

PART IV

POLICY AND LEGAL ENVIRONMENT

9. GLOBAL POLICY FRAMEWORK

The Millennium Declaration, which sets the agenda for peace, security and development for the United Nations in the 21st century, General Comment No. 4 of the Committee on Economic Social and Cultural Rights (1991), emphasizes the 'right to live in security, dignity and peace' as the central principle of the "Right to Adequate Housing". Adequate housing includes legal security of tenure, the availability of public goods & services, the availability of environmental goods & services, including water and land, affordability (including access to finance), habitability, accessibility, viable location and cultural appropriateness.

The Millennium Development Goals (MDG's) reflect many of the social and other development goals which address the essential dimensions of poverty and their effects on people's lives by attacking issues related to poverty reduction, health, gender equality, education and environmental sustainability. One of the three targets of Goal 7 "Ensure Environmental Sustainability", target 11 states that: "by 2020 to have achieved a significant improvement in the lives of at least 100 million slum dwellers." This calls for co-ordinated policies and actions relating to slum upgrading, environment, infrastructure development, service deliveries and poverty reduction generally.⁶⁷

In Goal 2 "Eradicate Extreme Poverty and Hunger", the first target is; "Halve, between 1990 and 2015,

the proportion of people whose income is less than 1\$ a day" through:

- Major improvements in urban health care and schools, water and sanitation, and in urban measures to improve maternal and child health.
- More effective community-level responses to HIV/AIDS that focus not only on prevention but also on supporting those who are infected and those who have lost family members.
- More effective measures to reduce urban poverty, with an understanding of how much the scale and depth of urban poverty is understated by the dollar-a-day poverty line currently used to monitor MDG target 1.⁶⁸

Most residents of urban slums live without any form of secure tenure, under constant threat of eviction, which obviates their ability to access credit and constrains their motivation to improve their homes and neighbourhoods. The challenge therefore is to develop new innovative tenure types, which are affordable to the urban poor. Slum areas that are not titled challenge existing land registration and cadastral approaches. The land industry needs to think beyond conventional titling approaches as these will not be able to deliver fast enough or at a suitable scale because they are not affordable to slum dwellers. The legal system of property rights and security of tenure are critical to sustainable approaches of slum upgrading. The transformation of a land administration system is a large undertaking. It normally involves a number of separate agencies, it relates to power and patronage. It requires extensive civil society debate at national and

⁶⁷ See, for instance, United Nations (2004), *World Urbanization Prospects: The 2003 Revision*, United Nations Population Division, Department of Economic and Social Affairs, ST/ESA/SER.A/237, New York.

⁶⁸ The role of local organizations in meeting the MDG's is discussed in more detail in Satterthwaite, David (2005), "Meeting the MDG's in urban areas; the forgotten role of local organizations", *Journal of International Affairs* Vol. 58, No 2, spring

local levels, it is cross-sectoral and considered key to poverty alleviation.

Uganda's performance against the MDG's, is measured within the realm of the Poverty Eradication Action Plan (PEAP), which is Uganda's PRSP framework, which projects that poverty should fall to 28% by 2013 and to 26% by 2015 for all Ugandans⁶⁹. 20% of Kampala's population is below the national poverty line, with a gini-coefficient (income distribution) of 0.45. 52.1% of the population is economically active, while 47.9% of the population is not economically active⁷⁰. The poverty rates in Kampala have been steadily declining in correspondence to the national poverty figures. On MDG 6, Uganda has had significant success on halting the spread of HIV/AIDS and Malaria, with chances that the trends can be reversed if resources continue to be available. In Kampala City the prevalence rate is at a low of 8.1%, the infant mortality rate is slightly lower than the national rate at 83.0 compared to 97.0.⁷¹

On MDG 7, target 10, about ensuring sustainable access to drinking water, UNDP calculates that this implies increasing the overall country water coverage to 62%. Household surveys by Directorate of Water Development and the National Census results confirm a shift from 25.8% in 1992 to 60.9% nationally in 2002. Within this the rural coverage stands at 55.7% and the urban stands at 93.2%. The achievement of this target is on course in urban areas and has to bridge gap for the rural to achieve the national target of 62%. In Kampala City, the current water coverage stands at 52.69% of piped water and 0.56% for boreholes, this performance is close to achieving the MDG target rate, it is expected to improve with the implementation of

the Kampala Urban Water Supply Programme that is covering most of the slum areas.⁷²

On target 11, about improving the lives of slum dwellers, the PEAP asserts that improvements in the land market will result in improved security of tenure for slum dwellers. In this perspective the PEAP does not adequately tackle slum upgrading, but however avails a commendable opportunity for the programme to hinge on poverty eradication objectives. Kampala City Council faces a stiff challenge in achieving target 11 on improving the lives of slum dwellers, because it requires substantive resources to disentangle the land tenure question.

