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Jacqueline Walubwa Achwoka

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Université Bordeaux Montaigne

École Doctorale Montaigne Humanités (ED 480)

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THÈSE DE DOCTORAT EN GÉOGRAPHIE HUMAINE

**Recognition of Informal Norms in Creating
Resilient Water Management Structures -
The Case of Soweto East, Nairobi**

Présentée et soutenue publiquement le 13 décembre 2016 par

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Dedication

To

Queenie,

To all the love I encountered during this doctorate process

& above all to

My past shoes,

My present shoes

&

My future shoes

Acknowledgments

This particular adventure has been one fascinating journey that I never fathomed I could undertake, it has taken me to the abyss of despair, self-doubt and to the summit of self-confidence yet it has been the most solitary and enriching endeavour I have ever embarked on. In deed any journey is as important as its destination and the experiences of this ride are what I cherish and carry with me in my sojourn. This particular traverse has helped me discover my true self (which I still don't know), appreciate my 'womanity' as well as dared me to dream of the unimaginable and conquered the picturesque mountains of Africa, till its very roof! Everest here I come.

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GENERAL INTRODUCTION



The protection of minorities is vitally important; and even the most orthodox of us may find himself in a minority someday, so that we all have an interest in restraining the tyranny of majorities. Nothing except public opinion can solve this problem. Bertrand Russell

Synopsis

Despite significant economic growth, Africa still experiences massive urban poverty and other social problems¹ due to unregulated and unplanned massive growth of cities with a quarter of the 100 fastest growing cities in the world being in Africa. In 2011, Africa alone hosted 52 cities exceeding one million inhabitants; these statistics do not translate to all these inhabitants having access to all the rights and services the city has to offer. Therefore, the prevailing worldwide view that cities are engines of growth and human development may very well be challenged by the unfolding realities in Africa, unless this urban economic and general developmental progress is translated into more broadly shared well-being among nations' socio-economic strata.² The urban poor seem to be hanging on the fringes of the city yet there is a global growth of the middle class in Africa, which should actually symbolize a rise in the living standards of the city dwellers yet it does not. The number of middle class population is rising and so are the urban poor.

The rise of Africa's middle class brings with it another important dynamic to the urban planners and policy makers. It was estimated that in 2010 the African middle class accounted for 34% of the population³, nearly 350 million people and will continue to grow from 34 % of Africa's population to 1.1 billion - 42 % of the population in 2060⁴. This growth brings with it the

¹ UN-HABITAT (2014), *The State of African Cities, Reimagining Sustainable Urban Transitions*. Nairobi, UN-HABITAT

² *Ibid*

³ African Development Bank (AfDB), (2011), *The Middle of the Pyramid: Dynamics of the Middle Class in Africa*, *Market Brief* April 20, 2011

⁴ Mazzolini, A. (2015), *Sub-Saharan African Middle Classes Urban Trends: Challenges For Local Governance And Critical Reflections On The 2030 Urban Development Goals*, *International Conference Local Government and Urban Governance: Citizen Responsive Innovations in Europe and in Africa*, Lisbon, Portugal

challenge of governing expanding unpredictable cities as most of the population moves to the city in search of opportunities and spaces in which they can utilize their fortunes. More often than not they find themselves in very expensive quarters which they cannot sustain; this then pushes them to areas which are underserved by the city fathers leading to expansion of informal settlements. Although in absolute terms Asian cities still remain the world's fastest growing, the global share of African urban dwellers is projected to rise from 11.3 % in 2010 to 20.2 % by 2050,⁵ this poses a new challenge in administering the urban services.

The challenge of governing these cities is brought about by the fact that most governance regimes tend to depoliticize the local; which is, they tend to ignore or underestimate the role that politics and power play at the city level and the importance of city-state or city-party relations.⁶ This underestimation of the role of politics in the local sphere leads to an even more pressing challenge, which is the failure of the planners and governors to study the local context and see that the urban forms and growth of the cities takes different forms, for instance, in East Africa urban growth takes place mostly in the slum areas and informal settlements thus direct transplanting of the master planning approach to the local context may contribute further to social and spatial marginalization or exclusion from the urban fabric⁷ of the ever increasing urban population rendering them second class citizens.

These second class citizens have been and are continuously being subjected to different regimes of governance which perpetuate slum proliferation consciously or unconsciously by promoting

⁵ UN-HABITAT (2014), *The State of African Cities, Re-imagining Sustainable Urban Transitions*. Nairobi, UN-HABITAT

⁶ Bekker, S. & Fourchard, L. (2013), *Politics and Policies Governing Cities in Africa*, Human Sciences Research Council, South Africa

⁷ UN-HABITAT (2014), *The State of African Cities, Reimagining Sustainable Urban Transitions*. Nairobi, UN-HABITAT

powerful political and economic entrepreneurs to profit from underserved areas through exploitation of service provision networks or by killing of decentralization initiatives designed to empower local governments, leading to the maintenance of the status quo of the settlements. The status quo is characterized by weak regulated urban settlements, acute housing shortages, traffic congestion, crime, pollution, lack of basic infrastructure like electricity water and sanitation, sufficient living area among others which depict a weak infrastructural base. If a place of residence lacks one of the above mentioned characteristics, the UN-HABITAT defines it as a *slum*. In addition, these settlements are characterized by the worst environmental and sanitation conditions. It is therefore perhaps not surprising that urban environmental problems claim an estimated one million African lives each year.⁸

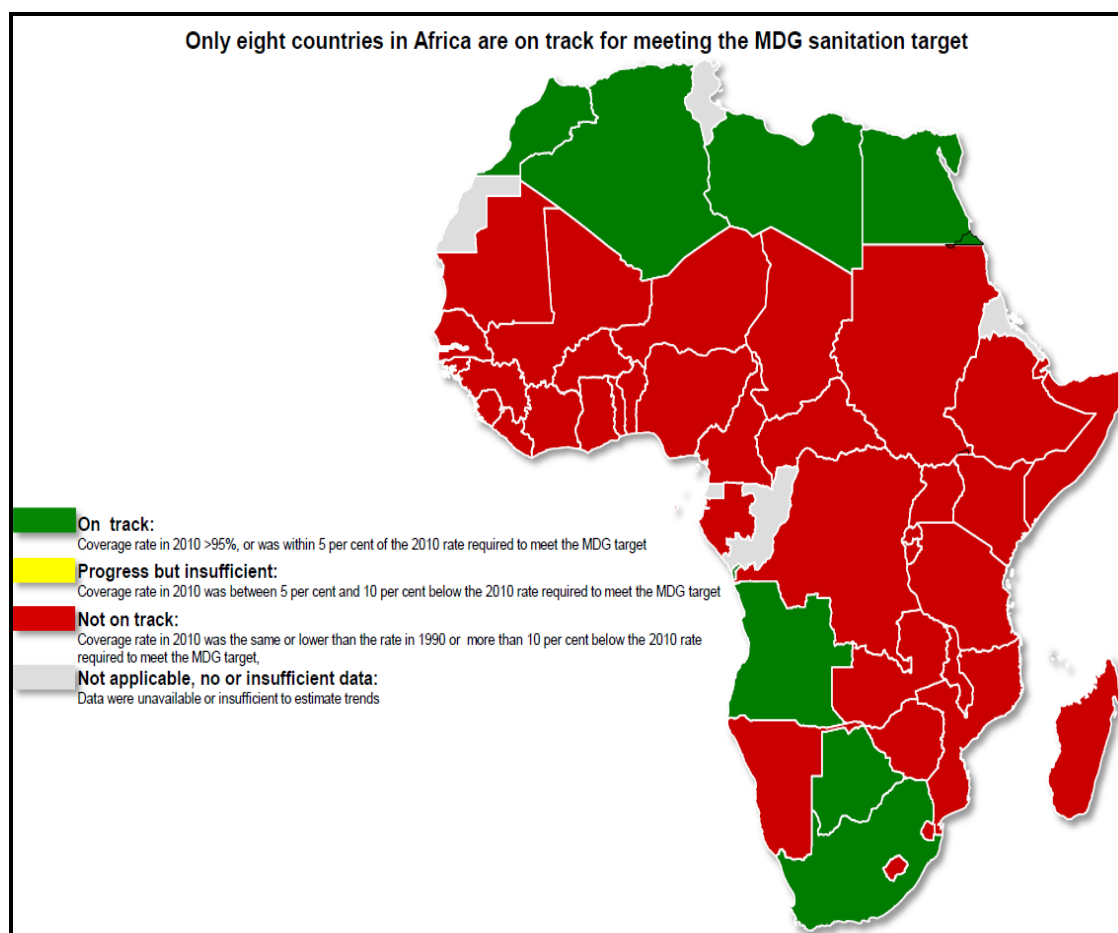
A weak governance system compounded with these vulgarities renders life unliveable in most slum areas, especially in provision of water and sanitation. Even though 1980s was declared the International Drinking Water Supply and Sanitation Decade, the universal coverage was not achieved, since official UN statistics suggest that 27 % of the urban population in what they term “developing regions” lacked basic sanitation in 2012; for the least developed countries it was 52%.⁹ Clearly the Millennium Development Goal target for halving the proportion of the population without improved or basic sanitation was not met in urban areas and now the introduction of the Sustainable Development Goal 11 has revised the target to suggest that water and sanitation should be accessible to all with no specifically defined target numbers.

⁸ UN-HABITAT (2008), *The State of African Cities, A Framework for Addressing Urban Challenges in Africa*. Nairobi and London; UN-HABITAT and EarthScan

⁹ WHO & UNICEF (2014), *Progress on Drinking-Water and Sanitation: 2014 Update, Joint Monitoring Programme (JMP)*, WHO and UNICEF, Geneva

Statistics from the year 2010 show that only North Africa had surpassed the MDG target, all other regions are set to miss the target by 2015,¹⁰ judging from figure a, North Africa had achieved 95% coverage of what was expected in 2010, while most of the countries in Sub-Saharan Africa were still off the mark towards achieving the target.

Figure a : Progress of MDG target on sanitation in Africa



Source: WHO/UNICEF Joint Monitoring Programme

¹⁰ WHO & UNICEF (2012), Progress on Drinking-Water and Sanitation: 2012 Update, Joint Monitoring Programme (JMP), WHO and UNICEF, Geneva

Before the introduction of the Sustainable Development Goals, many governments were in a flurry to meet the Millennium Development Goal target and started many initiatives to meet the water and sanitation needs of the most vulnerable in the society, especially the ones in the informal settlements. They employed all the machinery they deemed possible but as the proverbial African forms of government, these turned out not to be as effective, as the nature of implementing the programs or awarding contracts to the service providers encouraged patron-client relationships more than relations of independence which entail provision of solutions to the problem.¹¹ These services were pegged on political parties being able to exert pressure over local political expression, as such no sustainable water and sanitation solution was effectively provided for these urban dwellers; the projects have more often than not been hit and run, starting with so much pomp, often achieving a short lifespan due to the fall out of favour of the local people with the prevailing political regime, yet these services should not be pegged on a clientelist relationship, as they are basic services and needs which should be accessible to everyone.

This is a matter of injustices that have been propagated in the city from the time of the colonial heritage till post-independence Kenya, where land and housing policies have done little to change the situation of the urban divide, which was along racial lines, but now is on socio-economic lines. The dominant elites have made it literally impossible for the informal settlement dwellers to access the water and sanitation services leading them to inhuman and undignified lives.

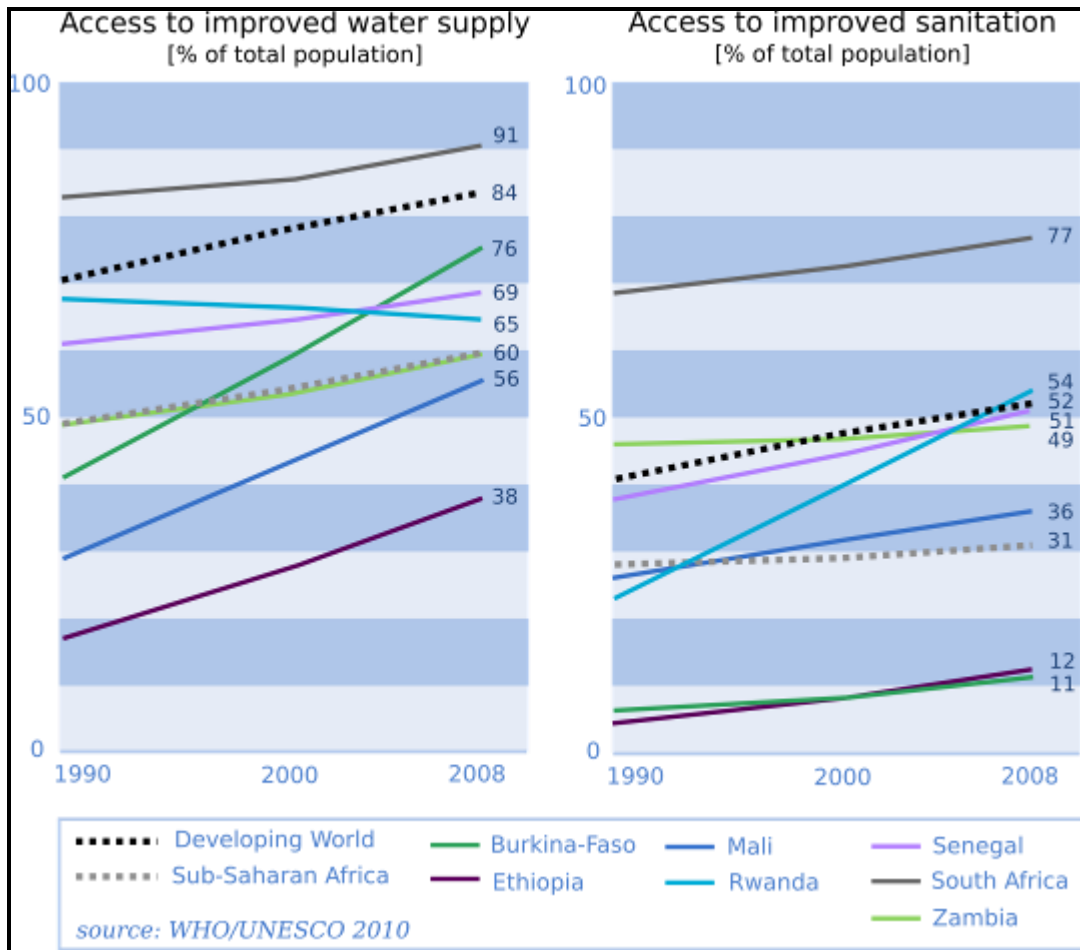
¹¹ Jaglin, S. (2005), *Services d'eau en Afrique Subsaharienne. La Fragmentation Urbaine en Question*. Paris, CRNS, éditions.

The water and sanitation challenge

All urban dwellers need safe, quick, easy access to clean toilets, day and night – without fear, without a long walk, without a long wait in line, and without the need to plan ahead or to spend more than they can easily afford. They should be able to count on privacy, cleanliness and the means to wash anus and hands quickly and conveniently, which is difficult if there is no water piped on the premises... In high-income countries, nearly all urban dwellers can access a toilet the moment they want to or need to. There is no need to consider “do I have time to do so now?” or “do I have the money to be able to pay?” They seldom have to worry about the toilet being occupied, when there are only a few people per toilet, as is the case in most houses or apartments in high-income countries.¹² This is not the case for informal areas where more often than not the person/toilet ratio is much higher.

¹² Satterthwaite, D., et al (2015), Is It Possible to Reach Low Income Urban Dwellers With Good Quality Sanitation? *Environment and Urbanization*, Vol. 27 no. 1 3-18

Figure b: Water and sanitation situation in selected countries



Source: WHO & UNESCO

Figure b indicates the sanitation and water situation in some selected countries. It is only South Africa that seems to have achieved both 50% coverage in both water and sanitation, the others are still grappling. Even though statistics show that there is some coverage, there is still a resounding problem in that these systems although improved, meets the sanitation needs not of the whole country but of the high-income and some upper-middle income residences, which is but a small percentage of the population. Most of the urban population of sub-Saharan Africa and

a high proportion in Asia still lack a regular piped water supply to their home and there is no public provision for sewers and effective covered storm drains.¹³

The water and sanitation needs of these people are clear, yet most urban centers in low and many middle income countries appear to lack the technical and financial capacity to install, expand, maintain and pay for comparable water and sanitation system – and the regulatory framework to support this creating a huge gap in service provision.¹⁴This has resulted to the use of on-site sanitation options by many inhabitants of the informal areas and an adaptation to the near lack of publicly funded sanitation options and provide for themselves or use (and pay for) informal or small-scale service providers (for water and sanitation).¹⁵

To lower the costs of these solutions many countries have adopted almost similar approaches- co-production and co-design, community participation, public private partnerships etc. The essence of these solutions has been participatory inclinations with user involvement at the base. Residents are active in discussions of what should be done (to what standards, at what cost, who pays what and how payments are structured), who should be involved in the planning and who should be present during implementation. They have to make the trade-offs among what they would like, what can be afforded and what support they get from local authorities, and their decisions have to factor in the needs and priorities of different household members – especially

¹³ Satterthwaite, D., et al (2015), Is It Possible to Reach Low Income Urban Dwellers With Good Quality Sanitation? *Environment and Urbanization*, Vol. 27 no. 1 3-18

¹⁴ Mitlin, D., & Satterthwaite, D. (2012), *Urban Poverty in the Global South: Scale and Nature*, Routledge, London

¹⁵ Satterthwaite, D., et al (2015), Is It Possible to Reach Low Income Urban Dwellers With Good Quality Sanitation? *Environment and Urbanization*, Vol. 27 no. 1 3-18

women, children and those with impaired mobility.¹⁶ This makes community solutions work where a toilet and tap connection for each household is expensive.

As shown in the study of literature it is an almost universally agreed principle that co-producing water and sanitation solutions with representative community organizations encourages bringing down of costs and generation of more revenue and livelihood solutions for the concerned community members. Secondly, it is important for making the local authority or utility aware of what can be brought to local solutions by those it does not serve and lastly it empowers communities to supervise public agencies and the contractors they hire and hold these contractors to account if they do not deliver what was agreed and commissioned.¹⁷

Co-production has currently been gaining more approval as a paradigm of governance to deliver sustainable solutions to this water and sanitation menace especially in the wake of RIO+20 where water was recognized to be at the core of sustainable development given its linkage to key global challenges.¹⁸ Defining co-production as “a process through which inputs from individuals who are not “in” the same organization are transformed into goods and services”, Ostrom, presented case studies from several developing countries and argued that co-production of many goods and services normally considered to be public goods by government agencies and citizens organized into polycentric systems is crucial for achieving higher levels of welfare in developing countries, particularly for those who are poor.¹⁹

¹⁶ *Ibid*

¹⁷ Cadornigara, S. et al (2014), *Tools for Inclusive Cities: The Roles of Community-Based Engagement and Monitoring in Reducing Poverty, IIED Working Paper*, IIED, London

¹⁸ Rio+20 United Nations Conference on Sustainable Development, *The Future We Want*, Agenda Item 10, A/CONF. 216/L.1 (Re-issued on 22 June, 2012)

¹⁹ Ostrom, E. (1996), *Crossing the Great Divide: Coproduction, Synergy and Development*, *World Development*, 24 (6) (1996), pp. 1073–1087

In the world over there have been projects that have taken this up with varying levels of success for example the Orangi Pilot project in Pakistan. This project started in 1984 in Christy Nagar, Orangi, the largest squatter settlement in Karachi and in Pakistan.²⁰ After five years of reported success it was replicated all over Orangi to extend simplified sewerage. This project's success was realized in the mobilization of community support and involvement. It reached those people in high density irregular settlements who had been excluded from development by helping 15% of the residents to construct their own sewers and a further 25% to learn from their neighbours on how to construct the sewers. This led to 750,000 people accessing sanitation and a further replication of the project in 49 other settlements in Karachi.²¹

Another example is from South Africa, where the residents of Zwelitsha used the concept of co-design to design their Siphumelele water and sanitation facility. The community members and partners designed the facility in mind bearing that they had the idea of linking livelihoods to their sanitation and water needs; as such they designed a revenue generation portion of their facility to reduce the burden of funding from the municipal. They thus included Enviro Loo toilets for men and women, a wash area and a kiosk on the ground floor, they did not include showers due to their infrequent use; The Enviro Loo is a waterless toilet system that provides a safe, non-polluting, cost-effective solution to sanitation. The crèche and soup kitchen were situated on the second floor. This project started in 2014 and the progress is yet to be measured, but the whole essence is that sanitation and water solutions are being provided in a co-produced manner.

²⁰ Watson, G., (1995)? Good Sewers Cheap? Agency–Customer Interactions in Low-Cost Urban Sanitation in Brazil. World Bank Water and Sanitation Division, Washington DC

²¹ Curtis, T. et al (2007), Pro-Poor Sanitation Technologies, *Geoforum* 38 :901–907

On the basis of the foregoing, it is evident that there exists a challenge of water and sanitation in the urban informal areas, with many local governments still grappling with the false hope of achieving the MDG target of water and sanitation by 2015 for their jurisdictions. On the other hand it is emerging that a new governance paradigm is also evolving in which co-production is proving to be a more sustainable solution in accessing the poor peoples' needs to water and sanitation. Home grown systems are proving to offer sustainable solutions more than the conventional city planners' theories and modes of providing urban services to the residents. These theories should be noted that they cannot be transported from north to south as all cities are not products of capitalist transformation and each city should be viewed uniquely as an ordinary city.²² This calls for a questioning or an enquiry into the current forms of governance and governability in relation to the citizens in the wake of the cities haphazard development and rapid urban growth which makes it literally impossible for the city fathers to provide solutions to this ever growing 'unplanned population.'

The prevailing water and sanitation governance systems as conceived do not provide adequate space for state governments to provide water and sanitation solutions single handed, thus there is a need to rethink of how the informal areas can be governed so that the dwellers can access this services like their counter parts in well planned areas. So far literature on sanitation and water provision in informal communities in urban areas denotes that there exist systems where users have been seen and empowered to design and manage themselves in producing sustainable and resilient resource governance systems.

Based on the above observation this thesis begs to ask the major question which is: It is evident that community driven solutions employing informal law systems are sustainable and more

²² Simone, A. (2001), On the Worlding of African Cities , *African Studies Review*, Vol. 44 : 15-41

resilient to forces of premature extinction, therefore; How can water and sanitation systems be designed and governed in informal settlements to achieve the sustainable development target of increasing water for all?

To answer this question, based on the above observations, this thesis deduces a hypothesis that there is a disconnect between statutory systems and community driven systems of governance for water and sanitation solutions, the redress of this disconnect would contribute to the creation of resilient and sustainable resource management systems where uniquely entrenched informal norms are encouraged to develop and evolve in co-produced systems of governance.

The objective of this thesis is to explore this hypothesis using a case study of the Kibera Integrated Water, Sanitation and Waste Management Project (K-WATSAN) system developed and produced by the Soweto East community in Nairobi. This water and sanitation system has a locally developed informal norm system of governance which has proved to be effective in ensuring the sustainability and resilience of this project for more than five years after its inception; this is in contrast with the ‘normal’ development intervention trends, which have failure as their norm occurring after the first two years of decommissioning, especially in Kenya. K-WATSAN is the pilot water and sanitation intervention nested under the Kenya Slum Upgrading Programme, which is an ambitious program in line with Vision 2030 aimed at improving the lives of 5.3 million slum dwellers by 2020.²³

Therefore this thesis will look at the process of producing governable water and sanitation resource systems in light of the following angles; use of voice and compact, legal pluralism, co-

²³ Walubwa, J.A. (2010), “KENYA SLUM UPGRADING PROGRAMME” *An Analysis of Kibera Integrated Water, Sanitation and Waste Management Project*. MA thesis, Department of Geography & Environmental Studies, University of Nairobi, Kenya.

production and co-design as concepts used in governing common property resources to make them more sustainable and resilient. These will be put under the lens of the Governance Analytical Framework developed recently in conjunction with various social sciences.

These angles lead to asking the following specific research questions:

1. In which historical, livelihood and governance contexts is the Soweto East water project embedded and what trends can be observed?
2. How is the K-WATSAN project configured in terms of actors, activities and values?
3. What arrangements are used to govern K-WATSAN project?
4. How do these governance arrangements impact the livelihoods of actors in K-WATSAN project and their sustainability?
5. How do formal and informal aspects of governance interplay in the development process, and how do they relate to the wider rules of the game in a society?

This thesis uses methodological polytheism,²⁴ in that it acknowledges the strengths in embracing a pluralistic approach by employing a variety of methods as no one set of tools is categorically better than the other, therefore, this research makes several moves back and forth between theory (re)construction and data analysis.²⁵ It has taken also into account the inter-sectionality and has committed to holistic inquiry by assessing the interplay between human agency and systemic structures and tensions as it acknowledges the intersubjectivity and reflexivity in the research process. Thus, cognizance of the fact that the actions understandings, and interpretations of our research team influence the people, the settings and the findings produced the research team has

²⁴ Bourdieu, P. (2004), *Science of Science and Reflexivity*. Palo Alto, CA: Stanford University Press

²⁵ Axinn, W. G. & Pearce, L. D. (2006), *Mixed Method Data Collection Strategies*. New York, Cambridge University Press.

been working back and forth between the subjective and objective frames to produce a representation of the reality on ground.²⁶

Relevance of the study

Arguably, water and sanitation are important aspects of the daily life of humans and more so they have been recognized as one of the crucial aspects lacking in the world, hence the ratification of a water and sanitation goal to be implemented by the different countries for all their citizens. This target is set to be achieved both in the rural and urban areas and as such the way of appropriating these services to the population has been highly debated and implemented through various designs. In light of this, some designs have worked positively while some have failed dismally and need to be rethought. In essence the success or failure of the same is all a question of governance. A crisis of governance²⁷ is what has been used as an apt term to define the actual world water crisis more than a lack of water, since the world has enough resources to ensure that each of the inhabitants has enough to sustain themselves.

So far, different paradigms of governance have evolved and through experience it is evident that co-produced solutions are better and they seem to thrive more than direct interventions by the state or non-governmental development organizations inside affected communities. When co-produced solutions are upheld, most communities create and develop singular systems with a specific manner of running them. These manners of governing these systems more often than not

²⁶ Perry, G. K. (2009), Exploring Occupational Stereotyping in the New Economy: The Intersectional Tradition Meets Mixed Methods Research. In Berger, M. T. & Guidroz, K. (Eds.), *The Intersectional Approach: Transforming the Academy through Race, Class, and Gender* (pp. 229-245). Chapel Hill, NC: University of North Carolina Press.

²⁷ United Nations (2006), *United Nations Millennium Development Goals Report*. United Nations (UN): New York

resort to a common rule or agreement upheld by the community, which may be termed as customary regimes or informal regimes. Studies indicate that these customary regimes have led water and sanitation practitioners to recognize that there exists secondary sub-systems which can exist parallel to the main system of service provision and work effectively only when they are allowed to thrive.

As such their resilience has led researchers to concede that they constitute a factor to be reckoned with when preparing 'modern' legislation for water resource governance.²⁸ Thus, we find that water legislations have sections developed for the accommodation of water users' opinions by formation of water users' associations to further their aims and contribute to the sustainability of these systems in so far as the mode of governance fosters the societal values and goals associated with sustainable development.²⁹ These systems usually present a more democratic process as they are user-developed, so they are more likely to attain a higher level of resilience. Further, research on these systems has shown that in some cases their resilience is the result of an inherent adaptive capacity which makes the systems more sustainable than state developed systems.³⁰

²⁸Eastern and Central Africa Programme for Agricultural Policy Analysis (ECAPAPA), 'Accommodating customary water management arrangements to consolidate poverty-focused water reform: A policy brief' (2007) Project Number: 101621 Project Title: Managing Conflicts over Natural Resources Management (ECAPAPA)

²⁹ Ørebech, P. et al (eds),(2005), *The Role of Customary Law in Sustainable Development*, Cambridge University Press, Cambridge

³⁰ Ostrom, E. and Gardner,R. (1993), *Coping with Asymmetries in the Commons: Self-Governing Irrigation Systems Can Work*, *The Journal of Economic Perspectives* 93-112

For example, an anthropological study by Nkonya³¹ in rural Tanzania indicates that that customary institutions in Bariadi district play a more significant role than statutory law institutions despite some shortcomings of the former, for instance in the tendency to discriminate against women, yet this is one of the fundamental rights that are being championed in the globe. The research thus proposes a need for the statutory legal systems to recognise the importance of customary institutions and to design policies and strategies to improve customary institutions particularly with respect to participation of women in decision making.

Another study depicts a strategy of organising water users into statutory created water user associations as a means of integrating pre-existing customary management systems into statutory legal systems for water governance. Koppen et al,³² document a case study on the attempt to integrate the traditional rotation-based water sharing system (*Zamu*) with formal water management instruments in the Mkoji sub-catchment. Kapfudzaruwa et al have also evaluated the effectiveness of legal water user associations in integrating pre-existing traditional governance forms in rural South Africa.³³

Most of the research has focussed on customary systems being successful in communities with an almost similar ancestry, which are mostly found in the rural areas and have a repository of more unifying factors than dynamic factors of divergence and competition for market forces of survival, while this thesis takes a different angle and looks at an urban informal area, where the instincts are more of personal gratification, than the common good of the society. The people

³¹ Nkonya, L. (2006) , Drinking From Own Cistern: Customary Institutions and their Impacts on Rural Water Management in Tanzania, Kansas State University

³² Koppen, B. et al, (2013), Integrating Formal and Traditional Water Management in the Mkoji Sub-catchment, Tanzania: Is it Working? International Water Management Institute, South Africa

³³ Kapfudzaruwa, F. & Sowman, M. (2009), Is There a Role for Traditional Governance Systems in South Africa's New Water Management Regime? *Water SA* Vol 35(5)

living in the area have no obligation to have allegiance to the promotion of the longevity of common resource properties, as they share no common denominator, save for the fact that they live in an informal area and have similar challenges.

The present research contributes to this debate by critically analysing the forms of customary governance and other strategies being employed in Soweto East for the realization of a resilient water and sanitation system. It does this by employing a mixed method of research, both qualitative and quantitative. As noted before this is a pilot project, which has elicited a lot of research interest in academia and governance circles. No research yet has been done on the intricacies which have brought about the sustainability and resilience of this particular system. Thus this thesis is important as it first focuses on an informal area which has had a long history of neglect and mis-governance of public goods and secondly it contributes to theory by evaluating the suitability of governance using co-production in achieving the sustainable development goal of sanitation for all by using locally designed informal norms in a heterogeneous settlement by Kenyans for Kenyans.

Thesis structure

To come up with a critical analysis of the governance of K-WATSAN, the aforementioned set of formulated research questions have been answered in Part I, II and III in the following order:

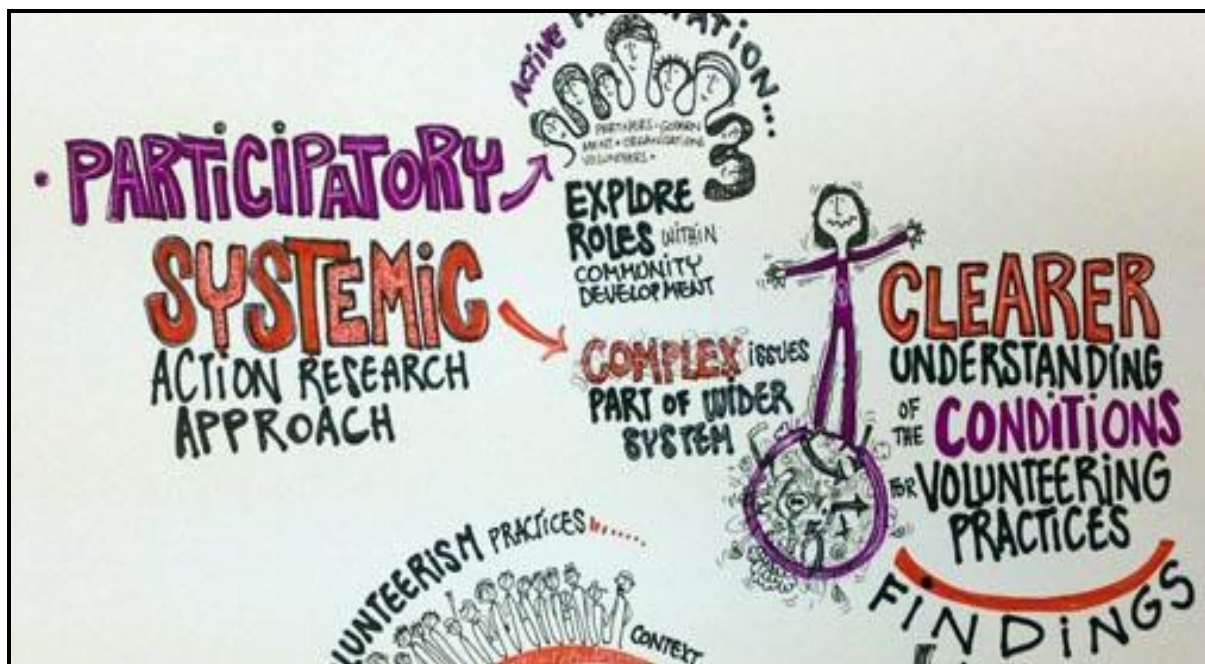
Part I of this thesis provides a contextualization of the study: Chapter 1 sets the scene to situate the thesis, by presenting the historical and current context of the study area in which the water and sanitation project is based, the laws that played in the field as the scarcity of urban services was being realized together with a slight exposition of the case study, depicting a clear case of the historical injustices that have been encumbering these people. This then paves the way for the conceptual orientation underpinning the study in Chapter 2 which aids in guiding the study and give a clearer background to what theories the thesis will be referring to at all times. All

these have been preceded by the research design and methodology between the introduction and part one.

Part II presents the society analysis: This situates all the people (agency) involved in the project, their habits, practices and representations are depicted; it goes deeper to present the practices which shape governance arrangements and their outcomes and the livelihood aspects of the people. Chapter 3 analyses the stakeholders who are actually the human capital, Chapter 4 analyzes the governance contexts that are currently in place and also from a historical perspective while imbibing the everyday practices and the livelihood perspectives in terms of the socioeconomic context.

In Part III, conclusions, summaries and synthesis are provided in terms of the power relations that have been depicted all through the thesis. This part shows the fitting in of this K-WATSAN project in the wider political debate. It provides the key findings and reflections. Chapter 5 provides the link between the local legal framework and the statutory law while at the same time framing the thesis in the urban justice and rights to the city debate that has been dominating urban studies literature in the last few decades.

RESEARCH DESIGN AND METHODOLOGY



Introduction

For the reliability, replicability and validity of this research, the steps taken to ensure that a final thesis has been presented in a scientific way must be documented in a clear and precise way. The thesis is a final product of the years of hard work put in. This section therefore outlines the various methods and sources of information that have been utilized in this study. It should be born in mind that forces of structure and agency shape the outcome of the selection of the appropriate research method, in that agency has its limits, and research decisions are influenced by one's methodological training and the proclivities of one's audiences.³⁴ These structural forces shape and are shaped by reigning methodological paradigms, or sets of widely accepted beliefs and values about how research should be conducted, that shift through time.³⁵The most commonly referenced paradigms are constructivist, positivist and pragmatic paradigms.

To avoid the 'Durkheimian conflict'³⁶ or the qualitative–quantitative (metaphysical–positivist) duality which is an overly rigid dichotomy,³⁷ I chose to use mixed method research a form of multi-method research in which some level of integration or “mixing” of qualitative and quantitative data is achieved. This mix of methods may be achieved by actually merging the two datasets in some way, having one set of data build on the other, or by embedding one dataset

³⁴ Denscombe, M. (2008), Communities of practice: A research Paradigm for the Mixed Methods Approach. *Journal of Mixed Methods Research*, 2(3), 270-283.

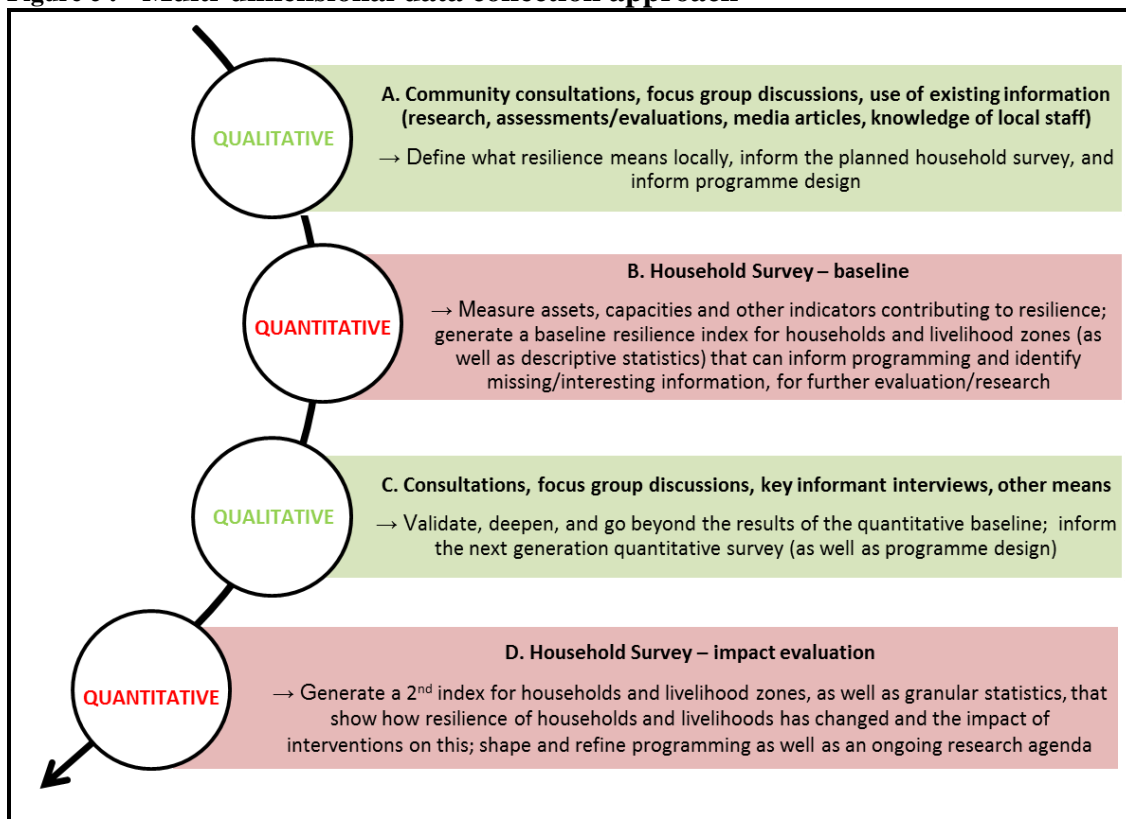
³⁵ Bryman, A. (2004), *Quantity and Quality in Social Research* (2nd ed.). Routledge, London

³⁶ Lieberson, S. (1992), Einstein, et al: Some Thoughts about Evidence in Sociology. *American Sociological Review*, 57, 1-15.

³⁷ Morgan, D. L. (2007), Paradigms Lost and Pragmatism Regained: Methodological Implications of Combining Qualitative and Quantitative Methods. *Journal of Mixed Methods Research*, 1(1), 48-76.

within the other so that one type of data provide a supportive role for the other.³⁸ Mixed methods research requires that the multiple methods are explicitly interwoven at the data collection and/or analysis phase. For example, either the collection of one type of data builds on findings from the other type of data collection, the data are somehow transformed and combined, the analysis of one type of data is based on findings from the other type of data, or other explicit linkages in the process. This is depicted in figure c, which indicates the different modes in which data collection can complement each other to enrich the data collected.

Figure c : Multi-dimensional data collection approach



Source: Adapted from UNICEF, Kenya

³⁸ Creswell, J. W. & Plano Clark, V. L. (2007), *Designing and Conducting Mixed Methods Research*. Thousand Oaks, CA: Sage.

Therefore this research constructed a methodological triangulation³⁹ by using different ways of gathering data by matching bottom up tools with top down tools at three different levels, which were: macro; meso and micro levels. The sources include primary and secondary data as well as quantitative and qualitative data. These data were used to answer the larger question which was on the ‘how’ which is very exploratory and seeks to give answers on the process carried out as opposed to only giving numbers and figures which describes the quantities and magnitudes of the interviewed people’s attitudes and perceptions.

The macro perspective was covered by national reports based on expert interviews, literature analysis and secondary data collection this was to capture policy, socio-economic and demographic context., some of these materials were retrieved from archival sources at the Kenya National Archives, especially on the history of the settlement, annual reports from the ministries, non-governmental bodies and civil societies working there The meso-perspective was covered through interviews with stakeholders and key informants in relevant public and private institutions to elucidate about the changing institutional settings following up primary results coming from macro- and micro-accounts and lastly to contextualize and have deeper insights into the working logic, practices, networks of actors, driving forces and processes the street-level bureaucrat were interviewed and observed to give the micro perspective which provided a bottom up representation.

The primary data was obtained using household surveys around the sanitation blocks in 2009⁴⁰ and later on in 2013, 2014 and 2015. (The Field Survey was carried out in February-April 2013, May-July 2014 and March- June 2015, these Field Survey blocks were used to strengthen the

³⁹ Denzin, N.K. (1970), *Sociological Methods: A Source Book*. Aldine Publishing Company. Chicago

⁴⁰ Walubwa, J.A. (2010), “*KENYA SLUM UPGRADING PROGRAMME*” *An Analysis of Kibera Integrated Water, Sanitation and Waste Management Project*. MA thesis, Department of Geography & Environmental Studies, University of Nairobi, Kenya.

data collected before in the previous study and reinforce what was being collected during the random walks in the community. Any clarifications and missing data were sought after during these periods).

