

## **AN ARCHAEOLOGY OF FORMAL URBAN HOUSING PROBLEMS IN KENYA: ISSUES AND POLICIES**

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### **ABSTRACT**

This review paper traces the origin of formal urban housing problems in Kenya. It indicates that formal urban housing problems have their origins in the colonial period where discriminatory policies led to the skewed housing provision. The problems were further compounded during the post-colonial period, where the independence government operated for a long time without an explicit policy on housing. The capacity of the government to provide formal public housing has also been limited. In addition, limited availability of public has affected the State's effectiveness in the management of housing land uses. The housing problems are also worsened by the cumbersome and costly procedures of formal housing land acquisition, which discourage many people in need of housing to follow that route.

**KEYWORDS: Housing, Land, Urbanization, Policy, Planning**

### **1. INTRODUCTION**

Urbanization in Kenya and Africa in general has been attributed to colonization. This view stemmed from the assumption that native Africans did not have the political sophistication and the organizational ability to build towns; as they lived in isolated rural settlements before colonialization (Hull, 1976). Living in urban areas was thought to have come about as a consequence of colonial inspiration. In contrast, long before the arrival of a significant number of new settlers in the 19<sup>th</sup> Century colonial expansion out of Europe, urbanisation was however taking place (Chandler, 1994a: 3-14; 1994b: 15-32), for example in Kenya's coastal region (e.g. Mombasa) (Stock, 1995: 193; Obudho and Obudho, 1994: 200).

The arrival of Europeans, however, did give rise to the establishment of ports, administrative headquarters, transportation networks and mining facilities throughout sub-Saharan Africa. All these functions created favourable trading and living conditions for the surrounding areas and thus acted as magnets for surrounding populations. This led to the movement of members of the

native population to these centres (Obudho and Obudho, 1994: 51; Christopher and Tarver, 1994: 36-40). Some of these centres grew to become capitals and major towns for various countries including Nairobi in Kenya. The original colonial function of Nairobi (in 1899) was as a staging post for the development of the colonial railway system linking the port of Mombasa to the inland terminus at Kampala in Uganda. In 1905 Nairobi became the capital and the transformation of the surrounding fertile lands began.

To generate revenue for administrative purposes, colonial governments introduced head and hut taxes. Given that the predominant economy before colonisation was subsistence based, individuals (especially men) had to seek paid employment. They were to be either employed in plantations, or move to urban areas to seek employment, in order to raise enough money to meet the tax requirements (Obudho, 1997).

Although hut and poll tax policies tended to force individuals to work in urban centres, such migration was not made easy. Significant laws such as strict building codes and methods of direct control<sup>1</sup>, which required natives to obtain permits before visiting or living in urban centres, discouraged them from living in urban areas. These laws were enforced by police, chiefs, European settlers and African 'loyalists' associated with the colonial administration (Mireri, 2006: 110; Elkins, 2005: 63; Obudho, 1997).

After independence (in 1963), the government under majority rule removed the rule requiring indigenous Kenyans to acquire a permit to visit urban areas. In the period between 1963 and 1979 Kenya registered high rates of urban growth. In 1962, for example, there were 34 settlements registered as urban centres compared to 91 in 1979. Urban growth in this period was largely attributed to rural–urban migration. This was due to income differentials between rural and urban areas as well as increased likelihood of obtaining formal sector employment in urban areas (Government of Kenya, 2003; 2001; 1996b; 1979 and 1969; Rakodi, 1997). Furthermore the investment policies of the government were biased towards urban areas which served as pull factors for migrants in search of better facilities and services located there (Lipton, 1977: 298-9).

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<sup>1</sup>These were “apartheid-like controls on the rights of indigenous populations to live and work in urban areas” (Satterthwaite, 2008: 237).

Degradation of the environment, coupled with increased agricultural density as a result of population growth in rural areas (especially in former native reserves) put pressure on land for cultivation. These pressures became so strong in most rural areas that land owners could no longer afford to subdivide the land to accommodate additional farmers. New lands were needed for cultivation but such land was generally not available. It is not surprising to find that excess farm labour migrated to urban centres to look for employment opportunities (Rakodi, 1997).

