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WHO'S IN CHARGE OF THE HOUSING SECTOR?

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INTRODUCTION

Following the promulgation of the Constitution in 2010, the right to housing is now a constitutional right provided for in Kenya's expansive bill of rights. However, the country has been a party to the international covenant on Economic, Social and cultural rights for decades having ratified the covenant in 1972. Progress in realization of this right continues to be shaped by diversity of socio political, economic and policy dynamics.

Kenya has continued to develop a strong policy infrastructure in different areas including in areas that have implications for housing sector and realization of the right to housing. In particular, the government has rolled out a policy blueprint, vision 2030 that aims at turning Kenya in to a middle income country.

Although accurate statistics and data remain a major challenge, in 2009/2010, Kenya's housing development sector experienced high growth. In most major urban centres, there has been a construction boom particularly in the middle and up market sectors for which the private sector has been the main engine of growth.

However the government has not been left behind. The estimated cost of residential buildings completed by the Kenya government and its Agencies increased significantly from Kshs 210.2 Million in 2008 to Kshs 938.5 million in 2009. Some 280 housing units were built for civil servants in the Shauri Moyo area in Nairobi on a public private partnership basis.

An additional 22 apartments for civil servants were completed in Kileleshwa in Nairobi. Redevelopment of housing for civil servants is ongoing in Ngong, Machakos, Athi River, and Nyeri. Furthermore, 1000 housing units have been developed in Kibera and Mavoko under the Ministry of Housing's Kenya Slum Upgrading Programme (KENSUP).

Nevertheless a number of challenges are being experienced. According to a UN-Habitat study, 60 to 80 percent of residents in Kenya's largest urban centers, Kisumu, Mombasa and Nairobi live in informal settlements which are crowded with poor quality housing and lack of basic services. This is a cause for alarm since it is a manifestation of violation of right to housing.

Again devolution as presented by the new constitution has brought with it a number of challenges within the Housing sector relating to which level of government is responsible in terms of providing housing services to the citizens.

Therefore, this brief is meant to highlight lack of clarity about the assignment of functions between the County and National government in the Housing sector as devolution dawns on us. This is important because lack of clarity on who will carry out certain functions may lead to gaps and inefficiencies in service delivery. For example, it is uncertain which level of government will cater for County civil servant housing or the fate of National Housing Corporation (NHC), among other confusions.

In developing this brief, a number of policy documents have been used as reference points, including the Ministry of Housing Strategic Plan, Draft Housing Bill 2011, National Housing Policy for Kenya (Sessional Paper No.3 of 2004), estimates of expenditure for 2012/13 financial year (June version) and the Constitution of Kenya 2010. Our review of housing policy documents and the 2012/13 budget reveal considerable confusion about which level of government will be in charge of what activities under the devolved system. There is a need for greater public debate and clarification about the appropriate roles of each level of government.

WHAT DOES THE CONSTITUTION SAY?

As a starting point, it is important to look at how housing functions have been assigned by the Constitution between the two levels of government, that is, the national and county government. This is done by looking at the Fourth Schedule of the Constitution.

Under this schedule, the national government has been put in charge of Housing policy, while the county has been given responsibility for county planning and development, including housing. Generally, the National Government will be in charge of housing regulatory framework whereas the County governments will majorly deal with actualizing the framework by way of implementation.

What the 2010 Constitution Says About Responsibility for Housing

National Government	County Governments
<ul style="list-style-type: none"> • Housing policy 	County planning and development, including: <ul style="list-style-type: none"> • Housing

This general division of labor between the two levels of government is not straightforward, however, because housing policy is generally linked to land policy. The Sessional paper on National housing raises the issue of coordination between land and housing policies. At the policy level, both land and

housing policy are functions of the national government. At the implementation level, housing belongs to counties whereas land issues largely remain at national level. However, if one takes the idea of 'land stock' and other mechanisms for ensuring the availability of land for affordable housing, this would necessarily involve coordinated efforts by the two levels of government. There is a strong link between availability of land and housing development.

When we look at the Constitution and Sessional Paper, we get a general sense that housing policy will continue to be developed by national government, but counties will largely be responsible for construction and management of housing stock and ensuring an adequate housing supply for Kenyans. It is less clear how national and county governments will coordinate on land issues related to housing. And where does this constitutional division of labor leave the National Housing Corporation?

Unfortunately, the National Housing Bill, 2011 does not help to clarify these matters. Counties are only mentioned casually in the Bill. There is not any description of their role in the housing sector. The Bill leaves most of the sector in the hands of the National government. If the Constitution seems to reduce the national role in housing, the Bill expands it by creating new agencies like the Kenya Housing Board and Kenya Housing Authority.

The role of counties need not be confined, as this bill suggests, to just being consulted by the Housing Authority and providing data. The bill also sets up parallel regional offices, whereas the counties themselves should be integrated into any regional structure.

DO BUDGET DOCUMENTS FURTHER CLARIFY WHO IS RESPONSIBLE?

In drafting the 2012/13 budget, the Treasury undertook an exercise to determine which activities would be carried out by the national and which by county governments. This is reflected in the Budget Estimates: those activities to be devolved were coded "98." These budget figures are still the most detailed information we have about what government thinks each level of government will be responsible for.

Unlike the Housing Bill, the budget does show a number of activities will be devolved. For example, consistent with what one might expect based on the Constitution; District government estates management is devolved. Provincial housing is also devolved but with a significant portion of the money remaining at the national level as indicated in table 1 below.

However, one might have expected slum upgrading to be devolved, as it is primarily implementation of construction projects. The budget shows instead that while 180 million Ksh of development expenditure under slum upgrading is devolved, ten times that sum (1.8 billion Ksh, about 93%) is to remain at national level. Why should this be?