The year 2009 acted as a baseline year and data collected then was used as the baseline survey of this thesis. I had personally carried out a research in the same area in 2009 and now 5 years later, I continue to carry out research in the same area with my motivation being depicted in the thesis title. In addition to this block data collection periods numerous informal and formal interviews were conducted with anyone deemed to be a key stakeholder. The main purpose of this exercise was to acquire a huge repository of data so as to build up on what already existed. It was noted that sometimes data changed depending on whom it was obtained from and at what time, thus it was paramount to cross check the respondents to ensure reliability of the data collected; for this (non)participant and active participant observation, field diaries were kept during this Field Survey period. To further collect transient information I used ethnographic materials especially the visual ones and also conducted several random transect walks in the village which at the end of it all became my second home.

At the preliminary (*primo primum*) analysis, I discovered that several themes were emerging in the various discussions and encounters with the different stakeholders. In view of this the major method of analysis used was thematic analysis, where candidate themes were identified, tested and retested to confirm their suitability in the proper representation of the findings; these then helped in the organization of the thesis. Systems mapping was also used to further clarify the project innings.

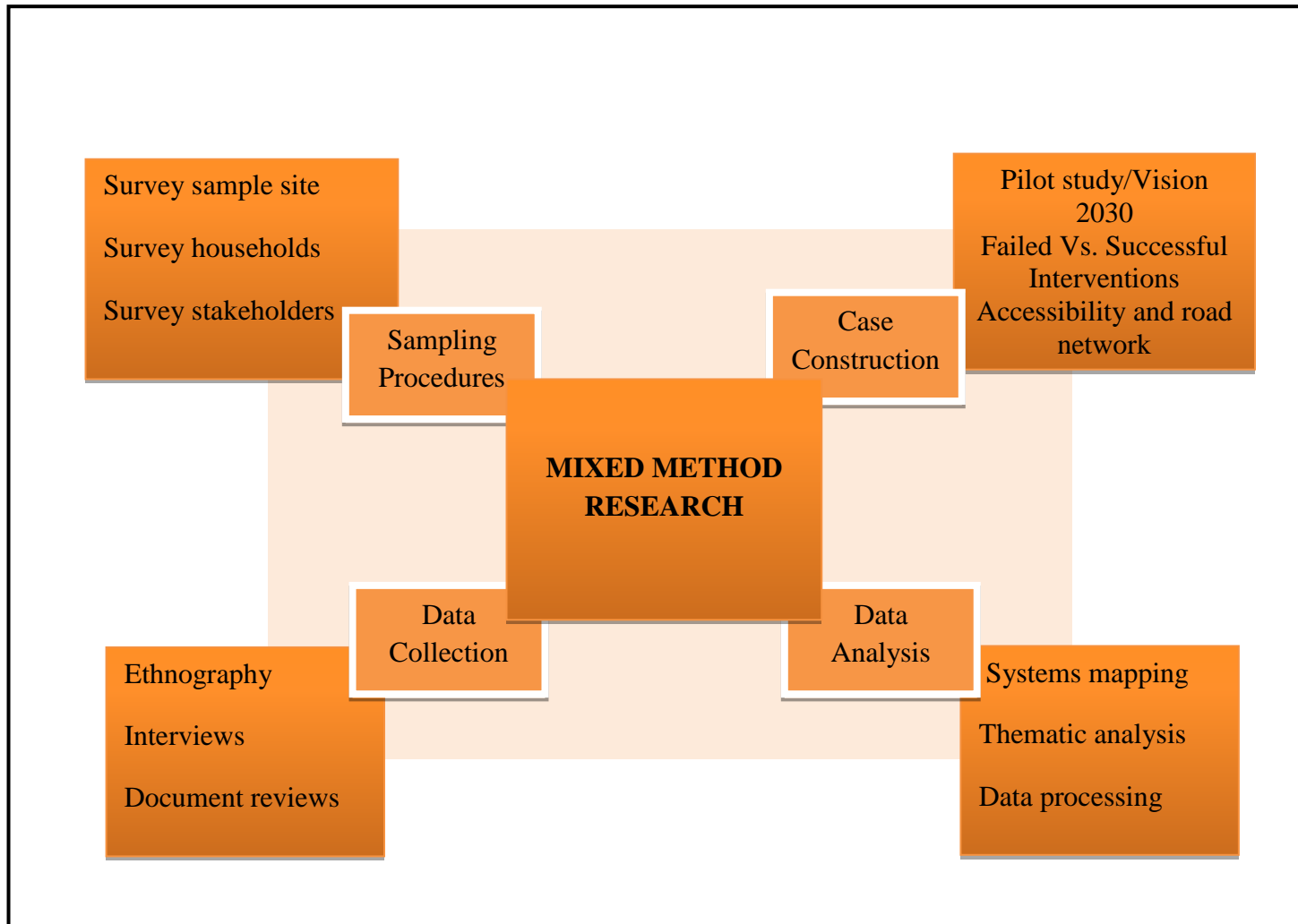
To articulate the above clearly, this section is divided into different subsections which start with the household and sanitation blocks as the unit of analysis by highlighting what is composed in each of them and defining whom/what forms part of the analysis unit. The second subsection goes on to explain how the study area was chosen as opposed to other study areas; which will be

followed by an exposition of the sampling procedures used for the selection of the respondents while the last section gives details about the two main methods of data collection- household surveys as the main primary sources and several secondary sources together with the analysis of the data and how they all fit into a proper repository. It finally ends with concluding remarks on the methodology used. Table i gives an example of how the mixed method approach was operationalized in this study.

Table i : Operationalization of the mixed-method approach

Paradigm/ Approach	Interpretivist/Constructivist	Behaviouralist/Positivist
Data	Interviews Active Participant Observations (Non) Participant Observations Visual Ethnography	Semi-structured Interviews National Census Results Case Selection House-hold Selection N=70
Descriptive Inference	What respondents said about the governance of the sanitation facilities	How many respondents gave their answers on the governance of the sanitation facilities
Causal Inference	The meaning attributed to the behavior observed, which was sustainable water system, examples of meanings are; the residents were psychologically appeased that the systems were user-developed and managed	The correlation between levels of sustainability and number of water systems
Theory Building	Inductive: User developed and governed systems leads to sustainable and resilient systems	Deductive: Non-tragic commons result to sustainable and resilient systems as they have a stake to claim
Philosophical Foundations	Ontological: street-level bureaucrat empowerment is an effective method of governance	Epistemological : We know by researching and observing a number of cases

Research methodology mental map



The household and sanitation facility as a unit of analysis

This study used a wide range of information with a great emphasis on the workings and functioning of the households which were then used as a unit of analysis. These households then combined made the sampling frame around the sanitation facilities. The households which lived near the sanitation facilities are the ones which were interviewed because they have been and continue to be the main users of the produce- water in this case. They gave reliable information on the use of water, its access and availability since the inception of the project to the time the research was being conducted. This data was used to inform chapter four, five and six of this thesis.

As an operational definition, this study defined a household as that:

‘assemblage of people living under one roof, who have a bond of kinship or other social ties and share the resources that they command in a common pool’

Sometimes the households constituted those who were not related but lived together as a way of minimizing cost in the city. This is one typical livelihood strategy depicting rural-urban linkages ever present in sub Saharan Africa, where relatives or neighbors in the rural areas come to the city to live with other neighbors or relatives. As aptly put by urban livelihood scholars that ‘migrants still maintain close relations with their rural homes even from a distance [...]they send money and sometimes receive goods or host visiting relatives.’⁴¹

In the selection of the households we found that some were male headed, female headed or female managed. This classification depended on who made the decisions in the family and not

⁴¹ Owuor, S. (2006), Bridging the Urban-Rural Divide Multi-Spatial Livelihoods in Nakuru town, Kenya, African Studies Centre , Netherlands

necessarily on the tasks or roles assigned to the different gender. The senior most member of the family was then asked to be the respondent in the survey. This member had criteria to fulfill too; he/she had to have lived in Soweto East for at least five years before the date of the administration of the questionnaire, though the preference was given to those who had actually participated in the establishing and running of the project. Those who had been present before this particular intervention were also preferred. Sometimes they were not the senior most members.

The sanitation facility/ block was favored because; it is at the core of the research. It is the node where decisions are made and all the actors congregate to carry out their daily practices. This is where they access water; the tap which they all rely on is here. So this was seen as a point of analysis where we see power relations being exercised and the networks of actors use this as the playing field.

Plate i: A sanitation facility in Soweto East

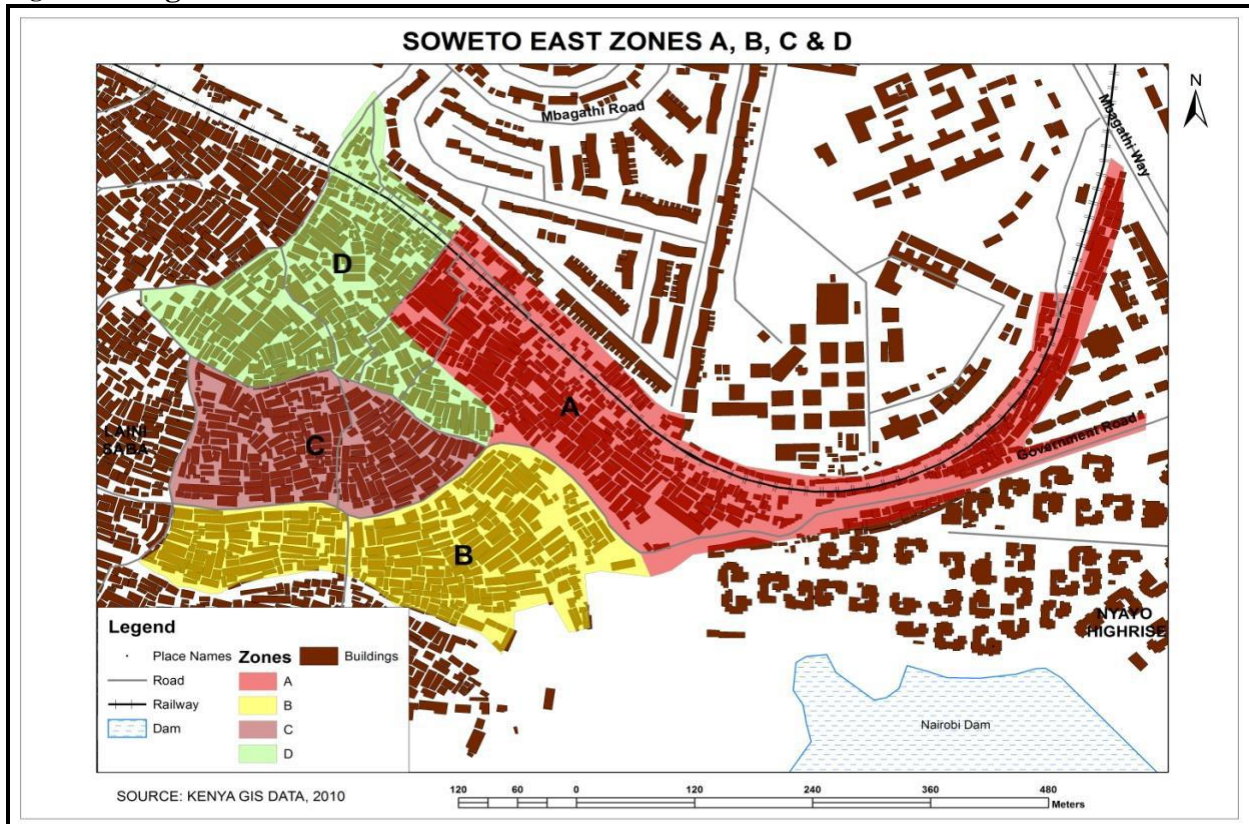


Source: Field survey

Reason for choosing study area - case construction

The study area was chosen due to its alignment with Kenya's Vision 2030.⁴² A policy document highlighting the needs of the Kenyan people and the steps in which they need to go through to achieve development by the year 2030. It is edged on three pillars, i.e. economic, social and political. The social pillar of Vision 2030 aims at building a just and cohesive society that enjoys equitable social development in a clean and secure environment. Three key sectors identified to ensure this is realized are; water and sanitation; the environment; and lastly housing and urbanization – in this thesis the focus is on the first area which deals with water.

Figure d : Regions where field research was carried out



⁴² Kenya, Republic of (2007), *Kenya Vision 2030*. Nairobi, Government Printer

It is important to note that the area is interesting to work on because the people living in this particular site have been consistent victims of previous water intervention projects, are aware or have seen these interventions come to their door step and have lived through them whether positive or negative. Thus are better placed to compare this new intervention with what has always been there. There have been many donor agencies coming to aid their plight for water, so they are actually first hand witnesses who can give testimony to the different happenings of the various interventions and their impacts.

Secondly, this project is a pilot project of the Kenya Slum Upgrading Initiative; hence it is the one that can show what lessons have been learnt during implementation of the project. The site and its activities will also be used as a learning point and case for replication in other areas of the republic.

Thirdly, in terms of road network and accessibility, it is easily accessible and can be reached on foot or by car as will be described in chapter one during the contextualization of the space. Fourthly, the area is also rapidly changing from a 'failed' intervention area to a 'successful' or 'working' intervention area, where most of the inhabitants are now using water derived from the K-WATSAN sanitation blocks. They are moving from a 'water scarce' community characterized by long queues of Jerri cans or Jerri can carrying individuals to a 'water satisfied' community which has access to water 24 hours a day. Jerri cans are the 'normal' or perceived and convenient way of transporting and fetching water; they are versatile and can be converted from oil holding containers to water storage containers. The most common measure is 20 liters which costs approximately 5 KES.

Plate ii: Dwellers carrying Jerri cans in search of water



Source: Field Survey

Sampling procedures

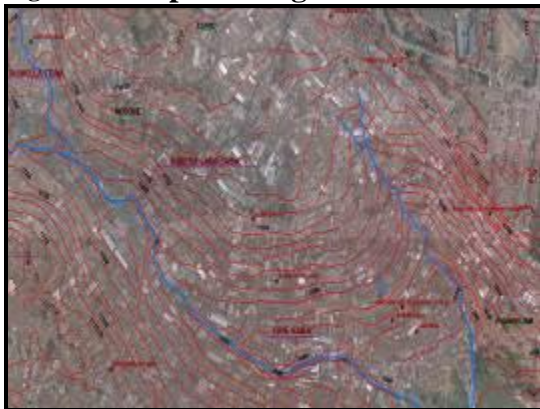
The selection of sample sites

The sample sites in the study area were selected purposefully, in that they were the nodes or loci in which the actors and networks operated from. These signify the playing field in which the daily practices of the Soweto East residents are carried out, if these nodes were to miss then the whole project would be in vain. The essence of this is that, the intervention created 7 sanitation facilities in which water could be accessed, and thus these were the sites that were automatically chosen and selected as the sample sites. Thus, these sites acted as the main data generation points; they were the determining points of proximity to the households which were chosen for inclusion in the study. Purposive sampling was used here. The main aim of selecting these locations was to capture as many ‘project households’ as possible so as to obtain the impacts which these sanitation blocks have caused in this community over the last five years, perceptions that the community members have of the sanitation facilities, daily practices of the community members, power relations of the different actors in the networks, the nature of the networks, the

actors present and household economies that depended on water as an economic tool or asset for their livelihood.

The aspect of the ‘traditional’ institutions in use and management of the current water system was also captured in these nodes. The selection of the sample sites inherently picks up certain features of people’s social relations and social networks as part of the social capital. According to the World Bank 1997, the term social capital refers to the set of norms, networks and organizations through which people gain access to power and resources and through which decision-making and policy formulation occur. This definition encompasses a general view of micro and macro scale institutions in the organization of production that affects performances. It can be realized from either formal or informal social networks. The option of choosing these sites permits a comparison of parameters of interest across the different sanitation blocks and their management. It offers a different perspective of the before and after of the intervention. Thus it offered an opportunity for investigating differences between the power relations of the different nodes as well as other social characteristics of the sample households.

Figure e : Map showing contours and heights of Kibera



Source: Nairobi City County

Selection of the households

The purpose of the study was to find out how the sanitation blocks have survived for this long (5 years) with each individual accessing water at the time and point they need and in whatever amounts. Thus it was necessary to interview the households which had been interviewed initially i.e. in the 2009 study. The intention was to choose households which had participated in the previous research study and who had been there throughout the study. This would have aided in the recall of the first study and also how the changes had impacted on them since the setup of this study.

These households were selected for three main reasons:

1. They acted as a control group for the study
2. To offer background information on societal changes affecting the dwellers since the inception- the changes especially the socio-political were captured here.
3. They had more cohesive networks and established daily practices.

Box i elaborates in detail how the study respondents were chosen in the last study carried out in 2009. It was a comparative study between two villages Lindi and Soweto East. At the moment the focus of the research is on Soweto East alone, though Lindi village has been mentioned.

Box i: Selection of sample size

This study was carried out in two villages of Kibera: (1) Soweto East village where the Kibera Integrated Water, Sanitation and Waste Management Project is being implemented and (2) Lindi village which was largely used for comparative purposes. A workable random sample of 70 households in each village was selected for interviews. Even with a mathematical formula, there are no universal laws about the sample size (Mugenda & Mugenda 1999). However, guiding principles do exist. The sample sizes in the two villages were informed by a guided tour of the two villages as well as the available financial resources and time.

Random sampling of households in Soweto East village was done around the operational UN-HABITAT ablution or sanitation blocks: 10 households around the 7 sanitation blocks. This was meant to capture, as much as possible, the “project households” in order to achieve the overall objective of this study of analyzing the Kibera Integrated Water, Sanitation and Waste Management Project. In Lindi, simple random sampling was done from a list of households obtained from the village elders.

The same questionnaire was administered in the both villages to capture various aspects such as household demographic characteristics (2009); household head migration history; access to water situation (2009); coping with water scarcity; access to water and household’s health situation; access to water and livelihoods; perceptions on access to water; access to sanitation situation; and house conditions and other amenities. However, Soweto East respondents had an additional set of questions focusing on the impact of K-WATSAN on their livelihoods. In both cases, the respondent was the household head, spouse or an adult member of the household. At the end, the study managed to interview 117 households – 56 in Soweto East and 61 in Lindi.

The 2009 study acted as a baseline and the researcher and research assistants mapped out the households that had been sampled then. This was a very interesting exercise as the informal settlement is very dynamic with changes happening in a fluid manner. Of the 56 who were sampled initially, we found only 50 in the initial dwellings that they had been living in for the

last 5 years, while 2 had relocated to other areas within the settlement. Of the two, one of them had the house located on the path designated for a smaller access road thus his house had to be demolished to facilitate the construction; while the other had to relocate as his house had fallen down due to the ‘natural’ process of wear and tear. It was a mud house and the rains washed it away in due time which necessitated its rebuilding though in a different area. These two were located and included in the sampled households. The remaining 4 had left the settlement entirely.

It was evident that a replacement was needed for the four who had left the settlement and also to top up the initially desired sample size of 70. Thus another round of sampling was carried out to include 18 new households. This was achieved by mapping out the area once again - this was done with the assistance of the SEC, (Settlement Executive Committee - These are community members duly elected by the community and charged with representation of the community issues and concerns to the relevant government authorities in case of a need or arbitration) we obtained a list of the households and did a stratified random sampling of every 5th household. Of these we asked them if they were users of the sanitation blocks and we always tried to get the one who had lived there for more than two years. If the 5th household was of a recent immigrant, we did not interview that household as what was needed was a ‘veteran’ or a more ‘seasoned’ water user, so we moved to the next household so as to get the typology of the households that were useful to the survey.

This choice of the households forced me as the researcher to observe the networks and dwellers more intensely and for a long time. My life there was almost a daily mapping of the research households. They became my friends and they became acquainted with what my research was about even before they had the formal official interviews, because many times I as the main researcher went to have conversations with them at the watering points and visited them casually to have a chat. These produced a wealth of information which was useful in the final data analysis and also helped in the reformulation of questions to pose to the dwellers. In total the

selected households numbered 70 which was the population I interviewed to generate data for this study.

Selection of the stakeholders

It was imperative to select the stakeholders in a way that reduced bias and ensured transparency so that any information provided would be accurate. As such, document search was conducted to know who has been working in the area and then the stakeholders were extracted from the search. As mentioned in chapter one, Kibera as a whole has experienced many interventions with many people claiming to be ‘experts’ in this area of water and sanitation who have the solution to the much needed problem or catastrophe; this would also be a similar case for Soweto East which has also had several interventions.

A progress report⁴³ on this particular intervention noted that while selecting the stakeholders it was important to be very village specific as they aptly put it: “The primary objective of this study was to provide an up-to-date “status report of the various actors operating in Kibera, their areas of focus, and their achievements” (2004:2). Various organizations and institutions involved in service provision (specifically ‘humanitarian’) were identified and classified into nine major thematic areas: Religious; Health Services; Education and training; Social welfare and support; Water and Environmental sanitation; HIV/AIDS; Income generation and economic empowerment; Public sector and Legal/Rights Organizations. The study noted implications/considerations for any upgrading programme based on information collected from each of these actors [...] It was found that many of the services provided within Kibera were village-specific. The majority of services provided in Soweto, for example, were religiously

⁴³ Meredith. T, and MacDonald. M, (2004), Kibera Integrated Water Sanitation and Waste Management Project Progress and Promise: Innovations in Slum Upgrading, UNON, Publishing Services Section, Nairobi

based (there were 29) as opposed to actors providing economic empowerment and income generating activities (there were 0).

Conclusions of this study were that, despite “the process of slum upgrading [causing] different emotions in different actor and residents” of Kibera, there is enough “goodwill among the slum dwellers across the whole spectrum of actors for participation in the process” (2004: 18).”

In view of the above the stakeholders for this particular research were selected depending on their level of engagement in the project. That means, exactly what stake or interest they had whether directly or indirectly. This looked into the amount of resources they had put in for the realization of the project; for example how much time they invested, in terms of project inception or actualization and implementation of the project; how much finance they had invested; how much labour they had invested and much more depicted in the table. Table ii shows the different stakeholders and resources invested.

Table ii: Stakeholders and resources invested.

Stakeholder Name	Resource Invested
Maji na Ufanisi	Water infrastructure and plumbing skills and capacity building
KENSUP	Umbrella body for implementing the project- monetary resource
UN HABITAT	Partner implementing organization – monetary and advisory resource
Members of the SEC	Labour, security, community mobilization and representation
Members of the community, including members of CBOs	Labour and ‘land’ – space for constructing the water facilities
Nairobi City Council	Provision of water permits
Soweto East Resource Centre	Space for holding meetings and conflict resolution
Academics – U.O.N	Technical plans, advisory resources and monitoring and evaluation of project
Ministry of Housing	Advisory role

A brief note on the respondents of the survey

At the household level, we encountered different dynamics. Either the male headed, female headed or female managed households. For this we asked the senior most member of the

household to answer the questions. This was done after probing if he or she was the one who knew the workings of how the water was accessed and utilized in the home. More often than not it was the eldest female member who fetched the water and by virtue of this, she knew and made decisions in regards to water use while the male members knew much more about the meetings at the node, who was in charge and at what time they were in charge; so they knew much more about the organizational structure of the water points as opposed to the women.

Once the stakeholder organization had been identified, the selected respondent was the person or people who had been present since the inception of the project. We found that they were better placed to answer the questions posed to them than the ones who came later. The initial ones had a better grasp of the project and could recall almost pictorially the events in their chronological order; as such they were a richer source of information.

Initially some respondents wanted to be paid for offering information as they saw this as an opportunity for making an extra coin or generating income. This was resolved by our code of ethics, whereby we explained to them that the research was educational based and was for their own good, it was not a money making venture; once they understood this, it was easier to work with them and they were very cooperative.

At the initial stage some questions were misunderstood by the research assistants. This lack of understanding was brought about by some attitudes posed by the respondents in that they wanted to answer their own question. i.e. a question they think should have been asked and was not framed according to their way of thinking, so they thought it was not asked in the questionnaire, as such they volunteered their own information or answer to a question they had 'asked' to their own selves as opposed to the one asked in the questionnaire. This was noted earlier and if left unchecked would have compromised the data obtained, thus a solution needed to be retrieved for this situation. After careful reflection, the situation was resolved by carrying out a second and third dry run of the questionnaires, asking all imaginable questions and walking with the

assistants through the study site to show them how to ask questions to the dwellers. A retraining of the research assistants was conducted and any inconsistencies were checked during the extra-research informal interviews.

Lastly, as mentioned in the first chapter and chapter four also, we find that Kibera has had several interventions with the dwellers being subjected to several interviews and the likelihood of encountering research fatigued respondents is very high. Whenever we encountered this particular genre of people, we tried to gain their trust one last time and won their friendship so that they would give us accurate responses as opposed to the stereotypical responses which denote or depict that aid should be coming their way. In fact one respondent (Njeri) said that *'Mnashinda mkituuliza maswali , lakini hamtuletei hio mnapatanga huko mbele, mbona niwajibu maswali za polisi?'* To paraphrase her, I would say that she wondered why researchers keep coming to the settlement to ask questions which she equated to police like questions , yet they never share with the villagers the spoils of what they (researchers) get from carrying out studies, so what was the use of her responding to these set of questions? What was so unique about them?

Methods of data collection and analysis

Methods do not travel quite straightforwardly and due to the dynamism of this particular research spanning a long time frame; it employed a broad approach to obtaining data as mentioned in the foregoing sub-section. It used a range of mixed methods to gather data which enriched each other for a notable output. For example to obtain primary data ethnographic methods and observations were used as well as interviews and questionnaires as tools of data sourcing.

Primary data collection

Project household surveys

The household surveys were undertaken during the official field periods⁴⁴ 2014 and 2015; Since there were seven sanitation facilities, the first five were done in 2014 while the last two were done in 2015. This was to ensure that the data was collected without too much rush and provide ample time for any clarification needed. The other reason was that the first fifty respondents were available around the first five sanitation facilities and such it was easier to collect at one go, while for the other twenty respondents, there was need to do sampling afresh so as to add them to my study, this required time too, hence the choice of doing the interviews in 2015.

The household questions were designed and pilot tested in the village during the informal round trips that I and the researchers used to carry out. This was specifically in 2013; where by the inconsistencies in the questionnaires were identified and corrected before the actual formal data collection exercise was done in the next year i.e. 2014. Any question that was misleading or had several interpretations was paraphrased for clarity. For the pilot survey twenty households were arbitrarily selected and interviews conducted with each assistant. The main reason was to build familiarity with the questions, since these were not the same assistants used in the baseline study in 2009. These were new and needed an introduction to the survey.

The survey questionnaires generated substantial amount of data for the study at household level which was used in the study. A total of 70 households participated gainfully in this survey. This was a hundred percent success rate as that was the intention. If for one reason or another the household head was not present the research assistant made another appointment with the neighbor or present household member so that they would come back and do the interviews again.

⁴⁴ The Field Survey was carried out in February-April 2013, May-July 2014 and March- May 2015

One unwritten criteria we as the research team had was to ensure that both the spouses were available so as to get a better picture of the relationship between water access, water use and the power relations at the fetching point. This was because most of the time the women, even though they were not the household head, knew much more about the access in terms of time, distance and any other dynamics that were there as opposed to the men who knew much more about the political angle of how the water came to their door step, so this rich mix was the better idea.

During the official periods of collection we were able to get our respondents to fill the questionnaires, which I later looked them up for any misleading information. Once any anomalies were spotted the questionnaire was separated from the rest and I did the actual clarification and back checking when I went back for informal transect walks. These clarifications were in the form of informal chats, to make the respondents feel at ease, show respect for their time, and make them not feel like they are being re-interviewed. This facilitated the production of good data.

During the preparation of the questionnaire, particular attention was paid to the structure and order of the questions, deferring sensitive, personal questions (especially on leadership and money) towards the latter part of the questionnaire⁴⁵ so as to gain the trust of the respondent before they disclose any personal information. Table iii shows the type of information sought and what research question they sought to answer.

⁴⁵ Appendix 1; Project Household Survey Questionnaire

Table iii :Type and description of information collected at household level

Type and data description	Research question
Background Information	1,2, 3
Use of water	1,2,3,
Livelihood situation	3,4,5
Everyday practices	3,4,5

Visual ethnography

In selecting this method of gathering data, the main driving force was an attempt to see the world through the eyes of those with whom we produce data. So that I could actually see how the city was and is made on the ground, the everyday practices of doing the city.⁴⁶ This produced a wide range of data as active participant observation was used as a way to meet people in *a priori*. This thus enabled me to see the inter-sectionalities of the processes and patterns rather than ask all the nuanced behaviours.

To secure evidence , store and preserve observation for later, I chose to take photographs, which actually brought about a transformation of my gaze, and helped me construct themes that were present in the settlement, for example a recurrent theme was on participation as many photographs were on that aspect of people holding consultative forums or working together. Even though photographs are subjective, they actually are abstractions of spatial ‘truths’ and

⁴⁶ De Certeau, M. (1984), *The Practice of Everyday Life*, University of California Press, Berkeley

their meanings are derived from the social transactions they are part of.⁴⁷ They helped me, make sense of the research I was carrying and how it interacts with the urban life.⁴⁸ At times the camera became a hindrance in the capturing of data and so we resorted to using the phone camera as it was more natural and the community was accustomed to this mode.

Plate iii: Community members pausing during one of the construction moments



Source: Field survey

⁴⁷ Pink, S. & Afonso, A. (2004), *Working Images: Visual Research and Representation in Ethnography*, Routledge, London ; Becker, H. (1995), *Visual Sociology, Documentary Plategraphy, and Platejournalism: It's (Almost) All a Matter of Context*, *Visual Studies* 01/1995; 10(1-2):5-14

⁴⁸ Marcuse, P. (1997). "The Enclave, the Citadel, and the Ghetto: What Has Changed in the Post-Fordist U.S. City." *Urban Affairs Review* 33 (2): 228–264

Both active participant and non-participant observation were carried out throughout the study period, there was no fixed date especially at the beginning of the research. Since we had been accepted as community members, one of the research team members would go and sit at the water fetching point randomly, talk to the inhabitants, help in running the facility and just get immersed in the daily life of the people. The exercise was very informal and helped the people whom we were studying act their roles in a more natural manner, especially when a clarification was needed of earlier collected data. Sometimes I took a transect walk in the village and went to the water tap and just sat, and observed what was being done in the site or sometimes to gather specific data, I chose to go in the morning as this was when most of the water was being fetched for domestic uses.

When observing the people, the research assistants and I put diary entries which helped to explore the role of water in the lives of the dwellers and the water technologies they used at the water sites either to conserve or use it sustainably. We also observed interactions with water and social interactions involving water. It was very interesting to watch how people or sometimes ladies in particular used to use the tap as a meeting point to discuss what happened in the village the previous night or perhaps how they had spent their day. The sanitation facility was actually a node of social interaction as depicted in chapter four.

Key informant interviews

To corroborate the information received from the users and dwellers of the water system, it was important to have interviews with stakeholders, who had a huge role to play in the design and implementation of the project; as such we contacted key individuals and partner groups in the government (they are responsible for their citizens) the UN-HABITAT, NGOs working there, community based organizations and the SEC. They are mentioned in Table ii. They had a different set of interview schedules⁴⁹ as the information needed was different from what the

⁴⁹ Appendix 2: Expert Survey questionnaire

dwellers were giving. These we termed as ‘expert interviews’. These interviews were conducted in two phases with the first phase being in April 2013 and the final one in March and April 2015. From each organization, only one person was chosen to participate in the key informant interviews, and his views represented the views of the organization. These interviews were used to answer question 3,4,5, which form chapter three, four and five of this thesis.

Focus group discussion

The participants/ respondents were purposefully chosen for the focus group discussion. They were the ones responsible for managing the sanitation facilities. One would call them the ‘men/humans at the tap.’ They were responsible for issues related to management of the sanitation facilities and thus knowledgeable on management norms and institutions.⁵⁰

Plate iv: Focus group discussion with community members



Source: Field Survey

⁵⁰ Appendix 3: Guideline for Focus Group Discussion

The objective of the focus group discussion was to provide background information on the sanitation blocks, their management and the informal water resource management system. The discussion also served to gain insight on the normative and institutional structures of the water resource governance system of the community.

Box ii: On the research assistants

There were two research assistants for this particular study. The initial requirement for selection was to have assistants who had completed a Bachelor's degree in the social sciences, who would have most probably been sourced from the exterior of the settlement, but when I went to the field the SEC recommended that I get researchers from the village, who were familiar with the study site and for empowerment purposes. It was a very tense moment for me, as I thought the reliability of the data may be compromised if I had to get a local, but after several deliberations we reached an agreement where I took a researcher from the wider Kibera settlement who had finished his degree and was looking for a means of livelihood while the other was in the process of doing one. I wanted someone neutral so that they could remain objective during the study as the meaningful contribution of the research assistant is vital in the realization of the study goals and objectives.

Luckily the research assistants whom I got had previously dealt with questionnaires in the field and as such they were familiar with research protocols. However training for this specific Field Survey was necessary to ensure that the surveys are conducted with a high degree of accuracy and standardization. Besides training the research assistants on how to collect data, the training also involved establishing an agreement with the research assistants that the confidentiality and informed consent of all the survey respondents was upheld. The surveys were conducted orally in Kiswahili, English or sheng depending on how fluent and comfortable the respondent was, but the final recording was in English. It was advantageous to get research assistants from the study area as such because they were at ease with the respondents and the language was not a barrier in the study, it also made the respondents have confidence to divulge private information which was vital for the study as the research assistants resonated with the lives of the respondents.

Secondary data collection

The household survey was supplemented by secondary data. Plenty of work has been done about Kibera in general, but to get the specific works on this particular study, it was important to narrow down to the stakeholders and organizations that have dealt with this intervention, hence the need to access government ministries especially, housing, lands and water to get accurate data on their perceptions about this particular intervention. Beside these government ministries, national archives, NGO offices operating in the study area and the resource centre in the study area were accessed. Before the collection of data, preliminary scoping was done to assess the value of data and the data needs so as to address specific research questions. This then led to a document search whereby both formal and informal records of key events e.g. inception phase, mid and end term evaluations were identified and collected for further examination.

The aim of all these was to understand K-WATSAN in its entirety, situate it spatially, temporally and institutionally. As mentioned in chapter one, this particular project was a ‘new’ paradigm, hence the importance of understanding it so as to explore the ‘how’ of it. It resulted from a history of scarcity, hence it is unique and needed to be understood in the context of its birth and development, as such the understanding of the events that preceded it was paramount for understanding the events that took place within it.

The document search was summarized into four categories; the first was the general history of the settlement known as Kibera and then narrowed down to Soweto East, the origin of K-WATSAN, the operations of k-WATSAN and any reports done after the implementation of the same. These documents were scanned for lessons learnt, the envisioned operations, the actual operations and any other comments, which were then documented and offered as an enriching fodder for this thesis.

Some of the documents that were scanned included: Academic theses on this project, Water Act 2002, Physical planning Act, Reports from UN-HABITAT, archived historical documents,

project documents from Maji na Ufanisi, consultant reports , constitution of Kenya among others. A wide range of Plates were also scanned from Nairobi County Water and RMRD.

Data analysis

The analysis of the data involved processing the data first before trying to make sense out of it. After cleaning of the data, the raw responses had to be analysed thematically by using thematic mapping as a tool for extracting the themes emerging in the raw narrative which later helped to understand the flow of information and structure this thesis to make sense of the data gathered and the project itself.

Data processing

After every Field Survey period the return questionnaires from the field were checked in so as to keep track of what site had been surveyed and which questionnaires had been returned and subjected to a close scrutiny for inconsistencies and errors before coding and data entry in the presence of each research assistant who had brought in the questionnaire.

Quantitative data were used as entered whereas qualitative data were either coded⁵¹ or used as narrative text to clarify other replies. The generated code book was used to translate the entries in the questionnaires to a spread sheet. The spreadsheet data were then converted to electronic form using Statistical Package for the Social Sciences (SPSS) interface data editor since SPSS was the main analysis platform for quantitative data. The resulting dataset was further subjected to cleaning based on the preliminary frequency distributions. The coded qualitative information was used to provide descriptions and magnitudes. An example of data mining is shown in table iv. This is where quantitative information was derived from dataset variables measured at nominal and ordinal levels, data mining was performed to extract quantitative information using Likert

⁵¹ The researcher designed a code book based on the array of responses generated in the field

scale technique⁵². It represents part of the questions that have been answered and informed the writing of chapter 4.

Table iv: Data mining

Raw Response	Old Value	Coded Response	New Value
Access to toilet	1	Water and Sanitation	3
Access to credit services	2	Monetary gain	1
Clean environment	3	Water and Sanitation	3
Reduction of diseases	4	Health benefits	2
Ease of access	5	Water and Sanitation	3
Less distance to facility	6	Water and Sanitation	3
Access to water	7	Water and Sanitation	3
Privacy in facilities	8	Water and Sanitation	3
Employment promotion	9	Monetary gain	1

Source: Field Survey

In the example above (Table iv), the raw responses were the qualitative results obtained from the questionnaires (nominal scale of measurement). To have a meaningful output, the most desired result in line with the K-WATSAN objective was given the value of “3” and the least desired result was assigned the value of “1”. The results were then assigned labels corresponding to categories in line with the. The new values were the quantitative values obtained, which could

⁵² Gordon, S.(2003), Computing Information Technology: The Human Side, Irm Press, Massachusetts

then be entered in an inferential statistical analysis procedure or be used in generating descriptive statistics.

Analysis of data

At the preliminary stages statistical data was subjected to exploratory data analysis using statistical tools of descriptive measures including measures of central tendencies and dispersion to assist in accurate description of statistical data. The results of these analyses were presented in tabular form.

The philosophy of this research was to get to know ontologically by reflexivity about the subjects under study. There was a need to understand and hear the voice of the particular project, which had to come from the different actors in the project, therefore I did a thematic analysis to extract the emergent themes and then ordered the work. This I did by familiarizing myself with the data, which entailed listening and re-listening to the audio versions of the interviews and focus group discussion several times, then coded systematically the interesting features in the entire data set both for the semantics and latent themes to establish what patterns were emerging.

Once I had several themes, I decided to clean them up so as to get the best candidate themes, this I did by lumping up together the themes that looked similar, then giving them an overarching broader theme and reviewed them for relevance so that they could have internal coherence and strong distinctions between them. Once this was complete I was able to name the themes by describing them in manners that captures their true essence. For example when many sub-themes talked about ‘making the project into our own language’ or ‘giving us ideas that we can understand’ or ‘giving us things that are familiar to us’; the theme of ‘vernacularisation’ was born which was very distinct from other themes and had enough data to support it.

The theme of ‘participation’ also emerged, during the analysis of the content , which thus forced me to use the community participation model⁵³ and rapid appraisal technique to measure the

⁵³ Daniel, P.(1969),Maximum Feasible Misunderstanding; Community Action in the War on Poverty. New York Free Press ; Botterill, L. & Fisher, M. (2002), The Rise of the Community Participation

level of community participation in the project to gauge if it was a theme that could merit to stand alone. The parameters or indicators used in the community participation model included:

- a) Knowledge base: Whether the relevant community had better knowledge of the problem and a workable solution to it once the programme started being implemented.
- b) Numbers involved: It is assumed that involving the community would mobilize many more human resources than could be marshaled by the government acting alone. This was used as an indicator of whether the programme was government or community owned.
- c) Capacity building: Any participatory programme would build the capacity of the participators to tackle any future problems on their own.
- d) Sustainability: The programme was analyzed to see if the affected population would be able to continue with the programme once the implementing agencies leave the site.
- e) Established networks: network base and development is seen as a key concept in understanding the symbolic, geographical and political space.

The rapid appraisal technique involved mapping, ranking, diagramming and discussions – by the community. In mapping, the researcher was able to get information as to whether the community knew where the project was being implemented, their views about it, the opportunities and constraints that their new and old situation presented. The ranked information was largely on the levels of participation, what knowledge the community had acquired and issues related to the running of the facilities. In diagramming, charts were used to establish relationships between the various processes, stages and participation in project implementation, including leadership structure.

Conclusion

In this section, the methods used in the research were reviewed. Multi-method research was employed where several methods were utilised to capture and analyse as accurately as possible

Model. A paper presented at Jubilee Conference of the Australasian Political Studies Association, Australian National University, Canberra

the data and information needed to answer the research question dealing with how this community has managed to be resilient in terms of water provision and accessibility for the last few years, which is far from the normal cry. This question of the ‘how’, further leads us to answer the ‘why’, which is explained throughout the thesis, when power relations are being elucidated upon as we go along.

The methodology was fluid and not very strict in that there were set periods of data collection though, the data collected was not only limited to these periods, it was an extended study, as I the researcher had access to the village literally all the days I wanted, since they are close to my neighborhood. This prompted me on several occasions to go there and make friends and do observation in a very natural manner. Many of these informal conversations yielded information that would have otherwise been hidden or proved difficult to access if I had only gone to the field on the official prescribed data collection months.

The use of field note books was also very essential, as it recorded a lot of information which sometimes seemed useless but when writing the thesis it seemed very useful. The data collected also built and complemented each other in regards to the networks formed and operated, the daily practices of the people of Soweto East, the socio economic aspects, how the dwellers bargain their daily life and more importantly the power relations in Soweto East.

Ethnographic material, systems mapping and thematic analysis proved to be key at the different levels of abstraction from the operationalization of the concepts to the comparison between the different nodes. I had to do a triangulation of methods and find different doors of entry into the problem so as to find common ground and expound on the question at hand to come up with this thesis.

