

Effects of Governance Practices on Provision of Housing as a Basic Right for the Low Income Urban Areas in Kenya; A Case of Mombasa City

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Abstract: *This study sought to determine the effects of governance practices on provision of housing as a basic right for the low income urban areas in Kenya. A case study of Matopeni settlement, Kongowea ward, Nyalı constituency in Mombasa city. In spite of all efforts and the introduction of various housing policies and laws in Kenya, informal settlements continue being on the rise while housing conditions continue to deteriorate particularly in urban areas. This is in addition to other government and stakeholder-led housing programmatic interventions. In particular, the study sought to assess the effects and extent to which policy frameworks, have contributed to the state of housing in the urban low income areas. The study was conducted through survey method and data collected using questionnaires and interview guides from 100 household out of a 598 households and a target population of 6,153. The selection was done through stratified random sampling in Matopeni slum and 10 key informants purposively selected. Data was analyzed using Statistical Package for Social Sciences (SPSS) and presented in tables, percentages, pie charts and graphs. The study revealed that the poor housing conditions were as a result of inadequate sector policy frameworks coupled with poor implementation strategies or the total unwillingness to implement them due to personal or group interests. The frameworks range from housing, urban planning and infrastructure and land. It also revealed that despite the various policy frameworks in the land and housing sector, the laws had been particularly land laws and conflicting. There hasn't been political will in legislation processes or implementation of the policies. This had resulted to poor land management systems leading to land grabbing and squatting, evictions and serious tenure issues. Similarly was the lack of government strong focus on housing programmes for the low income groups by government beyond efforts by KENSUP which were minimal compared to the housing deficit experienced over the years. Further revelation was that most of the laws were still new or undergoing reviews as a result of the promulgation of the new constitution in 2010 and introduction of devolved units. The studies further revealed that housing has never been a core area of government interest and that the government had not driven or give guidance on housing. There was also lack of attempts by the government to broaden focus on housing policy and integrate it with wider economic, social and environmental goals despite its statement of intent on shelter in its development and strategic plans. Others were poor promotion of security of tenure, inadequate supply of affordable land and infrastructure, inadequate resource allocation, lack of policies on housing financing as well as community participation of on low costs housing provision. Recommendations for policy action include finalization of the review of the current national housing policy and passing of the Housing Bill, improvement on implementation strategies for sector policies as well as those related to financing and infrastructure, provision of services. Further, there should be regularization of land and operationalization of land laws to improve on land management systems to solve land tenure issues. There is also need for the adoption of more inclusive and participatory housing approaches, devolution of social and public housing programmes and an increase in budgetary allocation to the sector.*

Keywords: Participation, policy frameworks, public services, housing policies, urban-poor, adequate housing, social housing, low-cost housing, Social infrastructure, slums, security of tenure:

1. Introduction

Housing provides the basic human necessity of shelter and has important implications on household functionality, productivity and social harmony. Studies have shown that housing conditions influence individual's outcome in health, education, socio-political participation, and labour participation, among other aspects of life (Musyoki, 2012). Good housing is likewise associated with high or increased self-esteem.

The world is experiencing a global housing crisis with about 1.6 billion people living in sub-standard housing units and an approximately 827 million; currently living in urban slums. 100 million are homeless, according to the United Nations (UN). Majority of these are increasingly urban residents, and every week more than a million people are born in, or move to cities in the developing world. An estimated 1 billion people comprising of 32% of the global urban population are living in urban slums (Habitat for Humanity, 2014). The UN further projects that unless

serious steps are taken, the number of slum dwellers worldwide will increase over the next 30 years to nearly 2 billion.

