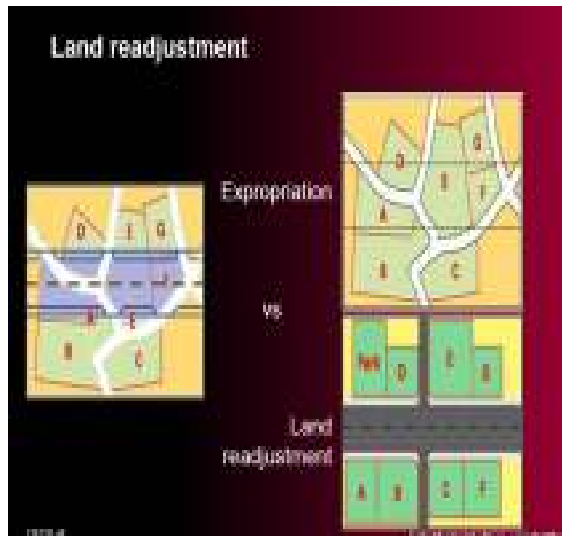


Figure 1.4 Expropriation and Land Readjustment
Source: IHS, 2013

Community Land Trusts

Community Land Trust (CLT) system is a collective ownership approach in which the settled land is owned by the community and not by the individual residents. The title deed is under the community's name. A resident would own the structure which he/she built but not own the land on which the structure was located and thus the land must not be traded. The structure can only be sold following a specific sales formula. The case of the Tanzania-Bondeni land Trust in Voi and the Nubian Village in Nairobi Kenya offers practical examples. The CLT for Tanzania –Bondeni did not work because of lack of legal framework as members were registered under the Societies Act. Although the purpose of CLT is to avoid gentrification as land is supposed be for all, the CLT approach denies individuals with an interest to get a form of security of tenure which can be used as collateral for investment in provision of better shelter.

Land and Utilities

Government might use its rights of eminent domain to acquire per-urban land, subdivided it into housing plots, designate areas for open space, community facilities, schools, soccer fields, and commerce, and install the urban infrastructure before anyone settles there. It is much less costly than retrofitting urban services to an existing settlement of families. Land and utilities is akin to site and service scheme in Kenya. Kapsoya Site and Service Scheme in Eldoret is an example of a neighborhood that has developed through land and utilities approach.

Land Sharing

Slum dwellers for example bargains for a share of land they currently occupy. The landlords may have to agree on the sale or lease them the land. The land sharing is therefore an instrument used in case of land conflicts between land occupants and land owners, those who want to develop the land. It enables commercial development without displacing existing residents. Parties agree to divide a plot of disputed land. Developers are given the right to build on one portion of the site and land occupants are allowed to occupy on another portion, with a promise of secure tenure on their new plots.

There are six common per-conditions of land sharing including; booming property market; well established communities; community organizations and consensus; third party intermediation, physical/or technical feasibility and financial feasibility. The land sector in Kenya is beset by numerous and endless land disputes and land sharing offers the way forward in resolving them. It can be adopted as a form of alternative dispute resolution (ADR) mechanism as envisaged in the Constitution of Kenya 2010, the National Land Commission Act 2012 and the Land Act 2012. As an example land sharing can be used to solve the famous disputed Waitiki land situated in the Coastal region of Kenya whereby many squatters are claiming ownership after settling there for many years, while the original owner has a Title Deed.

Street-Led Slum Upgrading

Streets are tools and pillars of urban transformation. Streets trigger economic activity, attracting shops, services and increased residents identity with their place of residence, bringing an enhanced sense of security and orderly development. Investment in infrastructure (public good) yields private investments on property development and housing improvements (private goods) making street-led slum upgrading an effective tool for increasing property valuation, wealth generation and business incomes which are likely to cause spin-off effects on the prosperity of neighbouring areas.

In Kenya, the street led slum upgrading has been applied in Langas informal settlement in Eldoret town under the Third Urban Project undertaken by the World Bank. Under this project, a loop road was created linking Kona Mbaya and Kisumu Ndogo in Langas slum of Eldoret Town.