PART 1

1 SPACE AND SOCIETY



Kibera "may be the most entrepreneurial place on the planet" and that "to equate slums with idleness and misery is to misunderstand them" The Economist 2012

1.1 Introduction

This chapter sets out the context in which the thesis is based on. It is essential to set the stage and contextualize the space itself in its historical and cultural setting to understand the intricacies and the richness of the dynamics that play in the field. The settings facilitate the tools of understanding, analyzing and measuring as we open and close the space and society of the study interest. It also allows one the comprehension and appreciation of the limits and territorial logic that surround and encompass the observed situation in the thesis.

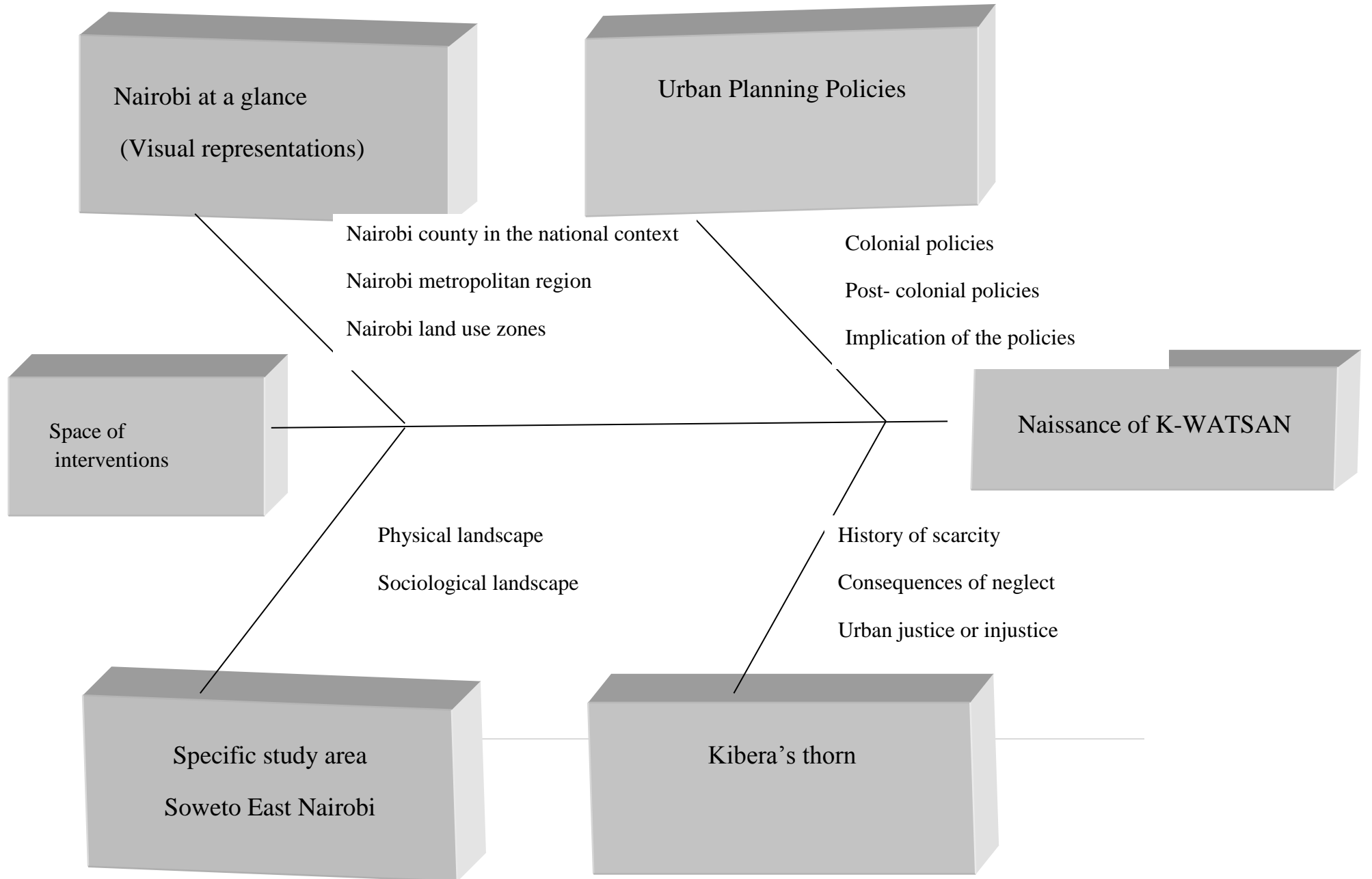
Like many spaces of habitation; Kibera and by extension Soweto East village - which is the particular area under study- has unique and singular characteristics which makes it stand out from other spaces and gives it its unique way of being handled. It has undergone an unusual property regime rule and as such the power dynamics that play in this field are ruled in a non-conformist way; they are very fluid and change from one regime to the next or better still, from one day to the next depending on who has the upper hand and can command a more convincing client- patron relationship. This is what lends to Kibera its impenetrable identity. Kibera which has been termed as the largest slum (informal settlement; to be politically correct) in Africa has a face; this face is confusing to many as it has mingled expressions. It is the face of poverty, despair, unsanitary conditions, hope, wealth and a new generation- the face is relative and depends on who is doing the act of looking. Over the years it has received many good will interventions from local and international donors and at the same time faced numerous imaginable 'vulgaries' for its fight for existence and survival- for example forced evictions, outright blatant demolition, illegal arrests etc. have been the periodic norm in this settlement yet in the end it has come out triumphant with an almost bold mocking face saying 'I am here to stay!' And that is what Kibera is- an eyesore to some, an income generating opportunity to others, a political fodder group to some and more importantly a place to call home for many.

This thesis focuses on the latter group, as they are the ones who live and bargain their daily lives there; when all else have said or carried out some work in the settlement; this group still remains to carry out the humdrum of everyday life.

In this age of planetary urbanization, this introductory chapter sets the stage in aiding the comprehension of the effects and patterns of urbanization that have been going on in Nairobi, which is the capital city of Kenya in Sub-Saharan Africa. It starts by a quick location of Nairobi so as to physically position it in the globe, then sets the history of the laws that have affected the planning of this city (now a county) from the colonial times to the present study; these laws are intrinsically linked with land laws in Kenya and hence they are sort of interwoven together and depict a tapestry which explains housing provision in the county. It then gives a synthesis of these laws and how they affect the study which opens to the next phase of the chapter which is the study site per se- Kibera and specifically Soweto East.

The second part of the chapter takes one through an introduction into the settlement so as to see with the eyes of the people, feel with them and understand the context in which they carry out their daily practices. It starts with the physical entry into the settlement, giving a brief introduction of how the place looks, then looks at a brief history of Kibera – which is actually the history of the Nubian community- the snippets of the history slowly eases into Soweto East, showing how this history is actually a history of scarcity of urban services which have a hinge on the fragility of the property rights. A lack of clearly defined land rights have led this settlement to be excluded from mainstream planning and as such have no basic services needed for a decent livelihood. As the chapter draws to a close it shows how the people of Soweto East have organized themselves to take charge of one of their basic rights – water!

Mental map of chapter one



1.2 Nairobi at a glance

Nairobi City County (2010 status) was established as a railway depot in 1899 by the original colonial masters of the time building the Mombasa - Uganda Railway. They were of British descent and had come to trade and establish colonies in the global south. So far its population has risen over the years to about 5.5 million people by day and 4 million people by night,⁵⁴ while the Nairobi Metropolitan Region (NMR) has a population of 8 million people due to various dynamics like a shift in balance between the rural and urban economies leading to rural to urban migration, increase in refugees and asylum seekers and natural population increase among other factors.⁵⁵ It has been termed as a place of 'cool waters' getting its name Enkare Nairobi from the Maasai community who were a pastoralist people occupying this particular region in the early years of the turn of the 20th century.⁵⁶ Nairobi is found 140km south of the equator, at the junction of Athi River Plateau, lies at an altitude of 1670 m above sea level and 25 kilometers from the escarpment that overhangs the eastern shoulders of the Great Rift Valley.⁵⁷

Nairobi City County has a multi-racial population with a growth rate of 4.7 % per annum and average population density of 5,797 persons/km²; 50 persons/km² in the NMR and 90,000 persons/km² in some low income residential areas. It is managed by Nairobi City County Government which provides services to the city residents while the NMR consisting of 4 counties and 15 local authorities is managed by Nairobi Metropolitan Development section under the Ministry of Land , housing and Urban Development .

⁵⁴ Kenya, Republic of (2010), Kenya Population and Housing Census. Nairobi, Kenya National Bureau of Statistics

⁵⁵ Hope, K. (2013), "The Growth of Urban Communities in Kenya." *African Identities* 11(3): 274-289

⁵⁶ Nevanlinna, A.K. (1996), 'Interpreting Nairobi. The Cultural Study of Built Forms', *Bibliotheca Historica* 18, Soumen Historalli Seura, Helsinki, p. 91.

⁵⁷ *Ibid*

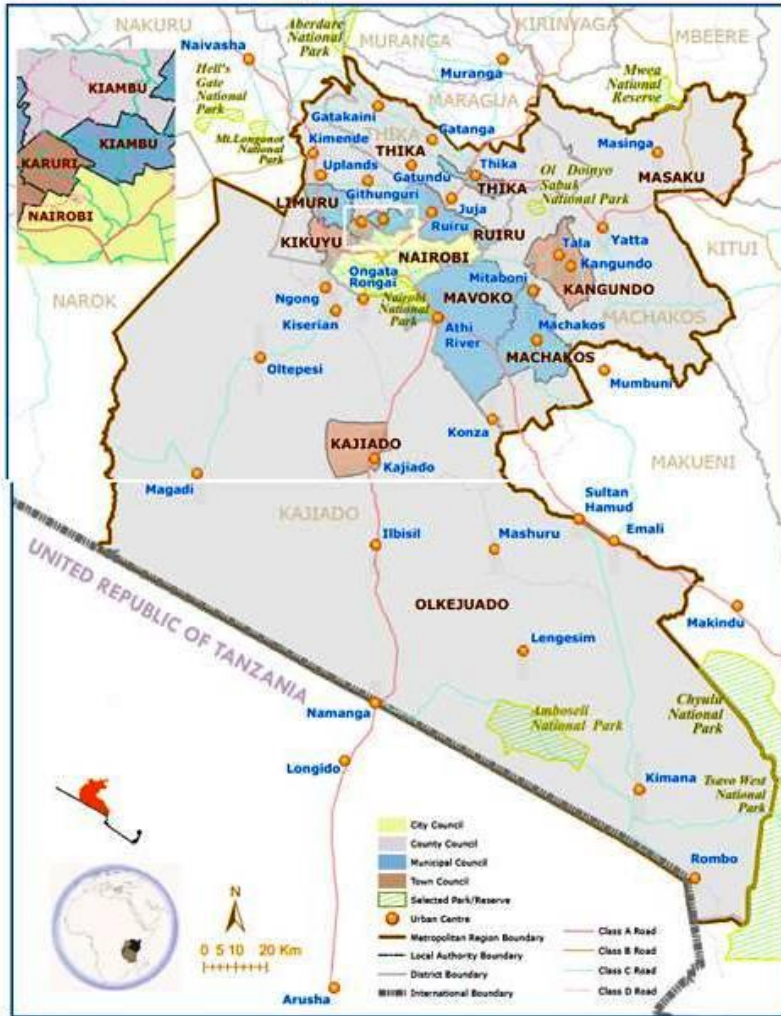
Figure 1. 1: Map of Nairobi County in its national context



Source: Kenya National Bureau of Statistics (2015)

Figure 1. 2 : Map of Nairobi Metropolitan Region

Chart 1-4: The Nairobi Metropolitan Region



Source: Habitat Planners

Though Nairobi is zoned and divided into several zones⁵⁸ with different uses e.g. residential, commercial or industrial, it is also marked with unplanned city growth depicting urban sprawl,

⁵⁸ See appendix 4 on zones of Nairobi

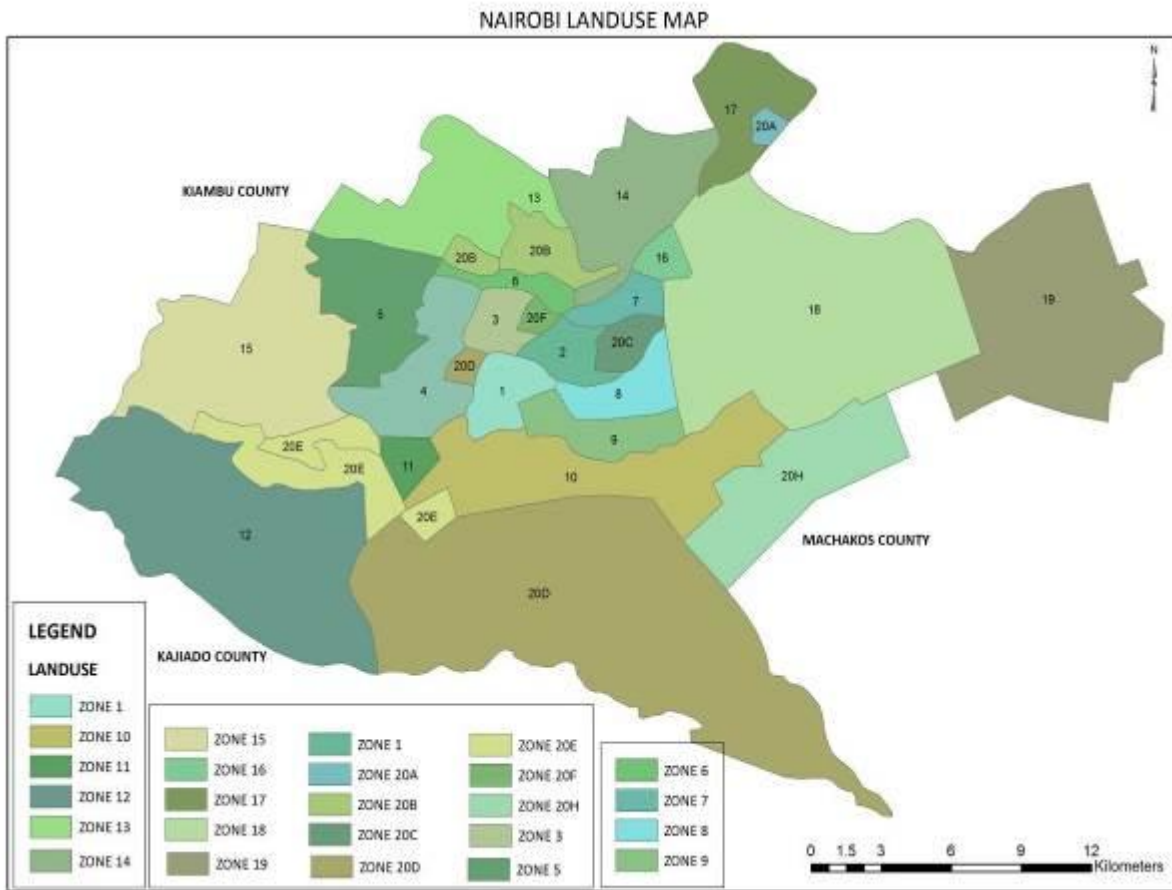
congestion and property development in excess of the carrying capacity of available infrastructure,⁵⁹ due to the ever burgeoning population with a thirst for housing in the city. This has forced the developers to respond to this thirst without too much regard to any definite urban development framework⁶⁰ leading to an orchestrated mélange of housing models ranging from high rise tenements to informal settlements housing the various segments of the population thanks to the rudimentary enforcements of proper housing construction standards and accompanying infrastructure and services.⁶¹ All these dates back to the urban planning practices that have been in existence in Nairobi during the several years of its being.

⁵⁹ Kimani M. and Musungu T., Reforming and Restructuring Planning and Building Laws and Regulations in Kenya for Sustainable Urban Development, 46th ISOCARP Congress 2010

⁶⁰ Syagga, P. (2011). "Land Tenure in Slum Upgrading Projects." *Les cahiers d'Afrique de l'est*: 103-113 & Oyugi, M. O. and A. K. A. Owiti (2007). "Land Use Management Challenges for the City of Nairobi." *Urban Forum* 18(1): 94-113.

⁶¹ Kimani M. and Musungu T., Reforming and Restructuring Planning and Building Laws and Regulations in Kenya for Sustainable Urban Development, 46th ISOCARP Congress 2010

Figure 1. 3: Map of Nairobi land use zones



Source: Ministry of Housing

1.3 Urban planning policies affecting provision of housing in Nairobi City County

1.3.1 Urban planning policies during the colonial period 1899 – 1963

In Kenya, land and housing have almost been synonymous terms dating back to the colonial days especially in Nairobi which had largely been conceived as an exclusive European city, where Africans (African men) were ‘tolerated’ only for their labour power,⁶² as such they came

⁶² Amis, P. (1984), Squatters or Tenants: The Commercialization of Unauthorized Housing in Nairobi. *World Development*, Vol. 12, No. 1, pp. 87-96 & Huchzermeyer, M. (2011), Cities with 'Slums': From

only for specific functions in the city and left when their 'need' was over so as not to contaminate the all exclusive white enclave. They had to walk with passes called 'kipande' and have salaried employment to demonstrate their legitimacy in the city. This was promulgated through the Employment Ordinance Act.⁶³ The Africans did not own land in the city but the colonialists did, where they appropriated huge tracts of land as either private property or as leases extending to 999 years with no regard to the local community needs and aspirations, this they did under the guise of 'no man's land'⁶⁴ where land that did not seem to have an owner was acquired by one with a legal title.

This period was marked by stark spatial racial segregation sanctioned by the government and reinforced by the planning laws as well as exclusionary zoning regulations which saw the city divided into four distinct sectors; North and East defined as the Asian Sector which consisted of Parklands, Pangani and Eastleigh; South East to South had a small Asian enclave before it was bounded by the Nairobi National Park- Nairobi South and Nairobi West; East and South was the African Sector, sheltering Pumwani, Kariakor and Donholm; while the North and West marked the European Area.⁶⁵

informal settlement eradication to a right to the city in Africa. Claremont, South Africa, University of Cape Town Press

⁶³ MacOloo, G. C. (1998), 'The relevance of Kenya's Urban Settlement Policies for Independent South Africa, *Southern African Geographical Journal*, 80 (2): 81-85

⁶⁴ Oyugi, M. O. and Owiti A. K. A. (2007), "Land Use Management Challenges for the City of Nairobi." *Urban Forum* 18(1): 94-113.

⁶⁵ Olima, WHO (2001), "The Dynamics and Implications of Sustaining Urban Spatial Segregation in Kenya – Experiences from Nairobi Metropolis" A Paper Presented at the International Seminar on Segregation in the City Held at Lincoln Institute of Land Policy in Cambridge, MA, USA, July 25-28, 2001

This segregation and zoning were further articulated in the command paper of 1923, the major colonial Nairobi city plans of 1905, 1927 and 1948 and supported by very high planning standards that were unattainable by the African city builders/residents at that time given the prevailing economic conditions facing them.⁶⁶ These three plans articulated various needs according to the time they were drawn. For instance the plan of 1905, positioned Nairobi as an 18km² railway town, with clearly delineated areas for commercial pursuits and residential areas for European employees and Asian traders with no consideration for the African and Asian labourers. The 1927 plan, which was the second plan, elevated Nairobi to a settler capital incorporating more European areas (Europeans 90%, Asians 10%, Africans 0 %) and extending transport networks to service the newly created lands as the boundary of the city was extended to 77 km². This plan provided for (1) drainage and swamp clearance, (2) building and density regulation and (3) attempted to furnish Nairobi with a monumental center while at the same time producing inflated land prices in the African and Asian quarters as a byproduct, forcing the growing population of Africans to live in informal settlements.

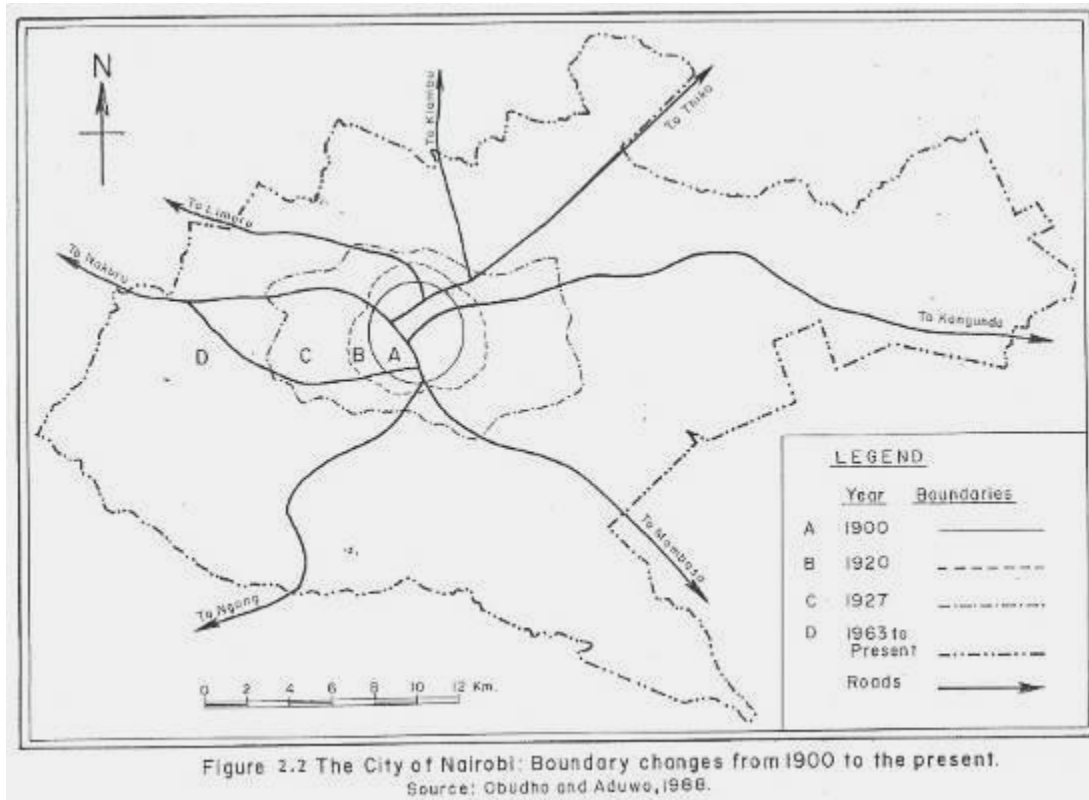
To address this issue, attract industrial investment and establish neighbourhood units for the working class, the third plan was formulated in 1948 as a functional plan, which enlarged the city from an area of 77 km² to an area of 83km² and classified Nairobi into different zones; Kenya center, official buildings, business and commerce, industry , railway, residential, official housing, open space, forest reserve and park zones; this was the first plan to make provisions for the Africans which was a laudable effort though it did not solve the problem as congestion was still rife in the African enclaves.⁶⁷The African enclaves were officially created as public housing by the colonial government to maintain control and surveillance over the ‘upcoming political

⁶⁶ Van Zwanenberg, R. (1972), History and theory of Urban Poverty in Nairobi: the problem of slum development. *Journal of East African Research and Development*, Vol. 2 No. 2 1972

⁶⁷ Nairobi City County (2014), The Project on Integrated Urban Development Master Plan for the City of Nairobi in the Republic of Kenya. Final Draft Report

dissents', these were in Shauri Moyo, Ziwani, Bondeni, Bahati and the Eastlands side of Nairobi. They had a planned neighbourhood concept with common sanitary facilities, shops, schools, hospitals, social halls and open spaces.⁶⁸

Figure 1. 4: Map indicating Nairobi boundary changes from 1900- 1988



Source: Obudho and Aduwo

1.3.2 Urban planning policies during the post- colonial period 1963- 2015

With the attainment of independence in 1963, the restrictive colonial policies and laws that prohibited the movement of Africans to Nairobi were relaxed resulting to a rapid influx of people

⁶⁸ MacOloo, G. C. (1998), 'The relevance of Kenya's Urban Settlement Policies for Independent South Africa, *Southern African Geographical Journal*, 80 (2): 81-85

into the city, resulting in major upward shifts in the city's population without concomitant rise in housing provision⁶⁹. The population exponentially grew from 11,512 persons in 1906 to 342,764 persons in 1963,⁷⁰ which created a problem for the independent government as there was need for planning for this sudden upsurge in population to make a coherently developed city.

To address these issues, the Kenyan government hired services of United Nations experts who laid the foundation of the first national housing policy in post-colonial Kenya. The housing policy was drafted in 1963 to provide legal guidelines for housing provision, which included among others; adoption of building standards commensurate with [to] the people's economic conditions; incorporation of self-help policies in housing production and conducting research on cheaper building materials; rescinding colonial policy of bed-space provision only; integration of private and public sectors in housing production;⁷¹ notably it carried forward with it the colonial legacy of slum clearance in dealing with informal settlements.

In 1968 a land planning act was enacted to control development of urban land mainly through preparation of town plans without clearly spelling out the contents and machinery of preparation, thus planning decisions were made purely on administrative grounds and the rights of people affected by proposed development, including tenants were subordinated to administrative

⁶⁹ Amis, P. (1984), Squatters or Tenants: The Commercialization of Unauthorized Housing in Nairobi. *World Development*, Vol. 12, No. 1, pp. 87-96

⁷⁰ Olima, WHO (2001), "The Dynamics and Implications of Sustaining Urban Spatial Segregation in Kenya – Experiences from Nairobi Metropolis" A Paper Presented at the International Seminar on Segregation in the City Held at Lincoln Institute of Land Policy in Cambridge, MA, USA, July 25-28, 2001

⁷¹ MacOloo, G. C. (1998), 'The relevance of Kenya's Urban Settlement Policies for Independent South Africa, *Southern African Geographical Journal*, 80 (2): 81-85

convenience.⁷² With this came spatial challenges which were addressed in the 1973 Nairobi Metropolitan Growth Strategy which was to guide the city development to the new millennium, the year 2000; this strategy included the adjacent urbanizing areas, adjusting the city size to 696 Km².⁷³ As with the previous plan, this plan was formulated without including the Nairobi city residents, only the Nairobi City Council, the government of Kenya, World Bank and the United Nations.

In 1984, the 1984-1988 Nairobi City Commission Development Plan was drawn up as a follow up plan to the 1973 plan; it outlined the development needs of all sectors; housing; health; environment sewerage, social services, transport and public works, manpower development and financial management.⁷⁴ With the call for increased public and stakeholder participation in all decision making processes witnessed in the 1990s, the Nairobi City Council organized a stakeholder's open forum dubbed 'the Nairobi City Convention' in 1993 comprising of stakeholders, professionals and ordinary citizens to map out strategies and practical actions towards a better Nairobi (The Nairobi We Want), which gave recommendations based on four thematic areas : (1) use of space and the physical environment; (2) problems pertaining to provision of services ; (3) social sector ; (4) administrative and political issues.⁷⁵

⁷² Mwangi, K. (1997), The nature of rental housing in Kenya. *Environment and Urbanization*, Vol. 9, No. 2, October 1997 & Kimani M. and Musungu T., Reforming and Restructuring Planning and Building Laws and Regulations in Kenya for Sustainable Urban Development, 46th ISOCARP Congress 2010

⁷³ Nairobi Urban Study Group (1973), Nairobi metropolitan growth strategy report: Volume I, main report. Nairobi: Nairobi City Commission

⁷⁴ Nairobi City Commission (1985), Development plan 1984–1988. Nairobi: Nairobi City Commission

⁷⁵ Karuga J.G. (Ed.) (1993), Actions towards a better Nairobi: Report and recommendations of the Nairobi City Convention. Nairobi: Nairobi City Commission

In 1995, Code 95 was instituted, this was a revised by law of the building code, which provided building standards and regulations to cater for local realities which could afford decent housing for the poor. A year later, the physical planning act of 1996 was enacted to provide for the formulation of national, regional and local physical planning guidelines, policies and strategies. The act further provided for the preparation of regional and local physical development plans and created a framework for interest group involvement at various stages of plan formulation, as well as dispute resolution mechanisms to resolve planning disputes.

All these well-meaning plans guided the urban development of post-colonial Nairobi to the new millennium, which marked the expiry of the Nairobi Metropolitan growth strategy with a lack of encouraging results in the housing sector, particularly in the low income sub-sector.⁷⁶ As the new millennium came with hope, so did the housing sector as newer policies were drawn to counterbalance what had not succeeded. In 2004 a revised housing policy came into force to usher the development of the housing sector, it encouraged integrated strategies in scaling up housing production, shifting towards pro-poor approaches and slum upgrading as opposed to slum clearance policies.⁷⁷

While in 2010, the promulgation of the new constitution⁷⁸ brought with it radical changes in the land and planning policies; there was the recognition of the right of all citizens to accessible and adequate housing with reasonable standards of sanitation. For these conditions to be effected, various complementary acts of parliament were enacted, for instance;(1)) the Urban Areas and Cities Act of 2011 provides for the principle of governance, participation of residents and

⁷⁶ MacOloo, G. C. (1998), 'The relevance of Kenya's Urban Settlement Policies for Independent South Africa, *Southern African Geographical Journal*, 80 (2): 81-85

⁷⁷ Kenya, Republic of (2004), Sessional Paper No. 3 of 2004 on National Housing Policy Nairobi, Government Printer

⁷⁸ Kenya, Republic of (2010), The Constitution of Kenya. Nairobi, National Council for Law Reporting.

management of urban areas and cities ;(2) the County Government Act of 2012⁷⁹ which gives the mandate of powers, functions and responsibilities to deliver public services to the country governments;(3) the Land Commission Act of 2012⁸⁰ provides for principles of devolved government in land management and administration and lastly the Land Use Planning Bill of 2015 was formulated as a compliment to the 2011 Urban Areas and Cities Act⁸¹, with the main function of providing the legal framework for planning, use, management, regulation and development of land in the country

1.3.3 Implications of these policies to this study

The above narrative of the colonial and post-colonial policies governing land use and urban areas housing provision present in the country should be read as an interwoven account of the rules and policies that have been at play rather than as a sequential account of the same. These policies have been the blue print guiding development of the housing sector which goes hand in hand with the provision of adequate water and sanitation to the dwellers of the city. So far a top-down approach has been the main feature of these policies where by even the people affected by the same have not been consulted in their development, save for one or two instances. Yet they as citizens should be at the forefront of the development holding their mantle of citizenship at the lead. Conventional understandings of citizenship view it as a formal relationship between the

⁷⁹ Kenya, Republic of (2012), County Governments Act No. 17 of 2012. Nairobi, National Council for Law Reporting

⁸⁰ Kenya, Republic of (2012), Land Commission Act No. 5 of 2012. Nairobi, National Council for Law Reporting

⁸¹ Kenya, Republic of (2011), The Urban Areas and Cities Act No. 13 of 2011. Nairobi, National Council for Law Reporting

individual and the state, a social contract binding a set of responsibilities to each party, embodied in the fulfillment of duties and the protection of rights respectively.⁸²

The protection of rights and fulfillment of the social contract have not been clearly visible, evidenced in the fact that a deeply entrenched colonial legacy, decades after independence is still manifested in them even though several attempts have been made to make the policies home grown and adopt them to the needs of the country. In the colonial regime segregation evidenced in the housing sector was along racial lines, but now the same segregation is manifested in the city along economic lines depicting a relation of dominance and economic power on who owns property in Nairobi. We find that the housing provision in the city is clearly marked as either housing for the (1) high income characterized by low density developments; (2) middle income characterized by medium density development; (3) low income characterized by high density development mostly in flats and low quality apartments with little space and the latter category is the (4) informal settlements characterized by extremely high densities and mostly found juxtaposed near the high income areas to provide cheap labor, a form of social inequality and dominance.

The voice of the informal areas have for a long time been ignored rendering them voiceless in a city that should give them an ear for their plight further exacerbating the socio spatial inequalities present in many cities. The informal areas are further silenced by the land ownership system present in Kenya which does not favour low income earners but favours the politically well aligned persons. It is based on individual titling which ensures that those with economic power have access to land and leave out the poor. This together with the effects of the housing market puts pressure on low income earners pushing them to slums and reinforces the socio-

⁸² Assiter, A., (1999), "Citizenship Revisited", in Qaddumi, D. (2013), *Advancing The struggle for Urban Justice to the Assertion of Substantive Citizenship: Challenging Ethnocracy in Tel Aviv-Jaffa*, DPU *Working Paper* no. 150 , UCL , London

economic inequality leading to exclusionary effects in a global city, yet the city is a place where every person needs to enjoy the benefits brought about by the intermingling of people from various lands, as it is a crucible of opportunities.

One of the last attempts towards an inclusive city was the promotion of the vision 2030 put forth by the government of Kenya which is an economic blue print to guide development in the country, one of the mandates of the vision is to eradicate slums and improve the lives of people living in informal areas. So far the government has committed to provide 200,000 housing units and installation of physical infrastructure in slums.

Thus a critical analysis of the policies facilitates an understanding of how the state is trying to uphold the rights of all the citizens in the city and showing how these policies either disenfranchise or uphold the rights of the citizens who inhabit the particular city, irrespective of their economic and social position in the society. They help us critically examine if justice is for all or a selected few and facilitate the understanding of the position in which the residents of Soweto East find themselves in today.

1.4 The study area - Kibera

1.4.1 Physical landscape

An entry into Soweto East village in Kibera Nairobi is like an entry into a majestic and grandiose enchanted palace, where by there is a spine road, which is tarmacked and deviates off from the main road- Mbagathi way. Mbagathi way is Cabro- paved, to assure durability and longevity for years to come, so the contractors and builders make us believe. At the beginning of the spine road, to the left, there is a high end university (Riara University) which lends the image that one is entering a very 'posh' area of the city while on the other side – right hand side- are houses which are half constructed/ finished, left to the mercy of the inclement weather or other

vulgaries. (See Plate 1.1) They are a testimony of the corrupt days of a previous regime whereby the proprietors of such projects fell on the wrong side of the law (read ruling elite) which resulted to never ending ‘invisible’ legal tussles in a fight to claim ownership of the land and hence a stake in the property therein. It is a form of clientelism in a minor scale between ‘big man’ and ‘big man’ as opposed to ‘big man’ and ‘the poor’, where expressions or displays of loyalty can win you a contract, a food parcel or a reward,⁸³ whereas betraying the party may exclude one from access to public resources, which is exactly what happened to the proprietors of these estates.⁸⁴

Plate 1. 1: Houses of the ‘Patron’ during KANU regime



Source: Archives

⁸³ Staniland, (2008), quoted in *Exploring role of governing African cities* in Bekker, S. & Fourchard, L. (2013), *Politics and Policies Governing Cities in Africa*, Human Sciences Research Council, South Africa

⁸⁴ Personal conversation with local area opinion leader

A few paces inside the spine road is a completely different picture all together, it is lined by the backside of another failed low income housing project designed to cater for the urban poor, yet it was hijacked by the middle class Nairobi residents who now comfortably occupy it. (See Plate 1.2) The United Nation’s Habitat Office occupies the opposite side of the spine road and is nested inside the compound of the administration police and chief’s office.

Plate 1. 2: Highrise estate, hijacked by the middle class



Source: Field Survey

Highrise came about as a result of a failed slum upgrading project. The government’s efforts to upgrade slums have always, more likely than not ended up to be corrupt or/and ineffective. During the 1990s, the National Housing Corporation constructed the Kibera Highrise on the southeast corner in order to provide quality housing for slum residents. However, upon

completion, the government changed its tune, deciding to grant and sell these units to middle-class Kenyans instead.⁸⁵

Plate 1. 3: The spine road in 2009; entry to Soweto East Village



Source: Field Survey

At this time the spine road was the first ever tarmacked road to be established in the settlement, which signaled the advent of progress and a promise of the upgrading that was very much hyped in the village.

In 2009⁸⁶, this would have marked the end of flowing piped water, stone houses, high rise buildings with a sense of dignity or decency and tarmacked road. If we fast forward to 2015,

⁸⁵ Huchzermeyer, M.(2008), Slum upgrading in Nairobi within the housing and basic services market: A housing rights concern , *Journal of Asian and African Studies* vol. 43 no. 1, 19-39

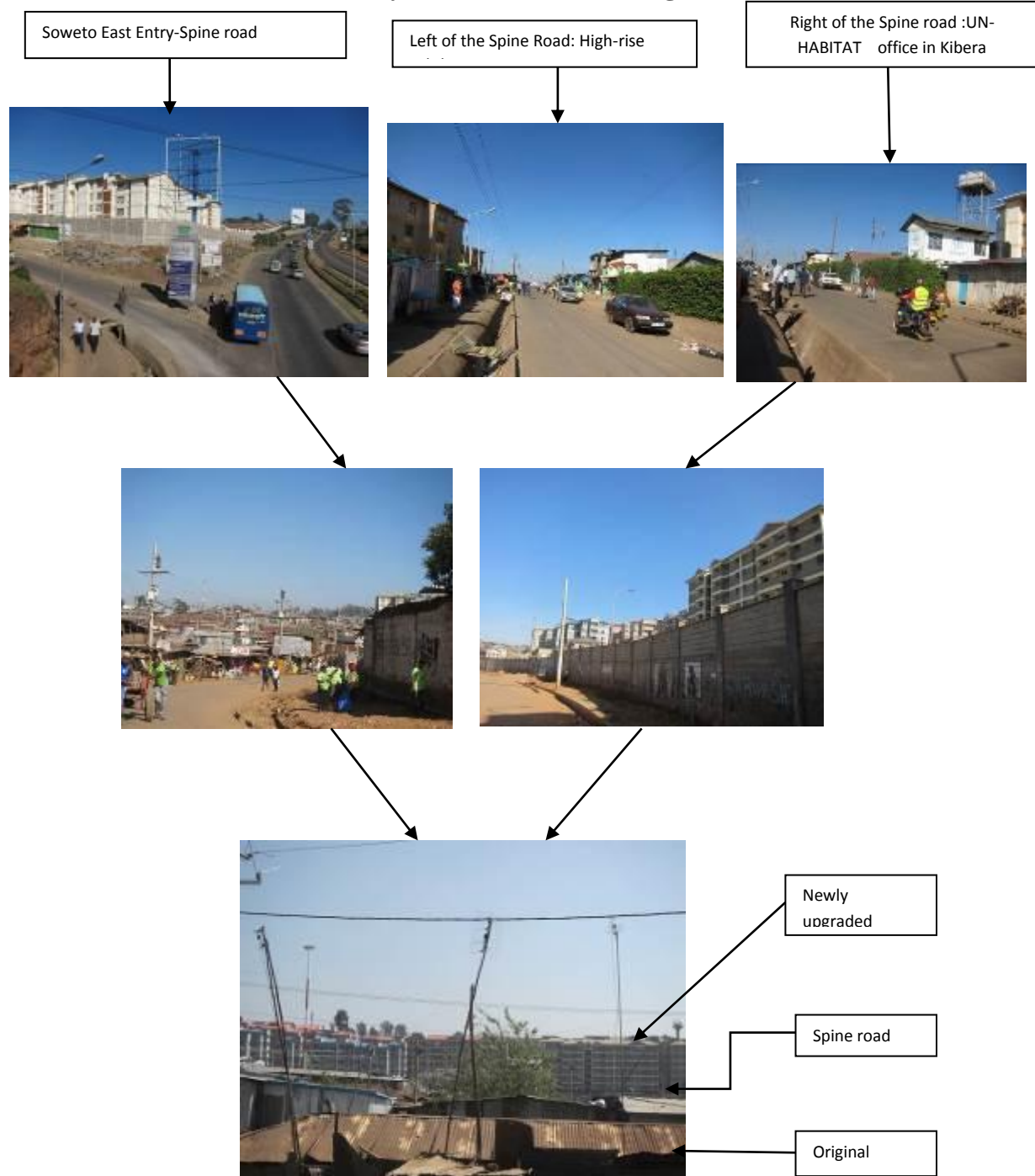
there is a slightly different picture, in that on the right hand side of the spine road there are 836 units⁸⁷ in high density multi storied houses punctuating the Soweto East landscape, lending dignity and pride to the once decrepit landscape. These housing units are designed to accommodate 1,460 registered Kibera families, but clearly there is still a shortage of close to 700 families as the numbers do not add up.

These houses overlook the non-storied mud houses or tin shacks whichever the case, which are the original houses found in Soweto East village before any slum upgrading intervention was carried out. The 2.0 km spine road was originally nonexistent but now it is tarmacked connecting this side of Kibera to a 5km all-weather road that dissects the settlement into various villages, ending at the Kibera law courts and connecting it to Kibera drive which borders the entire Kibera settlement to the East. The tarmacked spine road separates the newly upgraded settlement with the old tin shacks/mud houses- a clear anti-thesis between the old and the new; marking the entry into Soweto East village.