Governance is a broad term and may have several definitions depending on context. According to the World Bank, governance is referred to as "exercise of authority, control, management, power of relevance for the Bank government." It further defines the term as "the manner in which power is exercised in the management of a country's economic and social resources for its development" (World Bank, 2006). It can also be defined as a set of traditions and institutions by which authority in a country is exercised. The Bank further states that the political, economic, and institutional dimensions of governance are captured by six aggregate indicators (World Bank, 2006). This includes voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption. Governance thus can be referred as to the rule of rulers practiced within a set of rules.

2. Housing Situation in Kenya

Access to housing is explicitly recognized as a human right by the Kenyan Constitution of year 2010. Article 43; specifically provides that every person has the right to “accessible and adequate housing and reasonable standard of sanitation” (Cok, 2010). The International Covenant on Economic and Social Rights (ICESCR), to which Kenya is a state party, similarly recognizes the right to adequate housing (Art. 11(1)) and further stipulates that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources. This is with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. Article 2(1) further imputes an obligation (to fulfill) upon the state to take positive measures to ensure that the right is realized for all citizens.

National and county governments are therefore expected to ensure that adequate budgetary allocations are made to provide adequate and affordable housing, especially for those in desperate need. The government of Kenya’s housing Policy aims at provision of decent and affordable housing for the medium income groups. This is evident in the succeeding development plans including one of the years, 1997-2001, all of which support the development of low-cost housing. But there has been little evidence of formal physical development of low-cost housing units in the last twenty or so years, leading to the question of whether the policies and programmes are indeed successful (Mugwanga, 1993).

All these gaps in the provision of low-cost housing to the urban poor has triggered the researcher to carry out a summative evaluation study on the Kenya Government Housing policies and strategies for housing the urban poor in Mombasa and how the same Government can adopt some of these policies and strategies which have worked better, to some extent, in developed countries to improve low-cost housing supply to the urban poor in Kenya as a whole.

Despite the signing of the signatories by government of the relevant international covenants and treaties recognizing the right to housing, the country has not taken adequate and significant measures to domesticate such covenants and treaties – perhaps because of their real view of the right to housing. The Kenyan government since independence has continued addressing shelter in its development and strategic plans. These includes, the vision 2030, the NARC government economic blueprint termed the *Economic Recovery Strategy for Wealth and Employment Creation (ERS)*. With the obvious lack of voice for poor in the policy and legal making process; the housing laws have been taking years before they can be finalized and adopted by parliament and even after that long waiting implementation has been low thus taking time before the poor can benefit.

Kenya suffers from a terrible shortage of good quality and affordable housing as well as service delivery across the country but more critical in urban areas due to high

population factor. Combined with the high rate of rural-urban migration, unemployment and under employment, increasing poverty and escalation of housing costs and prices, there a dire demand for provision of low-cost housing, infrastructure and community facilities not only for the socio-economic development of the country but as a constitutional right (GoK, 2010).

The Kenyan government on paper seems to be ahead of its neighboring countries in policy formulations including the 2010 constitution that has been considered as one of the progressive laws. Several housing and land laws have equally been developed after the promulgation of the constitution though in the sector a lot of efforts had been in place in terms of policy formulation particularly addressing land reforms and issues of forced evictions and resettlements but the housing conditions are not yet adequate. Despite the various legal and policy frameworks, housing conditions have continued to deteriorate. The result is mushrooming of slums in many cities and towns across the county.

Ineffective government policies or regulatory frameworks that are also non pro-poor have in a way contributed to the state of housing conditions not only in Kenya but in many countries particularly the developing world. For instance, it’s believed by some exerts that public support for low-income housing in Latin America and the Caribbean (LA/C) has been inefficient and in some cases harmful to the poor. This is because in the 1990s, governments in many LA/C countries shifted their investment in public housing away from direct construction and subsidies for low-income homeowners, and towards facilitation of private market efforts to provide housing (Salazar, 2002). Although this approach of privatization may have worked in some places to reach a greater number of poor people with a greater degree of efficiency, it has also been criticized of shortcomings.