Another confusing area is provision of housing to civil servants. It seems likely that national civil servants would continue to be catered for through the Civil Servants Housing scheme fund. County

governments will also be having Civil servants and it seems that they should be catered for by county governments. However, the civil servants housing scheme fund has not been devolved at all in the budget. A large share of the Housing department budget under grant to civil servant scheme has not been devolved and therefore it is not clear how County Civil Servants will be catered for in terms of housing.

Issues around rent control seem to be handled through the Rent Tribunal and looking at the estimates of expenditure this appears to be devolved through regional rent tribunals. However, most of the funding actually remains at national level (about 47 million Ksh compared to 20 million devolved). Is it sensible that the national tribunal should be more expensive to run than all regional tribunals combined? The draft Housing Bill proposes the establishment of the Housing tribunal but provides little clarity about how it will function at the two levels of government. The table below gives devolved activities and their cost under the housing sector in both recurrent and development expenditure.

Table 1

MINISTRY OF HOUSING (recurrent expenditure)					
Head code	Unit code	Description	Total Budget	Amount devolved	Percent Devolved
0005	98	District Government Estates management	398,925,000	388,925,000	98
0008	98	Provincial Housing	34,104,912	14,516,000	43
0010/ 0009	98	Rent restriction tribunal and Regional Rent Tribunal Operations	68,124,011	20,309,216	30
TOTAL FOR ACTIVITIES THAT ARE PARTIALLY DEVOLVED (Kshs)			501,153,923	423,750,216	85
TOTAL RECCURENT ESTIMATES FOR MoH (Kshs)			1,696,297,266	423,750,216	25

Source: Estimates of expenditure for 2012/13 (June version)

Table 2 below gives the devolved activities under the capital expenditure.

Table 2

MINISTRY OF HOUSING (Capital expenditure)					
Head code	Unit Code	Description	Total Budget (Kshs)	Amount devolved	% Devolved
0004	98	Government Estates Department HQ	564,288,926	60,000,000	11
0006	98	Slum upgrading and housing development HQ	1,980,000,000	180,000,000	9
007	98	Housing Department	867,646,668	247,646,668	29
TOTAL (Kshs)			3,411,935,594	487,646,668	14
TOTAL DEVELOPMENT ESTIMATES (Kshs)			3,511,935,594	487,646,668	13

Source: Estimates of expenditure for 2012/13 (June version)

BEYOND THE BUDGET

The National Housing Corporation is not part of the budget estimates, but has a budget of about 6 billion Kshs per year (2012/13 total expenditures), making it the largest player in the sector. While the Housing Bill suggests that it may continue to function as it has been, it is not clear whether this is really aligned to the constitutional division of functions.

Policy papers and the draft Housing Bill for the sector also propose new activities in the sector that are not currently performed and whether these functions should be performed by national government, as is often suggested, is an open question. The sessional paper has identified one of the challenges affecting housing sector as low availability of mortgage facilities. This is an area that might require national policy and national intervention, since it is not just about housing but also financing.

Is the proposed National Housing Fund still constitutionally proper as a national body falling under “housing policy,” or is it more apt to say that it is no longer permissible without a county-national

government agreement? Arguably, since the Fund is designed to mobilize funding for housing, it makes sense to be run as a national entity to which counties would apply or from which they would receive conditional grants for housing. This needs to be clarified, however.

The Ministry of Housing Strategic Plan for 2008-2013 identifies a set of functions for the housing sector as a whole. It is worth appreciating that the strategic plan was developed before the new constitution came in to force. This leaves open the question of whether the functions it prioritized belong to national or county government.

Promotion of housing through sector incentives and infrastructure could be a joint responsibility between the two levels of government or even a primarily national responsibility. This is so because the sessional paper proposes tax incentives for low-cost housing and since taxes are an incentive that must be provided by national government barring additional legislation, it seems like this would be considered part of national housing policy.

On the infrastructure side, if infrastructure refers not to actual housing but to water, electricity and other amenities, this would not fall within housing sector and must be coordinated with other agencies, which will be operating at either the national or county level. Leasing offices for constitutional bodies seems like a national role as well. Therefore the strategic plan needs to be reviewed to catch up with the new developments brought by the constitution to avoid conflicts and duplication of functions.

Another question is whether the establishment of Appropriate Building Material and Technologies centres is still ongoing and whether these centres are distributed across the counties. This would be another issue in terms of whether they are run as devolved units or considered “policy” units and therefore national. The draft bill proposes the establishment of Kenya Housing Authority where one of its functions will be to promote research on housing, building materials and technologies. This might be understood to mean that this authority will be in charge of ABT’s. This matter is made more complicated since planning and research unit under the Ministry of housing has not been devolved under the estimates of expenditure.

CONCLUSION AND RECOMMENDATIONS

From the above analysis several issues emerge and if not addressed as a matter of priority then service delivery to the citizenry through the housing sector will be compromised. The key issues that need clarity in terms of which government level bears the responsibility in service provision are;

- Who is responsible for county civil servants housing?
- Will the National Housing Corporation continue working at National Level only considering the huge budgetary allocation it receives? What is the justification for this?

- Why is a significant proportion of the Slum upgrading fund remaining at the National level yet counties are supposed to be implementers of all housing policies hence require a significant portion of the funds ?
- Will ABT's be run by the national or county governments?

Going forward, a clear framework needs to be developed with regards to how housing and land issues will be handled since housing is dependent on availability of land.

Again, there is urgent need to revise the policy documents in the housing sector to bring them in line with the constitutional provisions. These documents include the Ministry of housing strategic plan, the sessional paper on housing policy and the draft National Housing Bill 2011. This is so because the areas of confusion raised entirely emanate from these policy documents and there is need to harmonize them to reflect the provisions of the new constitution.

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