Urban population changes during this post-colonial era were also the result of natural increases (Obudho, 1997; Obudho and Obudho, 1994: 53). Mortality rates fell as a result of improved access to medical facilities. This fall is associated with an increase in life expectancy rates. Fertility and birth rates also continued to be high throughout this period because medical facilities, scientific techniques as well as expert personnel were located in urban centres (Lipton, 1977: 266-7).

According to the 1989/1999 National Population Census (Government of Kenya, 2001), the country registered a very high rate of urbanisation during the decade. The number of urban centres rose from 139 to 276, a significant change when compared to earlier periods that registered relatively modest changes. This growth was skewed towards larger settlements rather than smaller urban centres with populations of less than 10,000 people. The three largest urban centres (Nairobi city, Mombasa and Kisumu municipalities) accounted for about 40% of Kenya's total urban population (Mireri, 2006: 109). Urbanisation in Kenya is thus characterised by a primate urban system that is centred on Nairobi. For example, Nairobi City accounted for 51, 36, 34 and 28 per cent of the urban population in 1969, 1979, 1989 and 1999. Urban primacy is said to exist when a country's largest city is at least twice as large as the combined population of the second and third largest cities (Otiso, 2005: 120).

## **2. URBAN HOUSING ISSUES**

Commenting on housing in Kenya, Kamau (2005: 12, 13) argued that conventional production of urban residential housing can be categorised into two distinct approaches, which includes the "provider" and the "enabling" approaches. The approach based on the "provider," as the word suggests, entails provision of residential housing for the public, by the government or a public agency. He continues to describe how approaches based on "enabling," on the other hand,

involve the initiative of supporting the private sector in the production of houses. Enabling policies provide a framework for housing development by the private sector. They may also include the state installation of services and transport networks in particular places with the aim of influencing the actions of the private sector to build houses for residential purposes.

Although Kenya does not have an explicit policy on urbanisation and urban housing, (a housing policy has been adopted and is now being drafted into law), Kamau (2005: 37) explained that there have been implicit urban housing development policy initiatives such as those in the late 1950s and early 1960s, popularly referred to as mass public housing. At that time government emphasized construction of public housing estates through a system of centralized planning control and large-scale master plans. Urban development policies at this time were however restrictive and were based on racial segregation (K' Akumu and Olima, 2007: 87). The approach to native Africans' urban housing was based on a strategy of the removal or clearance of slums and squatter settlements. These discriminatory and oppressive housing policy initiatives were retained for some time after independence and the institutions that were responsible for housing development were also retained.

## **2.1 Housing during colonial period**

Anyamba (2005: 1, 2) observed that during the colonial consolidation period between 1906 and 1926, Nairobi was being colonized as an alien state, based on the interests of the White settler population. The Master Plans that guided its growth only took into consideration the interests of European residents. Asian labourers/coolies and traders and natives were largely ignored in these plans. However, natives were most affected in that they could not own a freehold property in the city, even when they could afford to. As a result of the discriminatory skewed urban space allocation, only 8 percent of the city's residential land was reserved for the native residents. At this time, European-owned plots totalled 2,700 acres of land, while Asians had 300 acres for residential purposes. Natives did not have any land except nominal official housing and a few women who owned houses at Pangani village under Usufruct provisions of the existing English Law.

The exclusionary and discriminatory practices were also reproduced through zoning policies that supported a pattern of racial segregation and social stratification. The 1948 Master Plan that led to the Nairobi boundaries extension, to cover 84 km<sup>2</sup> further facilitated land use zoning which was based on racial segregation (thus based on the discriminatory and exclusionary practices). After independence, the same 'apartheid' policies (although at this time based more on economic leanings than skin colour) were continued as is demonstrated in the 1973 Nairobi Metropolitan Growth Strategy (Anyamba, 2005: 2).

## **2.2 Housing in post-independence period**

Mbogua and Chana (1996: 89) argued that, as a result of the exclusionary and discriminatory policies and practices, even after independence, only few natives held land within Nairobi City. As population increased after the 1963 relaxation of restriction of movement by natives to the City, the skewed land ownership meant that more space was needed for housing, and this land was not available in economic and ownership terms. In addition, the independence government could not afford to provide additional houses for these people, due to budgetary constraint of its early days in office. Furthermore due to the sudden rise in population with little or no corresponding investment in infrastructure and services, the capacity of existing infrastructure and services was overstretched within the existing housing areas.

