

PART 1: PAST KENYA SLUM UPGRADING PRACTICE

Definition of governance

The term governance is broad and may have several definitions depending on context. The World Bank defines governance as "exercise of authority, control, management, power of relevance for the Bank government." Another definition by the bank is "the manner in which power is exercised in the management of a country's economic and social resources for its development"(World Bank, 2006).

The Worldwide Governance Indicators project defines governance as the set of traditions and institutions by which authority in a country is exercised. The political, economic, and institutional dimensions of governance are captured by six aggregate indicators (World Bank, 2006).

- a) **Voice and accountability:** the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media
- b) **Political stability and absence of violence:** perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including domestic violence and terrorism
- c) **Government effectiveness:** the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies
- d) **Regulatory quality:** the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development
- e) **Rule of law:** the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence
- f) **Control of corruption:** the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests

Participation refers to different mechanisms for the public to express opinions and ideally exert influence regarding political, economic, management or other social decisions

Therefore, participatory governance emphasizes on deepening democratic engagement through the participation of citizens in the processes of governance with the state. The idea is that citizens should play a more direct role in public decision-making or at least engage more deeply with political issues. Government officials should also be responsive to this kind of engagement. (IDS Working Paper 264, 2006.)

In this instance, we define governance in the context of institutions mandated with slum upgrading, their roles, inter institutional relationship, powers, space for communities and civil society to participate in slum upgrading (Glass, 1979).

Current slum upgrading governance: actors, roles & mandates

Three main types of institutions carry out slum upgrading in Kenya: government, non-government and international development organizations.

Government: divided between central and local government institutions – Ministry of housing, Ministry of lands, Ministry of Finance, Municipal councils etc. The ministry of Housing currently is in charge of implementing government led programs like Kenya Slum Upgrading Improvement Project (KISIP) and Kenya Slum Upgrading Program (KENSUP)

Non-governmental institutions: Civil society organizations, community-based organizations, faith-based organizations: (Pamoja Trust, Slum Dwellers International, Muungano Support Trust (MuST), Muungano wa Wanavijiji).

Multilateral and international organizations: World Bank, UN Habitat, Swedish International Development Cooperation Agency, Agence Française de Développement

Role of civil society organizations & international development organizations:

- Role of international donors more visible than that of local NGOs (especially in relation to funding and implementation of slum upgrading projects): KISIP and KENSUP funded by the World Bank and UN-HABITAT
- International advocacy groups such as Amnesty International and Center on Housing Rights and Evictions (COHRE) critical of government sponsored forced evictions.

Case study: role of Muungano wa Wanavijiji in policymaking process

- From 2002, Muungano started involving the Government in its activities so as to share Government policies with the community and the Ministries of Land, Housing and Local Government.
- Submitted proposals during the National Land Policy formulation process (IFRA working paper, Nairobi, April 7, pg. 56)
- Involved in National Land Policy, 2009 formation between 2004-2008
- Ongoing participation in development of the Land Use policy, the Urban Development Planning Policy and the Eviction and Resettlement Guideline
- Advocated for housing incentives, which were incorporated in government policy that guides the community on how to access money through housing cooperative societies.

Lessons from Current Kenya Slum Upgrading Programs on Governance

- Lack of central slum upgrading authority: Implementation of slum upgrading programs make Formal programs are entirely managed by the Ministry of Housing e.g. in KENSUP government doing actual housing
- Lack of policy guidelines and coordination of actors.
- Conflicting goals/mandates- according to existing policy, central government through ministry of housing is meant to be in charge of housing programs (housing

policy) while infrastructure and planning in cities is the role of the cities/municipalities- slum upgrading programs integrate housing and infrastructure services calling for coordination between the two levels of government.

PART 2: PROPOSED NATIONAL SLUM UPGRADING POLICY

Guiding principles

- Balance of power between actors as power relations in slum upgrading greatly impact projects (e.g. between communities, government and civil society)
- More clearly defined policy on the role of each stakeholder
- Timely involvement of stakeholders is key to the success of any development project
- Financial leveraging from all stakeholders (e.g. private sector, government)

Lessons from case studies

Kenya:

Huruma & Mathare 4A

- Land tenure facilitation by local government acts as an incentive for communities, civil society and private sector to invest in slum upgrading programmes
- Private sector and local communities mobilize resources and implement project

Thailand

Community Organizations Development Institute

- Support for investment in informal settlements by National Government through establishing institutions with financing for pilot projects
- Government facilitates issuing of land tenure with a focus on community tenure with 30 years minimum lease
- Decentralized decision making through establishment of coordination committees which draw membership from local communities, city agencies, and civil society
- Slum upgrading plans drawn in line with city plans

Mumbai

- Government facilitates land tenure and security of land tenure acts as collateral to communities and also as an incentive to private developers (+ profit accruing to sale of excess units)

Tanzania:

Hanna Nassif Community Managed Settlement Upgrading Project (1992)

Cities Alliance Citywide Action Plan

- Land tenure acts as incentive for community to invest in slum upgrading
- *Human Settlements Development Policy*: government policy to upgrade slums through stakeholder participation, incentivizes participation of civil society and international organizations

Brazil:*Favela Bairro*

- Set higher infrastructure/development standards than MDGs
- Part of a broader set of social policies
- Used as entry point for other infrastructure and social programs

Kenyan policies relevant to slum upgrading: governance & participation provisions

The Kenya Constitution, 2010 establishes a new framework of governance that seeks to devolve power to 47 counties, which shall serve as the basis for national governance and planning.

