Slum Upgrading in Nairobi within the Housing and Basic Services Market

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A Housing Rights Concern

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Abstract

This article addresses the high level of commercialization of shelter and basic services in Nairobi, and its implication for slum upgrading in Kenya. The article is based on a review of published and grey literature, and on qualitative interviews with slum residents as well as with landlords, tenants and stakeholders in Nairobi's multi-storey tenements. The Kenyan government's conceptualization of slum upgrading inserts benefits into a highly distorted market, preventing a balanced realization of the internationally recognized elements of the right to housing, and raising fears of displacement among slum residents. An analysis of the wider tenement market confirms these fears, and suggests that market distortions must be addressed in order for slum upgrading to succeed.

Keywords housing • Nairobi • rights • slum • tenements • upgrading

Introduction

An important slum upgrading initiative is currently unfolding in Kenya – the Kibera-Soweto (Nairobi) pilot project of the Kenyan Slum Upgrading Programme (KENSUP), a joint initiative of the Government of Kenya and UN-Habitat (Government of Kenya, 2004). This article draws on published analyses of slums and slum upgrading in Nairobi, interviews and discussions on slum upgrading conducted in Nairobi for the Centre on Housing Rights and Evictions (COHRE) and on primary data from my qualitative interviews with landlords, tenants and stakeholders in the multi-storey tenement market in Nairobi. It reflects, from a housing rights perspective, on the challenges faced by the high-profile slum upgrading project in the context of Nairobi's distorted urban housing market. The article emphasizes that housing rights have a particular role in the context of Nairobi's market exploitation, its most glaring dimension being the large-scale illegal tenancy present in the slums and other low-income housing districts. An analysis of the wider housing market, and the application of housing rights to this analysis, provides useful insights for the slum upgrading pilot project in Nairobi and for the broader Kenyan policy and practice. These insights are relevant for global initiatives such as *Cities Without Slums*, which are to contribute to the realization of the Millennium Development Goal (MDG) 7, Target 11 'to significantly improve the lives of 100 million slum dwellers' by 2020 (UN-Habitat, 2003b: 8).

The housing rights challenges of the slum upgrading initiatives in Nairobi addressed in this article relate to the complex economic stakes that have developed in the slums. Decades of poorly functioning local government in Kenya have led to commodification or commercialization of water, shelter, refuse collection and to some extent sanitation (fees often being charged for the use of the scarce toilet facilities, as they are provided through informal profit-seeking and often exploitative enterprises). None of these informal commercialized systems provide services to adequate standards (Gulyani et al., 2006). Water access is insufficient and often contaminated, refuse collection is inadequate and its disposal unsanitary, and rented shelter is of the lowest quality due to minimal investment by the illegal structure owners (COHRE, 2005b). The processes of commercialization have resulted in a complex structure of economic stakeholders, who have acquired a degree of social legitimacy to extract profit out of the trade of inadequate basic necessities to the poor. In this system, and due to a scarcity of formal employment, people with the intention of residing in the city for a longer term aspire to become sellers of water, collectors of refuse or owners of rentable rooms. This underpins the legitimacy of market exploitation and has complex implications for the realization of the right to access to adequate housing, and the associated access to water, sanitation and refuse collection.

Among the slum dwellers of Nairobi (who are the customers of landlords/structure owners, water sellers, etc.) there has not been a strong sense of entitlement to basic service provision by local government. Therefore, there is a willingness to pay for inadequate access to privatized water and refuse collection and for rents for inadequate structures, all in excess of what local government could and should charge for better services. Local government in turn is characterized by an inability to extend its service delivery into the domain of the private providers, along with an unhealthy reliance on the donor and NGO community to improve marginally access to basic services. How can this situation be addressed, so as to realize the right to housing and improve the lives of slum dwellers? This article discusses whether housing rights can be realized within a better regulated commercialized system, or whether the provision of shelter, water, sanitation and refuse collection should be taken out of the hands of informal entrepreneurs and placed into the hands of local government or public agencies.

Slum Upgrading Initiatives in Nairobi

The Kenyan Slum Upgrading Programme (KENSUP) was initiated in 2000 through an agreement between the previous Government of Kenya (under President Moi) and UN-Habitat. It was renewed in January 2003 with the new NARC (National Rainbow Coalition) government under President Kibaki (Omenya and Huchzermeyer, 2006). An early decision was to pilot KENSUP in Nairobi's largest slum, Kibera, which houses over 600,000 people on 110 hectares of land, in 13 'villages' (Government of Kenya, 2004). After a detailed situation analysis in 2001 (Syagga et al., 2001), it was decided to limit the pilot to the Soweto 'village', the south-eastern sector of the Kibera slum, which has a population of 60,000 people (COHRE, 2005b). The Kibera-Soweto pilot project was launched on World Habitat Day in 2004 with a graphic media presentation of the planned redevelopment of the slum into orderly blocks of flats with $50m^2$ two-bedroomed units to be privately owned (Kiprotich and Mugo, 2004).