The Global Campaign for Secure Tenure (GCST) is an advocacy instrument of the United Nations designed to promote the rights of the urban poor to participate in processes of settlement upgrading and urban development. The GCST recognizes the need to have a specific rights-based focus, particularly on the principle of gender equality and the recognition of women's rights to land, housing and property as human rights, recognising the central role of the urban poor, especially women, in the success of the GCST. The Campaign identifies the provision of secure tenure as essential for a sustainable shelter strategy, and as a vital element in the promotion of housing rights. The campaign is also considered as the most important tool together with the Global Campaign on Urban Governance to achieve MDG 7 on slums. The Campaign addresses two distinct, but related, issues:

- The first is the extension of formality and secure title to already existing urban settlements.

69 PEAP, 2004, Page 221-222

70 Kampala City Council, District Three Year Development plan, 2005/06-2007/208

71 Ibid

72 Ibid

- The second relates to the need for improved provision and availability of urban land that is well located and affordable.

In Uganda, the preparatory phase of this campaign is in progress and situation analysis report has been prepared, after which regional consultation meetings will be conducted, followed by a national stakeholder workshop. In relation to slum upgrading for Kampala, the situation analysis report recommends slum profiling through a survey to establish a basic databank to guide the planning process for the urban secure tenure campaign in Kampala and in other urban centres⁷³.

The Global Campaign on Urban Governance is defined as the sum of the many ways individuals and institutions, public and private, plan and manage the common affairs of the city or town. It is an accounting process through which conflicting or diverse interest may be accommodated and cooperative action can be taken. It includes formal institutions as well as informal arrangements and social capital of citizens⁷⁴. In Uganda, policy and legalisation encourages and promotes decentralisation, which devolves powers and functions to lower units of administration, despite this it noted that few poor communities have been able to use initiatives such as decentralisation to improve their living conditions and their livelihoods, hence the crucial nature of urban governance for poverty eradication.

This campaign is a product of an emerging consensus that the quality of urban governance has a major impact on poverty reduction efforts. Many local authorities, control issues related to the access, cost and regulation of land-use, housing, infrastructure and basic services and are responsible for local economic development, including the informal sector. Studies in Uganda⁷⁵ have established that the urban poor especially slum dwellers rarely have the opportunity to participate in city and municipal governance except at the time of elections. Often times, they are pre-occupied with the struggle to survive, with no time or energy to devote in participation processes. Crucial strategies therefore, such as urban master plans continue to be developed without their consultation and input, they suffer from dependency arising out of viewing government services as favours. This has in turn affected revenue collection and created undue conflicts over political space and limited resources in urban areas.

73 Interview with Eddie Nsamba-Gayiyi, Consultant Secure Tenure Campaign

74 PEAP Revision Paper on housing Sub-sector

75 Conducted by the International Development School of Public Policy, University of Birmingham on Citizen Participation and Local accountability, 2002

10. NATIONAL POLICY AND LEGISLATION

(a) The Uganda Constitution 1995

Within the framework of the Constitution, the importance of a decent living environment is recognised, in objective X, the state is obliged to take all necessary steps to involve people in the formulation and implementation of development programmes and plans. Under the social and economic objectives, the state is obliged in objective XIV to ensure that fundamental rights of all Ugandans are fulfilled. In particular, developmental efforts directed at ensuring the *“maximum social and cultural well-being of the people and; the enjoyment of rights and opportunities of access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits”*, which are key aspects of slum upgrading.

The Constitution of Uganda embraces, the aspects and elements of slum upgrading, and in essence avails opportunity for the *“Cities without Slums Programme”* for Kampala City Council, to comfortably anchor in national development programmes in the following articles. Article 26: defines the right of a *person to own property* either individually or in association with others. This establishes the basis for ownership of property for slum dwellers, which is re-emphasized in article 237 in relation to ownership of land under the four tenure systems of mailo, freehold, leasehold and customary tenure. It also provides for compensation in case of deprivation of ownership rights in land. Article 30: reaffirms that all persons have a right to *education*, which is one of the basic services required for social and economic empowerment of slum dwellers. Article 39: emphasis that every Ugandan has a right to a *clean and healthy environment*.

Article 32, emphasizes affirmative action in favour of marginalized groups on the basis of age, gender, disability or any other reason created by history, tradition or custom, for the purposes of redressing imbalances which exist against them. Slum dwellers are socially and economically marginalized by virtue of the economic systems being pursued and by location. This article avails room for them to be addressed as a specifically marginalized social class. Article 36: states that minorities have a right to participate in decision making processes and their views and interests shall be taken into account in the making of national plans and programmes. This reinforces the need for governance in slum dwellings, to enhance participation and inclusion in government programmes of reform and development.