Mbogua and Chana (1996: 89) further argued that the inability of the formal planning system to provide adequate housing resulted in the growth of spontaneous settlements. The government at this time was responding to that kind of settlement by frequent evictions and demolitions to control the informal settlements, without providing long-term solutions for the housing problem (Memon, 1982: 157). Probably, because of the failure of the eviction and demolition strategy, the government had to seek a more realistic and pragmatic approach by adopting the assisted self-help housing (Kamau, 2005: 40). Enforcement of urban housing standards was relatively relaxed and the government started to assist low income groups to build and improve their own houses. Informal settlements played a major role in absorbing the new urban migrants. The new immigrants being from impoverished rural areas, meant that even if public rental housing was available they could not afford house rents. However, the informal settlements where a majority

of these immigrants found accommodation, existed outside conventional planning regulations (K' Akumu and Olima, 2007: 92; Kamau, 2005 39; Mittulah, 2003: 10).

The government approach got a boost in support from the World Bank which was keen to promote the Aided Self-Help Housing Scheme as a new approach to Kenya's urban development to accommodate the rapidly changing housing realities after independence (Kamau, 2005: 40). This approach was implemented through various strategies, such as the Site and Services Schemes and the Slum Upgrading Programs. Site and Services Schemes aimed at making access to land/plots with basic services such as water, sanitation, roads, surface drainage and street lighting, easy for the majority of self-house builders. It was expected that plot beneficiaries will "...develop housing using permanent materials and in accordance with the provided land use plans over an extended period of time through individual or self-help efforts" (Kamau, 2005: 40).

According to Kamau (2005: 40-41), the strategy did not work as planned, however, as shortly after its introduction land speculation occurred in response to a rapid rise land prices. The rise in demand for serviced plots attracted middle and high-income people who bought the plots from the poor beneficiaries thus negating the original purpose of the strategy (which was meant to develop capacity of individuals to adopt systemic change). There were other identified problems with this strategy, such as poor cost recovery and the lack of follow-up and ongoing maintenance which caused most of the sites and services schemes to literally turn into slums. The outcome negated the very purpose for which the reforms were meant to serve, so that the housing problem still persists (Huchzermeyer, 2008: 27; Mbogua and Chana, 1996: 89).

The failure occurs because the regulation of land for building is directly related to ownership of land as well as the infrastructure and access to funding for development (Huchzermeyer, 2008: 26, 28). Kamau (2005: 18) added that the existence of a large number of regulations concerning land use planning, zoning and subdivision has also largely contributed to inadequate housing, more so due to poor enforcement of these regulations. Stringent regulations based on outdated Master Plans contribute to non-conformance with most planning procedures as they are obsolete and fail to address current housing needs for the majority of urban dwellers. This is so in the knowledge that the regularization of land for building is also, most of the time, related to the

ownership status of the land, the provision of infrastructure and the possibility of financing for residential development on such land. Therefore, to own a house, land availability is a prerequisite. Availability of regularized land then is the first step in meeting the challenges of residential housing provision (Kamau, 2005: 17).

In terms of meeting housing goals, Kamau (2005: 25, 26) argued that the Banking Act and the Building Regulations Act also present constraints to prospective house owners. The bank lending conditions are based on borrower income and land tenure, and the application of these conditions severely limit the number of people who can build homes using bank loans. He added that mortgage finance companies and building societies only lend against formally registered properties. Thus the evidence of clear and legal land title to a house (that is also built as per the building code) is required before mortgage application is approved. He notes that this option is unavailable to many people who are employed in the informal sector or with income that cannot support mortgage repayments. Furthermore, the laws also prohibit banks and building societies from financing the purchase of a plot of land that has no structure plan.