⁸⁶ The collection of data for this project started in this year

⁸⁷ Communication by head of structure owners on 16th April 2015

Plate 1. 4: The face of the new entry into Soweto East Village



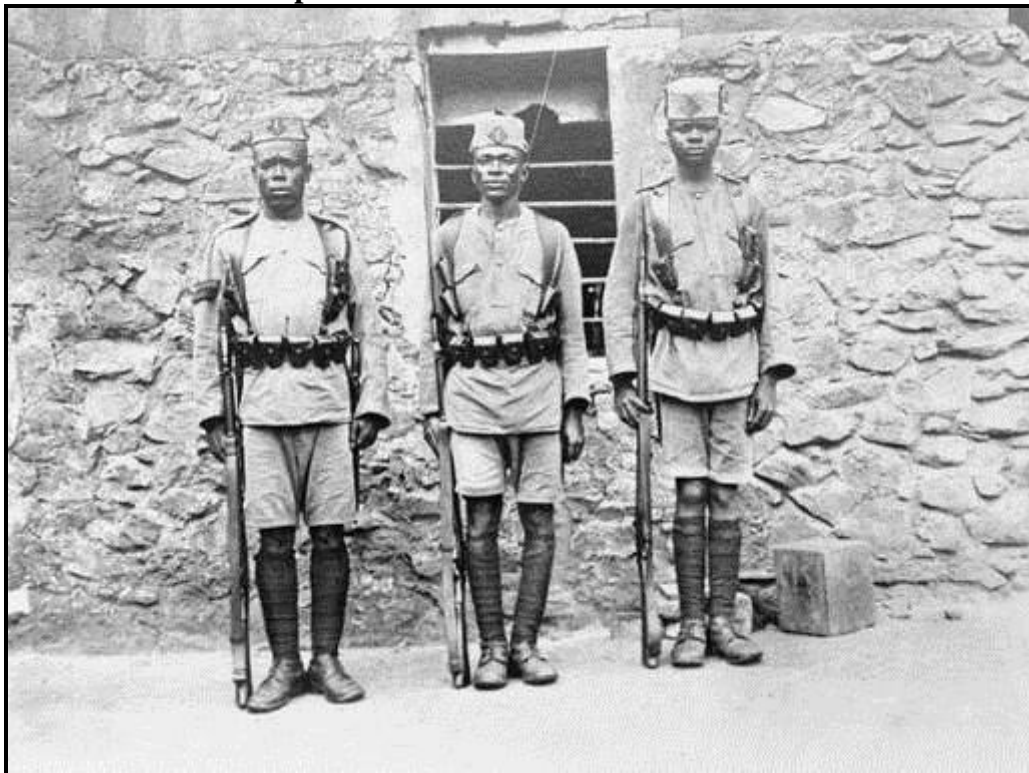
Source: Field Survey

1.4.2 History of the village- legal history

1.4.2.1 The first settlers

In one of the houses, Mzee Smiti (63 years) has been a resident of Kibera for the longest possible time he can remember, he actually claimed to have been born there and for him this is the only home he knows. He is actually a second generation descendant of the soldiers who fought for the British crown in the Kings African Rifles (KAR).⁸⁸

Plate 1. 5: A historical photo of soldiers from KAR



Source: Archives

⁸⁸ King's African Rifles Papers (1981-1982), Collection Level Description: Oxford Development Records Project, University of Oxford.

Box ii : A brief note on the Kings African Rifles

The Kings African Rifles roots lie in the regiments formed in the 1890s by the Imperial East India Company and led by their agents: the Uganda Rifles, the Central African Regiment and the East African Rifles(The Kings African Rifles and East African Forces Association-KAR&EAFA) Their history dates back to 1902,1st January when they were reorganized to form 6 battalions of The Kings African Rifles: The 1st and 2nd (Nyasaland) Battalions were established from the Central African Regiment, 3rd (Kenya) Battalion from the East Africa Rifles, 4th and 5th (Uganda) Battalions from the Uganda Rifles, and 6th (Somaliland) Battalion from local Somaliland forces. In 1910 this was disbanded, though a 6th (Tanganyika) Battalion emerged in 1917. A further Tanganyika Battalion, the 26th, was founded in 1939. There were three Kenya battalions, the 5th formed in 1916, the 7th in 1952 and the 11th in 1941. These battalions were used as an instrument of civilized authority and defender of Empire in what were then the colonies of Rhodesia, Nyasaland, Kenya and Uganda- from KAR & EAFA.

The KAR soldiers were locally recruited African rank-and-file soldiers led by white officers- They went by the title ‘askari’; a swahili word for guard. They were also deployed to different parts of Africa where the British protectorate existed including the present day Kenya. The soldiers were involved in the 1st and 2nd world wars assisting the British in their military expeditions. The independence of various colonies in Africa spelt the end of the regiment as a whole. The 6th and 26th Battalions were re-designated: the Tanganyika Rifles in 1961, 4th Battalion the Uganda Rifles in 1962, 3rd, 5th and 11th Battalions the Kenya Rifles in 1963, and 1st Battalion the Malawi Rifles in 1964.⁸⁹

⁸⁹ Gajendra, S.: Revolutionary Networks (India), in: 1914-1918-online. International Encyclopedia of the First World War, ed. by Ute Daniel, et al, issued by Freie Universität Berlin, Berlin 2014-12-19. ; King's African Rifles Papers (1981-1982), Collection Level Description: Oxford Development Records Project, University of Oxford.

Mzee Smiti was born in Makina village in 1952 before Kenya gained independence and claims that the area was heavily forested with no sprawling villages as there are today. The houses were neat and few as opposed to the ones present today.

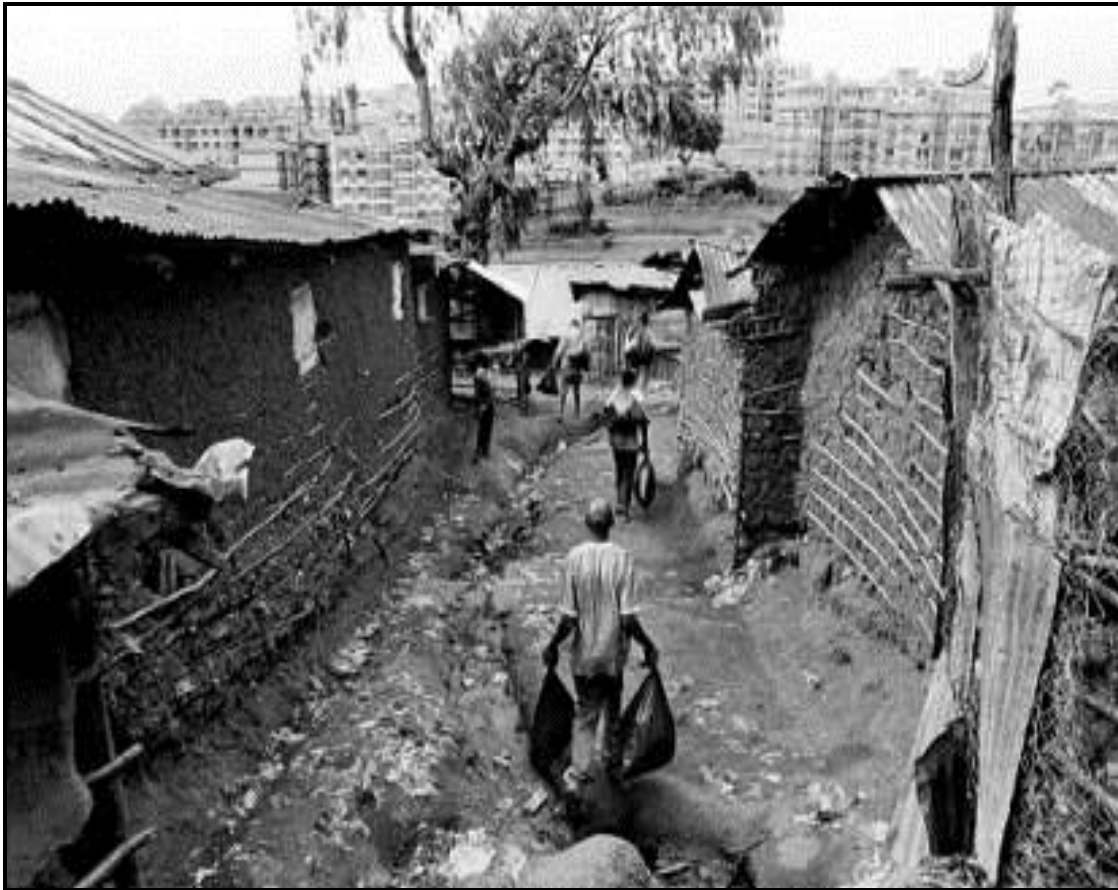
Plate 1. 6: U-shaped Swahili house with a courtyard



Source: Nubian Land Trust Archives

They had the Swahili type of architecture in which they were square shaped (u shaped) with a courtyard in the middle; as shown in Plate 1.6 .Plate 1.6 is one of the rarest original Nubian house still existing in the settlement, it is almost 100 years old, though no one can attest to the real date of building, while Plate 1.7 is the new look of the settlement- narrow streets with houses back to back.

Plate 1. 7: Present day Kibera houses



Source: Nubian Land Trust Archives

In his expose he recounted that Kibera was a heavily forested area given to the families of the Nubians who fought in the war for the British. Originally the area was heavily forested and wooded, thus acquiring the name Kibra⁹⁰ denoting a dense jungle in the Nubian lingua, it was

⁹⁰ Muthoni, A. (1999), *Community Participation in Solid Waste Management within Urban Informal Settlement; A Case Study of Kibera, Nairobi*. M.A. Dissertation, Department of Urban and Regional Planning, University of Nairobi, Kenya; Orwa O. (2009), *Spatial Analysis of Informal Settlement Sprawl and It's Environmental Impact; A Case Study of Kibera*. M.A Thesis, Department of Geography and Environmental Studies, University of Nairobi, Kenya

later renamed Kibera for easier articulation. Till today the Nubian community believes that they own this land due to equity and have consistently fought for recognition in the Kenyan constitution – though their position still remains hazy as they reside on government owned land. This community is still fighting till today to get title deeds for the land, according to his daughter Husna Hassan⁹¹. There have been several attempts to get recognition of this land by the Nubian community, which has involved politicians and other interested parties, with a lot of bloodshed and lives claimed, yet the title deeds to the land have never been officially given to them. In September 2013 the then cabinet secretary for land Mrs. Charity Ngilu made an announcement at a meeting in Kibera that a communal title deed would be given to Nubians. The land in question was 288 hectares in Makina area which was little, given that the Nubian community was small and still growing, the title deeds were later revoked in unclear circumstance rendering them landless, as this had been done in an illegal way. They claim that the land was a reward to (KAR) soldiers for the service rendered to the crown. The Nubian community has actually not been recognized by the Kenyan authorities till very recently in the last census in 2009 where they were given the place as the 43rd community. They number 15,463 in total⁹² though some scholars argue that the census methodology was inaccurate thus this should not be taken as the final figure, instead approximate the Kenyan Nubians to be 20,000-30,000 with only 10,000-15,000 living in Kibera.⁹³ However, the 2008 UNHCR report however classifies the Nubians in Kenya as stateless individuals and approximates their population to 100,000. This recognition albeit minimal has given them a voice and they can now articulate their ‘wants’ in a more forceful way as put quite succinctly by one of the elders of the community. “*A community becomes confident when it is recognized by other communities.*”

⁹¹ Nubian Community Land Trust Secretary

⁹² Kenya, Republic of (2010), Kenya Population and Housing Census. Nairobi, Kenya National Bureau of Statistics

⁹³ Balaton-Chrimes, S. (2015), Ethnicity, Democracy and Citizenship in Africa: Political Marginalisation of Kenya’s Nubians. Ashgate, Aldershot.

1.4.2.2 Kibera as we know it- influx of new migrants

Actually Kibera which covers an area of 262.5 hectares is one of the slums of Kenya with the origin of this settlement being traced back to the colonial era in Kenya, which spanned from late 1890s-1963, when Kenya got her Independence. Generally this era did not have as many slums as there are today but towards its end slums essentially developed due to a range of factors such as the displacement of Africans to make room for European settlers; the colonial government policy of racial segregation; clearance of substandard housing among others while in our age, there are more contemporary factors in play such as economic, political, legal and cultural factors associated with rural to urban migration.

To document Kibera chronologically, would be to document the history of Mzee Smiti's lineage, Mzee Smiti remembers the stories as told by his father about Kibera being a grazing land for the Maasai in the pre-colonial era but was taken by the colonial government before World War II which was administered by Kings African Rifles (KAR) from 1913 to 1928 as a military reserve.⁹⁴ He goes on further to iterate that part of this land near Laini Saba was a shooting range for the British soldiers.

'Hapa Kibra kulikuwa na miti mingi sana wakati wa zamani, hapakuwa na watu na hawa mabeberu waliweza kuja huku na kuweka mipaka pande zote ili kichaka hiki kitumike kwa kazi zao ambazo walizozipendelea wenyewe. Sasa, mbele ya mababu zetu kuja huku toka kule Sudan, walitumia huku kufanya mazoezi na bunduki na wale kurutu ambao hawakujua kuzitumia, basi walipata fursa ya kujifunzia hapo. Lakini siku hizi ni manyumba , na

⁹⁴ Walubwa, J.A. (2010), "KENYA SLUM UPGRADING PROGRAMME" *An Analysis of Kibera Integrated Water, Sanitation and Waste Management Project*. MA Thesis, Department of Geography and Environmental Studies, University of Nairobi, Kenya.

ilikuwa sana sana maeneo ya Laini Saba. Siku hizi huwezi fanya kitu kama hiyo. Hiyo ilikuwa mbele ya vita vya dunia ile ya Burma na ile ya Italia. Babu alipigana huko.'

Translated as;

'In the ages past there were very many trees and very few people here in Kibera, the British set boundaries here to denote Laini Saba where they could use it as a shooting range. Many new recruits used this as a practice field before our forefathers came from the Sudan and before the two world wars, in which my grandfather fought.'

This reserve was later given to the Nubians who served as soldiers and police functionaries for the British⁹⁵ It was given as pension for those who had served for 12 years in the army.⁹⁶

Although the Nubians were the first settlers in Kibera, the settlement started to receive immigrants from other parts of the country. For example, the Mau Mau activists from central province joined the area in the 1940s, while the Luo and Luhya came in 1950s, after the demolition of Mathare Valley slums by the colonial authorities. With this influx into Kibera, the Nubians took advantage of the immigrants and extended their houses or built new houses for rental purposes. This was the beginning of landlordism in the informal settlement. The

⁹⁵ Jurgen, E. (2002), *The Influence of Urban Land and Housing Policy on The Housing Behaviour of Low – Income Households in Informal Settlements The Case of Kianda Village-Kibera*. M.A. Dissertation, Department of Urban Planning, Catholic University, Nijmegen; Orwa, O. (2009), *Spatial Analysis of Informal Settlement Sprawl and It's Environmental Impact; A Case Study of Kibera*. M.A Thesis, Department of Geography and Environmental Studies, University of Nairobi, Kenya.

⁹⁶ Parsons, T. (1997), "Kibra is our blood": The Sudanese military legacy in Nairobi's Kibera location, 1902-1968. *The International Journal of African Historical Studies*

population concentrated around Makina village and up to 1960s Kibera was characterized as a Nubian controlled area with an emerging small scale rental sector.⁹⁷

After independence there were fewer restrictions on migration into the city and the result was twofold: (1) more people built self-squatter units as they could not afford to pay rent and (2) more rental units were built by the Nubians in the area. The National Housing Corporation of Kenya also used part of the land in Kibera to develop low cost formal rental housing estates. By 1972, the population had grown to 17,000 people from 600 in 1928.⁹⁸ This consisted of the Nubian landlords, tenants and squatters who had started to settle in the fringes of the settlement.

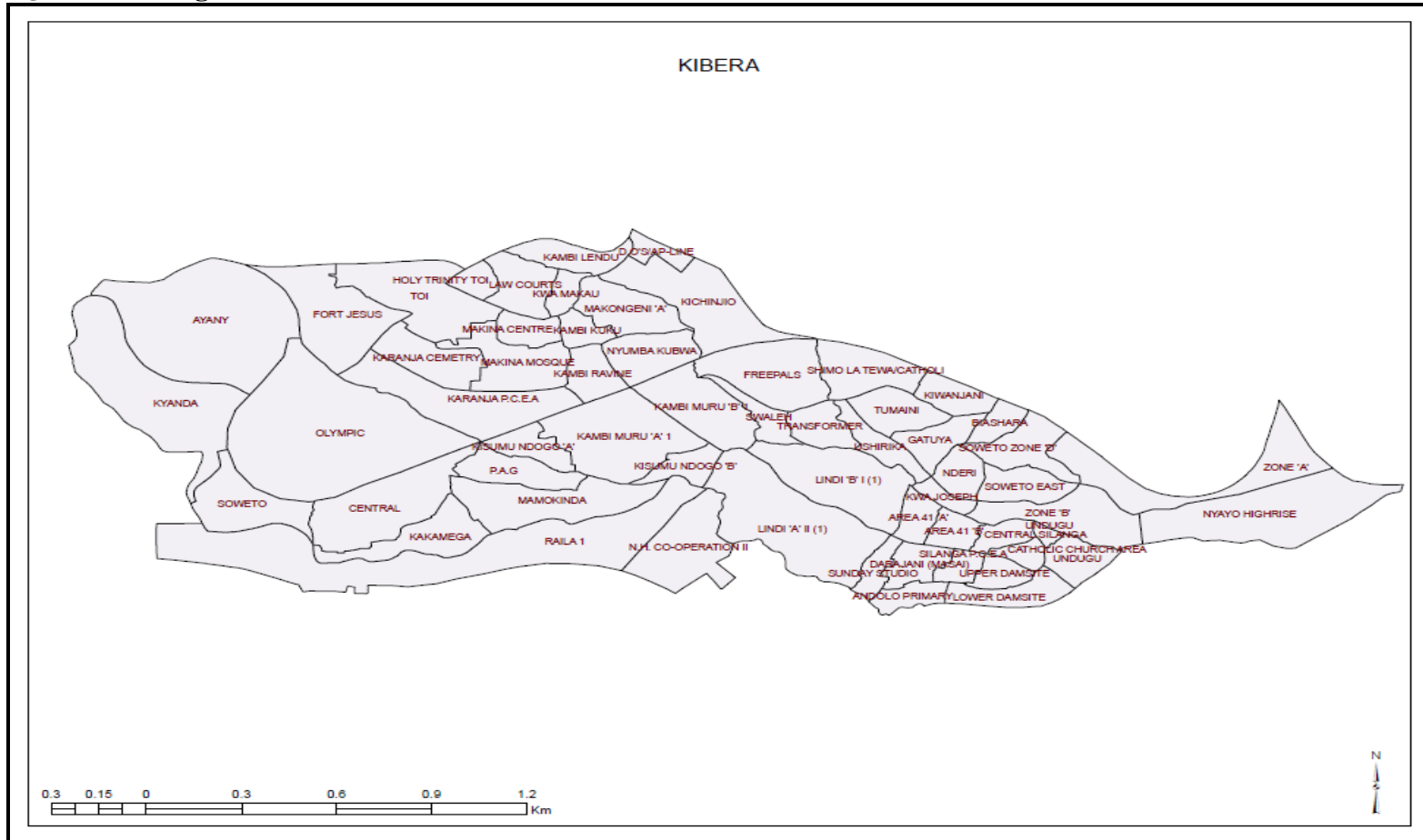
The land rights were not clear and had to be classified first before any further development could take place. The Ministry of Lands and Settlement had to interpret the agreement entered by the Nubians and colonial government because there was tension between the independent Kenya government and the Nubians. It was decided that the Nubians keep the rights to their housing but not to the land. In short, the Nubians lost the little rights they had over land in Kibera. Since then the government has formally owned the land.⁹⁹

⁹⁷ *Ibid*

⁹⁸ Jurgen, E. (2002), *The Influence of Urban Land and Housing Policy on The Housing Behaviour of Low –Income Households in Informal Settlements The Case of Kianda Village-Kibera*. M.A. Dissertation, Department of Urban Planning, Catholic University, Nijmegen

⁹⁹ Jurgen, E. (2002), *The Influence of Urban Land and Housing Policy on The Housing Behaviour of Low –Income Households in Informal Settlements The Case of Kianda Village-Kibera*. M.A. Dissertation, Department of Urban Planning, Catholic University, Nijmegen; Orwa, O. (2009), *Spatial Analysis of Informal Settlement Sprawl and It's Environmental Impact; A Case Study of Kibera*. M.A Thesis, Department of Geography and Environmental Studies, University of Nairobi, Kenya.

Figure 1. 5: Villages in Kibera



Source: Kenya National Bureau of Statistics (2015)

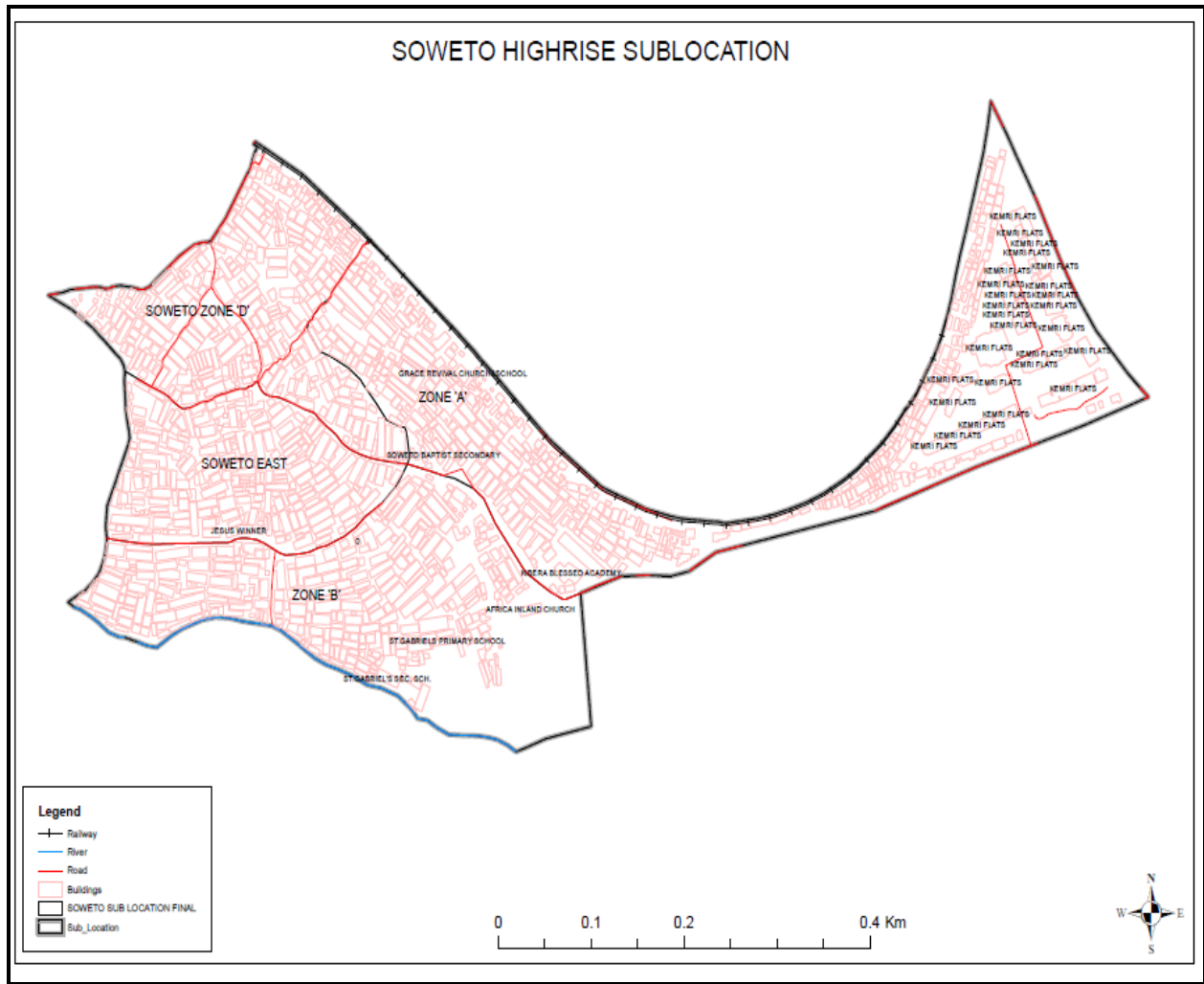
This in migration coupled with the already existing settlement dwellers prompted the creation of informal ‘villages’ based on a conglomeration of people from the same ethnic communities e.g. Kisumu Ndogo is a village predominantly Luo. With time these villages started welcoming other ethnic communities as it depended on who had the economic power to build a habitable shanty and thus become a structure owner,¹⁰⁰ hence the division and existence of the various villages leading to the new Soweto East village in which this thesis is based on.

1.4.2.3 Soweto East village

As mentioned above, Soweto East is one of the villages in Kibera where the Kibera Integrated Water, Sanitation and Waste Management Project is being implemented; which is the main focus of this thesis and will be explained in deeper detail in the proceeding chapters. The village is a recent sprout in Kibera slums lying at latitude 1°18`56.88 S and longitude 36° 48` 14.93E. It is centrally located close to the industrial area, the central business district, the hospital sector and borders the Kenya-Uganda railway line to the north, Mbagathi Way to the east, Kibera Highrise estate and Nairobi dam to the south east (see figure 1.5). Access to this settlement is via Mbagathi Way and Mbagathi Lane. For purposes of easier administration of the project, the study area was partitioned into four zones, figure 1.6 shows the study area.

¹⁰⁰ Interview with Mzee Smiti : To further explain that point we find that land belongs to the government; no one owns it; the ‘landlords’ only own the structures or houses they have built and that is where their capital rights end.

Figure 1. 6: Soweto East Village partitioned to Zone A, B, C and D



Source: Kenya National Bureau of Statistics 2015

Soweto East village covers an area of about 21 hectares of which 7 hectares are “demarcated” for railway reserve – yet people have still built their structures and live there due to a scarcity of land and limited resources to acquire a better place.

Plate 1. 8: Structures built on illegal land



Source: Field Survey

It is estimated that there are a total of 2,434 structures in Soweto East of which 650 are in the railway reserve.¹⁰¹ The structures include all habitable dwellings, water tanks, stand points, bathrooms, kiosks and all other built structures. Over two-thirds (69%) of the structures are for residential purposes, 20% are for commercial purposes, while the rest (11%) are for other miscellaneous uses such as health facilities, schools and churches.¹⁰² There are 7,748 households

¹⁰¹ Kenya, Republic of (2007), *Kibera Soweto East, Local Physical Development Plan*. Nairobi, Government Printer; Mulcahy, M. & Chu, M. (2007), *Kibera Soweto East, A Case Study in Slum Upgrading*. Nairobi Kenya

¹⁰² Kenya, Republic of (2007), *Kibera Soweto East, Local Physical Development Plan*. Nairobi, Government Printer

in Soweto East village. Contrary to what many researchers think, 72% of the structure owners live in the village. Most of the tenants pay an average of KES 726 per month for a single room¹⁰³ measuring 10 feet by 10 feet.

Depending on which organization carries out the research, the population statistics vary, for instance UN-HABITAT's socio-economic report of 2007 shows that Soweto east had 19,318 inhabitants spread out in four zones with an average household size of 2.3 persons while the Kenya Population and Housing Census Report (2010)¹⁰⁴ indicates that the village registered a total of 9,927 households with a total population of 28,182 and a population density of roughly 3321 persons per hectare. Of the total population, 47.4% can be categorized as migrants.¹⁰⁵

A large majority of the residents are unemployed. Those employed engage in petty businesses within the estate and in Kibera (groceries, kiosk, hawking and mobile vending), work as casual labourers in the industrial area or work as domestic servants in middle and high income estates. Depending on the type of employment or activity one is engaged in, the monthly wage is between KES 2,737 and KES 145,000 per month.¹⁰⁶The latter category includes some structure owners with multiple structures for rental purposes.

Environmental degradation is a major problem in Soweto East as the issue of sanitation has not been adequately addressed. Though rare, flying toilets are still common, solid waste is disposed at will, ending up in the Nairobi dam as there is no official dumping site in the settlement. The drainage system consists of open 'drainages' that are blocked regularly by disposed garbage that

¹⁰³ *Ibid*

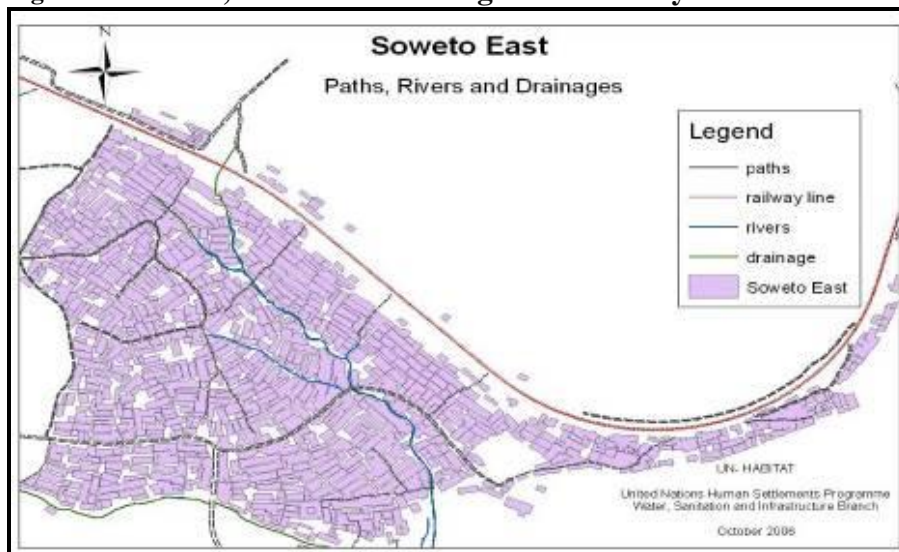
¹⁰⁴ Population and household distribution by socio-economic characteristics (2010), Volume II.

¹⁰⁵ Kenya, Republic of (2007), *Kibera Soweto East, Local Physical Development Plan*. Nairobi, Government Printer

¹⁰⁶ *Ibid*

gathers in them posing a high health risk to the dwellers. The open sewage system makes the matters worse especially during rainy seasons when the houses are prone to flooding. It is estimated that there are about 7 toilets and 5 bathrooms serving the population in Soweto East.¹⁰⁷ One latrine is shared with up to 50 households; this, contrasted to the WHO recommendation ratio of a single toilet for 20 people.¹⁰⁸ The conditions of these facilities range from acceptable to very bad with most of them lying on the latter side.

Figure 1. 7: Paths, rivers and drainages in the study area



Source : UN- HABITAT

Like many informal settlements Soweto East has had its share of interventions by NGOs, some examples of NGOs that have worked in Soweto East include: Oxfam, Amnesty International,

¹⁰⁷ Walubwa, J.A. (2010), "*KENYA SLUM UPGRADING PROGRAMME*" *An Analysis of Kibera Integrated Water, Sanitation and Waste Management Project*. MA Thesis, Department of Geography and Environmental Studies, University of Nairobi, Kenya.

¹⁰⁸ Adams, J. et al (Eds) (2008), *Essential environmental health standards in health care* , WHO Press, Geneva, Switzerland

Solidarity, Soweto Usafi Group, Ushirika, National Youth Service (NYS), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and Kenya Women's Finance Trust. However, organizations such as Kenya Women's Finance Trust and Oxfam have a weak relationship and have made very little impact to the water and sanitation state of the area. Institutions such as youth groups (Soweto Usafi Group and Soweto Forum), churches and schools in the area are playing an important role to facelift the sanitary conditions of Soweto east.

1.5 Kibera's thorn- a history of scarcity; a history of exclusion

Like many peripheral settlements, Kibera has experienced consistent, routinized marginalization processes of exclusion, exploitation and discrimination of its residents for a very long time; there has been a consistent and continuous ignoring of the provision of basic services due to the peripherization and scarcity of urban services; due to the existence of discriminatory law or lack of it. There has been a concerted effort to polarize Kibera and demonstrate Wacquant's¹⁰⁹ approach of advanced marginality which explains emergence of disadvantaged neighbourhoods using four dynamics i.e. macro-social aspect, economic aspect, political aspect and lastly the spatial aspect. In this case there is an emphasis on the political aspect where there is the reconstruction of welfare peripheralization.¹¹⁰ Kibera is polarized and used for political gains of certain individuals during the election periods and relegated to the rear during the inter-electoral period. There is sociological inequality described as marginalization with clear social relations with spatial implications of stigmatization into ghettos, slums or banlieus. A major insight of sociological concepts is that peripheries are poor in relation to the average socio spatial unit. This sociological inequality is clearly manifested in the fact that most of the people living in Kibera work in the industrial area of Nairobi or as domestic staff in the rich and middle class

¹⁰⁹ Wacquant L. (2008); *Urban Outcasts: A comparative Sociology of Advanced Marginality*. Cambridge: Polity Press

¹¹⁰ Wacquant L. (1999); *Urban Marginality in the coming Millenium*, *Urban Studies*, 36(10), :1639-1647

estates of the city, rendering a stark contrast in the income levels. This depicts that the ‘working staff/class’ are relegated to the ghettos while the ‘lords’ are in the affluent areas of the city; as such the spatial divisions are already clearly seen.

A second key term in political science literature addressing peripheralization is ‘exclusion’ which is a peripheral position defined as ‘exclusion from dominating resources of power and insufficient possibilities, abilities or willingness to create counter power.’¹¹¹ A direct link between processes of peripheralization and exclusion is outlined in governance research. Herrschel refers to regional scales within the European Union, though these concepts can travel to the global south as they are applicable to the scenario at hand. This approach differentiates between two types of peripheralism; spatial and network. Both types can overlap. Herrschel defines the exclusion from networks as a central characteristic of peripheralization. *Yaya ni kwa masos* (*Yaya is for the rich*) as one of the youths put it. They- the people of Kibera are consistently excluded from the networks of the rich as they cannot even access the nearest shopping mall ‘Yaya centre’ as an example, which is a stone throw from their habitat. This consistent marginalization is depicted clearly in the history of the laws that governed the land in Kibera over the last century.

1.6 History of scarcity

Kibera which is situated in Nairobi was under the British protectorate and of course the law governing Nairobi also governed it; however Kibera was a little bit special in that it was not quite classified and no one was really sure what to make of it or what to do with it. In the past there have been several attempts to regularize it but to no avail.

¹¹¹ Kreckel, R. (2004), *Politische Soziologie der sozialen Ungleichheit*, Campus Verlag, Frankfurt am Main/ New York

As mentioned earlier it was land given as pension to the Nubian soldiers who fought in the KAR. But this did not deter people from settling in as fast as they could and by the early 1930s, the Carter Land Commission survey found that half of Kibera residents were women and two-thirds were Kenyan - born Africans.¹¹² Frustrated that so many unauthorized Kenyans had set up residence in Kibera, the civil administration again began to examine their options for demolishing the slum.¹¹³ In 1933, the Carter Land Commission recommended a gradual eviction and compensation of the residents so that the settlement could be done away with. However, this was not successful but set the precedence for uncertainty of land use in Kibera, tension and insecurity among the residents.

This was in the wake of already two failed attempts of removing the settlement i.e. in 1919 when there was an attempt to relocate Kibera residents, which was deemed too expensive and thus there was a withdrawal of the original residency passes and termination of any issuance of passes. The second attempt was in 1922, with the enactment of the Vagrancy Act which declared the demolition of ‘unauthorized huts.’

Most of the new plans to remove residents were eventually rejected as logistically or financially prohibitive; they were further hampered by the rulings of a few powerful British leaders who expressed loyalty toward the first - generation KAR Sudanese,¹¹⁴ though these feelings of loyalty did not extend to all Kibera residents. As the Commissioner for Lands and Settlement in Kenya stated in 1931: “*The old Nubian is a man to whom the colony owes much, but the second*

¹¹²Parsons, T. (1997). “Kibra is our Blood”: The Sudanese Military Legacy in Nairobi’s Kibera Location, 1902-1968. *The International Journal of African Historical Studies*

¹¹³Wangui, E.E. & Darkoh, M.B.K. (1992), A Geographical Study of Kibera as an Example of an Uncontrolled Settlement. *Journal of East African Research and Development*

¹¹⁴ De Smedt, (2009), “Kill me quick”: A history of Nubian Gin in Kibera. *International Journal of African Historical Studies*

generation and the hybrids arising from mixed unions are degenerate.”¹¹⁵ While Kibera residents largely won the right to remain on the land during colonial rule, their victory was partial. The colonial administration reluctantly agreed to abide by its obligation to tolerate Kibera but did nothing to develop it.¹¹⁶

From the perspective of the government, two possible endgames for Kibera remained. The first was that conditions on the ground would become so unpleasant that residents would voluntarily choose to resettle elsewhere. In what Parsons terms “malicious neglect,” the government attempted “to force the Sudanese out by rendering Kibera unlivable.” They refused to provide services, believing that doing so would only encourage others to settle on this land. The second possibility was that the permitted KAR Sudanese would eventually die, at which time the colonial administration could reclaim the land. But the government did not anticipate the complexity and diversity of living arrangements that came about through years of informal settlement. They forgot the multi-spatial livelihoods practiced by Kenyans, especially the Kenyan male who wants to survive and erk out a living in the city. Most of the males, who had come to work, either brought their spouses and families or even married in the settlement and continued to live there. Some invited relatives who lived there and one could find in a shack possibly six or seven young men together. These dynamics encouraged the population explosion of Kibera in the early years. A 1945 survey of Kibera’s nearly 3,000 residents found that only ten households belonged to those who were originally given the pension.¹¹⁷

¹¹⁵ Van Zwanenberg, R. (1972), History and Theory of Urban Poverty in Nairobi: the Problem of Slum Development. *Journal of East African Research and Development*, Vol. 2 No. 2 1972:190

¹¹⁶ Parsons, T. (1997), “Kibra is our Blood”: The Sudanese Military Legacy in Nairobi’s Kibera Location, 1902-1968. *The International Journal of African Historical Studies*

¹¹⁷ *Ibid*

The tension between the colonial government and the residents was never resolved and the government thought the issue would be resolved once power was relinquished to the independent government. This was not the case. The Kenyan politicians did not uphold the obligations of the colonial government to the Nubians and had no intentions of granting them land rights. In 1969 however, they declared that the land comprising Kibera was state property.¹¹⁸ This further heightened the land insecurity and tenure issues.

From independence until the mid-1970s, the independent Kenyan government tried to eliminate slums throughout Nairobi by demolishing some and withholding basic municipal services from others.¹¹⁹ Yet Nairobi's population exploded following independence, as rural Kenyans felt more incentive to move into the city, and Kibera's numbers increased by the thousands. Some reports estimate Kibera's population grew from 3,000 in 1960 to 8,000 in 1968 and to 15,500-17,000 in 1972 and 1,000,000 in 2008.¹²⁰

¹¹⁸ Clark, D, (1978 – 1979), "Unregulated Housing, Vested Interest, and the Development of Community Identity in Nairobi," *African Urban Studies*

¹¹⁹ K'Akumu, O. A. and W. H. A. Olima (2007). "The Dynamics and Implications of Residential Segregation in Nairobi." *Habitat International* 31: 87–99; Syagga, EM., (2000), Trends of Urban Housing Strategy for Kenya in the Next Decade, in R.A. Obudho and J.B. Ojwang (eds), Issues in Management and Development in Kenya, East African Educational Publishers, Nairobi

¹²⁰ The statistics are not reliable due to the rapid influx and secondly there were claims that the numbers were exaggerated by aid agencies to elicit pity and more funds.

A chronology of key events in the history of Kibera

Time	Key events
1888	Nubians great grandparents arrive in Kenya from Sudan, following their support for the British Army in removing Egyptians from Sudan
1912	The first Nubians settled in Kibera officially
1940	Kikuyus who were settling in Dagoretti were working on Nubians' farms in Kibra
1943	The Kikuyu farm workers were offered pieces of land in Serang'ombe, Gatwikira
Mid 1950s	The Meru settled in Kibra but working as house-helpers for the Nubians
1960	The Luos, who had been forced out of Kawangware by Kikuyus after a fight broke out between the two ethnic groups over a protest by the Luo people following the death of Tom Mboya, were rescued by the Nubians
1960s	MPs ask Nubians to demolish the houses and renounce title deeds
1965	Shifita war by the Borana hit in Kibera
1969	First Nubian MP, Mr. Yunis Ali was elected. He was non-partisan
1972	Nubians fought for their land and Asmer Hamber, a Nubian was given document of ownership for the land
1974	Mwangi Mathai become the MP. He invited mostly Kikuyu in Kibra to work with him and the whole governance system was assumed by Kikuyu speakers
	The Kikuyu forcefully took great portion of land from the Nubians by use of guns and other weapons
1978	A Nandi District Officer by the name Lemmi Lammu was appointed. He invited most of the other tribes also to settle in Kibera
	Corruption intensified among the chiefs and other leaders who allowed for more land subdivisions
1982	The attempted coup by the air force, suppressed by the army, led to people losing jobs. There was a lot of tension, deaths and food shortages
1992	The introduction of a multi-party political system resulted in the emergence of Saba Saba clashes which led to the declaration of curfews in Kibera
2011	The Nubians are still fighting and have never been issued with land title deeds

This lack of security of tenure and no clear ownership of the structures in Kibera led to disinvestment in the area. The area was also not seen as lucrative for political mileage and was excluded from the networks of the city region due its lack of allegiance to the powers that were in the particular territory.¹²¹ Another factor that was underneath this disinvestment was brought about by the landlords who ‘dared’ to invest; they only put the basic minimum, which was just the structures (living quarters), no piped water, electricity or anything that could be termed decent in terms of living. Remember these landlords were also illegally providing the services, yet the independent government pretended not to have noticed them.

The plight of these residents of Kibera who have suffered several attempts of uprooting them can only be summarized in the following quote from Amnesty international:

In Nairobi therefore, the lack of recognition of slums and settlements as residential areas denies residents a range of essential services provided by the government to other residents of the city. These essential services include improved water supply, improved sanitation, electricity, garbage collection, improved health services, education, access roads and transport. Lack of good governance and proper leadership in these settlements has worsened the situation. The experience of slum-dwellers starkly illustrates that people living in poverty not only face deprivation but are also trapped in poverty because they are excluded from the rest of the society, denied a say, and threatened with violence and insecurity¹²²

The above narrative of Kibera coupled with rapid urban growth (read proliferation of many more people to the slum) brought numerous environmental challenges complicated by vulnerability to the negative effects of climate change; food and energy crises; urbanization of poverty and

¹²¹ Wacquant L. (2008); *Urban Outcasts: A comparative Sociology of Advanced Marginality*. Cambridge: Polity Press

¹²² Amnesty International, (2009), Kenya, *The Unseen Majority: Nairobi’s 2 Million Slum Dwellers*

increasing inequality; urban informality leading to a weak urban service and infrastructure delivery base; poor governance which cannot meet the demands of the rapidly growing population; all these led to a sorry state of Kibera.