Overall, the Constitution of Uganda embraces several aspects and elements of slum upgrading, and in essence avails opportunity for the slum programme to comfortably anchor in national development programmes. However, it has one major weakness. Planning is no longer a pre-condition for compulsory acquisition of land according to the 1995 Constitution. This has greatly affected the implementation of planned developments, since the majority of land belongs to people who do not appreciate planning, and who cannot be disposed with fair adequate and prompt compensation by the urban authorities who wish to enforce planned development.

(b) The Poverty Eradication Action Plan (PEAP)

This is Uganda’s national planning and development framework, which aims at reducing the proportion of the population living below the poverty line to below 10% by the year 2017. The Action Plan influences resource allocation and mobilization, and aims to transform Uganda into a middle-income country. In pillar one on economic management, the PEAP aims

to boost growth from 6.5% to 7% over the medium term by undertaking measures such as improvement in transport infrastructure and utility services which is one of the key aspects of slum upgrading. This commitment secures allocation of national resources to this purpose, though slums are not a priority action area under this.

In pillar two, on production, competitiveness and incomes, the PEAP makes commitment to implement major improvements in transport infrastructure mainly roads and partially railway, to support the operational structures for medium, small scale and micro enterprises (MSME's) that provide employment for about 40% of the urban population in Uganda. Employment is key to livelihood's options of slum dwellers in Kampala, in particular the youth and women.

In pillar four, on good governance, PEAP notes the improvement in public accountability, and the improvements in getting funds to their destination. Decentralization has promoted sound local governance at local levels and improved the capacities of local governments. Kampala City Council is one of the decentralised units of local government and as the partner and implementing agency for the Cities without Slums programme in Uganda, the existence of capacity within the council is of added value to the programme and the realisation of the intentions of this pillar.

In pillar five, on human development, PEAP notes that most sectors concerned with human development are slowly recovering from the decline in social services experienced during the 1970s and the 1980s. There is commitment:

- to implement the Health Sector Strategic Plan that prioritizes hygiene and sanitation and disease control, and continued effort to reduce the prevalence of HIV/AIDS;
- to support sector investment plans for rural and

urban water supply;

- to massively invest in primary education through Universal Primary Education;
- to social protection and strengthen gender analysis in sectoral ministries.

This pillar tackles the different aspects of human development that directly impact on the living environment of slum dwellers. It emulates the principles of equality and equity in development, the challenges however is resource allocation⁷⁶.

PRSP / PEAP IV is progressive and responsive to slum upgrading and it directly reflects the Millennium Development Goals (MDGs), on which slum upgrading. It tackles the different aspects of human development that directly impact on the living environment of slum dwellers. This commitment by the government of Uganda emulates the principles of equality and equity in development.

(c) Sectoral Policies

Several policies exist, scattered in different sectors responding to the various situations in slum areas e.g. housing, land, water, health etc. Majority, are either in draft or are recently passed, thus the concept of slum upgrading does not seem to be new. Major emphasis is the participation of the private sector. They are also used as an avenue for securing public investment in the specific sectors.

One particular policy is of relevance to this review, the decentralisation policy. Uganda's decentralization policy is based on devolution of powers, functions and responsibilities to popularly elected local government.

⁷⁶ PEAP, 2004

Within this decentralised management, Kampala City Council has powers:

- to make and implement development plans based on locally determined priorities to make, approve and execute their own budgets, to raise and utilize resources according to their own priorities after making legally mandated disbursements;
- to appoint statutory Committees Boards and Commissions;
- to make ordinances and bye-laws which are consistent with the constitution and other existing laws ordinances and bye-laws;
- to hire and fire personnel, to manage their own payroll and separate personnel systems and;
- to implement a broad range of decentralized services previously handled by the centre.

This extensive devolution of power is intended to improve service delivery by shifting responsibility for policy implementation to the beneficiaries themselves. It is also argued that it:

- promotes good governance by placing emphasis on transparency and accountability in the management of public affairs;
- develops, broaden and deepen political and administrative competence at local level;
- Facilitates democratisation by promoting inclusive, representative, gender sensitive decisionmaking; and to alleviate poverty through collaborative efforts between central and local governments' development partners, NGOs, CBOs, the private sector and other stakeholders.

Decentralisation therefore, allows for several actors and players to take part, in programmes and processes such as slum upgrading. The Local Governments Act 1997 (section 36, 37, 38, 78 and 87) mandates urban authorities, to deliver basic services at all levels of local government through a democratic, political

and gender sensitive administrative set-up. In essence, Kampala City Council has to deliver services to slum areas, including upgrading initiatives.

Local Governments (Rating) Decree, 1979 governs rating and empowers urban authorities to levy rates on all properties (with a few exceptions) within their boundaries. Since 1997, District Local Councils have been permitted by the Local Governments Act to impose, under the provisions of the Local Government Rating Decree, rates on properties that are within their areas of jurisdiction. However, to date not a single district has levied these taxes⁷⁷, because the old law is lacking in specificity and the capacity of local governments in this area is insufficient.