In Mexico for instance, government assistance to real estate entities and banks to develop low-income housing resulted in housing projects affordable only to the middle class. Furthermore, in a liberalized land market environment, these policies may have hurt the poor by rendering them unable to compete with subsidized developers and real estate entities (Salazar, 2002). Salazar further argues that, the lack of government commitment to housing policies aimed at the poor, rather than the middle class, is a significant cause of informal and inadequate housing on the urban fringe. Governments’ failure to create policies establishing territorial reserves for Low-income housing reflects this lack of commitment and reduces urban housing options for the poor (Salazar, 2002).

3. Housing and Related Policy Frameworks

The key policy document in housing is Sessional Paper No. 3 on National Housing Policy of 2004. It was adopted before the enactment of the Constitution in 2010, aims to “facilitate the provision of adequate shelter and a healthy living environment at an affordable cost to all socio-economic groups in Kenya.” The policy objectives have the potential of enhancing the realization of the right to adequate housing by enhancing ownership of housing through expanded

access to housing finance, in addition to promoting security of tenure for all groups, particularly low-income earners. In addition the policy aims at provision of decent and affordable housing for the medium income groups. This is evident in the succeeding development plans including one of the years, 1997-2001, all of which support the development of low-cost housing (Otieno, 2014).

Despite this policy statement, there is little or evidence of formal physical development on low-cost housing units in the last twenty or so years, leading to the question on whether the policies are indeed successful or there are challenges related to implementation (Mugwanga, 1993). Segregation policies in the colonial era, a post-independence policy of slum clearance and a more recent lack of equitable and defined land and urban development policies have shaped Nairobi slums, like Kibera, into their present state (Muraguri, 2011). It is evident that those interested in urban development recognize that building "low income" housing need not benefit poor or low income groups. Kenya, like many other developing countries often fails to attain the goals and objectives of housing policies and plans geared for low income groups; this is reflected in the mismatch of available housing forms.

A substantial percentage of urban residents occupy units that in terms of policy and planning are intended for other groups. Of particular concern are the very poor who often must live in informal areas because middle income groups occupy housing units planned for them (Mitullah, 1992). They manage to pay slightly high the market price that is out of reach for the poor. The latter are thus pushed down to look for alternatives which is slums. In this case credit can be given to the private sector though mainly concentrating on the middle and upper classes, at least the poor can occupy decent houses. This brings out into focus the issue of policy failure at some level; whether its formulation or implementation.

The shortcomings of housing policy at both central and local government levels; the ineffectiveness of the institutions charged with the implementation of policies; the limited role of the private sector and administrative and financial limitations (Mitullah, 1992) all have a role to play in the current housing crisis and more so the ever deteriorating slums conditions

4. The Constitution of Kenya, 2010

The constitution further provides for a wide range of rights under the Bill of Rights (Chapter 4), including the right to housing; that was not in the repealed constitution. In Article 43, the Constitution provides that: "Every person has the right – to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; *to accessible and adequate housing, and to reasonable standards of sanitation*; to be free from hunger, and to have adequate food of acceptable quality; *to clean and safe water in adequate quantities*; to social security, and to education"(GoK, 2010). Therefore the new constitution provides an opportunity to move the discourse on housing to a different level as it makes explicit provision on the right to housing (Article 43 (b) quoted

above). This explicitly emphasizes the obligation of the government to facilitate the provision of shelter for the poor including those living in the urban areas.

The Constitution provides a clear timetable for its own implementation, especially the enactment of enabling legislation. In relation to the housing sector, major laws that have been so far enacted area on land. These include a law establishing the National Land Commission (Article 67); Community Land (Article 63) to be enacted within 5 years; Regulation of Land Use and Property (Article 66); Legislation on Land (Article 68), Agreements relating to Natural Resources (Article 71) to be enacted within 5 years and legislation regarding environment (Article 72) to be enacted within 4 years.