In view of all these, many NGOs and civil societies tried to intervene to bring about a change and livability in the slum area. They started many projects to either bring in water, build schools or toilets. On the forefront were many religious organizations. But these projects did not survive the test of time. It was the proverbial white elephant. Any time the implementing organization came and did a project, it was running, but the moment they left the project stalled and the same vicious cycle continued. As such there was no sustainable project or urban service delivery. It even reached a point where there were so many interventions but nothing to show of it and Kibera remained in a deplorable state.

In an effort to reclaim the dignity of the slum dwellers the Kenya Government started an ambitious slum upgrading project which was aimed at bettering the lives of the people and as such came the naissance of Kibera Integrated Water, Sanitation and Waste Management Project

1.7 The advent of Kibera Integrated Water, Sanitation and Waste Management project

As earlier stated, the scarcity of urban services, malicious neglect and the need for people to survive led to the birth of Kibera Integrated Water, Waste and Sanitation Project (K-WATSAN) under the auspices of the UN-HABITAT and the Government of Kenya,¹²³ with the local community being the lead partners in this whole program. This is in response to the Vision 2030¹²⁴ social pillar and the Millennium Development Goal (MDG) 7 which is designed ‘To

¹²³ UN-HABITAT, (2007) , UN-HABITAT and the KENSUP, Nairobi and London; UN-HABITAT and EarthScan

¹²⁴ Kenya Republic of (2005), Kenya Slum Upgrading Implementation Strategy 2005-2020. Nairobi, Government Printer

ensure environmental sustainability’ and specifically Target 7C: Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation and increase the proportion of population with sustainable access to an improved water source and improved sanitation ; While Target 7D was to provide that: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers

Soweto East village was chosen as the pilot area for implementing this project, which will then be replicated in other areas of the country, so that post 2015 agenda finds the country in a better placed position than how it was at the inception of the MDGs initially.

During the naissance of this project, at the needs identification phase, surprisingly enough the community identified the challenge of water and sanitation as a more pressing and urgent issue as opposed to housing, as such this was the project that carried the day. Even though at the moment the area is partially decorated with a new housing structure, the water and sanitation component preceded all these.

K-WATSAN is a water and sanitation project comprising of seven sanitation blocks, all consisting of watering points(the tap), 4 modern ablution blocks, showers and children’s area for bathing and doing their laundry. Initially they were eight but one was demolished to pave way for a resource center. These serve a large population who live in this settlement, yet the recommended World Health Organization planning guideline sharing ratio is one toilet per every twenty people.¹²⁵

¹²⁵ Adams, J. et al (eds) (2008), Essential Environmental Health Standards in Health Care , WHO Press, Geneva, Switzerland

1.7.1 Aim and objective of K-WATSAN project

K-WATSAN project aims at contributing towards improving the livelihoods of the urban poor in Soweto East village by supporting small-scale community based initiatives in water, sanitation and waste management. K-WATSAN project objective is in tandem with KENSUP's objectives. That is, to improve the livelihoods of people living and working in slum areas in Kenya, through the provision of basic infrastructure and services, security of tenure, housing improvement and income generation activities. It is expected that the project will be replicated in other villages in Kibera and thereafter in other slums in Kenya.

1.7.2 K-WATSAN project implementation

K-WATSAN project is an initiative of the UN-HABITAT's Water for African Cities Program. The project is being implemented by the UN-HABITAT and Maji na Ufanisi, the latter being a local NGO with a specific focus on water and sanitation initiatives in the country. A partnership agreement was signed in February 2007 for the period; February 2007 to October 2007 with subsequent renewals thereafter. UN-HABITAT as the lead partner while Maji na Ufanisi offers both technical and non-technical advice and skills as the key implementing partner. Maji na Ufanisi are the people working on the ground to harness the potential of the local community. They empower the community to work together to produce the desired results by playing the daily role of ensuring that field activities are going on as planned on behalf of the UN-HABITAT.¹²⁶

¹²⁶ UN-HABITAT (2009), Progress Reports on K-WATSAN, Nairobi

1.7.3 K-WATSAN project activities

The K-WATSAN project has a number of activities that are being carried out to achieve the desired goals of KENSUP. These activities aim to (1) support the Soweto East community to improve their access to water, sanitation and drainage; (2) set up and strengthen governance frameworks to regulate distribution and accessibility to water and sanitation; (3) promote the formation of small scale waste management enterprises and access to credit facilities; (4) enhance access to modern energy for the residents of Soweto East; (5) enhance information and technology skills among the population; and (6) enhance capacity building. These activities are elaborated further below.

1.7.3.1 Supporting the Soweto East community to improve their access to water, sanitation and drainage

Access to water and sanitation situation in Soweto East village is being improved through the construction of sanitation blocks at strategic points in the settlement, where they can be accessed by as many residents as possible. The project had planned to support the construction of eight sanitation blocks – two in each of the project’s planning zones (the project has four planning zones, namely, A, B, C and D). At the time of this survey, seven sanitation blocks had been constructed and were fully functional.

These sanitation blocks comprise all-in-one complexes with modern ablution blocks, shower cubicles, babies’ area, water booths and a laundry area. To make sure that water is available most of the time, these facilities have been fitted with 10,000 litres water storage tank (Plate 1.9). To access these facilities with ease, the project has also designed a 2.5 kilometer low volume traffic road and 1.8 kilometer storm water drains to improve drainage in the area. The road cuts across Kibera (from Mbagathi way to Kibera drive). This is expected to improve the accessibility of Kibera with other city suburbs.

Plate 1. 9: A sanitation block in Soweto East



Source: Field Survey

1.7.3.2 Setting up and strengthening governance frameworks to regulate distribution and accessibility to water and sanitation

Based on past (failed) experiences, the project is setting up and strengthening governance frameworks to regulate distribution and accessibility to water and sanitation. Poor governance can lead to the mismanagement of water and sanitation facilities, as well as their inequitable distribution and inaccessibility. Good governance structures have been set up through the formation of Water and Sanitation Committees at the community level. The committee is made up of technical staff, non-technical staff and community representatives. The committee is helped by the Settlement Executive Committee (SEC). The Water and Sanitation Committee has a structure which allows for selected individuals from the community to monitor the use of sanitation facilities, do repairs and collect revenue from the facilities.

1.7.3.3 Promoting the formation of small scale waste management enterprises and access to credit facilities

Integrating water and sanitation with waste management is important in any slum intervention. The project has put in place a community based solid waste management system, largely spearheaded by youth groups in the village. The main components of this intervention are: (1) construction of solid waste (garbage) transfer points; (2) construction of a recycling centre; and (3) procurement and installation of appropriate waste collection, handling and recycling equipment. This activity had not started at the time of the survey, except for the solid waste receptacles next to the sanitation blocks. Some youth groups have been provided with bicycles which they use to collect waste – not for disposal, but for sorting and selling of recyclables.

Plate 1. 10: Waste management situation in Soweto East.



Source: Field Survey

Members who manage and utilize the sanitation blocks have access to credit from the money they earn from these facilities. 25% of the money earned from these facilities is shared between the members while the rest 75% is saved in the cooperative societies they have formed. It is expected that the saved money will help in financing the purchase of KENSUP upgraded houses.¹²⁷

1.7.3.4 Enhance the resident's access to modern energy

Most of the residents in Soweto East use paraffin, fuel wood and charcoal for their daily needs, yet electricity grid lines pass through the settlement. Some of the residents go as far “stealing” electricity from the grid lines and even “selling” the same to others – an illegal and very dangerous venture that has led to loss of many lives especially during the rainy or wet season. The K-WATSAN project aims at providing the Soweto East residents with alternative modern energy sources, street lights and individual household electricity connections which is still yet to happen.

1.7.3.5 Enhance information and technology skills among the population

Information and technology skills are intended to link the settlement to the global village and technological advancement. This will be achieved through the establishment of a community information and communication technology resource centre. At the time of this survey, the centre was being temporarily run from the UN-HABITAT site office in Kibera. With eight computers, the centre has ensured continuous access to computers and internet facilities to the

¹²⁷ Personal communication with SEC Treasurer

residents. In addition, Soweto East is one of the slums which participated in UN-HABITAT JAM where residents learnt and used internet facilities¹²⁸

1.7.3.6 Capacity building

Capacity building on the main aspects of the project is intended to empower the community to run and manage the project in a sustainable way. Capacity building is being done through mobilization, sensitization and awareness creation; empowering the youth in various ways; formation of management groups; information sharing; and conducting community and management committee trainings. The project intends to construct a project management centre or focal point for this purpose. The youth are being empowered through the Youth Empowerment Programme (YEP). YEP ensures that the youth have access to entrepreneurship opportunities by equipping them with skills that can enable them start small scale businesses – intended to later grow into large enterprises. YEP is committed to improving the livelihoods of Soweto East youth through provision of practical entrepreneurship training in construction (making of low-cost construction blocks), carpentry, masonry, electrical wiring and plumbing, among others. In addition, they are trained in managerial and organizational skills, business development and information communication technology.

1.7.3.7 The reported impacts of the project on the livelihood of the households involved

So far, the project has transformed the lives of several Soweto East residents. The project gives an opportunity for the residents to earn a living through communal management of the water and the sanitation facilities. The sanitation facilities are communally owned and their management is on a rotational basis – for as many residents to benefit from them as possible. Furthermore, improved access to water and sanitation is not only closely linked to the health status of a

¹²⁸ Maji na Ufanisi (2006), Kibera Integrated Water, Sanitation and Waste Management Project- Project Document

population, but also to livelihoods. A healthy population necessarily translates to a population which has capacity to look for livelihood means.

Bergeron and Esrey¹²⁹ observed that with less disease, the population can absorb more food, thus improving nutritional status and consequently health. Access to water can result in time savings for primary care givers and also in the preparation of more or better food for children. In addition, improvements in sanitation due to access to water results in better health.¹³⁰ Another potential benefit of improved access to water is that some income generating activities and livelihood sources need water.

Any area that is close to a main road is potentially lucrative in terms of business potential. The construction of the spine road has made Soweto East village accessible to the city centre and industrial area, making it easier and quicker for the residents to reach their places of work. The spine road has also allowed for motorized transport within some areas of the settlement. Transportation of goods to the area is now much easier and cheaper, especially to the small scale traders who depended on hand carts and human porters over long and winding paths to reach their destinations.

So far, the following impacts of K-WATSAN are emerging (summarized in table 1.1 and 1.2):

1. Improved access to water situation in terms of sources of water, cost of water (affordability), safety of water, reliability, distance traveled to water source, and time spent on fetching water.
2. Improved access to sanitation situation brought about by the sanitation blocks.
3. Improved accessibility through access roads.

¹²⁹ Bergeron, G. & Esrey, S. (1993), *Baseline Survey for the Guatemala Highlands Rural Water and Sanitation Project*. WASH Field Report No 403. Washington DC.

¹³⁰ Bateman, O. & Smith, S. (1991), *A Comparison of the Health Effects of Water Supply and Sanitation in Urban Guatemala*. Water and Sanitation for Health (WASH) Project Field Report No. 352 reprinted by the Environmental Health Project, Arlington, VA

4. Improved environmental conditions through waste management initiatives and community trainings on health and hygiene. 27.6% of the Soweto East households are using garbage bags and another 15.5% are composting their domestic waste.
5. Improved sources of income and livelihoods through running of the sanitation blocks, employment in the ablution blocks, provision of labour in K-WATSAN activities, access roads and a better business environment.
6. Capacity building, empowerment and training through the various trainings and Youth Empowerment Programme.
7. Greater awareness, participation and partnerships in slum improvement.

Table 1.1 : Reported impacts of the project

	N	%
Access to toilet	23	31.1
Clean environment (water, area, toilet, no faeces)	20	27
Access to water	13	17.6
Ease of access	6	8.1
Employment creation and promotion	5	6.8
Reduction of diseases	3	4.1
Less distance	2	2.7
Access to credit services	1	1.4
Privacy	1	1.4
Total	74*	100

Table 1. 2: Subtle improvements in attitudes and livelihoods

Variable	N	%
Spending less on buying water than before	26	53.2
Spending less time on fetching water than before	40	81.6
Has the water borne diseases reduced in the area?	39	79.6
Satisfied with the ablution facilities	52	98.1

1.8 Conclusion

Kibera has witnessed many interventions and abundant flow of resources on matters relating to water and sanitation over the last couple of years. Many actors have been present in the settlement trying to do something about the water and sanitation situation. However, there has been minimal success or unsustainable interventions. According to an actor's survey commissioned by the Kenya Slum Upgrading Programme (KENSUP) in 2003, over 545 civil society organizations composed of Non Governmental Organizations (NGOs), community-based groups and religious organizations were found to be operating in Kibera, yet the settlement is still in a sorry state.

Several reasons for lack of significant impacts in this sector have been cited. Some of them include:

- Lack of good governance structures for integrated interventions.
- Lack of community participation in the interventions.
- Lack of monitoring and evaluation of especially the donor-driven projects.
- Absence of an organized central coordination mechanism at national and settlement level.

The K-WATSAN project was born as a much needed solution to the above challenges. As mentioned earlier, it is a component project of KENSUP and is being implemented in Soweto East village of Kibera. The project started with a socio-economic and needs assessment mapping for the settlement (Soweto East village). Surprisingly, the mapping revealed that the Soweto East residents had other priorities far important than housing. In fact, housing was last in their priority list. As such, K-WATSAN was initiated not only as a starting point to provide water and sanitation (which was high in priority) but also to build trust among the slum dwellers before upgrading the dwellings and provide a backbone infrastructure to peg the upgrading on. An integrated and holistic water, sanitation and waste management project was expected to yield meaningful impact in the village before the dwellings were upgraded.

This chapter has talked about the events leading up to this particular project and the reported impacts of the same. These events are a reflection of the unjust legacy of the colonial policies and systems that were present and later inherited by the fathers of the nation. They stemmed from a lack of provision of basic urban services in the urban center denying the inhabitants the opportunities to enjoying the rights to the city. It then describes the study area by showing the formation of the settlement, how it looked then and now, the reasons as to why the settlement was in a sorry state, and exposes the land tenure system.

The chapter continues to elaborate how the project has sustained itself against all odds which keep threatening its existence. This aspect of resilience makes me pose the question why? And this major question will be answered in the subsequent questions by asking the following minor questions which have already been stated in the general introduction.

1. In which historical, livelihood and governance contexts is the Soweto East water project embedded and what trends can be observed?
2. How is the K-WATSAN project configured in terms of actors, activities and values?
3. What arrangements are used to govern K-WATSAN project?

4. How do these governance arrangements impact the livelihoods of actors in K-WATSAN project and their sustainability?
5. How do formal and informal aspects of governance interplay in the development process, and how do they relate to the wider rules of the game in a society?

2 THEORETICAL AND CONCEPTUAL UNDERPINNING OF THE STUDY

2.1 Introduction

An analysis of the water resource management system in Soweto East requires the blatant borrowing of some concepts for clarity and fuller understanding of how the system functions. The ‘how’ is a very important concept as it provides in intricate detail the miniscule happenstances that are hidden from the casual observer’s eye. The ‘how’ then seamlessly leads to the ‘what’ of the phenomenon under study. Many scholars appreciate the fact that most studies and realities do not exist in a vacuum – they acknowledge the multi-disciplinary and interdisciplinary embedding of realities in other sciences; this causes or lends to the sense of borrowing and seeing what works out best for a particular representation of reality that the research is trying to recreate. The concepts in this particular thesis are borrowed and revisited from other disciplines which are then adapted to the reality that is being studied, which is the resilience demonstrated by the Soweto East village residents in running their water system.

This chapter introduces and discusses the concepts which have been used to examine, analyze and describe the research themes and subjects. The main concepts are; governance and institutions, legal pluralism, actor - networks, common property resources and co-production; the connections between these concepts concerning urban goods e.g. water, people and places are explored over time and space. These concepts form an interdisciplinary foundation for the research. They actually are a tinkering of concepts which are from diverse theories and philosophies found in social sciences commonly referred to as a ‘*bricolage*.’¹³¹ A *bricolage* allows an exploration of the subject through different lenses, which aids in the reflection of its reality. The lenses could be the different concepts guiding the research methods as well as the type of analysis. This term is also used in the line of thought on institutional governance,¹³² in

¹³¹ Kincheloe, J. L. (2001), Describing the Bricolage: Conceptualizing a New Rigor in Qualitative Research. *Qualitative Inquiry* 7(6): 679-692.

¹³² Cleaver, F. (2002), Reinventing institutions: Bricolage and the Social Embeddedness of Natural Resource Management. *European Journal of Development Research* 14(2): 11-30.

philosophy and anthropology¹³³ referring to spontaneous action or borrowing of concepts from a heritage: all the concepts borrowed are relevant for this study.

This *bricolage* method has been introduced, to cater for the inadequacy of explanations found in the singular disciplines. More and more as knowledge is being increasingly acquired it is evident that no one discipline can clearly do justice to the research subject. There has to be an interdisciplinary thinking so as to make an attempt of expounding on the reality at hand. The table (table 2.1), shows the different subjects or theoretical concepts that have been borrowed to create a wholesome study. Which then introduces the Governance Analytical Framework, which is the overarching framework that begins the expose of the theoretical framework underpinning this particular study.

¹³³ Lévi-strauss, C. (1966), *The Savage Mind*. Chicago: University of Chicago Press

Table 2. 1: Disciplinary embedding

Discipline	Theme	Subject	Research Concept	Research question
Human Geography	Poverty alleviation	Resilience Participation Social capital	Co-production, pro-poor markets, place-space, social context	3,5
Political Science	Governance Political ecology Networks and actors	Governance Justice Rights	Governance, power relations, tenure, commons theories, institutions	1,2,3,4,5
Law	Pluralism	Law, governance	Legal pluralism, governance	4,5
Anthropology	History, cultural , legal	Water use, trade Informality	Cultural values, commodification	1,2,5
Economics	Common Property Resource	Natural & social capital valuation	Institutions and institutional economies, markets	1,2,3,4
Design	Poverty alleviation	Participation	Co-production and co-design	1,2,3,4,5

Mental map of chapter 2

1. COORDINATION

Systems of laws that operate in the s(p)lace ; alignment and inputs from the stakeholders ; specification of outputs like sanctions; share existing knowledge

ANALYSIS

Assessment of agency influence and interactions; validation & categorization of nodes, problem, processes and social norms

2. PROCESS

Regular transparent forms of governance arrangements engaging various dimensions of water governance like environmental, economic, political and social

3. DELIVERABLE

Non-tragic commons, Synthesise and interpret design principles for enduring CPR institutions; Contextualize water management systems; share common interests and sense of community

2.2 Governance Analytical Framework (GAF)

The Governance Analytical Framework is a tool of analysis whose methodology is centered on actors to enrich a discourse on the meanings of their actions. Its centrality lies on how the actors behave and how they attach their meanings to a particular problem or issue at hand focusing on the processes involved in its governance. The investigation of the governance processes is based on five analytical tools, which are: problems, actors, social norms, processes, and nodal points.¹³⁴ It puts the actors at the core of the analysis and as such explain actors' meanings to the most insignificant act that a curious passerby would not dare to point, enriching the 'seeing' as opposed to the 'asking' of ethnographic methods¹³⁵ by taking the different observed and participated actions a step further in asking and prodding their *quid* or essence. This framework acknowledges the fact that the intention cannot be observed but only the practice and as such, it relies on the actor-oriented approach to deduce the explications of certain observed phenomenon.

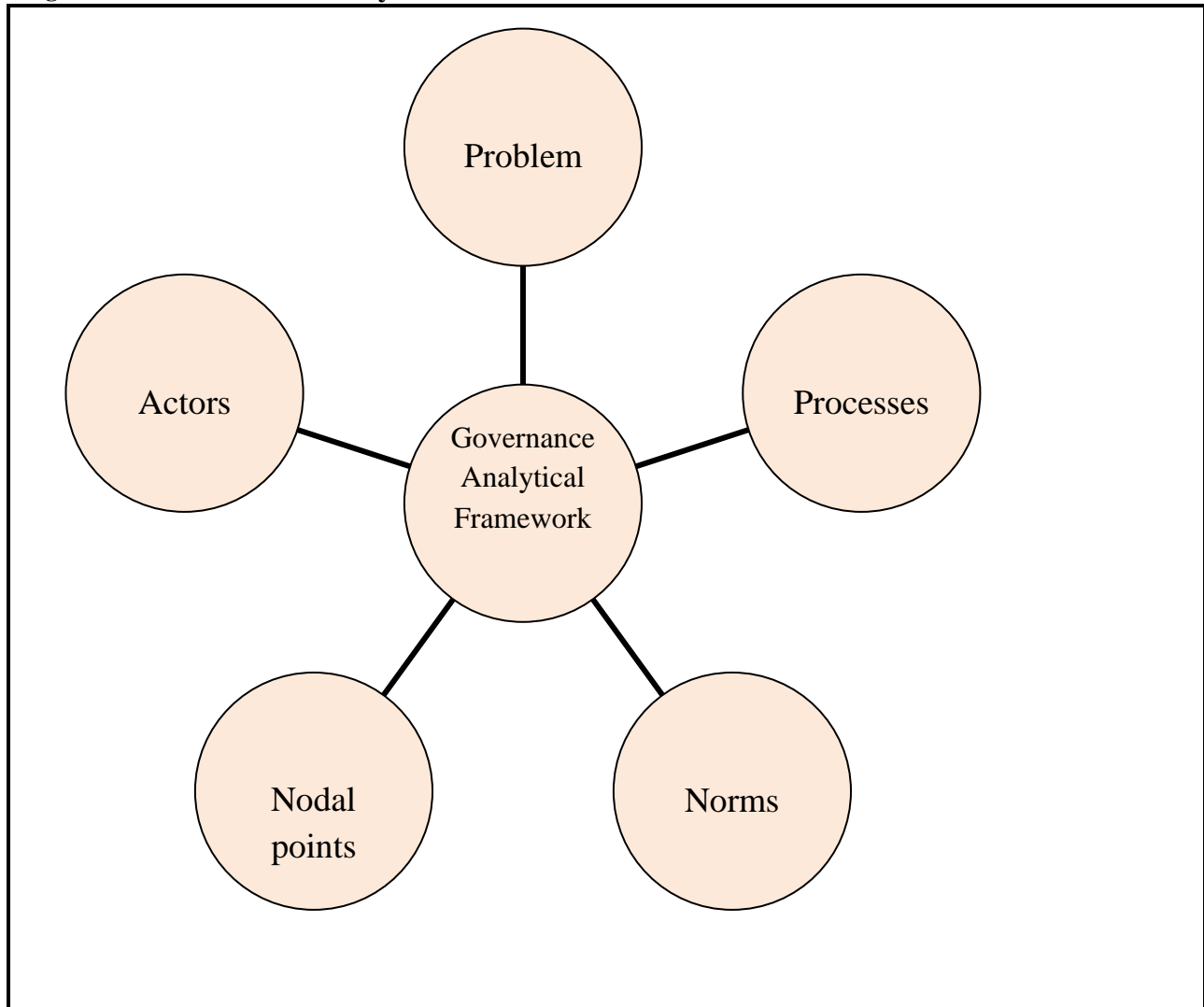
2.2.1 Demystifying GAF

This overarching principle utilizes five levels of analysis to understand the problem in its entirety; it first defines the problem, investigates the actors and delves into the social norms for a better comprehension of their interaction of the processes that aid in decision making at the nodal points. Figure 2.1 describes the core elements of the governance analytical framework.

¹³⁴ Hufty M. (2011), Investigating policy processes: The Governance Analytical Framework (GAF) in Wiesmann U, Hurni H, eds; with an international group of co-editors. *Research for Sustainable Development: Foundations, Experiences, and Perspectives*. Perspectives of the Swiss National Centre of Competence in Research (NCCR) North-South, University of Bern, Vol. 6. Bern, Switzerland: Geographica Bernensia: 403–424.

¹³⁵ Blockland, T. (2015), Lecture given at summer school on methods, Ideal City , Myth or Reality, Urbino, Italy

Figure 2. 1: Governance Analytical Framework



2.2.1.1 Defining the problem

One of the characteristics of the GAF is that the problem has to own a realistic perspective to warrant its study. To achieve this ‘realism’ ; the GAF approaches the problem with a plurality of views with an assumption that a problem is usually socially constructed and is understood

differently by each of the actors depending on their position in society and habitus¹³⁶ and is observed in their practices and discourses. For example, the scarcity of water in an informal settlement can be viewed as a curse or a big problem by the inhabitants of the settlement, in that they have to spend more of their meager earnings on accessing this basic commodity; while a water cartel owner, who has a mind of an entrepreneur may see this as a business opportunity in which he can enrich himself by charging high premiums while employing himself to the task of availing water for this people. On the other hand, the researcher imbued with tenets of rights may see this situation as a legacy of unjust systems which needs to be redressed; all these viewpoints are valid for the same issue, the only difference is the habitus which makes the different actors view the same issue from different angles. Thus, the ‘realisticity’ of deconstructing and constructing the problem relies on the merging of the different perspectives to achieve an acceptable standard of defining the issues at stake.

For this thesis, a combination of two methods was utilised to come up with the version of the problem adopted; i.e. the classical method of confronting documented evidence, coupled with ethnographic studies in the field together with the second method which entailed defining the problem jointly with the actors in the study area, as they too had and continue to have an active stake in the study and are not passive participants awaiting their fate. These two methods allowed for an in-depth understanding of the problem and the reconstruction of a generalized societal problem.

2.2.1.2 Understanding social norms

Norms are agreements and joint decisions between actors which guide their behavior as they are based on values or beliefs and contain a prescription of what one should do or not do and of

¹³⁶ Bourdieu P. (1980), *Questions de Sociologie*. Paris, France: Editions de Minuit.

sanction either of positive reinforcement or negative constraints which are directly related to social institutions.

The norms governing a particular society need to be put under a microscope in order to fully understand the regulations in the particular jurisdiction. These could be either informal or formal, as long as they regulate the happenings of the society. They are divided into three; i.e. Meta-norms (larger principles that guide society); Constitutive norms (Organizational or institutional mechanisms relating to the issue under analysis) and lastly Regulatory norms which delimitate the conduct of individuals or groups.

Norms are usually formulated at different levels and during analysis of the same, it is imperative to look at the process of reaction, which entails rejection, resistance, internalisation, or adaptation.¹³⁷

2.2.1.3 On the actors

As GAF is a methodology centered on actors, we look at the agency-structure; this entails focusing the gaze on the social actor networks to identify and analyze the different parties in the study phenomenon.

2.2.1.3.1 Identification and description of the actors

During the identification of the actors, much care is put in their stead to ensure that they are described without prejudice, be they formal or informal. Their status is taken into account. In this thesis, all the actors involved in the accomplishment of the project were included right from the orphans, women, faith-based organizations, widows to the youth, besides the ‘normal usual’

¹³⁷ Bulkeley H. (2005), Reconfiguring Environmental Governance: Towards a Politics of Scales and Networks. *Political Geography* 24:875–902.

groupings (men and local government) that have traditionally been considered as the main interest groups.

2.2.1.3.2 Assessment of the actors influence

This analytical framework lauds the promotion of the strategic actors in favour of the secondary and relevant actors, due to the availability of resources disposable to the researcher. It borrows from Prats¹³⁸ the definitions of strategic actors as any individual, organization or group with sufficient power resources to hinder or disturb the functioning of rules or procedures for decision making and resolution of collective conflicts; while relevant actors form part of the institutional fabric and have the necessary resources to be considered as strategic but do not use these resources or are dominated by others in the process. Lastly Secondary actors do not have sufficient power to change the rules of the game, or remain passive. This categorization depends on the individual's position in the social field, his/her capacity to mobilize the resources in the governance process and lastly his strategic interaction with other actors.

2.2.1.3.3 Categorization of interaction between actors

The nature of interaction between the different actors is categorized either as a transaction of negotiation, direction or reciprocal which can be derived by mapping of actors to establish the true nature of their interaction between each other. The mapping could be a socio-economic mapping as was done in this study or a mapping to establish their roles. The mapping enables us to establish what relationship is there between the different actors and as such depict the

¹³⁸ Prats J. (2001), *Gobernabilidad Democrática Para el Desarrollo Humano: Marco Conceptual y Analítico*. *Revista Instituciones y Desarrollo* 10:103–148. Available at: <http://www.hegoa.ehu.es/dossierra/gobernanza/3-Prats2001.pdf>; accessed on 28 October 2015.

influence they have on each other whether it is client-patron or family or employer- employee etc.

Once they have been categorized, the spaces of interactions are observed as this is where the formal and informal processes occur and form part of the decision making **processes** of these repeated interactions and relations. They are termed as the ‘**nodes**’ or **nodal points**. These nodes could be a physical space e.g. the sanitation blocks for this case or the chief’s office where community meetings are conducted or could be a virtual space like the telephone or internet. These nodes are studied in a historical manner to see how a common position was reached even though it was not their initial first choice.

2.2.2 Shortfall of GAF

Though the GAF has been lauded as a simple, approachable analytical tool that can be used in a variety of inter and multidisciplinary studies it has a glaring shortfall to it and as such should be used with caution and in studies that meet its aforementioned criteria. As an analytical tool, it can only be used for studies that require no choices to be made – only an analysis of their governance system. That is to say; it is not suitable for guiding the choice between different systems of values or ethics and cannot answer questions like ‘what is the best political system?’ other methods would be appropriate for this question. Thus it is important to ensure that only choice free analyses are required when using this particular tool for analysis.

2.2.3 Justification of GAF in this study

This particular analytical framework meets an all-embracing criteria i.e. it is *non-normative* as it describes the facts as they are by not prescribing any normative orientations; *interdisciplinary and reflexive*, in that it bridges the gap of governance between disciplines and acknowledges the researcher’s influence in the research process and information produced; *comparative and*

generalizable, as it compares governance processes taking place in a society at a given time and it is *operational* making it suitable to analyse empirical situations. These criterion make it an apt and suitable tool for analyzing concrete problems with a view to contributing to their solution by mostly analyzing the governance process.

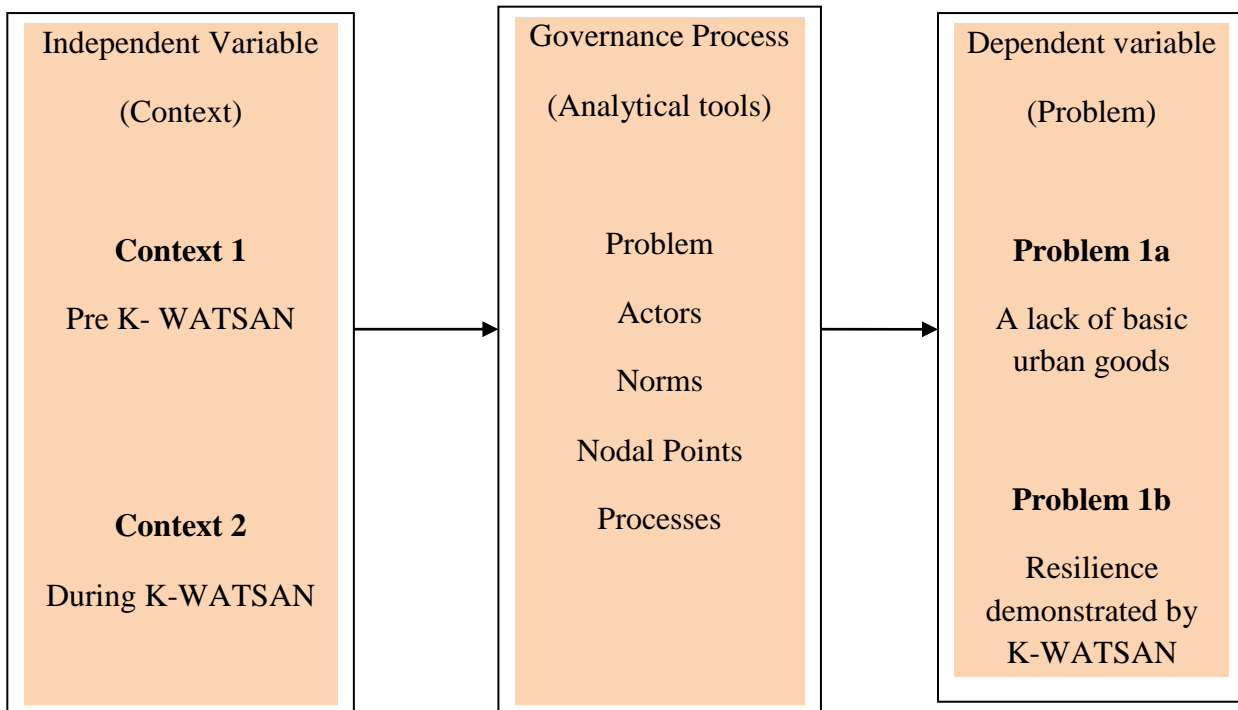
2.2.4 How it has been operationalized in this study

GAF has been used in this study to understand the issues of divergence between the laws that are and the situation on the ground experienced by the actors in the field. The actors in the informal areas have been lacking in basic urban goods despite there being policies to the effect of their provision being accorded. This same concept has been used in previous studies such as inequity in access to health services despite equitable access being legally guaranteed.¹³⁹ Here the problem to be understood is the dependent variable and it is assumed that there is a direct causal link between the dependent variable and the governance process; the dependent variable is the resilience evidenced in the K-WATSAN water management system together with the lack of urban goods and services at the onset of the settlement. The way in which the rules and norms are decided upon is causal and understanding this process can therefore facilitate the resolution of the problem under study. At the same time, the governance process is itself determined by a context, which for this study is a historical process of marginalization of urban poor and a political system pegged on the colonial system four decades later that reflects this history. Therefore, the governance process is itself part of a causal chain where it is being determined by

¹³⁹ Hufty M. (2011), Investigating policy processes: The Governance Analytical Framework (GAF) in Wiesmann U, Hurni H, editors; with an international group of co-editors. *Research for Sustainable Development: Foundations, Experiences, and Perspectives*. Perspectives of the Swiss National Centre of Competence in Research (NCCR) North-South, University of Bern, Vol. 6. Bern, Switzerland: Geographica Bernensia, 403–424.

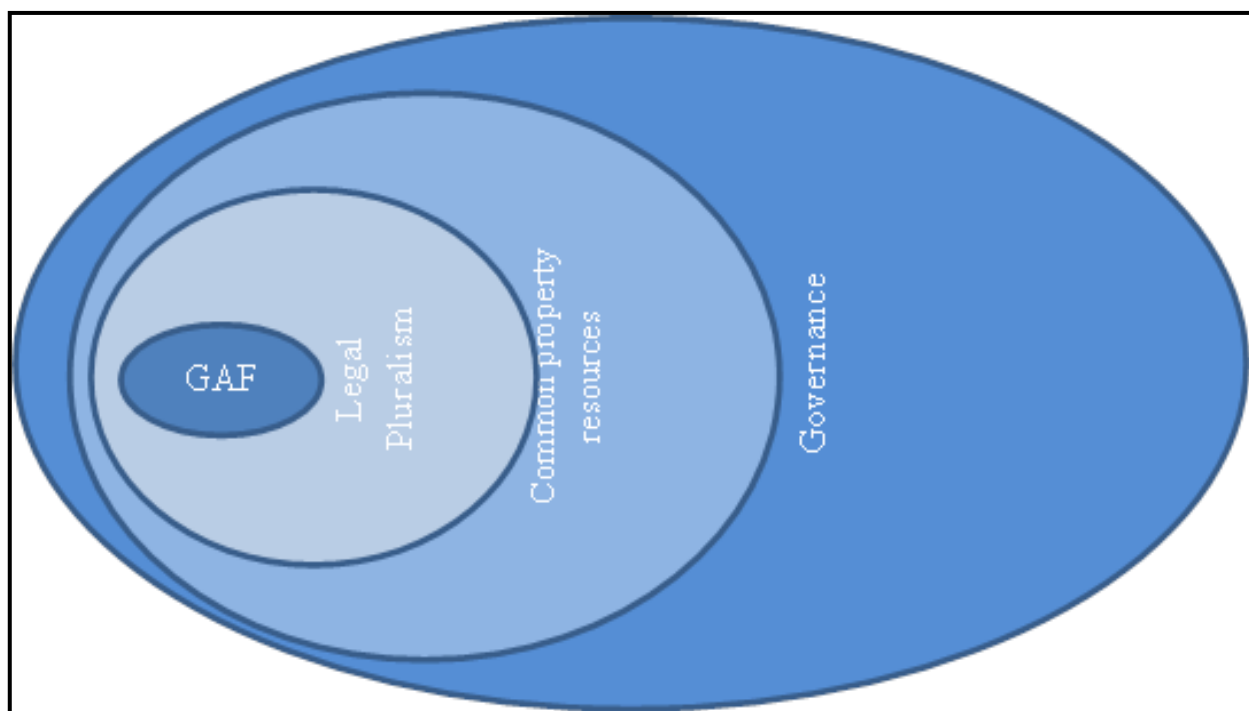
a larger process while influencing a dependent variable. In other words, it produces effects on a dependent variable (e.g. access to basic urban goods and services and the resilience of the water system, yet it is also affected by independent variables- the institutional organizations like the local implementing partners and ministries. Thus based on the levels of analysis present before the GAF aims to identify the way in which governance influences the resilience and what factors are favourable or unfavourable at the nodes in aiding to achieve the social change witnessed. The figure 2.2 demonstrates the operationalization of this process in this thesis at two levels the first was before the project was decommissioned and the next after the project was decommissioned, thus it shows the causal role played by governance as a process.

Figure 2. 2: Causal chain



As has been noted earlier that no one theory speaks everything to the data that glares at us in a study and as such the GAF has been used in conjunction with other theories to augment the deeper understanding of the problem at hand as depicted in figure 2.3.

Figure 2. 3: Marrying the GAF and other theories



Source: Author

2.3 Governance

2.3.1 The elusive concept of governance

To answer the third question on governance arrangements and subsequently the fourth and fifth, we need to actually get into grips with this elusive concept named 'Governance'- an often used word with a slightly not so well agreed definition by all scholars. Governance has been taken to

mean different things to different people, depending on which unarticulated bias one has. This term has developed very widely in the last two decades and has metamorphosed to capture the different angles. Governance is a multidisciplinary, multi-faceted normative and subjective concept which has emerged over the last 15 years, with theories and practice grounded in development and politics.¹⁴⁰

It has even crossed the language divide and is subjective for instance, interactive governance also suggests that there are important differences between management, policymaking and governance. The differences between these activities are not straightforward and unequivocal, and may vary with culture and language. Thus what is termed ‘policy’ in Anglo-Saxon political culture may be known as ‘*gouvernance*’ in the Francophone tradition; American authors, on the other hand, may label the same phenomenon as ‘management’. We take the view that governance is the more inclusive term, followed by policy, with management being the most instrumental of the three concepts.

Thus governance considers longer term trends and requirements with regard to natural resources, basing itself on an assessment of institutions and a discussion of the values to be attained. Policy deals with specific subjects in tighter timeframes, whereas management grapples with the practical dimensions of its implementation.¹⁴¹ Other authors take it as the exercise of political authority and use of institutional resources to manage society’s problems and affairs.¹⁴² It is a

¹⁴⁰ Pierre, J.(ed) (2000), *Debating Governance: Authority, Steering, and Democracy*. Oxford: Oxford University Press

¹⁴¹Kooiman, J., et al (2008), *Interactive Governance and Governability: An Introduction*. *The Journal of Transdisciplinary Environmental Studies* 7(1).

