



TOWARDS A POLICY ON EVICTIONS AND RESETTLEMENT

A Policy Brief

This Policy Brief considers and is informed by Vision 2030, Agenda 2063, the new Constitutional and legal order foisted by the Government of Kenya as the fulcrum of development. In the recent past, a failure to abide by the legal safeguards has brought with it devastating consequences for the lives and well-being of persons residing upon or doing business in the areas earmarked for infrastructural development. At a broader level, they subjugate governance efforts and the Rule of Law and, most poignantly, perpetuate the very problems that the development agenda seeks to ameliorate in the first place. Infrastructural development goes beyond building of roads, bridges, and highways and impact social justice. This brief offers policy recommendations for various stakeholders towards formulation and implementation of a robust social-justice-centred policy on evictions and resettlement.

INTRODUCTION

Infrastructural development in Kenya today is being promoted by parliamentary legislation and by a number of different strategies initiated by the Government of Kenya. There are two easily identifiable components of these projects: an economic component and a social component. The economic logic behind infrastructural development strategies currently prevailing in Kenya encourages development which is funded jointly by the government and the private sector, through loans, grants and donations from our development partners. However, this economic logic does not take into account the underlying social problems with which they are associated.

This situation is exacerbated by lack of a common and universally acceptable conception of infrastructural development. While it has conventionally been defined as a process of rehabilitation and improvement of the existing basic physical and organizational structures and needed for the operation of a society or enterprise, the popular conceptualization does take into account the social impact of these developments.

A holistic and “unified” approach to infrastructural development that integrates the social, environmental and economic dimensions in a transformative development processes has been a particular challenge in Kenya. This is demonstrated in the major ongoing projects such as road construction and expansion (Mombasa-Nairobi Highway Project, Rironi-Zambezi Interchange), slum upgrading efforts (Kibera, Soweto and

Mathare) and the establishment of the Standard Gauge Railway. Enormous implications abound in regards to the wide range of factors that impact complex human/nature interactions and both social and environmental change, including the role of social norms, institutions and actors, power asymmetries and technology. Regrettably, little has been done to explore the social consequences of the implementation of this development agenda, with particularity to the major projects mentioned above.

With these have come various enquiries as to the beneficiaries of these development projects. The conventional response has invariably borrowed from what the development partners have put forward as the ultimate objective of these projects: improving the business environment in order to attract private investment; investment in infrastructure (transport, energy and urban development); and, improving delivery in public services (especially for the poor). However, little effort has been expended in ameliorating the negative social impact on the latter category.

There is therefore a need for forging a platform for creating awareness and enhancing dialogue that shifts the response from confrontation to engagement among stakeholders in the road to achieving broad-based, equitable and sustainable solutions to the challenge of displacement and dislocations in favour of infrastructural development.

Despite perfunctory official commitments to upholding human rights during evictions and resettlements, the reality in implementation is often diffuse and disjointed. Further, efforts channeled in striking this balance are largely undocumented, or even improperly thought out.

The trifling references and adherence to the Constitutional and legal provisions on socio-economic rights and Land Laws (Amendment) Act. No. 28 of 2016 during evictions and resettlement point to the absence of clear policy or regulatory frameworks that place recognition and respect for social justice at the centre of execution of built infrastructural development. The result is continued subjugation of socio-economic rights in pursuit of the prosperity agenda.

POLICY OPTIONS AND RECOMMENDATIONS

The following policy options would form a basis for formulation and eventual implementation of a robust policy on evictions and resettlement.

Address the challenge of land tenure ownership and possession, especially with regard to the majority non-Titled

The greatest challenge to the dwellers of informal, spontaneous, or squatter settlements is the absence of security of tenure and planning. Many Kenyans live as squatters, in slums and other squalid places, which in turn are impediments to proper land planning and development. There is need for a broad-based national inquiry to ascertain the prevailing land tenure systems in all the informal settlements in Kenya which in turn would inform creation of alternative and innovative tenure systems that can cater for the interests of the poor in the urban areas and to allow for usage and management in a manner that is equitable, efficient, productive, transparent, secure, cost effective and ecologically sound.

Against this backdrop, it is crucial to invest the necessary resources required to address the negative impacts of resettlement and firmly anchor resettlement processes into Kenya's development and poverty reduction agenda. As urbanization increases, the need for effective and equitable models of enumeration of the landless and of resettlement becomes more urgent.

Enhance the dispute resolution mechanisms already in place to deliver social justice in relation to grievances in regards to compensation, ownership, dispossession and dislocation?