The constitution upholds social and economic rights of all citizens of Kenya, guaranteeing a just and fair country where all enjoy equal rights to a reasonable quality of life, with the right to accessible and adequate housing explicitly guaranteed by the Constitution. The Constitution also requires all levels of government to form policy and other measures to achieve the realization of the right to housing.

In a measure to institutionalize the new form of governments and fulfill the requirements of the constitution, various laws have been put in to place. Of interest to slum upgrading is the Urban Areas and Cities Act, 2011; County Government Act, 2012; National Land Policy; and the Public Finance Management Act, 2012.

The Urban Areas and Cities Act, 2011

The Urban Areas and Cities Act, 2011 explicitly states that every city and municipality shall operate within the framework of integrated development planning which shall contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights which include the right to housing; and be the basis for overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management.

County Government Act, 2012

According to the County Government Act, each county shall prepare a county integrated plan, which shall be the basis for all budgeting and spending of public funds. The act clearly states that, "A county government shall plan for the county and no public funds shall be

appropriated outside a planning framework developed by the county executive committee and approved by the county assembly". The county integrated plan shall focus on economic, physical, social, environmental and spatial planning.

Public Finance Management Act, 2012

According to the Public Finance Management Act, 2012 the budget process for county governments in any financial year shall begin with an integrated development planning process which shall include both long and medium term planning which will in turn inform the county budget estimates and establish financial and economic priorities for the county over the short, medium and long term.

The constitution and the Public Finance Management Act also give counties the mandate to borrow from other sources for the purpose of development. However, the national government has to approve and guarantee such loans. Past slum upgrading funds have been derived chiefly from multilateral organizations (World Bank and UN HABITAT) in the form of loans and grants to the national government. Slum upgrading funds will most likely continue to originate from such organizations. The World Bank is changing its lending framework to allow lending to other agencies beyond national governments. This timely change thus provides an avenue for county governments to source slum upgrading funds.

National Land Policy

In dealing with informal settlements, the National land Policy requires that the government, "take an inventory of genuine squatters and people who live in informal settlements; determine whether land occupied by squatters is suitable for human settlement; put in place appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement; facilitate planning of land found to be suitable for human settlement; ensure that land subject to informal settlement is developed in an ordered and sustainable manner; facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land; facilitate the registration of squatter settlements found on public and community land for purposes of upgrading or development; develop, in consultation with affected communities, a slum upgrading and resettlement program under specified flexible tenure systems; and put in place an appropriate legal framework for eviction based on internationally acceptable guidelines".

National Housing Policy 2004

The policy requires that government carry out land use planning and management and set up banking facilities for low income housing, as well as provide incentives to squatters to buy the land they occupy at subsidized rates for shelter development through a waiver of fees on surveying, sub-division, change of user and transfer.

It also proposes the establishing of a Slum Upgrading and Low-cost Housing and Infrastructure Fund under the Ministry of Housing financed from the exchequer and

development partners in order to fund shelter related infrastructure. This has already been realized through the KENSUP project.

Programs & projects

Kenya's two main slum upgrading programs, Kenya Slum Upgrading Improvement Project and Kenya Slum Upgrading Program, are initiated and supported by the government through the help of international organizations.

Kenya Slum Upgrading Program (KENSUP)

The aim of KENSUP is to “have improved the livelihoods of at least 5.3 million urban Slum dwellers (1.6 million households) by the year 2020 at an estimated cost of \$13 billion (Kshs 884 billion),” according to the Kenyan government.

Established in 2003, the program is guided by a Memorandum of Understanding (MOU) between the Kenyan government and the UN-HABITAT. In 2005 the Kenyan government developed specific slum upgrading strategies to guide the period of 2005-2020, in line with the timeframe of the United Nations Millennium Development Goals. (UN-HABITAT and The Kenya Slum Upgrading Program Strategy Document, May 2008). The seed fund for the program was donated by UN-HABITAT and World Bank Cities Alliance and the Government of Kenya. The program's main focus was on shelter improvement, infrastructure services land tenure among other issues (Ministry of Housing, Kenya)

According to the MoU, UN-HABITAT is to provide: technical advice through UN volunteers and consultants; assistance with the provision of core elements of infrastructure necessary for slum upgrading; assistance in the mobilization of financial and other resources for the program (e.g. liaise with donor agencies); and establish a Slum Upgrading and Low Cost Housing and Infrastructure Fund jointly with the Kenyan government.