¹⁴²World Bank (1991); *Managing Development – The Governance Dimension*, Washington DC. http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/03/07/000090341_20060307104630/Rendered/PDF/34899.pdf

signal of how informal authority of networks supplements and supplants formal authority of the government by exploring the changing boundary between the state and society.¹⁴³

¹⁴³ Harris, J. (1990), 'Society and State in Twentieth Century Britain,' in F. M. L. Thompson (ed.), *The Cambridge Social History of Britain 1750-1950*. Vol 3. Social Agencies and Institutions. Cambridge: Cambridge University Press

Table 2. 2: Selected definitions of the term ‘governance’

Varying definitions of governance ¹⁴⁴	Authority
The exercise of political Authority and the use of institutional resources to manage society’s problems and affairs	World bank
Governance is a method/mechanism for dealing with a broad range of problems/ conflicts in which actors regularly arrive at mutually satisfactory and binding decisions by negotiating with each other and co-operating in the implementation of these decisions	Schmitter
A category of social facts, namely the processes of interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, or reproduction of social norms and institutions.	Hufty M
An observable phenomenon of decision-making processes, social norms and institutions are inherent to social life, allowing members of any society to live together and cooperate, even without a state.	Evans-Pritchard 1940; Balandier 1967; Clastres 1974
The newly emerging models of action result from the concerted combination of social actors coming from diverse milieus (private, public, civic) with the objective to influence systems of action in the direction of their interests	Paquet & Hamel
The traditions and institutions by which authority in a country is exercised	Kaufman et al
The way “...power is exercised through a country’s economic, political and social institutions.”	World Bank’s PRSP Handbook
The exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.	UNDP

¹⁴⁴ Swyngedouw, E. (2005) , Governance Innovation and the Citizen: The Janus Face of Governance-Beyond-the-State , *Urban Studies*, Vol. 42, No. 11, 1991– 2006 ;
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNAREGTOPGOVERNANCE>, accessed on 31st October 2015 ; World Bank (1991); *Managing Development – The Governance Dimension*, Washington DC.
http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/03/07/000090341_20060307104630/Rendored/PDF/34899.pdf

In view of this we must therefore admit that the word ‘governance’ is a broad term still in the process of evolution and thus has no universally accepted definition.¹⁴⁵

For this thesis, governance embraces the decisions and processes that define expectations, grant power, exercise the same and provide goods and services to the dwellers. It stresses the role of the state, private sector, civil society and the ‘governed’ – the people who form networks and systems to access their goods as a multi-stakeholder practice and process, moving away from equating governance only with government, in all its manifestations. Governance occurs at different policy and administrative levels, embracing stakeholder diversity in interests, perceptions and ambitions.¹⁴⁶ Government, particularly at meso and micro levels can strongly influence daily lives, particularly of poor people.¹⁴⁷ This broad definition reflects the realities of the research subject and area

2.3.2 Governance theory

As a theory governance has roots in various disciplines including Public Administration, Political Science, Institutional Economics, Development studies among others and is concerned with steering actions of political authorities as they deliberately attempt to shape socio-economic structures and processes.¹⁴⁸ It may also be viewed as a cooperative mode where the state and non-

¹⁴⁵ Vapnek J et al, (2009), *Law for Water Management: A Guide to Concepts and Effective Approaches*

¹⁴⁶ Kooiman, J., et al (2008), *Interactive governance and governability: An Introduction. The Journal of Transdisciplinary Environmental Studies* 7(1)

¹⁴⁷ Cleaver, F., et al (2005), *Water Governance and Poverty: What Works for the Poor?* University of Bradford. Development. Bradford: Department for International Development of the United Kingdom

¹⁴⁸ Myntz, R. (2003), ‘New Challenges to Governance Theory’ in Bang, P.H. (2003) Eds: *Governance as Social and Political Communication*. Manchester University Press, Manchester 2003

state actors participate in mixed public and private networks. According to Stocker;¹⁴⁹ governance theory tackles the following critical concerns: first it refers to institutions and actors from within and beyond government. In our case, Government institutions like the Nairobi County Council and the independent water services providers like the Nairobi Water and Sewerage Company and other NGOs and CBOs. Secondly it identifies the blurring boundaries and responsibilities for tackling social and economic issues. This shift in responsibility goes beyond the public-private dimension to include notions of communitarianism and social capital. Thirdly governance identifies the power dependence involved in the relationships between institutions involved in collective action and thus must exchange resources and negotiate shared understanding of ultimate program goals. Fourth, governance is about autonomous self-governing network of actors. Finally, governance recognizes the capacity to get things done which does not rest on the power of government to command or use authority. It is characterized by a move away from centralization to decentralization; from redistribution to regulation; and from public services management to management through market principles.¹⁵⁰

The theory carries with it various assumptions among them, that the government's role should mainly be on the formulation of public policy and leave policy implementation to other bodies, which could be private organizations or non-profit organizations hence encouraging privatization, outsourcing, agentification and a stronger emphasis on market mechanism and performance indicators. The rationale for this is that the more the separation in policy from implementation, the more the participation by public actors in the implementation process and the more the realization of efficiency in the process.

¹⁴⁹ Stoker G (1998), *Governance as a Theory: Five propositions*. Blackwell publishers, Oxford, United Kingdom.

¹⁵⁰ Merrien 1998

2.3.3 Water governance

Before, the notion of governance had not been extended to water until the first connection between governance and water management in 2000 at the Second World Water Forum at The Hague.¹⁵¹ The concept is now widely used in research, policy and practice of water management. The Global Water Partnership (GWP) has characterised the world water crisis as mainly a ‘crisis of governance’. In water services, this manifests itself in the fragmented institutional structures, the lack of clarity in roles and responsibilities, questionable resource allocation, patchy financial management and the low capacity of implementing organizations. This crisis is also apparent in the pervasive leakage of sector resources, weak accountability of politicians, policy makers and implementing agencies, unclear or non-existent regulatory environments and unpredictability in the investment climate for private sector actors.¹⁵² Water resource governance has been described as ‘the range of political, social, economic and administrative systems that are in place to regulate development and management of water resources and provisions of water services at different levels of society’.¹⁵³

The use of the term water governance signifies a shift from the perception of the state of water resources as a bio-physical crisis to a crisis of governance. This has widened the scope of water management from technical issues of water availability to socio-economic and even political

¹⁵¹ 'Second World Water Forum, Ministerial Declaration of The Hague on Water Security in the 21st Century (22 March, 2000)', (2000)

¹⁵² United Nations (2006), United Nations Millennium Development Goals Report. United Nations (UN): New York.

¹⁵³ Rogers, P. Hall, A (eds), (2003), Effective Water Governance Vol 7,7 ; Global Water Partnership (2000). TAC Background Paper No.4: Integrated Water Resources Management. GWP: Stockholm, Sweden

issues surrounding water resources including democracy, corruption, and power imbalances.¹⁵⁴ The paradigm of governance has also served to highlight the link between poverty, development and water scarcity. The formulation of water resource management in terms of governance has also contributed to its appreciation as a multi-level governance task involving authorities from local levels, to the national, regional, supranational and global levels.¹⁵⁵ In developing countries the existence of multi-level governance in the water sector is especially pertinent as it marries the formal and the informal laws and institutions. Governance is thus recognized as the key that links national policy making with policy implementation relating to water resources.¹⁵⁶

To further reiterate the concept of governance and water; in 2006 UNESCO stated, “sound water governance should be open and transparent, inclusive and communicative, coherent and integrative and equitable and ethical.” This begs the question on the meaning of participation in this field, the role of the state and the stakeholders, the particularization of the concept to different political regimes and the developing world.

2.3.3.1 Dimensions of water governance

In the wake of all this sensitization on the aspects of conserving and responsible stewardship of water resources, the Water Governance Facility developed four inter-related and poverty centered dimensions that point to the importance of addressing governance issues in the water sector. The four dimensions can be categorized as social, economic, political and environmental.

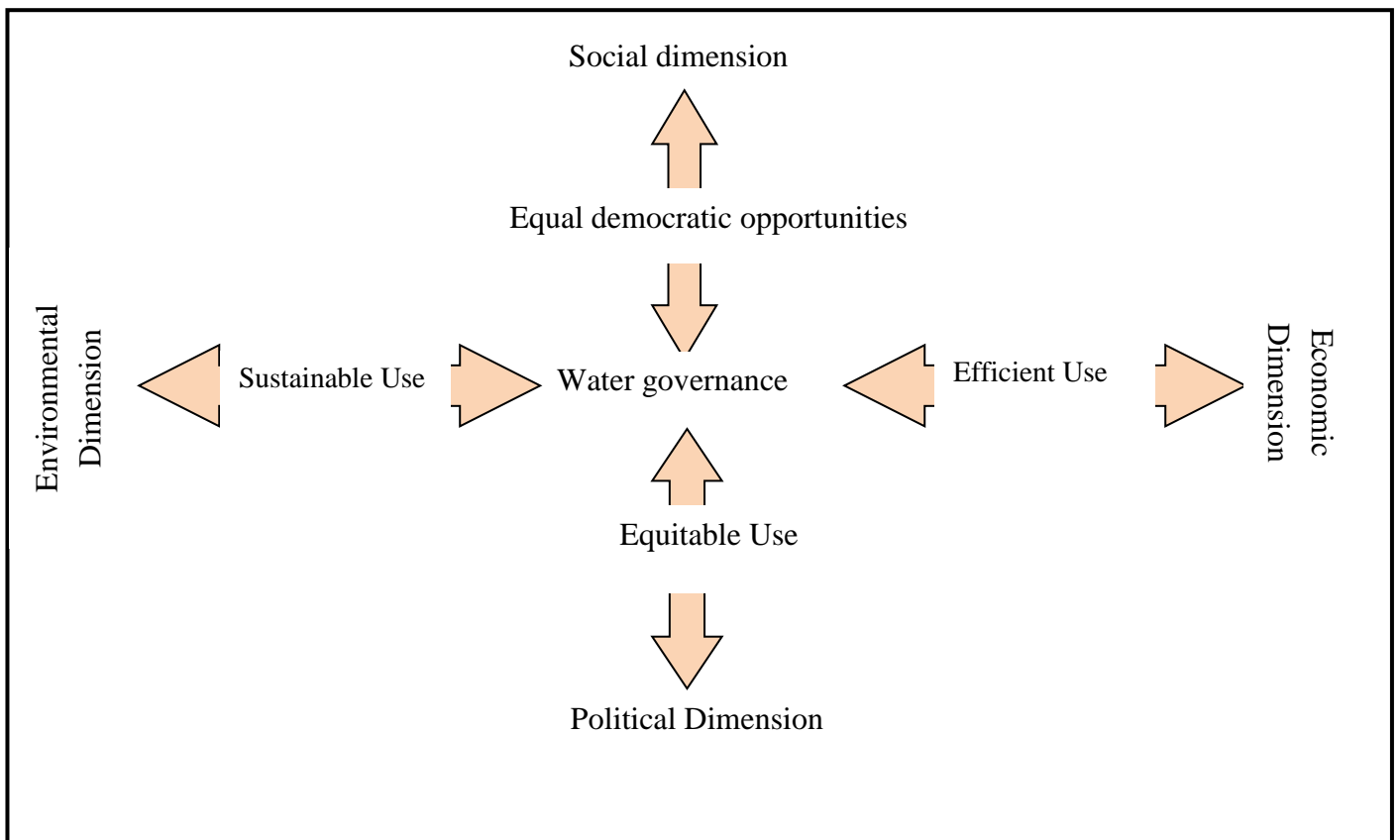
¹⁵⁴ Tropp, H. (2007), Water Governance: Trends and Needs for New Capacity Development, Supplement 2, Water Policy 20

¹⁵⁵ Dellapenna, J & Gupta, J. (2011), A Book Conversation with the Editors and a Reviewer. Law and Water Governance: Past, Present, and Future 36(3) Water International 398-401

¹⁵⁶ Wouters, P. & Allan, A. (2004), What Role for Water Law in the Emerging “Good Governance” Debate? *Journal of Water Law*

In assessing the water governance in this particular informal settlement, this study co-opted these facets as they are important factors that influence access to water in various ways.

Figure 2. 4: Factors that influence access to water



Source: Adapted from Water Governance Facility

The social dimension seeks to address the equitable distribution of water resources and services among various socio economic groups in the society, be it the urban areas or the rural areas. It has been noted that water is unevenly distributed in time and space, which has a direct impact on the daily well-being of the society. The economic dimension draws attention to the efficient

allocation and use of water resources in the overall economic growth as the governance structures exert a powerful effect on per capita incomes in many countries. It has been argued that poverty reduction and sustained economic growth depend on efficient use and allocation of natural resources.

The political dimension, routes/ advances for equal rights and opportunities for water stakeholders to take part in decision-making processes since well informed decision makers provide for effective implementation and enhanced conflict resolution. This should include the marginalized and the ‘non- categorized’ citizens, while the environmental dimension uniquely shows that improved governance allows for enhanced sustainable use of water resources and ecosystem integrity.¹⁵⁷

2.3.4 Governance arrangements

The term governance arrangement, used by Agrawal¹⁵⁸ describes the interplay of interactions, institutions, actors, principles, policies, mechanisms and processes; this interplay is paramount in understanding the arrangement in time and space as they are intricately related. Explanatory variables of governance outcomes include the characteristics of the resource and of products, users, institutional arrangements, external environment, availability of necessary information, ability to deal with conflict, compliance with rules, provision of technical, institutional and physical infrastructure, and ability to adapt and change. This describes and puts into context the different parts in play. This is in contrast to Kooiman’s governance systems which talks of

¹⁵⁷ <http://watergovernance.org/governance/four-dimensions-governance> ; Tropp, H. (2005). ‘Developing Water Governance Capacities’. Feature Article. UNDP Water Governance Facility/SIWI, Stockholm

¹⁵⁸ Agrawal, A. (2007), Forests, Governance, and Sustainability: Common Property Theory and its Contributions. *International Journal of the Commons* 1(1): 111-136.

governance systems as being an integrated whole and relates the governing system with the system to be governed by looking at the governing interactions. However, he reiterates the growing consensus about how governance impacts livelihoods and that societal change through ‘learning to adapt’ plays an important role in improving governance.¹⁵⁹ Thus creating and maintaining institutions are not ‘given’, with sudden or planned events acting as change agents. He talks of three orders of governance; first order; second order and meta. The governors managing the rules are key figures whose function and relationship need to be considered. The norms, values and principles shaping institutions mean that these need to be examined, including the legitimacy of the institutions, principles guiding the acceptability of institutions and coherence between the three ‘orders’ (i.e. day-to-day management, institutions and norms and values that shape them)¹⁶⁰ The interaction process involves a ‘system-to-be governed’ and a ‘governing system’ or arrangements. The relationships and interactions between the two constitute the governance interactions affecting the natural system and setting limits to resource users’ potential.¹⁶¹

However in this thesis the focus on governance arrangements is based on a common and distinctive set of features which are; Horizontal interaction among presumptive equal participants without distinction between their public or private status.; regular, iterative exchanges among a fixed set of independent but interdependent actors; guaranteed access in the decision-making cycle and organized participants that represent categories of actors, not

¹⁵⁹ Kooiman, J., et al (2008), Interactive Governance and Governability: An Introduction. *The Journal of Transdisciplinary Environmental Studies* 7(1).

¹⁶⁰ Kooiman, J., M. et al (eds.) (2005): *Fish for Life*. Amsterdam: Amsterdam University Press.

¹⁶¹ *Ibid*

individuals.¹⁶² These are an empowering democracy as they are participatory arrangements beyond the state enhancing more effective forms of governing as compared to the sclerotic, hierarchical and bureaucratic state forms that conducted the art of governing during much of the 20th century.¹⁶³

2.4 Legal pluralism

2.4.1 The place of law in geography

The aspect of law in geography has over recent years gained momentum with literature directed towards making connections between critical legal studies and critical geography scholarship as there is now a significant body of literature concerned with the role of law in managing specific urban problems whether at the level of the city; the neighbourhood or in relation to housing policy; the geography of regulation and the control of public space.¹⁶⁴ Dominant forms of spatio-legal relations can be explained as ‘splices’ or representational concepts which encode hegemonic meanings of law and space.¹⁶⁵

Some scholars have drawn on the methodology of legal pluralism to describe the various spatial scales of law and regulatory phenomenon. For example, Santos in numerous places has used the metaphor of the map to chart the sites at which different modes of legal and social power operate. He argues for a form of legal pluralism which moves from the understanding of different legal

¹⁶² Swyngedouw, E. (2005), Governance Innovation and the Citizen: The Janus Face of Governance-beyond-the-State, *Urban Studies*, Vol. 42, No. 11, 1991–2006

¹⁶³ *Ibid*

¹⁶⁴ Blomley, N. (2004), *Unsettling the City: Urban Land and the Politics of Property*. New York: Routledge.

¹⁶⁵ Blomley, N. (2003a), ‘From ‘What?’ to ‘So What?’: Law and Geography in Retrospect’, pp. 17-34 in Holder, J. and Harrison, C. (eds) *Law and Geography*. Oxford: Oxford University Press.

orders as separate entities coexisting in the same political space, to a conception of different legal spaces superimposed, interpenetrated and mixed in our minds, as much as in our actions We live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassings. Our legal life is constituted by an intersection of different legal orders, that is, by inter-legality.¹⁶⁶

2.4.2 Legal pluralism as a concept

The concept of interlegality provides one means of understanding the ways in which legal spaces operate ‘simultaneously on different scales’. It undermines the narrow, doctrinal closure of legal formalism and shows how ‘state law’ is at once connected to a range of alternative legalities and normative orders.¹⁶⁷ This calls for a questioning of legal centralism. Griffith¹⁶⁸ attacks legal centralism and the idea that the law is an exclusive, systematic, unified, hierarchical ordering of normative proposition emanating from the State. He has been credited with conceptualization or originating the idea of Legal Pluralism. The legal reality anywhere is that, there exists a collage of obligatory practices and norms emanating from both governmental and non-governmental sources. The whole package of norms (governmental and non-governmental) is Legal Pluralism.

The echelons of rights concept¹⁶⁹ stresses how rules and rights cannot act on their own but are enforced and shaped by social forces, beyond the formal, creating practice and process, highlighting the often pluralist nature of rights. Which have to be accounted for in any social

¹⁶⁶ Butler, C. (2009), *Critical Legal Studies and the Politics of Space*, Griffith University, Australia

¹⁶⁷ *Ibid*

¹⁶⁸ Griffith, J. (1985), *Four Laws of Interaction in Circumstances of Legal Pluralism: First Steps Toward an Explanatory Theory*.pp 217-227 in Allot, A. & Woodman, G.R, (eds), *People’s Law and State Law: The Belagio Papers*. Dordrecht. Foris Publications

¹⁶⁹ Boelens, R. (2009), *Water Rights Politics. Politics of Water: A Survey*: 161.

sphere. For sustainable water resource management there has to be institutions set up to create, monitor, enforce and secure the rights. In Kenya water rights as well as land are owned by the government but the users are the everyday common people. As such there has to be a regulatory framework in which the government and the users of the water can play in the same field. This means there exist a plurality of laws; there are several laws in which the people can operate from.

In this rights concept; four resource-related rights have been emphasized: rights to access, infrastructure and materials; rules (the formulation and contents of rights, obligations and operational rules regarding management of the resource; regulatory control); authority and legitimacy to establish and enforce rules and rights; and regimes of representation (the discourses and ontologies that inform or challenge resources). The echelons of rights concept highlights how conflicts occur over the material control of resources and rights to define, politically organise and discursively shape their existence. Struggles over rights may simultaneously concern resources and the legitimacy to formulate and enforce rights as individuals or organisations. This political ecology approach and attention to conflicts echoes Tsing's work on how friction shapes change.¹⁷⁰

In a society these rights defined above have to exist within a legal context, which Tamanha describes as a theory called legal pluralism.¹⁷¹ Tamanha picks up his idea from Griffith as mentioned above. This view of legal pluralism recognises the existence of multiple normative frameworks, among these being the official legal normative framework and the customary normative framework composed of 'shared social rules and customs, as well as institutions and

¹⁷⁰ Tsing, A. L. (2005), *Friction: An Ethnography of Global Connection*: Princeton University Press.

¹⁷¹ Tamanha, B. Z. (2008), Understanding Legal Pluralism: Past to Present, Local to Global. *Sydney Law Review* 30: 375.

mechanisms.¹⁷² Using the identified categories, this view seeks to demonstrate how issues likely to arise in a legal pluralist context can be resolved according to this view, the existence of multiple normative frameworks does not necessarily imply conflict. It can also refer to a condition where there is the simultaneous operation or co-existence of several systems of law in the same general field.¹⁷³

However, Moore¹⁷⁴ cautions on the oversimplification of Griffith's work. Legal pluralism must recognize and distinguish the source of the norms of social control. Legal pluralism should not be lumped together as the sum of governmental and non-governmental norms of social control without any distinction to their source. Scholars must look at each norm separately and interrogate its source. Non-governmental norms could have governmental norms embedded and not only will the existence of non-state norms lead to legal pluralism in all situations which is the emphasis of this thesis.

2.4.3 Why should we distinguish sources of norms and not lump them together?

Legal pluralism involves debates about the state of the State today, debates that ask where power (law) actually resides, its source and its provenance. It should not be confused with debates about the current transformation of the State through empowerment of sub-national collective entities through transnational phenomena and globalization. Therefore, it is important not to lump the

¹⁷² *Ibid.*

¹⁷³ Vani, M S (2002), Customary Law and Modern Governance of Natural Resources in India - Conflicts, Prospects for Accord and Strategies, Legal Pluralism and Unofficial Law in Social, Economic and Political Development International Congress 409-446.

¹⁷⁴ Moore. S. F. (1969), Law and Anthropology in Biennial Review of Anthropology. Bernard Siegel (eds), Stanford California, Stanford University Press : 252-300

different sources of norms so as to distinguish the State from other rule making entities by ensuring its autonomy and secondly we make this distinction to be able to initiate and track change. It is necessary to emphasize particular sites from which norms and mandatory rules emanate (for purposive reform/ how then can we reform the law, remedy its gaps, weaknesses, if we do not point out precisely the source of mandatory rules)

2.4.4 Five variants of legal pluralism

1. The way the State acknowledges diverse social fields within society and represents itself ideologically and organizationally in relation to such diverse non State social fields
2. The internal diversity of the State administration multi-directional in which its sub-parts struggle to compete for legal authority
3. The way in which the State itself competes with other States in larger arenas and with the world beyond regional blocs(the EU and Member states for example)
4. The way the State is inter-digitated (internally and externally) with non-governmental, semi-autonomous social fields which generate their own (strictly non-legal) obligatory norms to which they can induce or coerce compliance ¹⁷⁵
5. The way in which the State law may depend on the collaboration on non-state social fields for implementation of Law

Moore is not persuaded by merely looking at the classification of State law and non-State law and how when combined (or considered together or co-exist in a system) they denote legal pluralism. Moore encourages a more analytical approach, which is to examine the state of the State; locate provenance of the law/power, identify the source of obligatory rules, distinguish

¹⁷⁵ Moore, S. F. (1973), Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study. *Law & Society Review*, 7(4), 719–746. & Griffith, J. (1985), Four Laws of Interaction in Circumstances of Legal Pluralism: First Steps Toward an Explanatory Theory. pp 217-227 in Allot, A. & Woodman, G.R, (eds), *People's Law and State Law: The Belagio Papers*. Dordrecht. Foris Publications

sources of non-obligatory norms, identify semi-autonomous nature/norm making entities and analyse their relationship(s). For a study to be less descriptive or analytical it must also study the transformative potential on policy implementation i.e. how the State may depend on non-State entities/norms for effective implementation of the law, how such study can lead to the reform of State laws or better implementation.

This study refers to the laws operating in this particular space as governing the institutions present. Institutions are the formal and informal norms, rules, procedures and processes defining how individuals interrelate, act and make decisions within and outside of organizations. Institutions may not be clearly defined or static in terms of time or space, can be formal or informal and are interlinked with issues of knowledge, power and control.¹⁷⁶ The study emphasises that informal institutions are upheld by socially shared usually unwritten rules, created and enforced among the actors involved;¹⁷⁷ while formal institutions include rules enforced by outside third parties, such as State laws. Informal and formal institutions guide interactions, assign roles and influence rights and access to resources and resulting livelihood strategies.¹⁷⁸

¹⁷⁶ Leach, M. et al.(1999) , Environmental Entitlements: Dynamics and Institutions in Community-based Natural Resource Management', *World Development* 27.2: 225–47

¹⁷⁷ Arnold, J. E. M. & Pérez M. (2001), Can Non-Timber Forest Products Match Tropical Forest Conservation and Development Objectives? *Ecological Economics* 39: 437-447

¹⁷⁸ North, D. C. (1990), *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press; Scoones, I. (1998), *Sustainable Rural Livelihoods: A Framework for Analysis*. IDS Working Paper 72., Studies. Brighton: Institute of Development Studies: 22.,; Young, O. R. (2007), *Institutions and environmental change: The Scientific Legacy of a Decade of IDGEC Research*. Conference on the Human Dimensions of Global Environmental Change 24-26 May 2007, Amsterdam

Institutions may be shaped historically by previous ‘needs’, borrowing from different cultures, incorporating rules and meanings from one area of life to another, and drawing on the repertoire of local forms of decision-making. They can also be created, sometimes from nothing, using physical, social and/or institutional inputs (i.e. capitals) in alternative configurations. This study thus looks at ways in which non state laws are helping the state manage this particular people centered institution in managing their water practices.

2.5 Theory of the commons

2.5.1 A brief synopsis of the theory of the commons

Hardin¹⁷⁹ proposed a rather bleak view of property managed by commons; in his powerful parable of herdsmen sharing pasture. He argued that the commons are caught up in an inevitable process that leads to the destruction of the very resource on which they depend. The “rational” user of a commons makes demands on a resource until the expected benefits of his or her actions equal the expected costs. Because each user ignores costs imposed on others, individual decisions cumulate to a tragic overuse and the potential destruction of an open-access commons. Hardin’s proposed solution was “either socialism or the privatism of free enterprise.” This was a view accepted by many scholars to support the power of the central government and market forces. Hardin regretted his statement on the tragedy of the commons.

Common property resources include natural and human constructed resources in which exclusion of beneficiaries through physical and institutional means is especially costly, and exploitation by one user reduces resource availability for others. These two characteristics — difficulty of exclusion and sub-tractability— create potential common property resources dilemmas in which people following their own short term interests produce outcomes that are not in anyone’s long-term interest. When resource users interact without the benefit of effective rules limiting access

¹⁷⁹ Hardin, G. (1968), The Tragedy of the Commons *Science* 1243-1248.

and defining rights and duties, substantial free-riding in two forms is likely: overuse without concern for the negative effects on others, and a lack of contributed resources for maintaining and improving the common property resources itself.¹⁸⁰ In Soweto East village; the common property is shared by a group of users, which is a natural occurring resource yet can be termed as human constructed resource. It is portable water being shared by a group of people in a human made institution. It is group property and as such has particular property rights which determine the extent of management. Table 2.3 depicts different common property resources and the type of property rights in each of them.

Table 2. 3: Types of property-rights systems used to regulate common-pool resources

Property rights	Characteristics
Open access	Absence of enforced property rights
Group property	Resource rights held by a group of users who can exclude others
Individual property	Resource rights held by individuals who can exclude others
Government property	Resource rights held by a government that can regulate or subsidize use

2.5.2 Non- Tragic Commons

On the other hand scholars like Ostrom¹⁸¹ admit that common pool resources can indeed have negative consequences but also propose and demonstrate the existence of non-tragic commons

¹⁸⁰ Ostrom *et al.* (1999), *Revisiting the Commons: Local Lessons, Global Challenges*

¹⁸¹ Ostrom, E. (2004), *Understanding Collective Action*. In: Meinzen-Dick, R. Gregorio, M. Di. (eds) *Collective Action and Property Rights for Sustainable Development, 2020 Vision for Food, Agriculture and the Environment*. Focus 11, IFPRI International Food Policy Research Institute, Washington

and supports that even though humans tend to be selfish and invested in their own interests; they also have a desire to protect what they deem as their own property, even if they find themselves in a group. The prediction that resource users are led inevitably to destroy common property resources is based on a model that assumes all individuals are selfish, norm-free, and maximizers of short-run results.¹⁸²

The prisoner's dilemma refers to the paradox that individually rational strategies lead to collectively irrational outcomes, challenging the notion that people will cooperate on natural resource management and are rational creatures.¹⁸³ Yet on the contrary, there is psychological evidence indicating that people are not self-centered, that they regularly exhibit altruistic behavior, and that this altruism is evoked in collaborative behavior.¹⁸⁴ Recent studies indicate that if human beings are given incentives, they eventually develop norms to cater for what they view as their own property and want to safe guard it hence they develop and maintain collective action - the combined efforts of more than one person in order to achieve a common goal. These collective actions can be manifested in different user developed organisational structures which become possible such as cooperatives, informal organisations like 'chamas', associations and private companies.¹⁸⁵

¹⁸² Ostrom *et al.* (1999), *Revisiting the Commons: Local Lessons, Global Challenges*

¹⁸³ Ostrom, E. (1988), *Institutional Arrangements and the Commons Dilemma. Rethinking Institutional Analysis and Development: Issues, Alternatives, and Choices*. Workshop in Political Theory & Policy Analysis R88-2. Ostrom, V., Feeny, D. and Picht, H., San Francisco: ICS Press.

¹⁸⁴ Tomasello, M (2014), *A Natural History of Human Thinking*, Harvard University Press, Cambridge, MA

¹⁸⁵ Penrose-Buckley, C. (2007). *Producer Organisations: A guide to Developing Collective Rural Enterprises*. Oxford: Oxfam.; Bernard et al (2008), *Do Village Organizations Make a Difference in African Rural Development? A Study for Senegal and Burkina Faso. World Development* 36(11): 2188-2204.

However, it must be noted that even though collective action can empower individual and group chain actors to ensure and assert control over resources, resulting in higher profits, property and access¹⁸⁶ it is normally not a given. To realize the perceived and promised benefits this collective action has to undergo a formation process and is shaped by cooperation and conflict; though in the long run reciprocity, trust and shared knowledge structure are critical to overcome any dilemmas and challenges that arise to ensure cohesion,¹⁸⁷ which is a necessary prerequisite for the success of any group. This collective action can be developed in various ways, for example co-production and co-design

2.5.2.1 Co-production

This concept has been acknowledged as a hard to achieve concept in a community though it is often used as a strategy in service provision, co-production draws from the concepts of self-help, collaboration and participation, where urban poor communities and the local government can work together to produce more effective solutions to service provision. It is an opportunity for urban poor communities to engage with the state to influence policy change, reform practices and encourage governments to invest in their communities.¹⁸⁸

¹⁸⁶ Mwangi, et al (2007), *Collective Action and Property Rights for Poverty Reduction: Lessons from a Global Research Project*. CAPRI Policy Briefs Washington, D.C; Seixas, C. S. (2010), Community-Based Enterprises: The Significance of Partnerships and Institutional Linkages. *International Journal of the Commons* 4(1): 183–212.

¹⁸⁷ Ansell, C. & A. Gash (2008), Collaborative Governance in Theory and Practice. *Journal of Public Administration Research and Theory* 18(4): 543; Ostrom, E. (1988), Institutional Arrangements and the Commons Dilemma. *Rethinking Institutional Analysis and Development: Issues, Alternatives, and Choices*. Workshop in Political Theory & Policy Analysis R88-2. V. Ostrom, D. Feeny and H. Picht. San Francisco: ICS Press

¹⁸⁸ Mitlin, D. (2008), With and Beyond the State-co-production as a Route to Political Influence, Power and Transformation for Grassroots Organizations. *Environment & Urbanization*. 20:2, pp. 339-360.

Coproduction has been defined by various scholars in different ways with all of them having a connecting thread among them, which is the aspect of synergy and cooperation of equal standing between different entities especially the public (government) and the citizens. It has been defined as ‘the process through which inputs used to produce a good or service is contributed by individuals who are not “in” the same organization, while ‘institutionalized coproduction is the provision of public services [...] through regular, long-term relations between state agencies and organized groups of citizens, who both make substantial resource contributions’.¹⁸⁹ Both have the aspect of citizens being active participants in their decision making as opposed to them being passive in their destiny. It also implies the possibility that citizens might influence the execution of public policies as well as its formulation’¹⁹⁰ It builds up for horizontal interactions which build strong relationships between peers adding to the effectiveness of local negotiations to action mode and curtail the interference of political interests seeking to reinforce client-patron relations.

It is important in that the practice seeks partnerships rather than confrontation and helps the different parties work together in that there is a shift from simple claim-making towards the State, to co-production in the broad area of collective consumption – i.e. goods are consumed and/or produced collectively, and hence build and reinforce collective practices which inculcate solidarity among the urban poor.

¹⁸⁹Albrechts L, (2013), Reframing Strategic Spatial Planning by Using a Coproduction Perspective Planning Theory, February 2013; vol. 12, 1: pp. 46-63

¹⁹⁰ *Ibid*

Co-production enhances the building of a critical mass in the society which exchange ideas, learn from experience and builds on each other's strengths to build solidarity on what they term as their own. The learning occasioned by these exchanges gives a sense of dignity and bestows confidence; both individual and collective confidence among informal residents of their own capacities.¹⁹¹ If done well, this strategy ensures that ideas are home grown and user ratified in that the ideas come from the urban poor and are not imposed on them by well-meaning professionals,¹⁹² who most of the time have text book based solutions as opposed to the real day to day lived experiences of the people.

This form of producing solutions and governance relies on information passed on through the informal channels which is private and does not pass through the State and other formal institutions; as such sanctions and rewards can all be metted when need be, this helps solve societal problems which could have been termed as market failures.

2.5.2.2 Norm evolution

Since the residents of Soweto East find themselves in an extra legal position, they find that it is important to develop their own forms of governing systems to ensure the sustainability of their resource, which they deem very dear to them; they base their system on a set of rules which though often unwritten nevertheless have an obligatory force. These unwritten but obligatory rules developed by users of a common resource are termed as 'social norms', in legal property theory.¹⁹³ Social norms are distinguished from other customs, practices or norms which affect

¹⁹¹ McFarlane, C. (2006), Knowledge, Learning and Development: A Post-Rationalist Approach, *Progress in Development Studies*, Vol 6, no 4: 287-305.

¹⁹² Patel, et al (2002), Sharing Experiences and Changing Lives, *Community Development*, Vol 37, no 2: 125-137.

¹⁹³ Ellickson, R. (1991), Order Without Law: How Neighbors Settle Disputes. Cambridge, Harvard University Press

human conduct, on the basis of their obligatory nature. The obligatory nature is confirmed by the presence of sanctions for non-compliance.¹⁹⁴ Different sanctions can be applied by various actors, ranging from mild sanctions like disapproving looks to more violent forms including jostling and beating. The sanctions may be applied by various parties including the offender who may for instance subject himself/herself to guilt; the person(s) who have suffered as a result of the non-compliance; or the group which may sanction the offender.¹⁹⁵ In this system there could be withdrawal of services and outright castigation by the other users. This system like many other common property regimes relies mostly on informal mechanisms to implement their norms and depend on the good will of the users for the proper functioning.

Evolved norms, however, are not always sufficient to prevent overexploitation. Participants in this case, the residents of Soweto East water users or external authorities the Nairobi Water Sewerage Company must deliberately devise (and then monitor and enforce) rules that limit who can use the particular common property resource, specify how much and when that use will be allowed, create and finance formal monitoring arrangements, and establish sanctions for nonconformance. Whether the users themselves are able to overcome the higher level dilemmas they face in bearing the cost of designing, testing, and modifying governance systems depends on the benefits they perceive to result from a change as well as the expected costs of negotiating, monitoring, and enforcing these rules. Perceived benefits are greater when the resource reliably generates valuable products for the users. Users need some autonomy to make and enforce their own rules, and they must highly value the future sustainability of the resource.¹⁹⁶

¹⁹⁴ *Ibid*

¹⁹⁵ *Ibid*

¹⁹⁶ Ostrom et al. (1999), *Revisiting the Commons: Local Lessons, Global Challenges*

For this thesis the approach which Ostrom posits on avoiding the tragedy of the commons is what has been upheld in terms of the ‘non-tragic commons’. The thesis continues to depict the extraordinary capacity of stewardship which human beings manifest when left with a common property resource that determines their livelihoods and sustainability in a space. As they are aware of the consequences of the flourishing or lack of it of the resource, they create order in managing complex organizational arrangements to govern their own property. More often than not they exhibit a mélange of two or several of the design principles that characterize institutions that are long enduring. Table 2.4 manifests the same.

Table 2. 4: Design principles that characterize long enduring CPR institutions

Design Principles
Clearly defined boundaries and users
Congruence between appropriation and provision rules and local conditions
Collective choice arrangement; those affected by operational rules should be allowed to participate and modify the rules.
Monitoring; monitors who actively audit common pool resource conditions and users’ behavior are users and/or are accountable to them.
Graduated sanctions; sanctions to violation increase proportionally relative to the severity of crimes.
Conflict resolution mechanism; Low cost, readily accessible and rapid mechanism to settle conflicts
Rights to organize; rights and legitimacy of users to devise their own institutions is recognized by outsiders.
Nested Enterprises ; (for CPRs that are part of larger systems)

Source : Ostrom 1990;90

2.6 Conclusion

To critically analyze an institution, there has to be a theoretical underpinning that comes from already studied concepts. This thesis uses a bricolage approach which involves a borrowing of concepts from other disciplines which aid in the understanding of the subject. The main theories used are governance, legal pluralism and theory of the non-tragic commons. Due to the inadequacies of each of them, they have been used together so that the strength of one can make up for the shortcomings of the other theory and reinforce it as no one theory adequately addresses the topic at hand.

The governance analytical framework which defines the actors, the problem and the processes has been used as the overarching principle for doing the analysis, as such the above mentioned theories have been placed under a rigorous scrutiny of their applicability in the project. GAF has been used to understand the points of convergence and divergence between the laws that are and the structuring of the agency. It is assumed that there is a direct causal link between the dependent variable and the governance process (which is contextual) as applied to water resource governance in terms of the social, political, economic and environmental aspects. The governance process which is treacherous to elucidate is also affected by independent variables like institutions hence the way in which the rules and norms evolve is causal and thus the understanding of this process can facilitate the resolution of the problem under study.

Acknowledgement is given to the human race as they evolve the norms in a non-tragic way by using the eight design principles that define long enduring common property resources. They vouch for a form of legal pluralism which moves from the understanding of different legal orders as separate entities coexisting in the same political space, to a conception of different legal spaces superimposed, interpenetrated and mixed in the agencies minds, as much as in their

actions. This implies an examination of the state of the State together with the location of the provenance of the law so as to identify the source of obligatory rules, distinguish sources of non-obligatory norms, identify semi-autonomous norm making entities and analyse their relationship(s).

This then leads to an articulation of their voice by co-designing and co-producing sustainable solutions to their problems as they know exactly what point the State may depend on them (non-State entities/norms) for their transformative potential on effective policy implementation.

PART 2

3 THE FACES BEHIND THE WATER PROVISION; DEMISTIFYING THE STAKEHOLDERS AND THEIR INTERESTS IN K-WATSAN



Unity is strength – the power of people.

3.1 Introduction

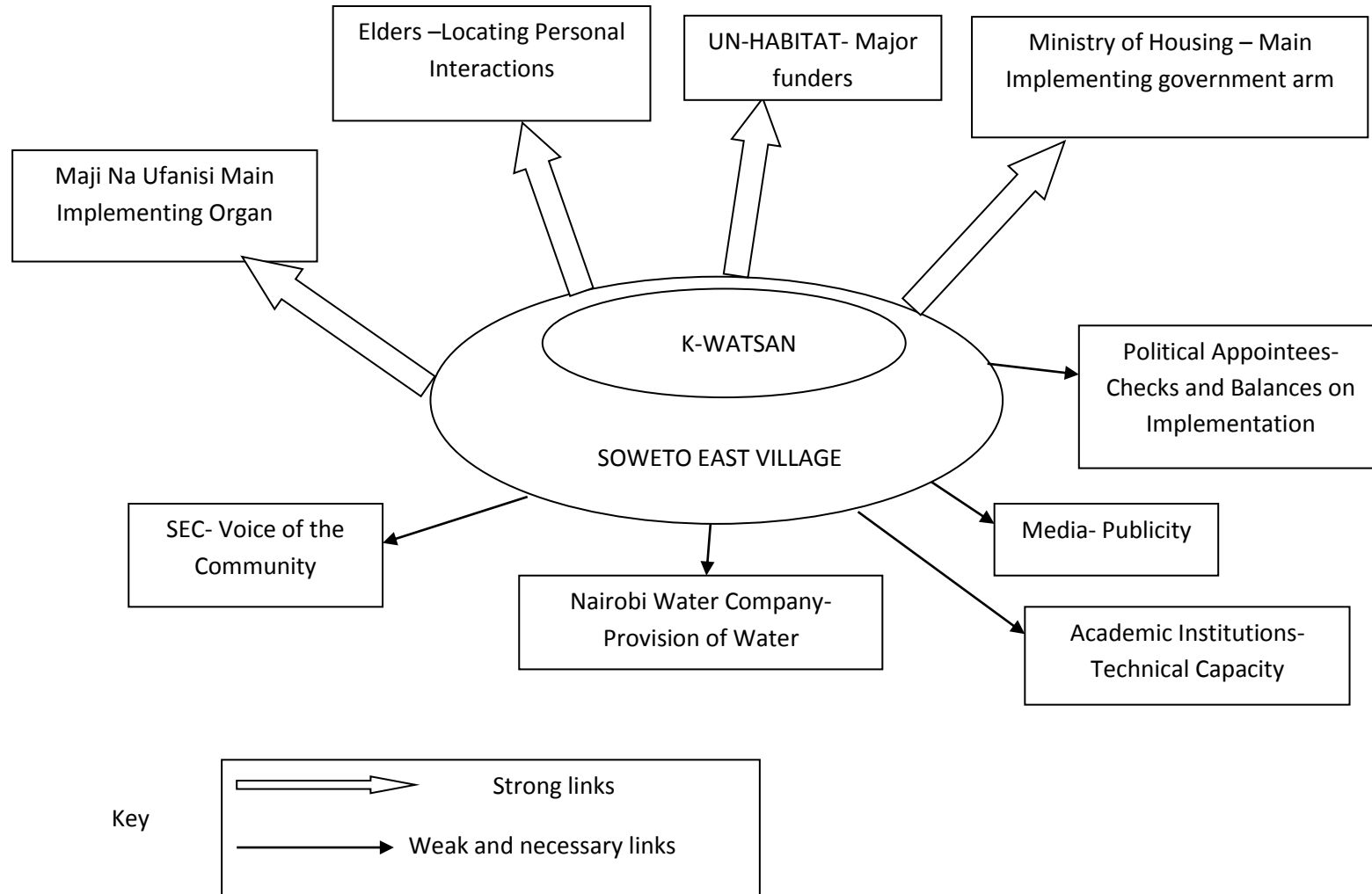
Nairobi being a part of the global village has in some way succumbed to the ‘city types’ as a fragmented city, with different distinct enclaves which have diverse societal expectations and characteristics. It can boldly be termed as an assemblage of pockets of dissimilar islands making an entire city or rather different spaces which have nothing to do with each other but all share the common thread which is the territory of Nairobi. Kibera is treated as an independent territory from Runda or Buruburu or another area. All these different enclaves have different types of stakeholders taking care of them depending on what interests they have or perceive to have. These stakeholders come together as coalitions managing spaces which are very much in line with neoliberal policies of managing cities. The fragmentation of Nairobi is largely due to its colonial legacy which like a sore thumb has persisted till today.