In the face of the inability of the formal sector to provide housing and the existence of several constraints to that end, Kamau (2005: 18) observed that various strategies were adopted by both the public and the government, an attempt by both parties to accommodate informal housing initiatives. These include a 'do nothing' policy and special subdivision approvals. The 'do nothing' strategy entails a situation where the government is aware that there is a housing problem but chooses not to intervene due to factors related to budgetary constraints. As Pacione (2005: 534) indicated "some urban authorities [may] adopt a policy of inaction in hope that migrants [to the urban areas], whom they consider to be the cause of the problem, will return to their rural origins." In some cases, invasions and occupation of land, by members of the public, for construction of residential units has also occurred which indicate the futility of the rural containment approach.

Kamau (2005: 24) argued that it is unlikely that sufficient housing of adequate quality can be made available to absorb new population growth, because land is not available. This is due to the shortage of serviced land compounded by high prices for land due to monopolistic land

ownership patterns and land speculation. He observed that in order to ease access to land for residential building, the government came up with Special Subdivision Schemes. The Special Subdivision Schemes/Programmes allow some latitude in relation to subdivision plan approvals. Thus, although constituting part of a land-use planning tool, they are to some extent extra-legal in that they overlook most of the planning regulations. These are mostly applicable on areas still zoned as agricultural and they are more advisory than restrictive in their focus.

With respect to the importance of land in the housing debate, Musyoka (2006: 236) argued that although most land subdivisions are not formal in terms of planning requirements, they are not illegal because property rights are not violated. Through localised mechanisms of land subdivision, ownership transfer processes are guaranteed to the plot owner. The localised mechanism for land transfer has relaxed the process of land ownership relative to what would have been allowed in a more formalised land subdivision scheme. Transactions in such situations therefore are not controlled and registered by the government authorities. This implies that houses are built without permits and housing quality (as well as the provision of infrastructure) is often below the Planning Standards. There are advantages in this situation, however; the subdivision plots are affordable to low income groups. This is in line with Payne's (1989: 2) argument that:

It is their ability to cut corners-and –costs which has helped the ...subdividers to expand their operations and to provide plots which are more appropriate, affordable and easily available than any other housing option.

Making a general comment on such extra-legal subdivisions, which is relevant to this study, Berner (2001: 10) observed that in most cases, land which is subject to extra-legal subdivisions is often in zones meant for other purposes such as agriculture, recreational etc. He further indicated that the land for extra-legal subdivisions is usually located in peri-urban areas where it is not too remote and public transport is available, because unlike middle-class suburbanites, the prospective buyers do not have cars and can ill afford high transportation costs in terms of money and time.

Although, the system of extra-legal land subdivision has met the short term objectives of providing land for housing development in Kenya, its proponents did not foresee the long term

implications in relation to land ownership, loss of farmland, urban sprawl and infrastructure financing.

### **3. ACCESS TO LAND FOR URBAN HOUSING**

Access to land for urban housing is either through formal or informal means. Formal or official ways of land allocation involve allocation of publicly owned land or sale of privately owned land to public agencies, individuals or groups. Formal means of land allocation are governed by regulations concerning tenure, title registration, agricultural land conversion to urban uses, land subdivision and land use and construction. Informal land allocation occurs when private entities transfer parcels of land to another individual or groups without reference to government regulations or involvement of the government in the transactions (Musyoka, 2006: 235-236).

#### **3.1 Allocation of public land**

Access to publicly owned land for urban housing depends on the supply of plots, allocation procedures and eligibility. Allocation of this land "...is done either by the President or the Commissioner of Lands" (Musyoka, 2006: 243). She notes that the Kenya's Constitution allows the President to set aside "...and allocate government land directly to individuals, groups, institutions and corporate entities" (c.f. Government of Kenya, 1991).

The Commissioner of Lands, who is the custodian of all government and trust lands, can "...allocate such land for various uses as provided for in Physical Development Plans" (Musyoka, 2006: 243). The law requires that the Commissioner advertise in the Kenya Gazette all the government land that is available for allocation. However, in the absence of the advertised government land, people can also apply to be allocated land by "...the chairperson of a Provincial or District Plot Allocation Committee, (which is) a committee of civil servants responsible for land-related decision making" (Musyoka, 2006: 243). Musyoka adds that the applicants for the allocation of plots on publicly owned land pay a fee of Kshs 1,000, which is non-refundable to unsuccessful applicants but which forms part of a land payment deposit for successful one.