Kibera's slum dwellers are aware that this approach resembles two recent slum redevelopment projects in Nairobi, both of which are contentious. One is the Kibera High Rise project of the National Housing Corporation (NHC) of the early 1990s (bordering Soweto), in which all the units, originally intended for Kibera's slum dwellers were allocated and/or traded to the middle class. The targeting problem in this project was due to high-level corruption beyond the control of the NHC (Sudi et al., personal communication). However, what enabled this corruption was the fact that the housing units were planned to middle-class standards from the outset. Kibera residents are aware of this same danger with the Kibera-Soweto pilot project plan (COHRE, 2005b).

The other project resembling the Kibera-Soweto approach and typology is the second phase of the Pumwani-Majengo slum redevelopment, also of the NHC. The slum dwellers who are allocated the two-bedroomed units will finance their unsubsidized mortgage repayments of K.Shs 11,000 by renting out the two bedrooms to other households at K.Shs 4000 each (at the time of this research, October/November 2005, US$1 converted into K.Shs 69). Officially therefore, single-room tenant households are to finance the asset accumulation of a few households selected for home-ownership. The remaining mortgage repayment of K.Shs 3000 is far out of reach of the slum tenants, whose slum rents are in the order of K.Shs 450–500. Though the financial arrangements for the Kibera-Soweto redevelopment are not finalized, the mortgage payments (presumably subsidized) are to be considerably lower. However, the official approach is still to achieve affordability by imposing on the home-owning households the letting of two out of three bed/living rooms in the unit.

In a deeply corrupt system of land allocation and profit extraction over the decades, 80 per cent of Kibera's residents are tenants of illegal structure owners (Olima and Karirah-Gitau, 2000). The fear of tenants is that the slum redevelopment (officially referred to as 'slum upgrading') will lead to their displacement, due to non-affordability and corrupt unit allocation (COHRE, 2005b).

The extent to which the slum redevelopment approach is officially promoted in Kenya is exemplified in the following statement in a pamphlet of the NHC (2005), directed at the public:

> The main lesson learned from this project [Pumwani-Majengo 'Slum' Redevelopment] is that it is possible to remove or get rid of slums by redeveloping rather than the concept of upgrading which only postpones the problem. The challenge however is that a source of cheap or subsidised finance must be identified to kick start the programme. (extract taken from pamphlet)

Acknowledging Fear: The Importance of Predicting Outcomes of Slum Improvement Initiatives

In the slums of Nairobi most residents are tenants. Besides the economic activity of landlordism, water vending and entrepreneurial garbage collection, the slums are commonly referred to as large open-air markets. It is impossible to understand from the outside the complexity of economic interests linked to the slum environment. These interests range from exploitative to entrepreneurial to survivalist. Given this complexity, one cannot accurately foresee from outside how an intervention will impact on communities, households and individuals, their income generation and their access to basic services. Yet, in the context of deprivation, vulnerability and fragile livelihoods, it is important to predict the impact an intervention will have. Providing free access to water will remove the livelihoods of established water sellers, who have laid out considerable amounts of capital (connection fees, deposit, materials and labour) to install their commercial water taps. Improving infrastructure may have the effect of increasing rent speculation.

People living in slums, and whose economic stakes are linked to the housing and service delivery situation in the slums, are able to predict the impact that a public intervention may have on their economic standing. These predictions usually manifest themselves in fear. NGO staff working close to the ground, thus in conversation with the residents about their fears, may also articulate accurate predictions. In the Kibera-Soweto slum upgrading pilot, residents reflecting on their own experience express fears about the future – loss of affordable shelter and displacement from sources of livelihood, schooling and other social facilities (Staff of Christ the King Catholic Centre, Kibera, personal communication).

An analysis of the wider situation of access to housing and services in Kenyan cities confirms the basis of slum dwellers' fears. Service delivery backlogs in Kenyan cities are so large that even the middle class is affected. According to the 2003 Kenya Demographic and Health Survey, only 65 per cent of Nairobi's households have access to a consistent source of water, 66.5 per cent have access to waterborne sewerage, while only 2.9 per cent are reached by municipal refuse collection. Further, only 10.4 per cent own the structures they inhabit, and 84.7 per cent rent or lease (Central Bureau of Statistics, 2004). Targeting resource allocation for service delivery and home-ownership exclusively at slum dwellers therefore unleashes intense competition for this improvement, soon displacing the original beneficiaries through cash offers from the better-off. These offers seem attractive, but are seldom sufficient to secure a better living elsewhere. By default, such intervention creates customers for structure owners and water sellers in other areas – expanding or newly emerging slums. Slum intervention must entail realistic means to prevent this from happening or must provide means for the slum dwellers to exit their slum by moving into more adequate forms of affordable housing rather than moving to new slums. It is safe to predict that the slum, as a form of rental accommodation in Nairobi, will only disappear when demand for affordable housing is met more appropriately or more socially, or when the tenant clientele no longer demands units at this level of affordability.