The Kenyan government is responsible for the program's execution through local counterpart professionals, buildings, and training and other facilities available; equipment, materials and supplies available; and financial counter-part contribution (UN-HABIATAT, May 2005).

Kenya Slum Upgrading Improvement Project (KISIP)

This is a slum upgrading project focusing on governance and institutional strengthening, land tenure and infrastructure, which is a government partnership with international development institutions such as the World Bank, the Swedish International Development Cooperation Agency (SIDA), and Agence Française de Développement (AFD). KISIP was initiated in 2011 and targeted 15 municipalities: Nairobi, Mombasa, Eldoret, Naivasha, Machakos, Malindi, Kakamega, Nyeri, Thika, Kericho, Kitui, Garissa and Embu. The World Bank provided \$100 million of the funding, while Agence Française de Développement

(AFD), Swedish International Development Agency (SIDA) and the Government of Kenya, contributed \$45mn, \$10mn and \$10mn, respectively.

International Treaties

This is the basis under which majority of multinational and NGOs engage in slum upgrading. Article 25 of the Universal Declaration of Human Rights states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

On 21 April 2010 human rights organizations including COHRE, Amnesty International and the national civil society organizations Shelter Forum and Hakijamii Trust wrote to then Kenyan President Mwai Kibaki urging him to stop forced evictions along the Kenya Railway across the country, as over 50,000 people faced eviction from land along the railway reserve (COHRE, 2010).

Similarly, in a letter dated November 2, 2012, Amnesty International urged the Kenyan government, “to pledge to immediately cease all forced evictions, to legislate and enforce a clear prohibition on forced evictions, and to pass a law on evictions that incorporates all the safeguards required under international human rights law.” (Amnesty International, 2012)

Table 1: Actors and roles as defined by Kenyan law

ACT/POLICY	PROVISION	ACTOR
Constitution, 2010	<ul style="list-style-type: none"> • Right to housing (Article 43) • Requires County to be in charge of Management of land management • Devolved powers to Counties - Article 176 (2) of the Constitution, a city or municipal board may establish operational sectors and service delivery entities, • Citizen participation in all aspects of development (Article 87) 	County governments Kenya Human Rights Commission (KHRC) Citizens
The Public Finance Management Act,	<ul style="list-style-type: none"> • Requires Integrated development planning as the 1st Stage of County budgeting process 	Ministry of Finance County governments
The County Governments Act, 2012	<ul style="list-style-type: none"> • Framework for integrated development planning and community participation • Citizen participation - Part VIII, (Article) • County planning - Part XI, (Article) • Delivery of county public services - Part XII - (Article) 	County government Citizens
Urban Areas And Cities , 2011	<ul style="list-style-type: none"> • Integrated development planning (Article 36) • Provision of Services: water, electricity, health, telecoms and solid waste management the mandate of County Governments • Citizen participation space – Citizen For a (Article 22) 	County, Municipal and City Councils
County Revenue Allocation Act, 2012	<ul style="list-style-type: none"> • Funding: equalization fund – poverty as a basis for allocation 	Government
National Land Policy, 2009	<ul style="list-style-type: none"> • Guidelines for resettlement of squatter settlements and planning of informal settlements • Included civil society in formulation 	Government Muungano wa Wajiji Hakijamii Kenya Land Alliance
National Housing Policy, 2004	<ul style="list-style-type: none"> • Establishes government as lead actor in slum upgrading • Provision for low cost housing 	Government

REFERENCES

Gaventa J. 'Triumph, Deficit or Contestation? Deepening the 'Deepening Democracy' Debate' Institute of Development Studies (IDS) Working Paper 264, July 2006.

'Triumph, Deficit or Contestation? Deepening the 'Deepening Democracy' Debate' Institute of Development Studies (IDS) Working Paper 264 July 2006.

'A Decade of Measuring the Quality of Governance', The International Bank for Reconstruction and Development, The World Bank, 2006

Glass, James J. "Citizen participation in planning: the relationship between objectives and techniques." *Journal of the American Planning Association* 45.2 (1979): 180-189.

"Kenya's Candidacy For Election To The Un Human Rights Council: Open Letter to Hon. Samson Kegeo Onger, M.P., Minister for Foreign Affairs", Amnesty International, 2 November 2012

"Kenya: Pres. Kibaki Asked To Stop Forced Eviction Of Tens Of Thousands From Railway Reserve Land", Centre on Housing Rights & Eviction, 21 April 2010

Kenyan Government Acts:

County Revenue Allocation Act, 2012

Kenya Constitution, 2010

National Housing Policy, 2004

National Land Policy, 2009

The County Governments Act, 2012

The Public Finance Management Act, 2012

Urban Areas And Cities, 2011