This colonial legacy is manifested in the policies that are and the very perspectives that people in Nairobi use in locating s(p)laces of habitation. The right to the city was given in piecemeal portions prior to independence, yet these subtle perceptions are still rife in the minds of the inhabitants. The focus on the role of the stakeholders involved in Kibera articulate the different modes in which they have chosen to live or otherwise their right to the city by highlighting the different stakes they hold in this project; most of the time, driven by the interests of the ruling political party of the day.

The stakeholders have in the background the Vision 2030 agenda, which partly aims at inclusivity (a highly contested term) for development. This inclusivity highlights the efforts which have been realized by several parties in terms of co-production and codesign of the water management system together with the creation of multi stakeholder partnerships to provide for the successful implementation of the system. Thus the analysis of their roles facilitates our understanding of the micro dynamics present in accessing urban goods for all and not only the privileged few.

This chapter highlights the weak and strong links, (Figure 3.1) people, institutions or organizations who have been involved in the management and running of this project; starting with the role of the government of Kenya which is the organ tasked with the responsibility of caring for polity in this particular circumscription entrusted to them by the world; the policies put in place and the implementation of the same, secondly, the UN-HABITAT, who happen to have partnered with the government of Kenya to ensure that this project runs its due course; they are also in charge of habitats worldwide and what a better project than this, could they afford to commence on and leave a mark, the NGOs, politicians with interests, the Nubian community who feel that they have rights to the land due to reasons stemming from thoughts of equity, community organizations involved and most importantly the community members who are the most important people in this whole circle. Their characteristics are highlighted to better understand them and the forces at play. It is important to understand the community in which an intervention is being carried out, since a richer appreciation of them ensures that the implementation is carried out in the 'near-perfect' manner possible. All the intricacies are studied and understood; hence making it easier to navigate their territory.

Figure 3. 1: Roles of the stakeholders in K-WATSAN & Mental map of chapter 3



3.2 The stakeholders in K-WATSAN

When I started interrogating the faces behind the new developments in Soweto East village, I discovered that there was much more than what met the eye at first glance. For any observer who has been following the changing face of Kibera, it is quite remarkable that there is a stark difference between what was evident ten years ago and what can be observed at present. The landscape is ever evolving with new faces of progress each and every day. The development noted in this particular space is part of the slum upgrading initiative of KENSUP in line with the social pillar of Vision 2030¹⁹⁷ of Kenya. The upgrading is part of the global initiative of significantly improving the lives of part of the 100 million slum dwellers by 2020.¹⁹⁸ Kenya's part in this is the provision of affordable and decent housing to its slum population noting that Nairobi alone, which is the capital city, has over 100 slums and informal settlements.¹⁹⁹

The upgrading initiative is underway with the construction of 230 business stalls and 836 housing units; although in the initial plans 920 units had been envisioned, these units are supposed to cater for 1,460 families which had been registered during the enumeration process at the beginning of the project.²⁰⁰ Hand in hand with this development, is the construction and management of the watering points- which is the main focus of this thesis, these watering points are famously referred to as the K-WATSAN ablution blocks or K-WATSAN sanitation facilities and can be spotted from a mile away. They actually dot the landscape and can be seen from anywhere in the settlement with dusty blue corrugated iron roofs and black 10,000 liter plastic water tanks jutting out of seven spots in the settlement. (See Plate 3.1). Due to their ease of

¹⁹⁷ Kenya, Republic of (2007), Kenya *Vision 2030*. Nairobi, Government Printer

¹⁹⁸ MDG target 11

¹⁹⁹ Mitullah, W.V. (2003), *Understanding Slums: Case Studies for the Global Report on Human Settlements 2003: The Case of Nairobi, Kenya*. UN-HABITAT, Nairobi.

²⁰⁰ Personal Conversation with structure owner's head of association, Bwana Walter Hongo

access and strategic location the community has preferential use for them and any passerby is welcome to use.

Plate 3. 1:K-WATSAN sanitation facility towering over the village



Source: Field Survey

The towering water tank jutting out of the roof of this sanitation facility, proudly displays the people funding the project, who are UN-HABITAT with Maji na Ufanisi as the lead implementing agency in conjunction with the government of Kenya.

It was very interesting to note that whenever I spoke to any casual observer or any person involved in the project- this was mostly the community members- about Soweto East village; they invariably said “*zile nyumba za Raila*” meaning “those houses of Raila.” This did not matter who it was; whether it was someone I wanted to interview or just wanting to chit chat

with them. They felt very offended that I could possibly dare to separate the houses with the water component. See plate 3.2 and plate 3.3. To them the logical order of conversation was the houses first, and then any other conversation topic could follow, for instance the water issue that I kept raising. They could not understand that my research was focusing only on the sustainability and the governance of the water system, which was used by the government of Kenya as an entry point to the slum upgrading initiative.²⁰¹ It was the only point in which the villagers were ready to accept first before they could accept the housing, but the villagers seem to have forgotten this point. I think out of euphoria and excitement of owning new houses in the near future.

Plate 3. 2: Partially constructed houses overlooking the original slum houses



Source: Field Survey

²⁰¹ Kenya, Republic of (2004), KENSUP Implementation Strategy 2005-2020. Nairobi, Government Printer.

At the end of it all I learnt that, if I needed to approach anyone to get information about this project, it was important to make reference to the new houses and later on steer them to the aspect of the water issues; this was the magic wand which helped me receive as much information as I needed. The promise of a new house was the air that impregnated most of the conversations that we had with the community members. *Raundi hii Serikali imetufikiria sisi watu wa chini* was one of the most common phrases that I heard during the Field Survey. It can be translated as; *'The government has finally thought about us. Or considered the plight of the low class people.'* I think Plate 3.3 is a psychological maneuver by the implementers as it actually shows the enticing face of the newly completed houses. This is a politics of hope as it makes the people aspire and know that their dreams can actually be realized and they are valid. The possibility of getting the promised houses is nigh and they are moving from the old age song of empty promises to reality. It fuels more hope for the slum dwellers to keep on having faith in this project started by the government.

Plate 3. 3: Partially complete housing unit next to a complete housing unit



Source: Field Survey

I learnt not to separate the houses from the water; and more still not to separate them from Raila (former Member of Parliament for Langata Constituency). In this village and in Kibera as a whole, there is a cult of Raila; though one of my key informants Mzee Simiti - a Nubian who has lived in the slum for many years was quick to point out that he considered Raila as just one more person and does not understand why everyone ‘worships’ or follows him. He further stressed that there has been success and failures brought about by the various stakeholders here and he thinks Raila brought in more failures than successes. Mzee Simiti says;

“Wajua, nyinyi wasomi na wafanyao utafiti, sijui mbona mnafikiri yakua Raila ndiye aliye anzisha miradi hii, la si yeye. Hii Miradi ilianza hata

kabla yeye awe waziri mku, ilishakuwa hapa na sisi tumekuwa tukiipinga sana. Raila ni mbunge wetu lakini hajafanya kazi vilivyo. Angalia, sisi tuko bado tu kwa ile hali ya kujaribu kujimudu, kama angekuwa anatumaji basi tungepata anagalao nafuu. Hapa ako na wajaluo wengi sana ambao wanamfuata bila hata kufikiria, kazi tu ni kuongea juu ya vitendawili ambavyo havina mbele wala nyuma, sijui mbona wanamuabudu huyu mtu? ehhKwa maoni yangu, mie naona ya kwamba alikuwa tu hapa wakati nzuri, yaani aliangukia kwenye matokeo ya kujimudu ilivyo anza na hao watu wa UN.”

This can be translated as;

“ you researchers and students, I do not understand why you think that Raila is the one who started this projects; these projects started even before he became the prime minister, he is only our member of parliament and so far he has nothing to show for his ideas and development in the area.” He continues to say that “the area is predominantly Luo, and they are the ones who pay allegiance to him without thinking much about what he says, he only speaks in parables which do not make sense. So I do not understand why people venerate him. In my opinion I just think that there was a great coincidence, in which he happened to be at the right place at the right time, that is when the project was being launched by the UN body, it could have been somebody else.”

Clearly there are as many varied opinions about this project as there are people, some feel very strongly about the project while others are indifferent, but what is of importance to note is that this project has taken many years to reach this far and be realized, loads of people have been

party to it at various moments with different roles and expectations, some for short periods, others for longer periods which have all been acknowledged as being useful to the growth of the project, either as lessons learnt or as the path to be adopted in the manner in which activities are carried out. The project stakeholders have been involved right from the conception of the idea to the implementation and of course this involves the formulation of policy, its adaptation to local capacity and its final implementation and decommissioning. In this particular case the components of the project would include people involved in the activities that led to the realization of the upgraded slum, for example the enumeration of the community members and community mobilization, which are tasks that do not seem significant or directly related to the project mandate.

As this project is unique, in the manner of implementation, both the housing as well as the water component cannot be separated; they are interwoven and must be studied hand in hand. The following sections outlines the roles and capacities of the different stakeholders at whatever period they entered into the project bandwagon- inception stage, others in the course of implementation and others continue to play important roles to ensure the completion of this project.

3.3 Institutional national and international stakeholders

3.3.1 Government of Kenya

Over the past decades the rate of urbanization has been growing at an unprecedented rate in Africa, with this rapid growth there has inevitably been the proliferation of many informal settlements which had not been planned and as such Kenya like many other African countries had tried to mitigate this phenomenon by trying to improve the housing conditions for its people. The strategies adopted were forced eviction, resettlement, site and service schemes and slum upgrading²⁰²; though most of the time these strategies failed as depicted in the history of Kibera

²⁰² Obudho, R. A. and Aduwo, G. O. (1989), Slums and Squatter Settlements in Urban Centres of Kenya: Towards a Planning Strategy. Netherlands, *Journal of Housing and Environmental Research* 4(1):17-29

in chapter one, hence the persistence of the slums menace and the need to address this as part of the global problem.

In an effort to respond to this challenge, which also included a lack of land and security of tenure for the slum dwellers in Soweto East, the government of Kenya embarked on an ambitious Kenya Slum Upgrading Programme (KENSUP) being financed by a consortium of partners;²⁰³ with its main objective being ‘to improve the livelihoods of people living and working in slums and informal settlements in Kenya’s urban areas.’²⁰⁴ In line with the new geographies of the world which are manifested most tangibly in the Millennium Development Goals articulated as policies of human development; human development can be viewed as a new philosophy, a new global social contract that makes possible the idea of ‘the end of poverty.’²⁰⁵ Specifically, the programme aims at improving the lives of 5.3 million slum dwellers by 2020,²⁰⁶ which is part of the new global commitment to poverty alleviation, breaking with ‘market fundamentalism’ of a previous era.²⁰⁷ The programme is currently being piloted in Kibera’s Soweto East village with an aim of replicating this project to other areas of the country. So far many lessons and best practices have been learnt and are being replicated in other slums country wide. The stakeholders in Kibera have been called upon severally to other slums to demonstrate how they have successfully achieved their upgrading feat. Recently, 2015 the MP of Mathare, Stephen Kariuki in a tour of Kibera mentioned that he as the representative of Mathare is looking forward to the

²⁰³ Kenya, Republic of (2005), Kenya Slum Upgrading Implementation Strategy 2005-2020. Nairobi, Government Printer

²⁰⁴ UN-HABITAT (2007), UN-HABITAT and the KENSUP. Nairobi and London; UN-HABITAT and EarthScan

²⁰⁵ Sachs, J. (2005), The End of Poverty: Economic Possibilities for Our Time. Penguin Books, New York.

²⁰⁶ Kenya, Republic of (2005), Kenya Slum Upgrading Implementation Strategy 2005-2020. Nairobi, Government Printer

²⁰⁷ Stiglitz, J. (2003), Globalization and Its Discontents. Norton, New York.

day when a project of the same magnitude would be brought to his jurisdiction, as they share many similarities and challenges with Kibera; he was in awe of the project. Similarly in one of the concluding statements, the chief of Laini Saba energetically resounded that;

The government had a feeling that if the development of this magnitude in Kibera succeeds then the success will actually be replicated in Kenya, it is presumed that the entire slum upgrading has succeeded nationally.

His words clearly depict the pride that the project has bestowed on them and at the same time the words of Harrison Kwach ring a bell when he says ‘I could have made you president if I had the powers as you are not only managing the location, but the entire slum upgrading in Kenya.’

Plate 3. 4: Visibility banner for KENSUP at the chief’s office



Source: Field Survey

KENSUP is a response to the Cities Without Slums Action Plan which is a joint effort between the World Bank and UN-HABITAT. The aim of the Action Plan is to help developing countries eradicate slums and mitigate the undesirable long term health conditions of the large and small cities. The Action Plan targets slum upgrading as opposed to forced evictions. It argues that with successful slum upgrading efforts, three vital processes occur simultaneously over time: the slum dweller becomes the citizen, the shack becomes the house and that the slum becomes the suburb or neighbourhood,²⁰⁸ as such KENSUP neatly fits into this niche.

KENSUP has a number of component projects. Those that are currently being implemented include: cities without slums (slum upgrading programmes in major cities/municipalities e.g. Mombasa and Kisumu); sustainable neighbourhood programme in Mavoko and the Kibera Integrated Water, Sanitation and Waste Management Project – the main focus of this thesis. However, it should be noted that this is not the first upgrading effort in Kenya. Immediately after independence, the Sessional Paper No. 3 on National Housing Policy for Kenya noted that:

the government will also facilitate slum upgrading through integrated institutional framework that accommodates participatory approaches involving relevant stakeholders, particularly the benefiting communities while enhancing co-ordination at national level. Upgrading will take into account factors of ownership of land and structures, age of settlement, and affordability. Appropriate compensation measures will be instituted for disposed persons where necessary.²⁰⁹

In view of the above, the Government of Kenya initiated a number of slum upgrading programmes with different successes and failures. For example, the Mathare 4A upgrading

²⁰⁸ Onyango, G. et al (2005), Situation Analysis of Informal Settlements in Kisumu, Kenya Slum Upgrading Programme and Cities Without Slums Sub-Regional Programme for Eastern and Southern Africa, Government of Kenya and UN-HABITAT, Nairobi.

²⁰⁹ Kenya, Republic of (2004), KENSUP Implementation Strategy 2005-2020. Nairobi, Government Printer.

programme,²¹⁰ the Korogocho slum upgrading programme, the Kibera highrise housing project and the Pumwani housing project, among others. Whereas these upgrading efforts have received much attention in academic research, there is a greater focus on this particular one, as it has a new model of implementation and still very little information has been gleaned from it.

The coordination of this particular project was put under the ministry of housing which steers and holds the government budgetary allocation vote for the programme. Leah Muraguri , director of KENSUP said;

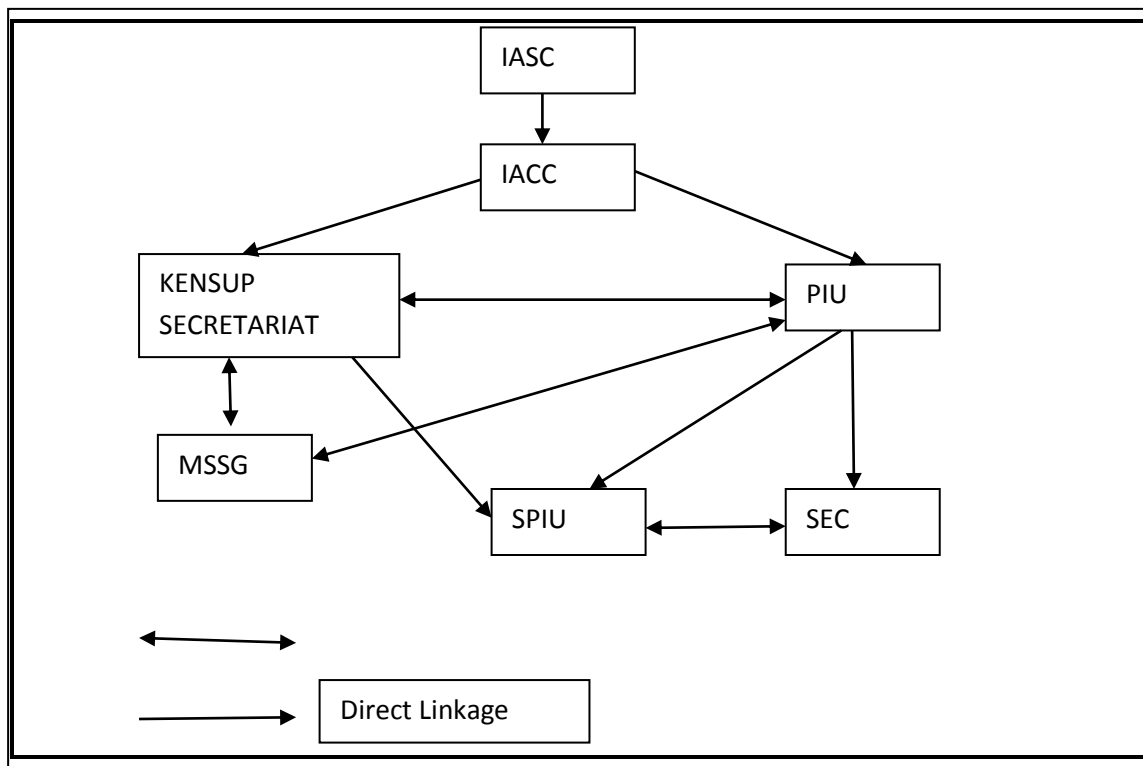
“The Ministry of housing is mandated to provide adequate housing for the Kenyan Population[...] the government of Kenya is implementing this program for the poor sector of the society so as to cater for the needs of the vulnerable. This ministry has formed collaborations with other ministries to achieve the primary goal, though the responsibility of the task rests on us.”

The ministry is helped to fulfill its mandate by other key relevant ministries such as the Office of the President (Provincial Administration), Ministry of Lands, Ministry of Local Government, Ministry of Roads and Public Works, Ministry of Finance and Planning, Ministry of Trade and Industry, Ministry of Health, Ministry of Water and Irrigation, Ministry of home affairs who donated land for slum dwellers relocation and Ministry of Information and Communication.

²¹⁰ Kusienya, C. (2004), Kenya Country Paper, Paper presented at ‘The Perpetuating Challenge of Informal Settlements’ Workshop at the University of Witwatersrand- Johannesburg, South Africa, November 2004.

Representatives of all these ministries, together with those from local authorities, UN-HABITAT and development partners form the *Inter-Agency Steering Committee (IASC)*. The IASC is mandated to give policy direction and approve policy decisions. The committee reports to the President of Kenya who is the patron of KENSUP. Another committee – the *Inter-Agency Coordinating Committee (IACC)* provides a link between the various ministries and KENSUP operations. The committee brings together people with technical and policy skills to coordinate KENSUP’s activities.

Figure 3. 2: The organogram of KENSUP



Source: Ministry of Housing Archives

The *KENSUP secretariat* is the focal point of all operations. It coordinates the day-to-day running of the programme. The secretariat engages relevant actors and partners in its operations,

i.e. NGOs, faith and community based organizations, civil societies and the government. The secretariat has a *Project Implementation Unit (PIU)* which coordinates the work of the *Settlement Project Implementation Units (SPIUs)*. The community is represented in the upgrading programme through the *Settlement Executive Committee (SEC)*, whose main role is to facilitate and organize community networks, ensuring that their views are taken into account during implementation. They ensure that the needs of the community are brought to the fore front. Ms. Jecinta Juma, an official in the ministry of housing seconded to the KENSUP secretariat attested to the fact of the community being at the forefront due to lessons learnt.

“We have to pay special attention to this project as we have had several failed attempts in the past in matters of slum upgrading. The communities have always been neglected and also the communities have not had a say in how they want their houses designed. For this reason, we have engaged experts from ADD²¹¹ to come and talk to the community and engage them in each and every step of this process, we do not want the community to feel left out and come complaining that this is another highrise.²¹² This is the brain child of the minister and he wants it all rolled out, we cannot fail this time. He wants at least to have people moved to the decanting site during his tenure and also that we can do the groundbreaking in Zone A. And the way you can see, time is not on our side, so we need to pressurize guys [people]. All the eyes are on us, internationally and locally and that is why I have to come to the site almost everyday to hear what the community members are saying and how they are accepting this project. I also try to see if I can make them

²¹¹ ADD is the School of built environment at the University of Nairobi, Kenya

²¹² High-rise is one of the failed slum upgrading programs which was hijacked by the middle income earners

hurry up with the design decisions, but I have to do it in such a way that they don't notice. If there is any little lapse, it has to be corrected immediately. By the way the ministry has invested so much on this project it cannot go wrong. The minister is keen and wants to know updates on a daily basis and that is where Gladys goes to report the progress. In fact for us to learn this community engagement thing, we were taken for training.

Jecinta refers to the experts from ADD, these were consultants from the University of Nairobi, who were specifically tasked to prepare the architectural plans for the site that had been cleared by the residents of zone A for the construction of the new houses. Like many informal settlements the houses in Soweto East are usually compact with hardly any space for constructing an extra shelter see Plate 3.5, though if need be, the alleyways would provide room enough for an extra shack. With this in mind the government of Kenya, through the ministry of housing engaged different groups conversant with community mobilization to encourage the residents to create room where the modern houses would be constructed. The area was portioned into four zones A,B,C and D, see figure 3.3²¹³ for easier administration of the project with zone A being the first to undergo the upgrading.

²¹³ UN-HABITAT (2008), Soweto East Redevelopment Proposal, Nairobi

Figure 3. 3: Soweto East Zones A,B,C and D



Source: UN-HABITAT

Plate 3. 5: Compact houses in Soweto East with little spaces between them



Source: Field Survey

The minister in charge of housing then Soita Shitanda, was really keen on ensuring that the project takes off and stays on schedule as much as possible.

“We have to keep on schedule and deliver our mandate; High rise estate is in the neighbourhood; we do not want to go that way,”

These are some of the sentiments that he expressed severally in the KENSUP progress meetings. Though the implementers are always keen on having the project take shape as planned, it is not always the case as delays are inevitable in community development programs. For instance in Mumbai’s Slum Sanitation Project (SSP) there was a complaint of it having trudged for several years as pointed out by McFarlane; “[For eight years we have been] struggling to implement the slum sanitation programme. And how much have we done? Very insignificant only 328 blocks.” Initially, the first phase of the SSP-325 blocks- was to be completed by 2000, but delays pushed this back into December 2005.²¹⁴ KENSUP is no exception, until today the first phase of the project has not yet been completed though it was launched in 2003.

²¹⁴ McFarlane, C. (2008), Sanitation in Mumbai’s Informal Settlements: State, 'Slum' and Infrastructure. *Environment and Planning A*.40:88-107.

Plate 3. 6: Child playing on the site cleared for the sanitation blocks



Source: Field Survey

3.3.2 Local authority and academic institutions

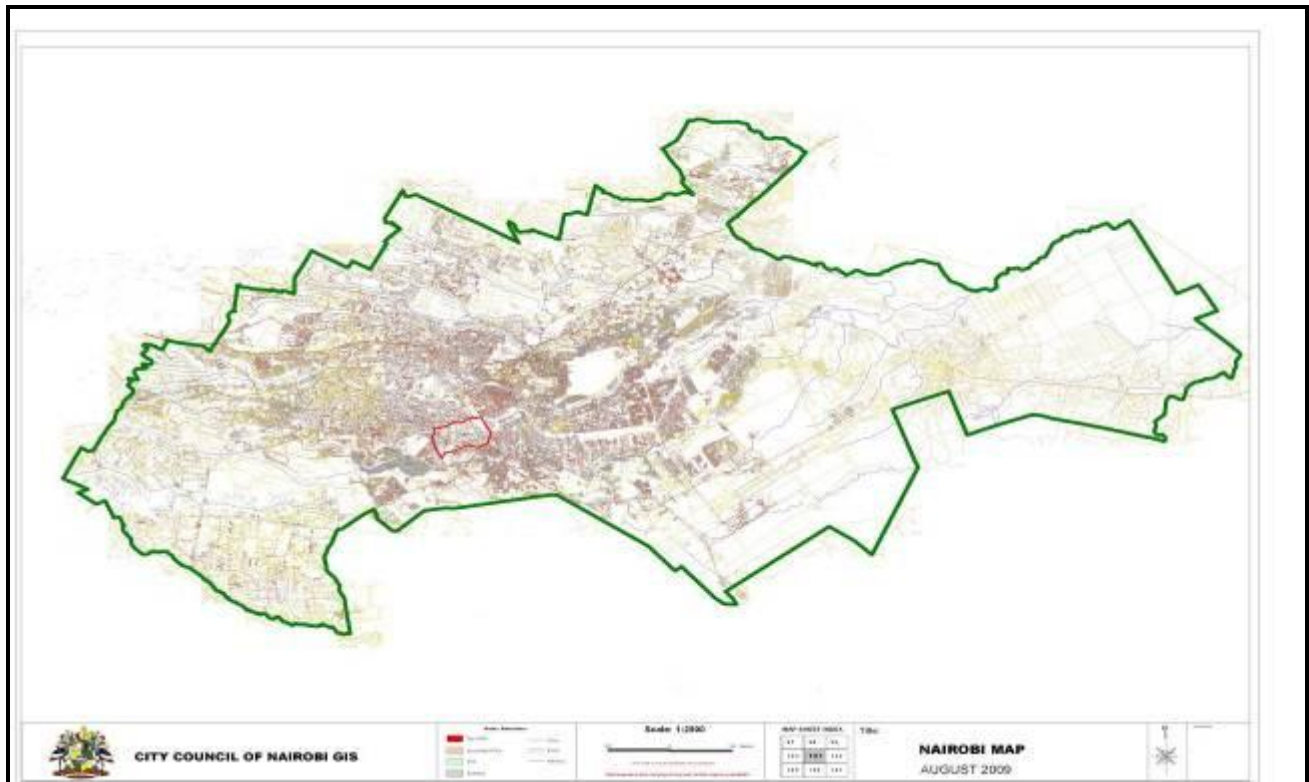
The County Council of Nairobi (CCN), formerly the City Council of Nairobi is an arm of the government of Kenya which has been working hand in hand with the ministry of housing to ensure that the implementation is within their jurisdiction and mandate and as such has been approving or disapproving the building plans. It receives its powers from the local government to make laws that are viable in its jurisdiction. Subject to section 202,²¹⁵ a local authority may from time to time make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of its area and for the good rule and government of such area and for the prevention and suppression of nuisances.

²¹⁵ Kenya, Republic of (2010), The Constitution of Kenya. Nairobi, National Council for Law Reporting.

The county council had to ensure that in the provision of water and sanitation for its residents the by-laws had to be adhered to and as such there was constant consultation with the community and academic institutions to facilitate the implementation of this during the project implementation phase. The CCN ensured that there was a permanent representative at the community at all times. This representation came in the form of Ms.Hannah, a middle aged woman who was predominantly present and was always seen working together with the community and could be thought of as being one of them. She was there to present the face of the county council at the grassroots.

'I come here every day, to see that the council's interests are adhered to. I am the council representative and I report the things that have happened here during our progress meetings at the ministry.'

Figure 3. 4: Boundary of the County Council of Nairobi in 2009



Source: County Council of Nairobi

The council was and still is in charge of local monitoring and evaluation to ensure that the sanitation facilities adhere to the by-laws of the county as it is a project within the jurisdiction of Nairobi County. Figure 3.4 - a map annexed from the county council archives showing rate defaulters. This is one way of exercising their powers over the inhabitants.

‘When designing these houses and facilities we have to cater for all segments of the population; the elderly and disabled should be allotted the ground floor of the buildings for easier access and also these sanitation facilities should have a ramp so that we do not disenfranchise the already vulnerable in the society.’

Architect Obonyo, the chairman of the Department of Architecture at the University of Nairobi emphasized during one of the design and redevelopment status meetings. The University of Nairobi has worked tirelessly and hand in hand with the CCN to ensure that the plans are according to the intended needs of the dwellers. They have been the experts contracted by the CCN and Ministry of Housing.

3.3.3 UN-HABITAT

‘The aim of Kibera Integrated Water, Sanitation and Waste Management Project is to contribute towards improving the livelihoods of the urban poor in Soweto East, by supporting small-scale community based initiatives in water, sanitation and waste management. This project is a direct component of Kenya Slum Upgrading Programme (KENSUP), a collaborative initiative between Government of Kenya and UN-HABITAT. The programme is jointly funded by the UN-HABITAT/World Bank Cities Alliance and the Government of Kenya. The Grant agreement was signed in July 2002. A Memorandum of Understanding was signed between the

then Minister of Roads, Public Works and Housing and UN-HABITAT's Executive Director on 15 January 2003. This marked the starting point of the Preparatory Phase of the programme, which will improve the livelihoods of poor people living and working in slums and informal settlements in urban areas of Kenya.'

These words were uttered by Harrison Kwach who was the National Program officer in charge of Water for African Cities Phase II in Kenya during one of our discussions. Harrison reiterated the important role of the UN-HABITAT in the KENSUP. It is the lead global agency working on transforming slums globally where, less than one third of the population in most urban centres in Africa, Asia, and Latin America are provided by what the UN has referred to as 'good-quality sanitation', and as many as 100 million urban dwellers worldwide are forced to defecate in the open or into wastepaper or plastic bags because public toilets are not available, too distant, or too expensive.²¹⁶ Kibera is famously known for the infamous flying toilets in meeting their sanitation needs.

Locally it has partnered with Government of Kenya to set up the Kenya Slum Upgrading Programme (KENSUP), designed to improve the livelihoods of people living and working in informal settlements in the urban areas of Kenya through the provision of security of tenure, physical and social infrastructure, as well as opportunities for housing improvement and income generation. The implementation is currently ongoing in four Kenyan cities.

The UN-HABITAT argued for a community driven sanitation initiative²¹⁷ as a panacea for the success of this project. Many International development agencies increasingly argue that

²¹⁶ UN HABITAT (2003), Water and Sanitation in the World's Cities: Local Action for Global Goals
Earthscan, London

²¹⁷ *Ibid*

effective sanitation provision in informal settlements in low-income and middle-income countries must center on “community mobilization” and seek to “create support and ownership” within settlements²¹⁸ as such one of the major roles of the UN-HABITAT is to ensure that community sensitization and buy in is entrenched deeply in this project. Harrison reiterates that;

‘Social mobilization, although a grueling process has been instrumental in the smooth running of operations in Soweto East. A lot of time was spent in mobilizing and informing residents about their roles in the project, before actual implementation begun. This was not a one-off activity as had been envisaged but has been a continuous process throughout the project cycle.’

The idea of community buy in of the project is very important, the community needs to have a sense of ownership of the project to steer it forward. From experience this particular community has felt disenfranchised and not being party to the mainstream politics, so this buy in was essential in ensuring that they appreciate the upgrading and see themselves as equal partners in this. Much has been made of the notions of partnership and participation by mainstream development institutions in recent years. They are buzzwords in the planning and implementation of interventions globally, associated with what can be described as a ‘post-Washington consensus’ or a ‘revised neoliberal position’²¹⁹ This position reflects a cautious approach to the earlier view that the market could deliver development, and emphasises the role

²¹⁸ UN Millennium Project (2005), Health, Dignity and Development: What Will it Take? The Report of the Millennium Taskforce on Water and Sanitation. Earthscan, London

²¹⁹ Mohan, G. & Stokke, K.(2000), Participatory Development and Empowerment: the Convergence Around Civil Society and the Dangers of Localism, *Third World Quarterly* 21: 247- 268

of an efficient and transparent state as a facilitator of development, with civil society as an implementer.²²⁰

Harrison continued to insist that although the UN-HABITAT's role was to offer technical support to the government at advisory level and local level, it was important to build in on consensus and cooperation so as to avoid instances of unforeseen competition rather than complementarities. For example, he points out to one of the instances when they lost time due to a lack of clear communication and clearly spelt out roles of engagement with the government.

'The ministry of roads had to change the design because the original road alignment was too close to the railway line. Unfortunately this change was not communicated to the consulting engineer hired by UN-HABITAT to design a portion of the road to be done by Maji na Ufanisi. Therefore, the design given to Maji na Ufanisi could not match with the 500m section done by the Ministry. Thus the consulting engineer had to produce a new design for government approval.'

This particular incidence led to falling behind on project deliverables as the involved parties had to go back to the drawing table to renegotiate the terms of engagement, so any work that had been decommissioned had to be put on hold for some time before the parties agreed on the way forward. So another role emanated from this, which was to create consensus on the subject and exploration of grounds for joint action so as to promote the concept of team work between the community, implementers and financiers. Partnerships and mutual understanding was a key issue to be taken into account and indeed the task of making slums better living and working environments for the urban poor, along with the inseparable task of reducing poverty, can only

²²⁰ Jenkins, R.(2002), The Emergence of the Governance Agenda: Sovereignty, Neo-liberal Bias and the politics of International Development, in The Companion to Development Studies (Eds)V Desai, R Potter (Arnold, London) pp 485- 489

be achieved through a common vision. This common vision for sustainable slum upgrading can only be realised through genuine partnerships.²²¹

Lastly it also played the role of being the communications focal point in disseminating all the information that was related to the project. This was a very important task, as any enterprise thrives on efficient and effective communication to achieve their goals. They set up a communication hub in which any information related to the project could be accessed without too much bureaucracy, which as we know kills transparency and democracy. This hub was open to all citizens and any other individual or institution that was interested.

3.3.4 Maji na Ufanisi

As has been observed above in the preceding section; UN-HABITAT has been the international body dealing with this particular project. For easier implementation of the project, there was need for subcontracting a local organization which could foresee the activities on ground, thus Maji Na Ufanisi under the directorship of Professor Edward Kairu was subcontracted and signed a partnership agreement in February 2007 for the period of February 2007 to October 2007, this period not being enough due to eventualities in the implementation phase, gave rise to subsequent renewals of the partnership agreement until the completion of the sanitation project. Maji na Ufanisi was the main implementing partner, playing the leading role in ensuring the daily field activities were carried out as envisioned by all the parties involved²²² offering both technical and non-technical advice and skills.

²²¹ UN-HABITAT (2007), UN – HABITAT and Kenya Slum Upgrading Programme, Nairobi, Kenya

²²² UN-HABITAT (2009), Progress reports on K-WATSAN, Nairobi

Plate 3. 7: Maji na Ufanisi emblem on one of the sanitation blocks



Source: Field Survey

Maji na Ufanisi is a 1997 locally registered Kenyan NGO specializing in water and sanitation issues in Kenya who have implemented several urban projects in Kenya. Their project budget for this particular intervention is USD 579,684. When quizzed about the involvement of Maji na Ufanisi in the project Ms. Nancy Githaiga who is the project Environmental Management Specialist, responsible for advising on implementation of solid waste and environmental management related the history;

[..].What happens meanwhile as the houses are being upgraded? It was evident then that some infrastructure needed to be put in place so that the residents could actually feel and see that some progress was happening on the slum upgrading front. They had always been skeptical about the

upgrading initiatives that had been previously happening and so trust needed to be built and inculcated in them. Thus K-WATSAN was the much needed starting point for the residents. They needed to have some sense of dignity with something underlying and that is why this integrated component was envisioned, to cater for solid waste menace, sanitation and water.'

The project has been set up in line with the current legislation governing the environment and water situation. For instance the principle underlying the water and sanitation provision and infrastructure is the Water Act (2002), which gives mandate to other bodies to provide water²²³ e.g. the Nairobi Water and Sewerage Company provides the Maji na Ufanisi sanitation blocks with water and the National Environmental Sanitation and Hygiene Policy (2006) gives the blue print and direction as to how basic sanitation and infrastructure should be developed together with education on the same. Nancy continues to say that;

'We harness the community potential to construct these facilities, they are the ones who will use them eventually, so they better own them. We are here daily trying to build their capacity so that when the project is complete, they can run it on their own. They should be able to do the daily accounting and pay their own water bills to Nairobi Water, they should know some basic computer and basic hygiene. We hope that they can improve the sanitation situation in their surroundings.'

By giving the community these basic skills, this particular NGO is empowering them to bargain their daily lives in and out of the village. They are being taught basic book keeping skills which can be very instrumental in running their own businesses, a small kiosk or road side business- some of the community members sell charcoal, mandazi (buns made out of thick wheat flour)

²²³ Kenya, Republic of (2002), The Water Act 2002. Nairobi, Government Printer

and potato chips on the road side- or even water business. These skills prove to be useful not only in the settlement but out of it too, as many of the people working in the construction of the facilities will eventually have to stop once the facilities are completed and would have to go to the city centre to look for employment. Millicent Akoth, a young girl in her teens was busy at the construction site pointed out that;

'Mimi nimefanya computer hapa, sasa najua kotype, pengine nikimaliza mjengo ntaenda town kufanya kwa cyber. Unajua nilikuwa naka kwa nyumba tu, lakini sasa hawa watu wamekuja na inaonekana maisha itakuwa nzuri. Wenye wanataka husoma computer ama accounts, mimi nilichagua comps kwasababu ni rahisi na hesabu ni mambo ingine.'

Loosely translated as:

'I have learnt how to type, this is due to the project which Maji na Ufanisi have started, they teach those who want to learn either accounting or computer skills. I chose computer skills as I am not so good at Mathematics and when this construction is over, I hope to go to the city centre to work in a cyber café, it looks like life will be better.'

These are some of the hopes of the people living in Soweto East, which Maji na Ufanisi have enkindled in the bosoms of many. The people have a sense of a better life to come in the future due to the skills they have acquired as being part of the project. In the settlement many people have either not studied or accomplished tertiary education²²⁴ or have no basic education due to a lack of resources to enable them go to school. But a looming question still remains- Is it

²²⁴ Kenya, Republic of / UN-HABITAT,RI/4733 Kibera Social and Economic Mapping Household Survey Report

genuine? This is a question arising from the fact that during one of the informal conversations I had with an official from Maji na Ufanisi, she actually said off record that,

'the people of the slums should not be fully emancipated as this will render them very expensive. The rich need the slums for their survival, we need cheap labour and can only get it from the slum.'

The Maji na Ufanisi Urban Programme boasts of having accomplished similar projects in Kibera (Soweto, Kambi Muru & Laini Saba), Kangemi and Kiambiu informal settlements with a total cost of projects in the informal settlements being close to KES 100 million since 1999.²²⁵ They also have a team of experienced water and sanitation engineers, technicians, foremen, community organizers, youth organizers and environmentalists who were able to produce plans for the construction of the water and sanitation facilities. See figure 3.5. They were thus confirming to me that their technical side is very strong and were the partner of choice to UN-HABITAT in the implementation.

²²⁵ Maji na Ufanisi (2006), Kibera Integrated Water, Sanitation and Waste Management Project – Project Document. Nairobi

3.4 Local institutions

3.4.1 The Nubian community

This community as mentioned in the previous part in chapter one, was the initial custodian of the land. It was actually crown land vested unto them. They were so to speak the gate keepers of the community land. This community was consulted to relinquish land so that the building of the project houses and sanitation facilities could start. Most of them were the structure owners of these pieces of land.

During one of the focus group discussions²²⁶ with the structure owners, it was quite clear that there were undertones and currents that were invested in the project, one could almost touch the venom in the words that were uttered by the Nubian structure owners.

'Hii ni ardhi yetu, sijui kwa nini sisi hatukuulizwa kuhusu huu mradi, mradi ilitokea tu. Siku moja sisi tuko katika mashughuli zetu kama kawaida, wala u hala; tukashuhudia matokeo ambayo yalitustaabisha sana.. Gari kubwa zaja hapa, zawachukua watu kuwapeleka sijui wapi, twamuona pia huyo mlinzi wa wajaluo akibeba godoro na taa- ili kutufumba macho - Waskia! Siku chache baadaye twazona tingatinga zaja kuporomosha ardhi na kuziangusha zile mabaki za manyumba-mwanangu waskia...waona kama hii ni haki? Watu wamekuja katika shamba lako hivo tu kama mabeberu, wankupokonya ardhi bila ruhusa na kusema kuwa ni mambo ya serikali- serikali gani hii ambayo haituridhi na kutujali? Twashindwa watu hawa wako na nia gani? Tungependa majadiliano kuhusu haya matokeo.'

²²⁶ Focus group discussion with structure owners

He claimed that they were not consulted enough, he continues to say that he was shocked when the project started, he saw only the equipment for demolishing the houses in the vicinity and people moving to the decanting site. He had not been warned. This is in contrast to what others say and what has been documented in the aspect of consultations. Husna Hassan verified this by informing me that as the secretary of the Nubian community she has had several reports about people being consulted, but it has not been done in the traditional Nubian way, in which the community is given time to go and reflect. There are various channels of consultation and steps, the older members of the community feel they need to be followed, yet they never state quit clearly which these channels are. Hence there is always a back and forth pull about how the consultation took place and what is the proper way of it taking place. Sadly a consensus has never been arrived at.