The Challenge of Targeting Slum Upgrading in a Distorted Housing Market

Nairobi's housing market, in which 84.7 per cent of households rent, provides various levels of rental housing, from middle-class apartments (mostly exceeding permitted plot coverage or building height), through multi-storey rooming (up to seven floors above ground in well located areas such as Mathare Valley and former site and service areas such as Dandora) to single-storey wattle and daub rooming in slums. Within the housing affordability ladder for Nairobi (see Table 1), the only accommodation of which the rents are comparable or even below those of rooms in the slums is in council housing. This accommodation, however, is allocated through political patronage and is not accessible to slum dwellers. The next best accommodation in Nairobi, though still largely unauthorized, is in the extremely dense multi-storey rooming districts. However, rents for single rooms in multi-storey buildings with shared toilets and washing facilities on each floor are at least three times those for rooms in a slum. Therefore, a move out of a slum room into non-slum accommodation involves a tripling of rental expenditure.

In one of Nairobi's multi-storey rooming districts, Huruma (north of Juja Road in Mathare Valley), tenants report that at any given point in time there are many vacant rooms to let (Huruma tenants, personal communication). While indicating a high turn-over within the multi-storey rooming market, it also suggests that if slum dwellers had the financial means, many of them would be absorbed into this market. Vacancies in the multi-storey rooming market give relatively sound evidence, contrary to what is argued by those in support of the Kibera-Soweto plans to redevelop the slum with two-bedroom units (officials of government and UN-Habitat, personal communication), that Kibera residents do not have the financial means to pay more than their current rent for housing. One can safely assume those who have the means to move from slums into

Table 1
Nairobi's ladder of housing affordability, based on my interviews with tenants, agents, landlords and officials in/about selected parts of Nairobi's East in September/October 2005

Monthly rents/payment	Description of housing unit	Services and service charges
K.Shs 400–500	Wattle and daub/tin/timber room in Kibera	No municipal provision of water and electricity. Water vending
K.Shs 450	Two-bedroomed council flat in Embakasi	Water and electricity provided but not included in rent
K.Shs 1800–2000	'Single' room in a multi-storey tenement in Huruma, Mathare Valley	8–14 rooms/floor sharing toilet and wash cubicle. Rationed electricity and communal water access included in rent (landlords estimate that water and electricity costs per unit are K.Shs 500–600, which is deducted from their rental income)
The Rent Restriction Act (Chapter 296 of 1982) applies to units with rents up to K.Shs 2500		
K.Shs 3000	Remaining mortgage payment for two-bedroomed flat in the Pumwani-Majengo slum redevelopment, if the two bedrooms are rented out at K.Shs 4000 each and the kitchen and toilet/shower shared	Water and electricity provided but not included in the mortgage payment
K.Shs 3600–4000	Two single rooms with connecting door in a multi-storey tenement in Huruma, Mathare Valley	4–12 units/floor sharing toilet and wash cubicle. Rationed electricity and communal water access included in rent
K.Shs 4000	Room with shared toilet and kitchen in shared three-roomed flat in Phase 2 of the National Housing Corporation's Pumwani-Majengo slum redevelopment project. This rent is paid to the home ownership beneficiary to finance the mortgage repayments	Water and electricity provided but not included in the rent
K.Shs 5000	Self-contained bed-sitter in multi-storey tenement in Umoja	Water and electricity provided but not included in the rent
K.Shs 5500	Self-contained 'seven-seater' (one room the size of two rooms, with toilets/shower) in Eastleigh	Water and electricity provided but not included in the rent
K.Shs 7000	One-bedroomed flat in Umoja	Water and electricity provided but not included in the rent
K.Shs 8500	Two-bedroomed flat in Umoja	Water and electricity provided but not included in the rent
K.Shs 11,000	Monthly mortgage payment for two-bedroomed units in the Phase 2 of the NHC Pumwani-Majengo slum redevelopment project (water and electricity not included)	Water and electricity provided but not included in the mortgage payment

Note. The exchange rate at the time was K. Shs 69 to US$1.

multi-storey rooming can and do make the move, meaning that they need not be catered for through slum redevelopment. In the slums, those who manage to move up the housing ladder are quickly replaced by other poor households, and it is at their affordability level that slum upgrading must be targeted.

The only multi-storey tenements that may be within reach of poor slum dwellers, thus providing a route out of the slum without an increase in housing expenditure, are those that have been badly neglected by their landlords or have had their water supply cut off due to water debt accumulated by the landlord. These landlords are eventually forced to lower the rents as their former tenants are attracted to newer and better serviced tenement buildings – new investments continue to be made in this form of housing. Neglected multi-storey tenements eventually border on 'slum' conditions: inadequate access to water and sanitation, poor quality of housing, overcrowding and insecurity of tenure (UN-Habitat, 2003b).

Instead of improving the lives of slum dwellers by enabling access to adequate housing, poorly targeted slum upgrading improves the lives of the better-off and displaces the original residents into expanding or newly forming slums. Such intervention therefore plays into the hands of structure owners illegally investing in slums. It may also play into the hands of negligent landlords of decaying multi-storey tenements. While displacing tenants into inadequate housing, slum redevelopment that provides home-ownership of two-bedroomed (or three-roomed) units unintentionally (or, as slum dwellers suspect, perhaps not so unintentionally) attracts middle-class households who otherwise rent similar units from private landlords in areas like Umoja, or attracts richer individuals who purchase these units as an investment and rent them to the middle class.