(d) Kampala Development Plans

To control development and have orderly growth, several urban plans have been drawn for Kampala over the years. The first modern plan was in 1912. In 1930 another plan was prepared stressing the zoning policy where residential, commercial and industrial areas. This was followed by another plan in 1951, known as an Outline Scheme. These plans were successful and often met their objectives but were rapidly overtaken by the changing situations as Kampala experienced steady growth from the 1950s onwards.

The 1972 plan tried to focus on population growth and prepared detailed plans for the expanding city. This plan specifically designed strategies for dealing with the high density peri-urban areas (slums) that had developed without planning control, due to demand for affordable housing. In this regard proposals were made to avail housing and other public utilities to such areas through government and private sector engagement and city authority supervision. While this Plan is

⁷⁷ Draft Issues Paper for the National Land Policy, 2005

now outdated in a number of respects, it offers a valuable overview of the urban situation, which ought to have been followed up by extensive detailed planning that did not happen.

In 1994, the Kampala Urban Study and Structure Plan, with its associated written provisions was formulated to respond to the need to address and provide a physical, socio-economic and financial framework for the direction and management of urban growth for Kampala for the period 1994-2004. Significantly, this plan called for:

- Mixed land use in Kampala in an orderly fashion, putting away the colonial legacy of segregation, but with primary preferences in certain areas;
- Development of division structure plans and parish structure plans to implement the overall Kampala Plan and avoid the scenario of the 1972 plan that remained on paper because of the incomplete detailed plans.

This plan proposed an urban pattern that responds to the socio-economic and political situation at that time and a written code governing the administration and enforcement of the Plan. As far as slum upgrading is concerned, this Plan observed that Kampala has continuously expanded absorbing parts of the then Mpigi District and the current Wakiso District. Currently, Kampala City development is guided by the three year Development Plan for 2004/05-2006/07, which among other things addresses the need to provide affordable low cost housing to its inhabitants. It clearly, states the intention to embark on slum intervention programmes by acquiring land for provision of infrastructure in the slums and re-development of the slums within the vicinity of Central Business District in order

for the settlements to conform to spelt out planning standards and guidelines.

(e) Adequacy of the National Policy and Legislation

The existing policy framework is relevant for positioning slum upgrading in the development process of Uganda as the Cities with Slums programmes proposes. It also clear, that slum upgrading will contribute to the livelihoods of slum dwellers in relation to the key aspects or issues tackled in the national development framework in its various PEAP pillars especially on human development. The concept of slum upgrading is not new in the policy environment, where almost all the policies are either recently adopted or in draft process. However, it is somewhat different when, it comes to legislation.

The legal framework is inadequate for streamlining slum upgrading in the country. The most pertinent laws are out-dated and in many cases inapplicable. Many of them enacted in the 1960s are likely not to apply to slum upgrading, which is a new concept, due to the fact that the laws are rigid and non-responsive. Because of this, when slum upgrading is undertaken within the current framework, some laws will be broken. It is also evident, that the majority of the laws at national level are reactive to situations pertaining on the ground instead of being pro-active and anticipating the future in respects of slum up-grading issues. The Statutes books do not look encouraging, and the practice is far from the standards and obligations established. Slum upgrading needs laws that are flexible.

It has to be noted that the creation of slums, has partly been a result of laxity of implementation and inadequacy in enforcement of existing laws. Obsolete laws, specifically the Public Health Act (1964) and the Town and Country Planning Act (1964), should be reviewed and improved to match the present day Planning and Urban Management needs. The Land Act cap. 227, makes matters worse by not setting land ceilings, at least for urban areas and setting stringent conditions for compulsory acquisition of land under the principle of eminent domain. Yet, compulsory acquisition is necessary in slum upgrading. This only leaves the option of negotiation with the land owners, which is time consuming and expensive.

Within the policy framework, the following aspects still need consideration:

- The role of the private sector is emphasized within the broad national development strategy and the sectoral policies. The implication of this is that any designed upgrading strategy must consider the role of the private sector seriously;
- All policies are geared towards achieving poverty reduction and contributing to the Millennium Development Goals (MDG). If slum upgrading is to be undertaken in Uganda, vigorous analysis of its relationship with poverty eradication and the achievement of MDG goals will have to be undertaken showing clear and factual estimates of targets and outcomes;
- The sectoral policies and the action plans developed to implement the above policies are used much more as an avenue for securing public investment in the specific sectors. Slum Upgrading strategy will have to be ground in the existing frameworks, illustrating clear linkages and complementarities as means of justification as well as securing a commitment for public resources to input in such an initiative;
- It is also evident that institutional capacity, gaps and legal bottlenecks combined with resource constraint are a factor in non-implementation of policy and law.