The housing laws are still in review and none has been adopted by parliament. The land laws on the other hand have been given priority partly due to the fact that land issues have been in focus with urgent need for reforms. This is not only because of the land tenure issues in urban slums but also due to the fact that they contributed a lot to the post-election violence in 2008 and have always been a subject of campaign during general elections and a cause of ethnic tension in the country. Similarly, the fact that none of the housing laws have been adopted is a clear indication of the low government prioritization of the housing sector.

5. Land Policies and Security of Tenure

The Kenyan Coast is rated as one of the very sensitive regions in Kenya as far as the issue of land is concerned with Mombasa ranked as having one of the highest numbers of landless people in the country. The squatter problem originates from the fact that most lands in the coast were previously owned by the Persians Arab Sultans and British and much later handed over to the Government of Kenya. This landlessness and unsolved squatter problem continues to dominate urbanization challenges in the coastal counties, due to rising populations, increased demand for land, and the non-restriction of land ownership in the country. Despite a presidential directive to settle coastal squatters on government land first issued in 1978 and subsequent concerted efforts to establish regional settlement schemes, the land question in Mombasa and environs still remains unresolved (Mbaka & Ogembo, 2013).

Recently the current government has tried to address the issue of squatting in the coastal region through the issuance of 60,000 title deeds, with claims most of the title deeds had remained in the government lands registry since 1964. The government continues to grapple with the land question across the country with subsequent government regimes unable to or unwilling to resolve it bringing to perspective a governance related challenge that basically has great implication on housing and planned settlements particularly in urban areas.

The complexities of slum settlements with regard to tenure arrangements have highly contributed to the poor housing conditions: the slums have no formal tenure arrangements combined with high densities, haphazard and unplanned developments pose a challenge in designing the type of

tenure that is best suited to the residents' situation (Muraguri, 2011).

The United Nations highlights government policies and practices related specifically to land as a cause of ongoing poverty in the developing world. According to UN-HABITAT, "The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty" (U. N. Best Practices Handbook 2003: 1). "The first essential condition for a vibrant and well-functioning housing sector is the availability of residential land, in ample supply and at affordable prices." Lack of access to land by the poor is the second most noted cause of poor housing in Latin America and the Caribbean (Canadian Foundation). In rural areas across many countries, landownership is extremely skewed towards wealthy landowners mostly practicing commercial farming while in urban areas, landownership patterns and soaring land prices have in most cases excluded the poor from decent shelter.

6. Research Problem

Kenya suffers from a terrible shortage of good quality and affordable housing as well as service delivery across the country but more critical in urban areas due to high population factor. Combined with the high rate of rural-urban migration, unemployment and under employment, increasing poverty and escalation of housing costs and prices, there is a dire demand for provision of low-cost housing, infrastructure and community facilities not only for the socio-economic development of the country but as a constitutional right (GoK, 2010).

The Kenyan government on paper seems to be ahead of its neighboring countries in policy formulations including the 2010 constitution that has been considered as one of the most progressive laws. Several housing and land laws have equally been developed after the promulgation of the constitution though in the sector a lot of efforts had been in place in terms of policy formulation particularly addressing land reforms and issues of forced evictions and resettlements but the housing conditions are not yet adequate. Despite the various legal and policy frameworks, housing conditions have continued to deteriorate leading to mushrooming of slums in many cities and towns across the county.

The slums or informal settlements are characterized by high densities, typically 250 units per hectare compared to 25 per hectare in middle income areas and 15 per hectare in high income areas, haphazard physical layout, difficult to provide infrastructure with very low income inhabitants or dwellers with limited assets. Services such as water and sanitation are non-existent or minimal. Morbidity and mortality rates caused by diseases stemming from environmental conditions are significantly higher than in other areas of the city (Mitullah, 2003).

They are difficult areas to live with high crime rate, crowding, violence and other mal-practices. Drug dealing and illegal brews are common and little presence of government security but use of illegal gangs to provide security. Other challenges are lack of tenure, single rooms

and cheap rents though services such as water and electricity are deemed to be expensive (Mitullah, 2003).