If slum upgrading is to improve the lives of slum dwellers, reduce slums and prevent the formation of new slums, then it needs to outmanoeuvre two interested parties: first, the existing and prospective landlords at the bottom end of the market, who are keen to take on tenants in their inadequate structures; and second, lower middle-class households who are tenants and have few prospects for acquiring home-ownership other than by buying out the beneficiaries of slum upgrading (and site and service) projects intended for the poor. In the absence of pensions and other security for this class, their motivation to own property may be for future security. They too may intend to extract rent from units they own rather than create an owned 'home' for themselves in the city.

Housing Rights in the Upgrading of Commercialized Slums

The Committee on Economic, Social and Cultural Rights, General Comment 4 (CESCR, 1991), identifies seven elements of the right to housing:

1. security of tenure;
2. access to services and infrastructure;
3. affordability;

4. habitability;
5. physical accessibility;
6. location;
7. cultural adequacy.

Slum upgrading should achieve a balanced realization of all these seven elements. However, in the context of intense commercialization of basic necessities within slums and a distorted wider housing market, as is the case in Nairobi, conventional physical slum upgrading and regularization does not lead to the realization of these elements. As *habitability* and *physical accessibility* of housing units and *access to services and infrastructure* are improved through slum upgrading or redevelopment, *tenure security* is undermined by the market competition for these improvements. The market undermines *affordability* and displaces slum dwellers to less convenient locations. Displacement means that both *affordability* and *tenure security* have been undermined and access to convenient *location* is lost.

The assumption usually underpinning the land regularization component of conventional slum upgrading is that tenure is secured to the greatest extent through home ownership. It is indeed the most sophisticated form of property titling, ensuring the greatest enjoyment of rights, including also the right to trade at will. In a context where 84.7 per cent of households rent, mostly in a system of large-scale landlordism, intense competition results for any freehold titling of property. Therefore titled land for low-income housing (be it in upgrading or sites and services projects) is soon traded to the better-off. In this context, home ownership cannot be considered a secure form of tenure for the poor.

Cultural adequacy can play an important role in defining slum upgrading approaches that do not undermine tenure security, affordability and location. Cultural adequacy is closely associated to habitability. Official standards of habitability are usually determined by western, 'urban' norms. Slum demolition (often linked to plans for slum redevelopment), in many cases is officially justified on the basis of 'inhabitability' of the existing slum. UN-Habitat (2003a: 153) notes that demolition on this basis 'normally creates more problems than it solves'. The rural-to-urban migration process, which leads most households into urban slums, inevitably involves an assimilation of elements of western culture. However, the social acceptability of wattle and daub rooms in Kenya's urban slums, with no water and sanitation, is to some extent underpinned by rural norms. In this context, non-western housing norms such as rooming (to decent standards) and shared access to water and sanitation can protect upgraded environments from market pressures, by ensuring that the housing units are not desirable to those with western demands, who command more resources and can buy out the original slum dwellers.

The enormous multi-storey rooming market that exists above slum rooming on Nairobi's housing affordability ladder also points to the current social acceptance, thus 'habitability', of single rooms. Two-roomed units (with communal access to toilet and washing facilities) have not taken off at scale in the tenement market.

In Huruma, many single room tenements provide interconnecting doors between pairs of rooms to allow tenant households the choice of renting one or two rooms. However, most tenants do not make use of this option.

Single-roomed units with communal facilities have been provided in official housing projects in Nairobi. The greenfield site and service development practice in Nairobi has sought to respond to the massive market pressures for private rental investment, a frequent reference point being 'what went wrong' in the former site and service area Dandora, funded through the World Bank's Urban I project and completed in 1977 (Shihembetsa, 1989). This project targeted home-ownership of 100–160m^2 sites at the poor, but has to a large extent transformed into a multi-storey tenement district with profits extracted by middle- to high-income landlords residing elsewhere. Conceptualized to encourage small-scale landlordism, the home-ownership beneficiaries of Dandora were to finance their subsidized mortgage payment by renting out rooms (Syagga, personal communication). However, qualification criteria meant that many of the beneficiaries were so poor that while servicing the mortgage, they did not have the resources even to build themselves a room on their serviced site (Shihembetsa, 1989). With no prospects of ever generating finance through their property, beneficiaries sold the serviced sites to richer individuals who had the capital not only to build the permitted number of rooms, but to multiply these vertically up to seven floors above ground.

In a subsequent attempt at more successful targeting, Nairobi planners conceptualized smaller, communal units, therefore less attractive to the middle class and less viable for large scale multi-storey rental investment (Wanjohi Consulting Engineers et al., 1983). The Umoja II estate south of Dandora included 'condominiums', six one-roomed units registered on an individual purchase basis, surrounding a communal courtyard with communal kitchen and wash space (Loeckx, 1989). While beneficiaries find that aspects of this concept (e.g. positioning of the collective cooking area) are not resolved in a culturally sensitive manner, this project nevertheless was considered habitable and relatively successfully targeted in its early years. However, even in the condominiums of Umoja II, market pressures are such that investment in multi-storey tenements is gradually reshaping this development. It appears that despite the small size of the units, the form of titling encouraged rent speculation and trade of the units.