A nation's judicial system is a key indicator of its level of democracy, rule of law and respect for human rights. It must rely heavily on the involvement of all stakeholders. The public is the key stakeholder in that regard and therefore the importance of its participation in any judicial process can never be over emphasized. There is need to establish appropriate institutions for dispute resolution and access to justice within communities with clear operational procedures, mechanisms for inclusion of community members in decision-making and clear record keeping to ensure transparency and the development of guiding rules for making decisions on questions relating to compensation, evictions and resettlement.

The use of Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to reduce the number of cases that end up in the court system and delayed justice should be encouraged.

Additionally, there is need for structured capacity building initiatives for quasi-judicial officers and judicial officers in relation to socio-economic rights, and especially in dealing with claims relating to evictions and resettlement.

Within the context of policy formulation, provide a structured framework for socially inclusive infrastructural development

At the very minimum, substantive policy interventions should entail the following:

1. Requiring the developing entity to undertake consultative and participatory statutory requirements such as environmental and social impact assessment studies;

Reasonable access to the process of formulating and implementing policies, laws and regulations, including approval of development proposals, projects, budgets and granting of permits and establishments of specific performance standards and indicators becomes an imperative on the path to resolving the social inadequacies besetting infrastructural development.

2. Requiring implementation of in-depth qualitative and quantitative public participation in the infrastructural development projects;

Efforts should be trained at creating structures for operationalisation of the Constitutional and legal requirements of public participation in the formulation, planning and implementation of policy on evictions and resettlement.

3. Implementing integrated urban renewal through multi-disciplinary intervention;

Formulate a policy where all dimensions of sustainable development are taken into account at the same time and with the same weight. These include economic prosperity, social balance and a healthy environment. A holistic approach is essential in order to reveal the potential of those affected by infrastructural developments in terms of cultural and architectural qualities, social integration and economic development. Questions relating to demographic challenges, social inequality, social exclusion of specific population groups, a lack of affordable and suitable housing and environmental problems should be addressed within the context of integrated urban development approaches: How can, in the course of this process, population segments and urban neighbourhoods risk isolation from local economic development, the urban labour market and the socio-spatial fabric be involved in the desired development in order to maintain and thus enhance inclusivity?

4. Encouraging public-private partnership;

Across the globe, the attention for public-private partnerships as governance arrangements for development and sustainability is growing. It is expected that these partnerships would contribute to inclusive growth and sustainable economic development and should be pursued with discipline.

Create structures for the operationalisation of the Constitutional and statutory right of access to information and harness the same for utilization in the framework of built infrastructure development

Access to information, a fundamental precept of the Rule of Law is anchored on the logic that governments hold information in trust in behalf of citizens, it follows that citizens have the right of access to the information held by the State. The Constitution of Kenya now recognizes this right, and a disciplined statute has since been enacted to provide a legal framework for the enjoyment of this right. However, the intuitional structures contemplated by the Act are yet to be put in place. There is an urgent need to operationalize Access to Information Act, 2015.

Enhance accountability mechanisms to monitor integrity of the implementers of the projects and enable citizens to demand accountability in the implementation of infrastructural projects

With the Constitutional integration of the idea of accountability in the management of public affairs, the exponential public unaccountability in governance is likely to be ameliorated. Accountability requires that first, people are given certain objectives second, there is a reliable way of assessing whether they have met those objectives and third, consequences exist for both the case in which they have done what they were supposed to do and in the case in which they have not done so.

CONCLUSION

Eviction and resettlement processes can often entail inherent risks of impoverishment and hardship for affected communities. When there is little preparation for an eviction and resettlement procedure; when the community does not have opportunities to participate in decision-making; when legal safeguards are not applied and evictions are forceful and violent; and when services, infrastructure and livelihood options at resettlement sites are insufficient, poverty is augmented. Years after relocation, most families at resettlement sites live in squalor and penury. Conversely, when authorities, the community, civil society and development partners work together to plan a resettlement process, the negative impacts of resettlement are not only mitigated, but the process can lead to improved and sustainable living conditions.



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Pamoja Trust is a non-profit making organization founded in 1999. PT is dedicated to promoting access to land, shelter and basic services for the Urban Poor. The organization takes principled and pragmatic approaches to protection and promotion of the right to the city through advocacy and precedence setting models for problem solving. PT provides social, technical and legal expertise at local community, national and international levels to ensure that urban growth and urbanism adhere to social justice principles and that national and international human rights standards are implemented in favour of the most vulnerable of urban citizens.

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