The government is the key actor tasked with implementation of policies that range from urban planning, land laws and housing. The study sought to assess the governance practices and whether they have a role to play in improved housing.

7. Results and Discussion

Effects of Policy Frameworks on Provision of Housing for the Low Income Urban Areas

The study revealed that policy and regulatory frameworks had an impact on housing provision. It further revealed that a number of policies both on land and housing were in place though a many were or had undergone review in the last 4 years following the enactment of the new constitution. There was however little knowledge of the policies on the part of the community and despite their existence little was being done through use of policy or legal channels to solve the land and housing challenges. Six percent (6%) of the household respondents indicated that they had access or had knowledge of housing or land policies while 25% had not (Figure 1.1). However all the key informants had knowledge of the policies and to some level participated in their formulation or implementation.

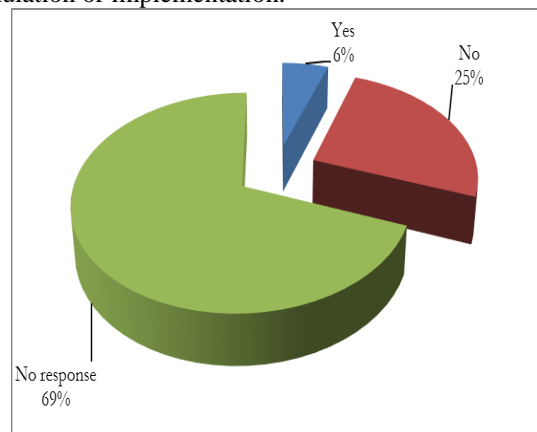


Figure 1.1: Knowledge of housing and land laws

It further revealed that a number of frameworks had been passed for the housing and land sector, the key ones being the constitution. Others were the; Housing Policy of 2004 but now under review; Housing Bill; Building Code; Housing Maintenance Policy; Draft Eviction and Resettlement Bill; Land Act ; Land and Environment Court ; National Land Policy ; EMCA 1999; EMCA Regulations; Public Health Act; Water Act and ; Radiation Protection Act.

The studies also revealed that previously a number of laws in both sectors were in existence though implementation had been a challenge. There were several land laws and in most cases conflicting with each other according one key informant. There has also been little achievement improving housing despite the National housing Policy Sessional of 2004. One of the key informants felt that the country was moving on the right direction after the promulgation of the constitution in 2010. The informant as optimistic with article 43 of the constitution on the Bill of rights. The respondents

also noted that the recently created constitutional office of the National Land Commission (NLC) officials had started initiatives towards resolving the tenure problems in the settlement. They further indicated that with the inception of the county governments the shift has changed from by-laws to legislations, guidelines and regulations. However at the moment the counties were still in the process of reviewing the by-laws and developing county legislations. Only sixteen percent (16%) of the respondents indicated that the laws assisted them in dealing with housing and land problems whereas majority said they did not (Figure 1.2).

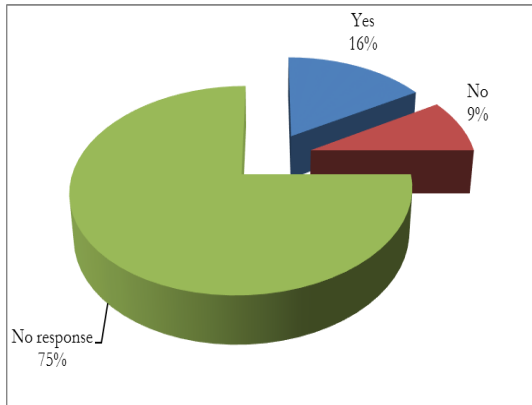


Figure 1.2: Role of policy frameworks in solving housing and land problems

On the hand, 49% of the respondents indicated that they got legal and policy support in addressing housing challenges while 51% said they did not (Figure 1.3). On an open ended question, the respondents indicated that they got support from non-government organization and individuals and recently the county office was starting to make initiatives.