Given these well-analysed and much-debated experiences in low cost greenfield development in Nairobi, it must be questioned why the planners for the Kibera-Soweto slum 'upgrading' (based at the UN-Habitat head-office in Nairobi) insist on inappropriate standards of habitability, conceptualizing two-bedroomed fully tradable units to middle class standards. One cannot blame Kibera residents for assuming that the project is deliberately attempting to create housing for the middle class and deprive current Kibera residents of their right to a convenient location in Nairobi (Staff of Christ the King Catholic Centre, Kibera, personal communication).

Habitability as a concept is applied in the defence of slums when demolition and redevelopment threaten. People live in slums, therefore slums, as inadequate as they may be, are habitable, and often more habitable/affordable/convenient than the alternative that is provided through the redevelopment. When threatened with eviction, people defend their slum environments. Often the eviction order is granted by the court on the basis of habitability standards, for example in South Africa, with reference to health and building safety laws (COHRE, 2005a). In the massive slum clearance programmes of the past (in the West), an area being officially declared a 'slum' meant it was beyond repair/restoration, therefore justifying a cycle of eviction, demolition ('slum clearance') and redevelopment, always associated with gentrification or displacement of the original population. Slum improvement as a concept (as opposed to slum redevelopment) emerged out of a struggle by slum tenants for recognition that these environments were indeed habitable and could be improved (Bodenschatz, 1987).

Tenancy, in particular exploitative large-scale landlordism in dense rooming districts, is a capitalist social relationship that developed in the mid to late 19th century in the West in response to massive housing demand and cultural assimilation, both associated with urbanization and industrialization (Harvey, 1985). In Nairobi, it has its roots in the first decade of the 20th century, when renting of rooms emerged in Pangani, in the absence of any other affordable housing for Africans (Hirst and Lamba, 1994). After independence, rooming flourished in the well located Mathare Valley, with private housing companies investing in this form of housing at scale (Etherton, 1971) setting the trend for large-scale landlordism, which predominantly provides rooming for the poor. The concept of rights has as important role to play in Nairobi today as in the exploitative capitalist context of the West, in which the concept first emerged.

Important Keys for Realizing Housing Rights through Slum Upgrading in a Distorted Market

Reduced Minimum Housing Standards

Within the current housing market in Kenyan cities, an affordable housing alternative to wattle and daub slum rooming does not exist. An affordable alternative cannot be created by adhering to the current Kenyan government's minimum standard of two habitable rooms (Ministry of Roads, Public Works and Housing, 2003), as market pressures simply do not permit a poor family to inhabit two rooms. In excess of minimum standards, slum 'upgrading' or redevelopment attempts to create home ownership of two-bedroomed units for former slum dwellers, then encourages them to let two rooms while occupying the third themselves – an official circumvention of official standards of habitability. Examples mentioned earlier are the Pumwani-Majengo slum redevelopment project (NHC, 2005) and the plans for redevelopment (or so-called 'upgrading') of the Soweto village of Kibera. Having to share a two-bedroomed unit with two other households may be far less desirable than what is readily available in the unregulated multi-storey housing market for the same price: two-roomed units, with communal sanitation provided for several parties; and slightly more expensive self-contained bed-sitters. These options are as inaccessible to slum dwellers as are the current mortgage repayments for two-bedroomed units (Phase 2 of the Pumwani-Majengo project), even if the two bedrooms are let at K.Shs 4000 each (see Table 1).

The private rents are determined by an unregulated market, in which landlords expect to make returns in as little as three years. Rents could be lower, if the expectations on return on investment were lower. However, this is linked to the type of finance (mostly non-mortgage) that investors mobilize for this construction. The lower down in the market, the more short-term the investment perspective of the landlord, and the less willing he/she is to spend on maintenance (Madete, personal communication). The same reasoning is reflected in the building design, with many distortions in access, light and ventilation, all restricting habitability by western standards. During interviews in Huruma's tenements, tenants of dark, unventilated rooms, to our surprise, voiced that they did not mind paying the same rent as others were paying for rooms with windows to the outside. Tenants also did not complain about flat-rate rentals per m^2 irrespective of the floor (up to eight floors without lifts), though the ground and first floors were considered less desirable due to frequent theft.

Certainly, some form of regulation to improve the habitability and safety of Huruma's rooming tenements would be welcomed by the tenants, provided this did not lead to an increase in rents. Dark corridors and stairwells, narrow-access balconies and sometimes rusted balustrades bulging with washing all present a danger to those spending most of their time in the tenements – women and children.