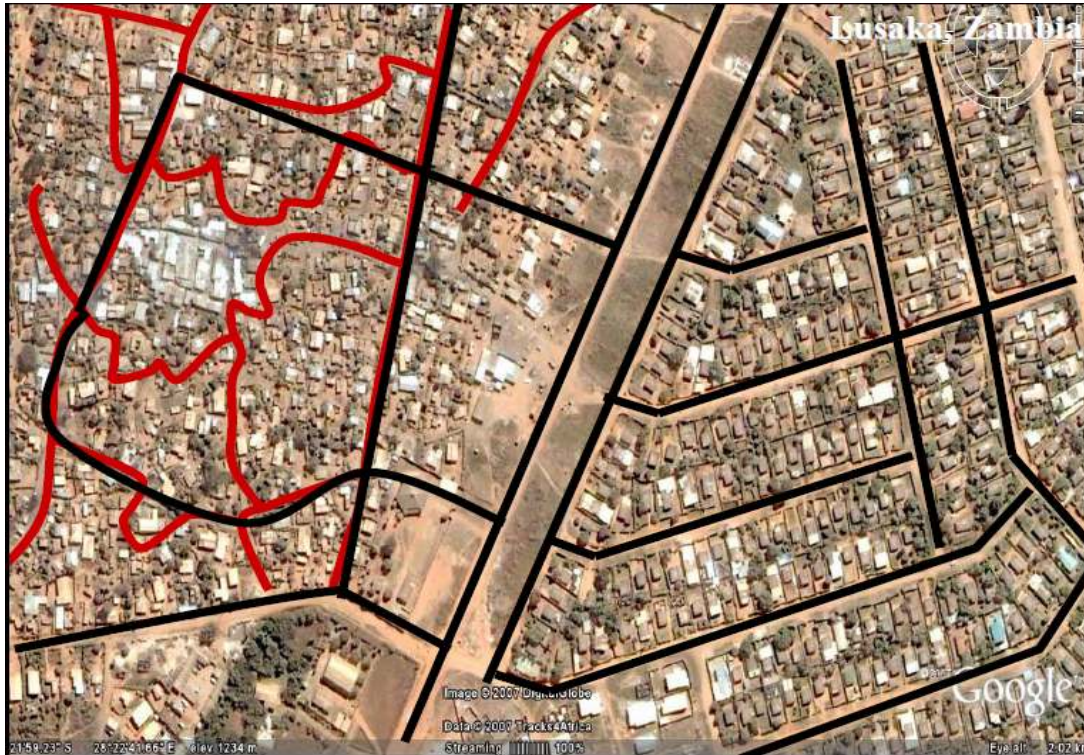


Figure 1.5 Street-Led Slum upgrading in Lusaka Zambia
Source; Acioly (2013)

CONCLUSION

The causes of informal developments are many and varied, involving a range of socio-economic, spatial and institutional factors such as exclusionary planning, bureaucratic inefficiency, and the legal system itself. The strategies that have been adopted in dealing with the informality include a combination of both preventive and curative instruments including; expropriation, inclusionary zoning, land readjustment, community land trusts land and utilities, land sharing and street led upgrading. These strategies are important for better planning and development of Kenya's Urban areas. It is worthy for the National and the County Governments in Kenya to embed these innovative strategies in their policies and legislations in dealing with existing slums as well as preventing slum formation. There is need for the Governments to create a fund that is similar to other devolved funds like the Youth,Uwezo and Women Empowerment funds in Kenya to be used for improvement of slum conditions. The County Management Authorities could generate more resources through land value capture of unearned increments in urban areas served with infrastructures packages such as roads and other public utilities. By so doing local resources will be mobilized for purchase of more land for housing development and associated infrastructure. It is also important for the Government to review legislations and instruments governing the housing sector with a view to introducing the concept of social housing and use of

appropriate building materials and technologies for low cost housing. On the other hand the Government has a responsibility to its citizens to pursue pragmatic policies that contribute towards empowerment of people including slum dwellers. National and local distributive policies that create jobs and other opportunities for all, as opposed to policies that enhance gentrification process should be pursued. Equal opportunities should also be made available to all citizens living in urban and rural areas as a strategy for stemming rural to urban migration.

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