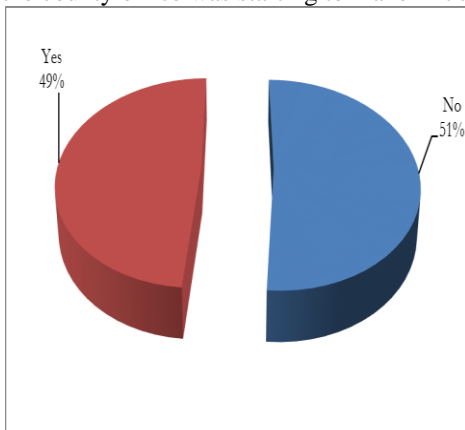


Figure 1.3: Support offered through legal and policy related issues

Some key informant respondents said that the laws were clear but had experienced challenges in implementation and cited corruption in the land sector coupled with poor land management systems as the main reasons being the failure to address security of tenure and land ownership problems.

The study revealed that majority of respondents (22.6%) had lived in their settlements for between 10 to 15 years (Table 1.1) while 35.3% had lived in the settlement for more than 21 years with the oldest residents being 35 years. This revealed that land tenure issues had not been managed in time and ownership issues were likely to be a problem

because of leaving communities squat in the land for such a long period of time.

Table 1.1: Duration in settlement

| | Frequency | Percentage |
|-------------------|-----------|------------|
| No response | 17 | 23 |
| Less than 5 years | 4 | 2.6 |
| 5- 10 years | 12 | 15.2 |
| 10-15 years | 18 | 22.6 |
| 16- 20 years | 1 | 1.3 |
| 21-25 years | 17 | 21.4 |
| 26- 30 years | 6 | 7.6 |
| 31- 35 years | 5 | 6.3 |
| Total | 80 | 100 |

Among the factors affecting equal access of poor residents to housing and related services in Mombasa as indicated by one of the key informants was land tenure. The figure below shows how long the respondents surveyed had lived in their current settlement.

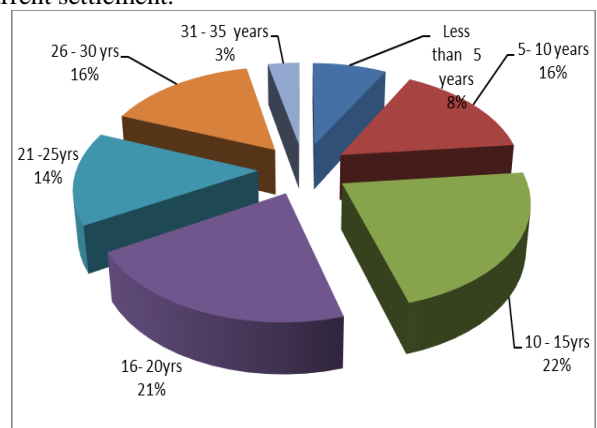


Figure 1.4: period respondent had lived in the settlement

It shows that its only 8% of the respondents who had lived in the slum for less than 5 years while all other had lived for many years with others up to 35 years (Figure 1.4). Thirty one percent (31%) of the respondents indicated that they owned the land they resided in whereas 69% did not. This is despite 4% of the respondents indicating they had letters of allotment and 3% title deeds as proof of ownership (Figure 1.5). Respondents also cited several individuals and companies as well as government as having ownership rights of the land.