It is important to note that an adaptive standard for 'multi-purpose room occupancy' was developed in Kenya as part of Code 92 (Interministerial Task Force, 1992: 4), and gazetted in 1995 as *Code 95*. The standard applying to a multi-purpose room (i.e. single-room occupancy) is $10.5m^2$ with a 'minimal internal dimension of 2.1m' (Interministerial Task Force, 1992: 4). Further standards are prescribed for the communal sanitary, washing and cooking facilities. These adaptive standards have been applied to single-storey tenements in several zones in the town of Nakuru (Agevi, personal communication). However, it appears that the Nairobi City Council has not sought to make use of this Code (Kagochi, personal communication), nor has the Ministry of Lands and Housing in the Kenyan Slum Upgrading Programme. *Code 95* did not anticipate multi-storey rooming, therefore does not contain any standards for the number of rooms that should be provided in one building, standards for the access balconies, balustrades, corridors, air-wells, staircases and so on. However, *Code 95* and its draft, 'Code 92', make provision for a Building Code Review Board, to 'keep under review all the planning and building bylaws in Kenya to ensure their relevance and applicability to the development of affordable, safe and sanitary housing and other urban facilities' (Interministerial Task Force, 1992: 44). This review board was never constituted (Agevi, personal communication).

However, it could play an important role in determining appropriate, non-displacing standards of habitability for slum upgrading.

A Role for Social Actors

Within the current low-income housing market, council housing stock plays no regulating role. Instead, it represents an additional distortion to the housing market, as large units are rented far below market rates to un-needy households (Oyugi, personal communication). Entitlement to these units is through illegal inheritance of occupation rights and political patronage, and municipal officials fear that councillors will resist any substantial increase in rents. Nairobi City Council's entire stock, including its units that are managed by the NHC, comprises only 18,235 units (Oyugi, personal communication), roughly the amount of households residing in the Kibera-Soweto pilot project area. Council housing densities are extremely low, therefore holding opportunities for multi-storey densification, and for providing the optimally designed single-room/two-roomed/bed-sitter housing options suggested earlier.

Should the Nairobi City Council or any other public institution resume the large-scale construction of public rental housing with small units, it would have an important advantage over the profit-seeking multi-storey tenement landlord: it need not make its returns in three years (Shihembetsa, personal communication). Therefore, without the political patronage that currently leads to low rents in public housing, rents for decently maintained one-roomed, two-roomed and bed-sitter units could be below those currently provided by the market, and if provided at sufficient scale, could have a moderating effect on the market (Shihembetsa, personal communication). In order for such housing provision to impact on the slum rental market (i.e. reduce the speculative opportunities for wattle and daub, single-storey slum structure owners), rents for the new units would have to be the same as rents for the slum rooms. This will require subsidization, as well as careful protection against market invasion, as one can reasonably predict that even at this low end, competition for single rooms will be from people who are economically better off than current slum dwellers.

In the context of extreme commercialization of housing, the renewed resumption of the council's role as a landlord with social responsibility, that is, a 'social landlord', is more appropriate than any creation (at public cost) of new speculative opportunities through 'home' ownership, which in the Kenyan housing market context means opportunities for speculation and landlordism. A further role for local government lies in effective rent restriction and arbitration. Kenya's current Rent Restriction Act (Chapter 296 of 1982) applies to rents up to K.Shs 2500, thus applying to slum tenancy, Council flats and multi-storey rooming tenements (see Table 1). There are calls to make the act applicable to rents up to K.Shs 5000 (Langford, personal communication), which would extend to the lower end of the self-contained unit market (see Table 1). Rather than rigid rent control, the act provides for a tribunal that has discretionary powers in determining rents on a case-by-case basis. However, calls have been made for decentralization of the rent tribunal 'to allow for local authority jurisdictional landlord–tenant arbitration bodies' (Mwangi, 1997: 141–59, cited in UN-Habitat, 2003a: 165).

Beyond the City Council's role as social landlord and a role for 'local authority jurisdictional landlord–tenant arbitration bodies', other social actors/institutions in the tenement market should be encouraged. Tenants in Huruma's rooming tenements mentioned that they had heard of 'good' or 'God-fearing' landlords. The estate agents interviewed mentioned that half their landlord clients are in fact landladies (landladies appear to be more inclined to make use of agents, therefore this does not mean that half of all landlords are women), and that these are far more concerned about their stock than their male counterparts. While estate agents tasked with managing rental stock for landlords have a reputation of being harsh, those that were willing to be interviewed appeared to have some social conscience. These more ethical actors should be sought out, encouraged through public awards and competitions, or through best (and worst) practice reports in the media. This would encourage a more effective demand from the tenants for a fair and habitable deal. In addition, NGOs and philanthropists should be encouraged to set up not-for-profit tenements, model tenements, demonstrating good practice, setting trends and moderating the market, as was attempted in 19th- and early 20th-century tenement cities of the West (Day, 1999).

Reducing Commercialization

Encouraging social landlords and moderating the tenement market through large-scale public housing could be regarded as necessary steps in correcting the distorted urban housing market in Nairobi, but it will take several years if not decades before they have a noticeable effect for the current slum population. In the interim, water, sanitation and shelter needs in Nairobi's slums are urgent and therefore call for immediate intervention. Particular challenges are posed by the extreme levels of commercialization of basic needs provision in Kenya. In contrast, in the stronger rights- and entitlement-based context of South Africa, commercial basic-needs provision such as water vending is scarce in urban informal settlements. Public standpipes, while often vandalized, are considered a collective resource that is not exploited for profit (similarly, shack tenancy is not dominant in South Africa's informal settlements, though re-emerging gradually). In Kenya, the existence of water vendors, often encouraged by donor-funded initiatives, is an enterprising response to a poorly functioning government. However, these enterprises, and the livelihoods they provide, present a barrier or disincentive to the expansion of the public water supply system. To a large extent, Nairobi's slums are maintained or perpetuated by a complex network of commercial interests, public sector unwillingness to curtail these and often corruption (e.g. in the allocation and protection of the commercial interests) as well as positive mutual support among slum dwellers (e.g. customer loyalty to a particular water vendor).