The local authority in the area where the allocated public land falls have a responsibility of providing infrastructure but the capital costs transferred to the land beneficiaries (Musyoka,

2006: 243). Until 1993, the infrastructural costs were indicated in the plot allotment letters. Due to lack of infrastructural provision and complaints because of this no-provision, the inclusion of the costs in the allotment letters was dropped. However the statement on the allotment letter requiring the beneficiaries to pay these costs on demand when the local authority provides the services is usually included in the allotment letters. 20 per cent of the market value of the plots is paid by the successful applicants pay as stamp premium and the rest of the 80 percent is paid in the form of annual land rent during the entire lease period (Musyoka, 2006: 243, 245).

The process of obtaining publicly owned land or housing is long, opaque, expensive, and therefore, not an option for ordinary Kenyans. The process is opaque due to limited publicity on the land available for allocation. Even where publicity is done, the Part Development Plans (subdivision layouts) are usually not in formats understandable to ordinary Kenyans. In addition, few Kenyans have access to daily newspapers where those advertisements are placed. Even if one buys the newspapers the advertisements are placed on obscure pages with other classified advertisements and will require keen attention to notice them, and even to understand the legal jargon used. Furthermore, I should make a point that the access to land in Kenya is often associated with access to political power, thus awareness of the availability of land for sale through *Kenya Gazette* notice and application for the same does not suffice. Other considerations such as patronage (through kinship, nepotism, ethnicity, political party affiliations, among others) play a crucial role in public land allocation (Musyoka, 2006: 245).

### **3.2 Sale of privately-owned land for conversion to urban housing**

Due to the complexities of the allocation process for the public-owned land for urban housing, private actors have come to fill the gap in land supply. These private actors "...are individuals, corporate entities or groups" (Musyoka, 2006: 245). Where land to be subdivided is in agricultural use, it is subject to an additional set of requirements under Land Control Act 1963. Besides the procedures (see Box 1) which subdivision application must undergo, applicants must pay fees at each of the stage as well as a professional fee to surveyors and planners.

It is a requirement by local authorities that before an approval of a subdivision of privately owned land, the infrastructure should be provided by the owner. The local authority takes

responsibility for the infrastructure after the land is developed. In most cases however, the infrastructure is not provided at the land subdivision approvals stage due to costs involved, and these costs are usually left to the plot buyers (Musyoka, 2006: 247).

**Box 1: Requirements during a land subdivision application.** Source: (Musyoka, 2006: 247).

- Copy of the title deed or certificate of lease presented as proof of ownership;
- Four copies of the proposed subdivision plan;
- A public purpose plot of 4 per cent of any land being subdivided with an area of acre (2.2 acres) or more set aside;
- A rate clearance certificate provided;
- A sketch site plan from Department of Physical Planning duly signed and stamp.

In most situations in Kenya, a large farm is subdivided formally and then small parcels of land subdivided into plots and "...sold to individuals, groups or corporate entities" (Musyoka, 2006: 247). These subsequent subdivisions of land into building plots may or may not satisfy legally recognised procedures. This is partly because formal subdivision procedures takes long, are costly and not well understood by many Kenyans. These and other limitations discourage many land sellers and buyers from adhering to the set procedures. The land subdivision activities and subsequent plot layout are done by hired surveyors and engineers from the formal or informal sector. Therefore subdivisions are characterized by planned layouts but lack of basic trunk services such as roads and sewerage. There are however, a few instances where land subdivisions are well organised in grid layouts such as those resulting from subdivision of large farms (Musyoka, 2006: 247).

#### 4. CONCLUSION

This paper indicates that housing problems in Kenya have their origins in the colonial period where discriminatory policies (which were racially-based) led to the skewed housing provision. Further, the paper indicates that the independence government has operated for a long time without an explicit policy on housing. In situations of policy vacuum coupled with limited financial capacity of the government to provide formal public housing, people have turned to 'informal' solutions to housing problems. In addition, limited availability of public land (where government can dictate terms to those allocated such land) has affected the State's effectiveness in the management of housing land uses. The housing problem is worsened by the cumbersome and costly procedures of formal housing land acquisition, which discourage many people in need of housing to follow that route.

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