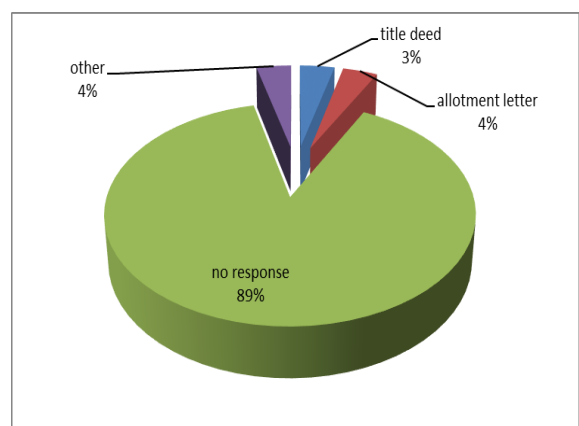


Figure 1.5: Type of residence ownership

The study could not ascertain whether this was true or not or whether the ownership documents were genuine. Those who claimed to own land indicated that they were allocated either by relatives, chiefs and elders, community, private individuals, government, had bought, were renting or land was vacant and they decided to settle. With devolution and shift focus to county governments countries more mandate for service delivery had been transferred. At the time of study the county government through county assembly had developed some laws and was still in the process of developing other county legislations but the study revealed the respondents or residents of the area of study were not directly involved. However the policy formulation process had involved other stakeholders and the respondents were hopeful their voices were going to be incorporated.

8. Conclusions

The study revealed lack of effectiveness in implementation of infrastructure related policies and strategies and particularly those related to water, roads in order to delivering results. Infrastructure development lies behind housing development just like in many other Africa countries. This is the direct opposite of the ideal or expected situation especially in the developed world. Infrastructure such as lighting, roads, drainage, sewage or means of sewage disposal is a necessary pre-requisite for good housing development. This governance factor had contributed to the deteriorating nature of housing in many urban low income settlements.

Adequate housing for the poor settlements had not been a core area of government interest. The government had not been driving or guiding on housing and the lack of attempt to implement the housing policy and integrate it with wider economic, social and environmental goals in itself showed the lack of commitments to solving the housing crisis. There is also lack of effective implementation strategies on other housing initiatives as well as inadequate planning though the laws on planning are in existent. Housing provision was instead being driven by the private sector for the upper and middle class. Similarly individuals, especially the same mentioned groups were being involved in construction of their homes and thus the poor were left with no choice but to live in unplanned settlements and poor living conditions.

Security of tenure still ranks high in terms of being a hindrance in housing provision. The study revealed that there were enormous land related challenges relating to land ownership and management practices. In previous years, it hasn't been easy dealing with land grabbing and the squatter problems. This has continued to affect government efforts in service delivery such as construction of roads and other infrastructure and others facilities. On the other hand the land is owned by private developed or government and efforts to regularize the land hasn't been easy. Coupled with several land laws before the current 2010 constitution, land cases had taken years to be sorted in courts. Without security of tenure, people were reluctant to develop quality housing, no approval can be given for construction with clear and financing is a challenge since the land cannot be used as security to access loans.

The study revealed that there were robust efforts to deal with land issues through established of the NLC and legislation of several land laws; a merger of the previous conflicting laws. Similarly county government had taken steps to develop relevant laws and it's remarkable to note how fast the laws were being develop and passed by the county assemblies unlike the time it has been taking the national assembly to pass the Bills. The county government of Mombasa being one of such counties, had started initiatives in collaboration with the national government and the NLC to compensate private owners of the land in some settlements such as Likien, Bolo and others in order to settle residents and improve housing.

9. Recommendations

The following recommendations were made based on the study findings; this include finalization of the review of the current national housing policy and passing of the Housing bill and other pending laws, improvement on implementation strategies for sector policies as well as those related to financing ,infrastructure and provision and services. Likewise is regularization of land and operationalization of land laws to improve on land management systems to solve land tenure issues. Similarly is the adoption of more inclusive and participatory housing approaches, devolution of social and public housing programmes and increase in budgetary allocation to the sector.

10. Areas for Further Research

Further research could be carried out to establish the impact of devolution and the establishment of devolved units on provision of housing in low income areas through county level policy legislations and strategies.

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