One option for slum improvement is to begin by reducing the number of profit-extracting parties or stakeholders, so that the beneficiaries of public expenditure can be those suffering violation of their rights to water, sanitation and shelter, that is, the slum dwellers. In the following paragraphs, this option is explored. While it has to some extent (and with varying success) informed slum upgrading initiatives in the past (e.g. Mathare 4A and Voi), it does not appear to be present in the current dominant debates on the upgrading of Kenya's urban slums. With reference to the experience of well targeted, though not always participatory, service delivery commitments in democratic South Africa, this option assumes public services can be expanded and made directly accessible to the poorest communities in a developing world context. Possible steps towards achieving this are spelt out in the following sections.

As a first step for Nairobi's slums, with immediate effect and at very little cost, the patronage by provincial officials (referred to as 'chiefs') in corruptly allocating land and extracting fees for improvements made by structure owners could be stopped. One year after the launch of the KENSUP pilot project, this form of patronage was as rampant in Kibera as before (Staff of Christ the King Catholic Centre, Kibera, personal communication). The 'chiefs'' interests are illegitimate and unlawful and they would need no compensation for loss of livelihood. This intervention would not require resources, but instead the level of political will that was present in various anti-corruption initiatives by the new Kenyan government in the past three years.

Any further steps at reducing opportunities for profit extraction should be discussed in detail with the slum dwellers and their representatives, in order to establish whether the intended results can be predicted. Established water sellers could be assisted in investing their compensation into other businesses, so as not to lose their livelihoods. They may also play a remunerated role in the management of the public water taps, though it should then be ensured that water selling is not resumed.

As a next important step, structure owners could be addressed. Structure owners in the slums do not legally own the land; profit-extracting private landlordism could be eliminated from the slums. Those living in the slum and who have invested meagre life savings in small-scale rental with relative legitimacy could be identified, compensated fairly and encouraged to invest in other income-generating opportunities. 'Legitimate' structure owners should be satisfied that their economic stakes will be fairly protected or compensated. This could be ensured by issuing licences for alternative businesses or assisting several structure owners to pool their capital and invest instead in more expensive, authorized tenements elsewhere. A loan mechanism for this could enable their transition from cut-throat slum landlords to respectable investors/suppliers of adequate rental housing.

However, a detailed identification of the structure owners would need to differentiate between those who deserve protection and compensation and those who have other stable investments, therefore illegitimately and unethically extracting profit from slums (see the structure owner typology identified in Syagga et al., 2002). One first step in differentiating between structure owners will be to identify those that live in better housing outside the slum – they, presumably, are unethically extracting profit from the slums.

No structure owners should be given the expectation that their economic stakes will be increased or that new opportunities for profit extraction (for themselves or others) will arise through the upgrading. This would have to be articulated very strongly, so as to ensure that newcomers with economic interests do not insert themselves into the already complex slum market. Councillors could be trained (as part of a human rights awareness) not to attempt building political or financial capital from making such promises.

In this scenario, once structure owners are eliminated from the slum environment and/or have successfully reinvested in other businesses, the City Council or a trust could step in as management agent. This suggestion assumes that the corruption that has been prevalent in Kenya's public institutions can be eradicated – several visible initiatives signal optimism on this front. Current slum tenants could become lease, permit or certificate holders with tenure security, and could be required to make affordable lease payments to the management agent, which would use these to make immediate repairs to the most inhabitable structures, a first step to noticeably improving slum dwellers' lives. However, tenants in parts of Kibera (e.g. Gatwekera Village) under encouragement from their Councillor, have already stopped paying rent. In short-sighted political self-interest, the Councillor has promised these tenants slum upgrading with free housing (Staff of Christ the King Catholic Centre, Kibera, personal communication). The tenants justify non-payment on the basis that structure owners have benefited in the past and that it is now the tenants' turn to benefit from the slum upgrading (Staff of Christ the King Catholic Centre, Kibera, personal communication). This form of misinformation and unrealistic entitlement should be avoided. Tenants should be ensured that they will benefit from the slum upgrading, not by ceasing to pay rents, but by receiving improved access to water and sanitation, electricity and gradually improved housing units, and by being included in a truly participatory process. One could advise tenants that if they are to be taken seriously in their insistence on affordable housing through the slum upgrading, they should continue demonstrating what is affordable to them, by making moderate payments, and insisting that these be converted into immediate improvements to their lives in the slum.

If economic stakeholders in the provision of basic necessities can be transformed/reduced to (a) social landlord, local government or associated agencies, (b) tenants or lease holders (many of whom also have modest economic stakes in the slums' informal trade) and (c) pragmatic, philanthropic and human rights NGOs, a participatory upgrading process can unfold and progress towards an improved situation for slum dwellers. The process and end product should be negotiated on a small scale between tenants/lease holders and their social landlord/management agent.

A relatively successful example of such a participatory process, which successfully eliminated existing structure-owner interests, is the Pamoja Trust savings and housing project (the 'Muungano Akiba Mashinani Approach') in a single-storey slum area in the eastern section of Huruma (Pamoja Trust, 2005). As a result of a participatory decision-making process that involved tenants and resident structure owners, three-storey attached houses with a ground floor space of 23.5m^2 were constructed in 2004, allowing for a density similar to the original slum environment. As single-household occupancy was agreed to by the participants (as opposed to subletting of three-roomed units in NHC's Pumwani-Majengo project), the rooms were made accessible through an intimate internal staircase leading off the downstairs room, saving extremely scarce floor space. The participants, who were/are also all involved in a savings scheme, agreed on an optimal loan repayment period of six years and four months (Pamoja Trust, 2005), according to their affordability levels. However, the economic attraction of landlordism is so present in the consciousness of Nairobi's residents that some of the new home-owners in this project began letting two of their three rooms soon after occupation (Abonyo, personal communication) resulting again in single-room occupation and lack of privacy (which the project sought to eliminate) and in higher densities than anticipated. This raises the question as to whether small-scale landlordism should be permitted in upgraded slums, and whether this can be effectively contained. This decision would depend on the tenure form, which may vary from one settlement to the next, and would require careful consideration of regulatory measures.

Every attempt should be made by the stakeholders of slum upgrading, tenants and former structure owners included, to prevent new forms of commercialization of basic needs provision in the immediate and longer term. This overarching goal would have to be understood collectively as part of a wider process in which the Kenyan government would regain its role and fulfil its duty in relation to adequate access to basic services across its urban environments. However, the inappropriately politicized and unsuccessful process towards a new Kenyan Constitution and Bill of Rights at the time of writing (also see Omenya and Huchzermeyer, 2006) indicates that this would not be an easy task.

Conclusion

Slums do not come about in isolation of the wider land and housing market and its distortions, and likewise cannot be reduced without correcting distortions in this wider market. Reducing Kenya's urban slums would require intervention in the distorted rental market through measures such as relevant and effective regulation of the capital investment made in rental housing, fair and transparent taxation and extraction of revenue from landlords, and by building or enabling an effective social security/pension system as a secure alternative to landlordism. Council-owned land and housing stock could be utilized effectively towards moderating the rental market, while new land subdivisions intended for the poor should create housing that cannot easily be traded to the middle class and be transformed into rental stock, therefore consciously discouraging landlordism and the attraction of new tenant households into the already densely developed and occupied areas.

Housing units that are least suitable for landlordism, sub-letting, or down raiding (selling to households of a higher income than the intented beneficiaries) would be single roomed units. In a context where single-room rents in multi-storey tenements are three times those of slum rooms, it can be anticipated that households that are better-off than slum residents would see it as their economic entitlement to benefit from any housing units that are larger than a single room, even if provided through slum upgrading and intended for slum residents. While the minimum standard for low-cost housing, as per the Kenyan Housing Policy (Ministry of Roads, Public Works and Housing, 2003) is two habitable rooms, extendable one-roomed units have been officially provided in greenfield condominium arrangements, setting a precedent for what may be considered in slum improvement initiatives.

In Nairobi's housing market, slum rooms are at the bottom rung of the housing ladder. The next rung – rooms in multi-storey tenements, are out of their reach. As part of raising housing rights awareness among slum dwellers, they could be encouraged to demand the protection of existing slum housing from new market opportunities created by slum upgrading, making reference to the rungs of the housing affordability ladder that are out of their reach. They could demand that slum upgrading is planned from a realistic understanding of slum tenants' position in the wider rental/housing market, and not planned from the seemingly corrupt position that speaks of participatory slum upgrading to the naïve (donors included), while channelling new market opportunities to a bribe-willing middle class.

As housing rights awareness is raised among slum dwellers, the same could occur within government. Officials and Councillors could be encouraged to stamp out the enemies of human rights within their own ranks, as argued by Kenyan human rights lawyer Opiata (2005) – those continuing to allocate land illegally and those taking bribes for the unfair protection of economic stakes that depend on government inefficiency (e.g. non-action by government in provision of water, sanitation or social housing). Housing rights activists and other social actors could emerge among slum-dwelling communities, NGOs, corporates and governments. They should also be encouraged and developed among landladies, landlords and property managers.

If all positive actors in slum upgrading understood the relationship between the local land/housing/tenement market and the perpetuation of slums, and the challenges this poses for the realization of the right to housing, a stronger effort could be made to eliminate the negative actors from slum upgrading processes. Those positively involved in slum upgrading, be they slum dwellers, officials, NGO staff, donors or consultants, could be encouraged to identify themselves consciously as social actors. A clear framework that gives meaning to the right to housing in the distorted urban land, housing and basic services market of Kenya could assist in developing the social actors that are required to achieve progress towards meeting the Millennium Development Goals' target of improving the lives of a large number of slum dwellers, without supplying displaced clientele for the formation of new slums.

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