3.4.2 The Soweto East community

The relative neglect of sanitation by mainstream development agencies and governments over the years notwithstanding, recent years have witnessed a shift in the nature of formal efforts to provide sanitation to informal settlements, with a growing emphasis on the community²²⁷ which marks a shift in the relationship between the state and the 'slum'²²⁸ in which the state is seen as an equal partner to the community and not the solution provider, the state facilitates the mechanisms of transmission of ideas and technologies while the community is the main implementer and thus there is a shift from ad hoc sanitation provision to a more sustained and universal policy²²⁹, in which the community leads the process. The following section

²²⁷ McFarlane, C. (2008), Sanitation in Mumbai's informal settlements: State, 'Slum' and Infrastructure. *Environment and Planning*, 40:88-107

²²⁸ *Ibid*

²²⁹ *Ibid*

characterizes the community in two parts for easier articulation of the roles; i.e. the Settlement Executive Committee (SEC) and the Community members themselves, though they form an enmeshed fabric that ideally should not be separated.

3.4.2.1 Settlement Executive Committee (SEC)

The Settlement Executive Committee (SEC) is the arm of K-WATSAN project that represents the Soweto East residents at all levels of project implementation. The SEC, formed in 2003, comprise of 18 democratically elected community members from various interest groups or stakeholders. These are the structure owners of whom less than 1% are living in Kibera²³⁰ tenants, community-based organizations, NGOs, faith-based organizations, the youth, widows and orphans, the disabled, the area chief, the area Councilor, and the area District Officer. The latter three are ex-officio members with no vote. Mr. Francis Omondi, who is one of the SEC members reiterates that;

‘The SEC members are democratically elected by the community, I insist democratically elected [...] to take care of the needs and voices of the community. We are the loudspeaker of the community. Any complaints or suggestions are channeled through us and then we take them to the concerned authority.’

Such a composition makes sure that all the stakeholders are represented and their views taken into consideration at all levels of project planning and implementation. The SEC stresses the interest of the community and ownership of the project. Their legitimacy and mandate comes from the same community who democratically elected them and whom they represent. The SEC

²³⁰ Acacia Consultants Ltd & Maji Na Ufanisi (2004), Actor’s Survey Report; Investigation of actors in Kibera., Nairobi

ensures that communication channels remain open and transparent. They see to it that the community is totally informed and involved in project planning and implementation.

'Like me, I represent the youths, each week we have a meeting and they tell me what the youths want me to tell the SEC. Many times the youths tell me about not being given enough job in the construction, Maji na Ufanisi like giving jobs to women. Most of the youths here are not working, and now because of this project they have a job. This is helping community because the youths stop engaging in crime and they have something to keep them busy. They can even have their own money so they stop thieving people on the road. I have to tell Maji na Ufanisi to be fair in giving jobs, because the youths have no money and it is better when they are not idle.'

The SEC member representing the interests of the youth Mr. Patrick Atali, who is also a youth in his early twenties, tells of his role in the SEC, in which he has to represent the voice of the youth. Specifically in this extract, it is clear that the youth are more concerned in earning a daily keep, more than even the sanitation facilities themselves, since they do not see a need for them. At the moment they only see a money making venture, which they want to capitalize on more than the benefits accrued in better sanitation. Most of the youth are idle and are prone to crime related activities, thus, this initiative is opportune in that it occupies their moments and deters them from criminal activities. Maji na Ufanisi, the implementing agency has been engaging the community in the construction of the facilities and as such they have created an atmosphere of more responsible citizenship.

SEC is the 'mini parliament' of Soweto East who wields a lot of power within the community and within the KENSUP institutional framework. Their word is mostly law and as such they need to be people with good standing, who can lead the community to the intended destination.

Attention to the power relations within communities²³¹ is an important dynamic that SEC tries to adhere to, at least on paper. The members should be elected every two years as their mandate expires then, though in reality this is yet to happen. The SEC members are more or less permanent, though the official terms of reference²³² do not make reference to them being permanent. It only references that a member can be reelected once.

'I insist democratically elected and not rigged'- Francis Omondi

The words of Francis, on the SEC being democratically elected is a phrase laden with a hidden meaning, in that , the SEC want to show how transparent they are in matters of democracy and participation, as that is the whole essence of this new model of upgrading. They do not want to be seen as having gone contrary to the wishes of the people and seen to occupy the positions illegitimately, since not all the members of SEC are viewed in high regard by the villagers and this has been a persistent sore point in the village, which no one seems to be addressing, as some villagers feel that their wishes have not been well articulated in the upgrading as such they continue to feel more disenfranchised, while others think SEC is the best decision that was ever made while some villagers continue to say that the SEC members will only step down when their job is done. The question remains; 'when will their job be considered done?'

²³¹ McFarlane, C. (2008), Sanitation in Mumbai's Informal Settlements: State, 'Slum' and Infrastructure. *Environment and Planning A* pp.40:88-107 & Ostrom, E. et al (1992), Covenants with and without a Sword: Self-Governance Is Possible 86(2), *The American Political Science Review* pp 404-417

²³² Appendix 5 : Settlement Executive Committee Terms of Reference

3.4.2.2 The community

The participatory revolution²³³ has been taking place in the past few decades which has involved the development of methods for enhancing the participation of ordinary people in decision making at various levels has also been experienced in Soweto East. These methods enable the poor and marginalized to contribute actively to gathering and analyzing information, where previously it was taken from them and analysed elsewhere. They enable poor people to participate in making and implementing decisions that affect them, where previously these decisions were taken elsewhere.²³⁴ Following the revised neo-liberal position it is becoming common to have urban sanitation initiatives involve the community²³⁵. Community participation is a prerequisite for success²³⁶ as this engenders a sense of community ownership.

This sense of community ownership is important as it tries to amalgamate a community who have migrated to this particular area as early as 1995, field research shows that 42.9% of the household heads started living in Kibera before 1995, with three quarters migrating to Kibera directly from their rural homes. The household heads gave several reasons for migrating to Soweto East village. Some of these include: presence of relatives who could assist them in their

²³³ Cornwall, A. & Scoones, I. (2011), *Revolutionizing Development: Reflections on the Work of Robert Chambers*. Routledge.

²³⁴ Christopher, E. (2013), *Participatory Methods, Behaviour-Influence and Development – A discussion Paper*

²³⁵ Davis, M. (2004), Planet of slums: urban involution and the informal proletariat, *New Left Review* 26; March – April 5;34, London

²³⁶ World Bank (2003), *Making Services Work for Poor People: World Development Report*, World Bank, Washington, DC and Oxford University Press, Oxford

search for employment; affordable housing; proximity to the city centre; and affordable food.²³⁷ 86% earn a monthly income of not more than KES 10,000, with 14% earning more than KES 10,000 who currently spend less than KES 200 on their monthly water needs, 39.5% spend KES 201-500, while 2.6% spend more than KES 1,000. The expenditure on food also varies: 61.5% of the households spend KES 1,001-5,000 while 28.2% spend between KES 5,000-10,000 – an indication of high expenditures on food.²³⁸

In this community the mean household size was 3. However, when only the nuclear family is taken into consideration, many of the households, 75% had at most 2 children, while 3% had a large family of more than 7 children. The number of children per household is 4 times less than findings in Mukuru kwa Njenga of an average of 8 children in a household.²³⁹ Their dwellings consist of single roomed structures 90.9% with rents ranging between KES 500 and KES 3,000 and above. The figure is dependent on proximity to water and sanitation facilities; availability of electricity which is more often than not illegally connected; and nearness to the road.

Women as gate keepers

The above synopsis of the community's income dynamics gives an appreciation of the characteristics of the people we are dealing with. The community members participated in the project according to their availability and interests, although both men and women were conscripted to participate in the project, it was noted that more women than men participated in

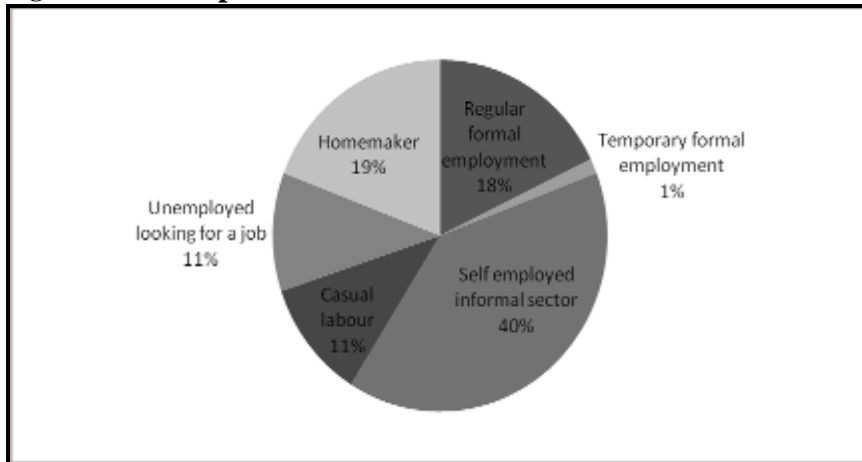
²³⁷ Walubwa, J.A. (2010), "*KENYA SLUM UPGRADING PROGRAMME*" *An Analysis of Kibera Integrated Water, Sanitation and Waste Management Project*. MA thesis, Department of Geography & Environmental Studies, University of Nairobi, Kenya.

²³⁸ Ibid

²³⁹ Gichuki, G. (2005), *Environmental Problems and Human Health in Urban Informal Settlement: A Case Study of Mukuru Kwa Njenga in Nairobi*. M.A. Dissertation, Department of Urban and Regional Planning, University of Nairobi, Kenya

the project as most men left the settlement early in the day and returned later on in the evening and as such most of the gate keeping was done by the women. In the demographic survey I discovered that when children below school going age and those in school (27% of the total population) are excluded, the Soweto East residents are engaged in a number of occupational activities. As would be expected, about half were engaged in self-employment in the informal sector or were employed as casual labourers (Figure 3.6). 19% were in regular employment, while 30% were either home makers or unemployed. The informal sector activities and casual employment ranged from washing clothes, shoe shining and repair, fishing, garbage collection, selling vegetables, selling water, hair dressing to selling illicit brews, among others.

Figure 3. 6: Occupational status in Soweto East



Those who were not in regular employment, due to various reasons found an opportunity to get some temporary source of income and have been the most active and dependable in the running of the project. They could be relied on at the time of construction as well as in manning the facilities as these jobs require huge blocks of extended time in which people can be available to perform the tasks required therein. The project implementing partners like Maji na Ufanisi remarked that they preferred to deal with the women more as they were trustworthy and could

not pilfer the materials used for construction or when manning the sanitation blocks, their accounts are more accurate. Nancy from Maji na Ufanisi mentioned that;

‘The women are trustworthy and can be relied upon to open and close the gates during the construction. They usually frisk everyone who is leaving the site, to ensure that the construction materials do not disappear in the pockets of people. They are more reliable in record keeping also and we entrust them with this task especially when the lorries that come to deliver supplies are on site.’

The women were more concerned on the completion of the project and as such were ready to do whatever was required to ensure that their interests were well represented. They preferred to keep strict accounts of the materials so that a sense of trust could be inculcated in them. They commented that this was the first project in which they have been given dominion and self-rule, thus they needed to show that they were worthy of that trust. Even though they had to grapple with challenges of trust and stewardship among themselves they made every effort to ensure the project would achieve its proper end.

‘Mimi huchunguza sana hizi misumari, sijui kwanini misumari hupata miguu hapa, kilo tatu huisha kwa siku na huoni kenye imefanya. [...] Lazima hii mradi ikamilike, sisi wanawake ndio hupata shida sana kwenda kwa choo, wacha nifanye kazi hapa, angalao msichana wangu akuwe salama.’

This can be translated as;

‘I take care of these nails as they keep on disappearing. For instance one may get three kilograms of nails not being accounted for in one day, which should not be the case. [...] this project has to come to its end, and has to be concluded very well as it is us women who grapple with the

challenges of accessing toilets, let me work here especially for the sake of my daughter's safety in the future.'

Ms. Wamaitha, one of the ladies manning the sanitation facilities, insisted on the need to protect the materials and the sanitation facilities as she saw that this was the lifeline of her family and especially her daughter. She is keen on securing all the property vested to the community and wants that all benefit. It is important to note that Ms. Wamaitha is a pastor at Word of God Church and esteems values of honesty and integrity.

As in all community projects, not everyone is in one accord with the project and has full buy in, some people have their own interpretation and see it as an opportunity for making selfish gains at the expense of the others. This was evident in this project as some people were stealing the construction materials for resale at throw away prices, in which they gained while the community lost. This did not matter to them; theirs was an interest that they needed to satisfy in whatever fashion and they did.

Special interest group -the youth

The household demographic characteristics reveal that over three quarters (78.6%) of the population in Soweto East were below 30 years of age but with slightly more males than females (57% versus 43%). The youthful population is an indicator of a highly dependent population. Kagiri²⁴⁰ found similar results in her study: there were more males than females in the settlement and that a large proportion of the population (74%) was aged between 18 and 30 years.

²⁴⁰ Kagiri, E. (2008), *Using Sustainable Technology to Upgrade Sanitation. Case Study; Soweto East, Kibera*. M.A. Thesis Department of Biological and Environmental Science, University of Jyväskylä , Finland

The project sought to be all inclusive by encouraging the youth to participate and lend a hand in designing their destiny. The youth had mostly been deemed as crime prone people and were sort of sidelined. At the initial stages of the project the youth did not have a proper footing in the project and did not seem to fit anywhere, save for the occasional accompanying of visitors who came to tour the projects either for research or out of curiosity; but this could only occupy a small percentage of the population. The situation did not last for a very long time, since the Youth Enterprise Program was launched by the secretary general of the UN – Ban Ki moon in 2007 when he toured the settlement, shortly after.

‘The purpose of the youth programme started in January 2007 is to empower the youth with skills so that they can employ themselves or even get jobs. Currently a lot of youth have been trained in different fields like electrical, block making, basic construction, and plumbing among others. I was among the twenty six youth who graduated in March 2009 after being trained in block making and basic construction.

We were taught a number of things which I believe will help me in my entire life. Among the things we were taught were measuring, excavation, batching, curing, things to consider at the site, safety prevention and after cleaning.

Although we faced a number of challenges during the training like working in a harsh environment, lack of protective gears, no drinking water, I was able to learn how to deal with these challenges and the benefit I got was skills which I would never have.

Since the training I have been able to get work in producing blocks in Mavoko, trained ten youth in Kibera in block making and basic construction. With the skills I have got in the training on business and

organization development training I am now prepared to start a block production company with my colleagues.

I thank the Executive Director UN HABITAT Anna Tibaijuka and UN-HABITAT staff for coming up with Youth Empowerment Programme.”

Mr. Micheal K. Wanjohi - Soweto Youth Group, Kibera.

Thanks to SEC’s articulation of the plea of the youth and the visit by the UN secretary general, the youth received a privileged position, which they did not have before. The YEP gave them a chance and enabled them learn specific skills to render them useful in the program. They participated in construction but at the same time they improved their skills; the imparted skills are important for bargaining their daily life even after the project.

Plate 3. 8: Soweto youth group signage at the entrance of the youth centre.



Source: Field Survey

Mohammed Nassur- a member of the Soweto youth group attests that;

'To me this is the easiest way of alleviating poverty among urban youths in Kenya and the world at large. Thumbs up for Ban Ki-Moon the Secretary-General of the UN for the precedence that he has set for other world leaders to follow with his contribution of 100,000 us dollars. I strongly appreciate the efforts of Mama Anna Tibaijuka the Executive Director UN HABITAT and her entire team for spearheading the Youth Empowerment Programme in Kenya in a very positive direction. If twenty five youths trained in habitat block production and basic building construction can build a world class youth training centre (Moonbeam Youth Training Centre),I am sure one million youths trained in different fields will do wonders and we will get rid of slums worldwide.

Finally I would like to urge my fellow youth to make good use of the word "GHETTO" another name which simply means "Get Higher Education To Teach Others". By doing so, we would all be sailing in the same boat and walking on the same street of informed and empowered society.'

Mohamed was clearly elated by the fact that he had participated in the training and knew how to make blocks for construction; he thought this was the only way of empowering the youth, which is achievable and realistic.

Plate 3. 9: The new look of Soweto youth group



Source: Field Survey

The youth of Soweto have continued to work in the project and other smaller projects that come up for the betterment of the community, for example the recently launched NYS project.

3.5 The media

The media is always the voice of the people, it is used to educate, entertain, inform or transmit information from one point to another. It is usually the quickest and fastest way to make known what one wants, as such it can be compromised or can be objective. Soweto East has had a share of its media moments with some of them going well, while others have resulted in unimaginable catastrophes.

This particular project has had several media interventions, especially in the mainstream media, when important personalities have toured the project for example Ban Ki Moon- UN President, Raila Odinga – former prime minister and leader of opposition, Uhuru Kenyatta – current president of Kenya (2015) and many others. There has been a lot of publicity about the project which has attracted other donors to come here and highlighted the work of other civil societies. For instance the following was reported on mainstream media as it addressed the government directly:

“The Nubian rights forum wants the Kibera slum upgrade project stopped until the government releases the Nubian community land title. The right’s group has issued a three-day ultimatum to the government to involve Nubian elders and opinion leaders in the slum upgrading project failing which the community will not allow the project to continue.”²⁴¹

²⁴¹ <http://www.ktnkenya.tv/live>

Whereas the progress or the happenings of the local community have not been demonstrated in the mainstream media, Kibera has had its share of community media which reports local news within the community itself. These media is used for community cohesion and lauding the happenstances of the community. It is used as a sense of pride for the community and also as something that occupies the youth and engages them as opposed to them being on the crime end. For example during the post-election clashes of 2007-2008; the community radio announced to the community and encouraged them to be of one accord so as not to destroy one ablution block which was near the line of fire. They encouraged each other to see the ablution block with a sense of community pride in which they had all put their efforts together to see its completion, so they could not let fire destroy it by razing the facility to the ground as they watched.

The different media stations are outlined below:

3.5.1 Pamoja FM

"Pamoja" is a Swahili word meaning Together – founded in 2007; with funding from the US Aid. It focuses on community issues through debates and feature broadcasts, as well as airing a range of music shows and news. Its aim is to empower youth of Kibera and its environs through education, information and entertainment. It was very instrumental in promoting peace during the post-election violence in 2008. It can be accessed through:

Facebook: <https://www.facebook.com/pamojafm>

Twitter: <https://twitter.com/PamojaFMradio>

Live stream: <http://tunein.com/radio/Pamoja-FM-999-s134689/>

Plate 3. 10 : Pamoja FM media banner



Plate 3. 11: Pamoja staff working to plan radio shows.



Plates by Emil Græsholm

Pamoja FM has two regular daily news segments at 1:00 pm and 4:00 pm; and three programmes from the BBC which complement a number of regular shows, for instance a feature coined the 'East Africa Express.' Every day there are programmes and debates focusing on community

issues, such as health including HIV, security and women's issues. This schedule is flexible; however, the station frequently clears space for extra features when important events or news feature in the country scene.

The people I talked to mentioned this Radio Pamoja as their main source of information; they sometimes do the reporting themselves and feel part of the ownership here. They said that sometimes international content from BBC is reported but mostly tailored towards them as an audience, hence they relate to this media station because it talks about them, to them and with them.

3.5.2 Voice of Kibera

It is a citizen reporting platform based in Kibera started by Map Kibera and uses the Ushahidi platform to aggregate and map reports. "Ushahidi" is a Swahili word meaning an eye witness or testimony. So it relies on people's testimonies to actually do its reporting. It aims at giving a collective global voice to the community. It has representatives from Hot Sun Foundation, Kibera Mpira Mtaani, Mchanganyiko, Kibera Community Youth Programme, Map Kibera, and Ushahidi and can be accessed through:

Website: <http://www.voiceofkibera.org>

Twitter: <http://www.twitter.com/voiceofkibera>

3.5.3 Ghetto mirror

It is Kenya's premiere slum newspaper published and distributed monthly for free; it aims at empowering youth through development initiatives and brings real life stories as told by the people who live in the slum. It also brings to attention the issues affecting the residents of Kibera and other slums. It is produced by the youth of Kibera.

Other media of note in Kibera are: Kibera TV, and Kibera News Network

3.6 Political appointees

Like many nations, it must be noted that Kenya is a very political society in which most of the political ramifications are closely related and tied to the leadership of the country or of the community. The big cake depends on how close one is to the leadership and there arise instances where the share of resources can be very disproportionate sometimes to the extent of marginalizing the communities they do not represent.²⁴² Given that informal settlements are often deeply divided around ethnic, religious, class, and economic lines²⁴³ some political appointees take advantage of any gathering or project to further their cause. They prefer to use big elaborate projects to solicit for votes as opposed to little or small scale projects with little impact. They always try to be on the best behavior record book with the members of their constituents so that when the time for voting is nigh, they are better placed than their rivals. For example in Mumbai's Slum Sanitation Program, one of the implementing officials pointed out that the demand for individual, twin, or shared toilet blocks is being deliberately suppressed, arguing that "the concept of individual toilets is not being marketed because it is not ``part of the game" [...]bureaucrats, politicians, and contractors view large toilet blocks as a political investment in informal settlements. In particular, some more progressive BMC officials have argued that politicians are more concerned with associating themselves with the provision of common blocks than with individual, twin, or shared toilets because large blocks are highly visible and reach far more voters."²⁴⁴ They were using the toilet blocks to manipulate votes, part of the long established politics of patronage in informal settlements.²⁴⁵This client-patron

²⁴²McFarlane, C. (2008), Sanitation in Mumbai's Informal Settlements: State, 'Slum' and Infrastructure. *Environment and Planning A*.pp.40:88-107

²⁴³ *Ibid*

²⁴⁴ *Ibid*

²⁴⁵ Bekker, S. & Fourchard, L. (2013), Politics and Policies Governing Cities in Africa, Human Sciences Research Council, South Africa

relationship has been one of the features that has marked Kibera for many decades, leading them further into deprivations of urban services.

3.6.1 A game of thrones

Informal settlements can be intensely territorial, divided along lines of ethnicity, religion, economic functioning, time of and place of migration.²⁴⁶ This can lead to a competition for resources that politicians often exploit for electoral gain. Many politicians have mastered the art of political patronage and have tried to have Kibera under their thumb. To control Kibera is to have political power on your side, it is an assurance of a landslide voting favor as there is a huge massive block of votes conglomerated here, which is perhaps what most political appointees have learnt to acquire the skills of the big game and ensure that their presence is felt in any development intervention happening in the informal settlement.

This particular project has had its share of political games and exchanges; for instance in November 2014 there was an interesting turn of events which depicted power struggles; in a span of less than a week, a delegation assembled and led by the president – Uhuru Kenyatta – made an impromptu visit to the settlement on a Sunday evening to speak to the people, inspect how the people are living, have a meet the people tour and assure the slum residents that the Jubilee government cared for their needs . Hardly a week later, just three days afterwards, the following Wednesday, Raila – He is the leader of Coalition for Reforms and Democracy (CORD); an opposition party in the Kenyan electorate – made a visit to the same site together with his former campaign manager Eliud Owalo, many people mobbed him and demanded to be addressed. In his charismatic way, in which he draws masses to himself he addressed the people of Kibera and even called on the government to expedite a court case that was filed to halt occupation of the housing units by dwellers in the settlement to enable them move into the houses. An injunction

²⁴⁶Benjamin, S. (2004), Urban Land Transformation for Pro-poor Economies, *Geoforum* 35;177 -187

had been filed in court challenging the construction of 200 stalls as the area was still occupied by other settlers. The settlers obtained a court injunction barring the demolition of the units.²⁴⁷ A local newspaper- Citizen Weekly- reported this²⁴⁸

RAILA TOURS NEW LOOK KIBERA TO COUNTER UHURU, WAIGURU FORAYS

Cord leader Raila Odinga's extensive tour of Kibera accompanied by his former campaign manager Eliud Owalo last week was ostensibly to counter president Uhuru Kenyatta forays in the area of late which have won Uhuru massive support. The tour has however sent chills down the spine of MP Ken Okoth with word that Owalo is to give a stab at the parliamentary seat. The tour was also used as a fact finding mission based on concerns raised by residents pertaining to recent forays in the constituency by Uhuru and cabinet secretary Anne Waiguru culminated in a major rally at the famous Kamukunji grounds in the constituency. The Cord leader used the occasion to receive back 32 fully-signed Okoa Kenya booklets with signatures. The Okoa Kenya signature drive in the constituency was undertaken through the initiation and facilitation of Owalo and whose launch was presided over by Raila himself in the company of Owalo about two months ago at the same venue

Speakers at the rally who included Raila claimed to the amusement of residents that all the major infrastructure projects currently ongoing in the constituency were conceptualised and initiated by Raila under the

²⁴⁷ <http://allafrica.com/stories/201411121737.html> by Patrick Vidija

²⁴⁸ <http://weeklycitizennewspaper.blogspot.fr/2014/11/raila-tours-newlook-kibera-to-counter.html>

slum-upgrading project after the then PM toured Malaysia on a benchmarking mission. They alleged that the projects were frustrated through failure to release funds by the Treasury under the stewardship of Uhuru who was then Finance minister.

Also in attendance were Langata MP Joas Olum and Ugunja MP Opiyo Wandayi. Conspicuously absent was Okoth who sources said he had been spotted at the offices of Nairobi governor Evans Kidero early in the morning. During the tour, there were some uncomfortable moments when boda boda riders shouted that they were tired of vitendawili and that they are happy with serikali ya kusema na kutenda.

The president has been gathering a lot of support from the people of Kibera, who were happy with his hands on approach. They were happy that he said and acted on his words, unlike Raila who only gave them parables. Uhuru delivered what he promised. This in some way threatened Raila, who saw that he was loosing a very strong foothold for his political party and tried to counter this loss by visiting the settlement, though it was not easy. He attacked the president, saying that he refused to release funds intended for development when he was at the ministry of Finance and Raila was the member of parliament for Kibera, hence the development projects stalled. This was not well accepted by the people as they saw this as an excuse.

Incidentally, this particular Wednesday when Raila visited the settlement, was the official day in which the governor of Nairobi Evans Kidero and the devolution cabinet secretary – Anne Waiguru- were supposed to tour the settlement. This would have made for a very embarrassing situation in which the government would have been portrayed as an entity with bad relations with its political fall outs. To save face and look like there is unity in the government the pair

hastily rescheduled and postponed their visit to a later day which happened to be two days after-Friday of the same week.

Evans Kidero, happens to be in the same political party as Raila, – CORD – but has been falling out of grace with the party leadership thus has little or no good relations with the former prime minister and at the moment he is partly favoured by the ruling party, which is the Jubilee coalition.

It can be conjectured that each of the leaders wanted to outsmart the other and show that they are better and make the community favour them. Ordinarily, a government delegation should have been the official visitor to the settlement, but this was rather different though not surprising that there was the president, then the former leader of opposition then finally the governor and the cabinet secretary. The governor of Nairobi and the president of Kenya are from different political parties and different ethnic communities which are supposedly at ‘war’ with each other, the Luo and Kikuyu, with the Luo community being favoured in Kibera where the governor belongs. This was highlighted in one of the dailies- The Standard newspaper²⁴⁹:

*DEVOLUTION CABINET SECRETARY ANN WAIGURU, NAIROBI
GOVERNOR EVANS KIDERO TOUR KIBERA TWO DAYS AFTER
RAILA'S VISIT*

By Nanjinia Wamuswa

Updated Saturday, November 15th 2014 at 00:00 GMT +3

*Devolution Cabinet Secretary Ann Waiguru and Nairobi Governor Evans
Kidero visited Kibera slums yesterday to assure residents that they were*

²⁴⁹ http://www.standarddigitalworld.co.ke/m/?articleID=2000141454&story_title=Waiguru-Kidero-tour-Kibera-two-days-after-Raila-s-visit

not out to buy political support for the Jubilee administration with the on-going sanitation projects.

Ms Waiguru and Dr Kidero said the national and county governments were keen to empower youth. They said the National Youth Service clean-up of the slums and building of toilets and roads were not tokens for electioneering campaigns.

“The conversation should be: Are we empowering the youths? Are they being paid adequately to do this work? Are we able to start a saving scheme for them to stand up on their own after the project,” the CS stated.

The governor welcomed the development project saying Nairobi county government is ready to work with the national government for the benefit of the people in Kibera and the city.

3.6.2 Raila Odinga

Raila Odinga is the son of the former first vice president of post-colonial Kenya, Mzee Jaramogi Oginga Odinga. He has been the MP for Langata from 1992 -2013; the official leader of the opposition from 2002-2007 and the prime minister of Kenya 2008- 2013 following the contentious presidential election of December 2007.²⁵⁰

Of special mention in this project is Raila, we cannot ignore him as he has been one of the instrumental figures in this project, even though at the moment of this research, there was a transition from when he was in the ruling elite of the country to the point where he is not ruling anymore. He had no political standing, save being in the opposition and being its head. We could

²⁵⁰ <http://global.britannica.com/EBchecked/topic/1383153/Raila-Odinga#toc286150>

actually say, he was a victim of circumstances in that during his tenure the project ‘found’ him and ‘left’ him without being completed, so someone else gained the fame and gains he had gathered during his epoch.

This particular project has mostly been attributed to Raila by the people, because he happened to be the political representative of the area- Member of Parliament of Langata at the time when there was a massive movement of people from Kibera to the new houses on the other side of Kibera which were to be used as a ‘hold pen’ until the newly upgraded houses are completed in terms of construction i.e. the decanting site. This movement was meant to create and provide space for commencing the construction of the new houses, since the settlement did not have any extra breathing space where one could do any constructive development or substantial improvement save the construction of one more shack for shelter- there was and will always be room.

Plate 3. 12: Raila helping one of the residents clear her belongings to pave way for the sanitation/ ablution facilities.



Source: Archives

After the lack of recognition of the project success or failures and the loss of his political standing Raila has tried in many ways to achieve his former status in the settlement, though this has been an uphill task. He does not enjoy the olden moments where everyone was pro-Raila in Kibera and they would do anything to applaud him. He often has to fight for recognition and that is why he takes opportunities of other politicians successes to jump in and make himself relevant. Though Mzee Simiti maintains that ‘Wakati wake umeksiha’ - his time is over.

3.7 Conclusion

It should be noted that each of the stakeholders played an important role, whether to hinder progress or promote it. Those who hindered the progress were as important as those who promoted it, in that, they strengthened the implementation team, which had to go back to the drawing board to see where the loop holes were and address them. Those who facilitated the progress were welcome at all times.

This chapter has outlined the various characteristics and roles played by the various stakeholders in achieving this project. The project was enmeshed in a larger project; KENSUP, which was aimed at improving the lives of 20 million slum dwellers in Kenya. So far the chapter has highlighted the international and national institutions, which have played a huge role in advisory capacity as well as policy formulation and provision of an enabling environment for their implementation. Of note is the UN-HABITAT, Government of Kenya, Maji na Ufanisi and the University of Nairobi.

Secondly it has outlined the characteristics of the local community and their organization giving a brief synopsis of their personal characteristics to better understand their way of life and how this project would impact on them. The media and the political appointees have also not been left behind as they are also an important ingredient in the whole story.

Of importance also was the political angle, which was always peeping and knocking to be heard. Every act was laced with a political language which required to be negotiated so as to get meaningful development in the area.

Table 3. 1: Summarises the role of the different stakeholders:

Stakeholder	The role played
The Community	<p><i>Nubian Community</i></p> <p>Agitation and disruption of the project process</p> <p>Ceding of Land</p>
	<p><i>SEC</i></p> <p>Leadership</p> <p>Community contracting and accounting</p> <p>Promotion of local peace initiatives</p> <p>Community awareness and sensitization</p> <p>Local monitoring and evaluation of project activities</p>
	<p><i>Community Media</i></p> <p>Advocacy</p> <p>Policy and information dissemination</p> <p>Education and sensitization</p> <p>Focal point for communication within and without the community.</p>
	<p><i>Community Members</i></p> <p>Forming community networks and cooperative societies</p> <p>Participation in project activities e.g labour provision , provision of space for construction and resource mobilization</p>
UN-HABITAT	Advisory role

	<p>Technical assistance</p> <p>Funding</p> <p>Monitoring and evaluation</p> <p>Communications focal point</p>
The Government of Kenya	<p><i>Central Government</i></p> <p>Policy formulation like Vision 2030</p> <p>Giving rights for the land to be used land and ensuring that there is security of tenure,</p> <p>Preparation of legal framework for physical planning, coordination, resource mobilization,</p> <p>Global communication</p> <p>Monitoring and evaluation,</p> <p>Institutionalization of programme units and development funds</p> <p>Coordination of development</p> <p><i>Local Authority in Conjunction with Academic Institutions</i></p> <p>Implementation of projects within their areas of jurisdiction</p> <p>Coordination of community</p> <p>Local level monitoring and evaluation,</p> <p>Provision and maintenance of physical and social infrastructure,</p> <p>Municipal planning including city development plans and Master plans.</p>
Civil Societies	<p>Demonstration of community engagement exercises</p> <p>Awareness creation and community mobilization</p> <p>Capacity building</p> <p>Agitation for community rights</p>
Private sector	<p>Establishing micro finance institutions, credit and financial</p>

services,

Introduction of income generation activities

Technical assistance in terms of expertise, construction material resources

Investment in the construction of sanitation facilities

4 WHO GOVERNS WHAT AND HOW? AN ANALYSIS OF THE WATER GOVERNANCE STRUCTURES OF SOWETO EAST VILLAGE



4.1 Introduction

Different regimes of water gives people the imaginative capacity to adopt a different approach to using water and managing its distribution in terms of quantity and frequency of access. Water governance has been deemed mostly as a crisis of governance and not of scarcity²⁵¹ meaning that there is water available for the people, only how we appropriate it, is the question. As such, we need to place the governance structures under a strict lens to see how well they can satisfy the needs of the present and of the future.

In this thesis, to talk of the K-WATSAN project, a mention of the slum upgrading project has to supervene as this was the main project in which it was nested in. The two have closely been intertwined with the progress being one long winding journey which has not reached its terminus yet but has already made tremendous strides which can be studied to make some meaningful deductions and conclusions.

This chapter seeks to answer the question; what are the governance arrangements found in Soweto East? It answers the question by analysing the system using minor questions which are structured in the following order; first a look at the approaches employed in managing the seven sanitation facilities followed by a close scrutiny of the nature of the informal system developed by the users - this is done in part by first defining informal norms which can be interchanged with customary systems and then secondly by unpackaging the system observed in Soweto East. Following the same pattern, I look at the unique features that characterize the system and make it stand out from the rest that have been observed in various studies and goes on to expose the different layers of law that inundate the system. From the study it is evident that both formal and informal norms exist in the same system, though one has an upper hand than the other, as people relate more to the informal one than the statutory one.

²⁵¹ Gray, T. & Stewart, A. (2009), *The Governance of Water and Sanitation in Africa, Achieving Sustainable Development Through Partnerships*. Tauris Academic Studies. London

Lastly the features observed, lead me to argue that these features form the structure making it exude five characteristics which make for the resilience and sustainability of the system, these are; the knowledge management system, effective feedback mechanisms, inherent modification procedures, stratification of rules and the system's autonomy. I use Ostrom's theory of non-tragic commons, following one of her eight design principles which routes for a self-organizing community for sustainable resource management.

4.2 Approaches to management of sanitation facilities

As stated earlier in chapter one and later on in the preceding chapter (chapter three) there has been a consistent emphasis on the need of ensuring that the community participates in the running of the project. In development literature it has been noted severally that several forms of community engagement exist and should be adopted for any successful or meaningful activity to take place. The essence is to bring on board those people who had been excluded from development to determine their own destiny. In this particular project, this aspect was and has been very important as there has been a history of lack of good will, corruption and negativity while at the same time, this project has been earmarked as the pilot project, hence there is pressure emanating from all corners for its success especially in terms of community participation. This project is expected to achieve much more and go further than all the other projects put together especially in terms of sustainability, as there is glaring evidence from the before implemented projects that a lack of participation ensures the lack of resilience of the projects to withstand both internal and external shocks.

Lessons learnt from other slum interventions noted that some implementation agencies lacked community mobilization skills²⁵² or just ignored the community they were supposed to work with, treating them as passive subjects of the intervention; needless to say their intended objectives were never achieved as the community really never owned the project. The implementers of this project thus needed to ensure that the community bought into the idea and ‘owned’ it. If they owned it, then it would be easy to participate in the project and create time to run it; normally the community members are busy trying to erk out a living and as such it takes a gargantuan amount of effort to convince them to participate in a development endeavour; though

²⁵² UN-HABITAT (2014), K-WATSAN; Progress and Promise: Innovations in Slum Upgrading, Post Project Intervention Assessment Report. Nairobi

the endeavour must be compelling enough to take possession of their wills and must be seen to make an ‘immediate impact’ in their lives.

The model that has been used in this particular project is one that underlines transparency and accountability by ensuring that the community is the main doer in (and of) the governance regime with a self-introspecting accountability mechanism. We notice that there are many legal systems that are at play in the managing of these resources and they all must fit in together as an embedded whole. The community subscribes to the state law; the state is the provider of the water and as such they have to pay the water they have received, otherwise there are sanctions involved; they also have the laws made by themselves to ensure smooth running of the facilities – these laws have both rewards and sanctions and interestingly enough these laws have been borrowed from the religions that they subscribe to e.g. in terms of honesty , borrowing and lending, in fact there is at the background the idea of religious law, they have also been borrowed from the ‘village taboos’ and ways of doing things. Thus, a conglomeration of semiautonomous laws is experienced here playing in an independent field²⁵³ with strict adhererants following them as closely as possible.

Community participation is a form of distributed governance in which the state vests its trust on the community to steer and manage themselves in the right direction towards a desired end. It is an expression of state reliance on informal authority for governance. Distributed governance is a new term for discussing a combination of formal and informal institutions. Institutions interpreted to include formal institutions which are codified and legally accepted and the informal are traditionally, locally agreed and non-codified.²⁵⁴.

²⁵³ Moore, Sally Falk (1973), 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' [719] 7 *Law & Society Review*

²⁵⁴ Kooiman (1993), *Effective Water governance, Modern Governance; New Government- society interactions*, Sage publications

Examining the role of distributed governance transcends the ‘sterile private vs. public debate’ and opens up discussion of effective governance, which has the following characteristics: open and transparent; inclusive and communicative; coherent and integrative; equitable and ethical; accountable; efficiency; responsive and sustainable. Thus in managing the seven nodes, the structure of governance is being scrutinised under the lens of the above mentioned characteristics of distributed governance. In Soweto East village, the seven sanitation facilities/nodes are being managed independently of each other. Each is an entity of its own, almost running as a business. The reason for this, is to ensure that each of the residents of the village takes an active role in managing their ‘tiny’ bit of fortune.

4.3 Nature of Soweto East informal law water management system

4.3.1 Definition of informal law system

Informal laws which are commonly referred to as customary law relates to norms and institutions that claim their authority from contemporary to traditional culture, customs or religious beliefs, ideas and practices rather than from the political authority of the state. A study of African customary law systems in the context of Kenya for instance, indicates that though some of the norms demonstrate the features of antiquity and immemorial usage, many others reflect the dynamics of an evolving societal community.²⁵⁵ In the informal settlements the society is always in a constant state of motion, evolving by the day, thus creating context specific systems rich in variations which are not frozen in time but rather adapt to changes in the social, economic and environmental circumstances.

²⁵⁵ Shadle, B.L. (1999), Changing Traditions to Meet Current Altering Conditions': Customary Law, African Courts and the Rejection of Codification in Kenya, 1930-60 . *The Journal of African History* 411-431.

The International Council on Human Rights Policy goes on further to define them as:

*[N]orms and institutions that tend to claim to draw their moral authority from contemporary to traditional culture or customs, or religious beliefs, ideas and practices, rather than from the political authority of the state. We use 'legal' to acknowledge the fact that these norms are often viewed as having the force of law by those subject to them.*²⁵⁶

The terms ‘customary’, ‘custom’, ‘community-based’, ‘informal’ and ‘local’ all of which have similar connotations are often incorporated into this more dynamic notion of customary law systems. In this context, customary law or custom law is thus defined as a reality that emerges and evolves from social practices of a community and which the community eventually accepts as obligatory.²⁵⁷ It is a ‘living law’, one that is adaptable, evolving and innovative.²⁵⁸ It consists of the ‘values, principles and norms that members of a cultural community accept as establishing standards for appropriate conduct, and the practices and processes that give effect to community values.’²⁵⁹

Thus in this thesis the informal system for governing the sanitation facilities, which is locally inspired can be defined as the set of obligatory norms and institutions developed and enforced by the community in contrast with the existing statutory governance arrangements. It is important to note that some of these norms and institutions could have been linked to the past experiences

²⁵⁶ International Council on Human Rights Policy (2009), *When Legal Orders Overlap: Human Rights, State and Non-state Law*.

²⁵⁷ Bennett, T. (2006), ‘Comparative Law and African Customary Law’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*

²⁵⁸ Menski, W. (2006), *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*

²⁵⁹ New Zealand Law Commission (2006), *Converging Currents. Custom and Human Rights in the Pacific*

they have had, but their subsequent evolution is influenced by a myriad of external factors. The ‘sets of rules, established through the process of socialization, that enable members [...] to distinguish acceptable from unacceptable behaviour’ are often binding, meaning that these can be constituted in the system of emergent laws.²⁶⁰

Customary law plays an important role in water management in many countries especially at the community level where certain aspects of water resource management fall outside the ambit of state law and agencies.²⁶¹ In the developing world, greater ambits of water resource governance fall outside the statutory legal systems, particularly in rural areas and informal urban and peri-urban settlements, where customary law provides a substitute.²⁶² The governance of water resources by the local community in these countries is thus a self-help mechanism to compensate for the failure or incapacity of the state to implement the existing statutory legal system for water governance.²⁶³ In many informal settlements we find that the community runs the water resource systems as opposed to the governments even though the government has enacted a water law²⁶⁴ which clearly articulates the responsibilities of each sector of the society in managing the water resources available in the country.

²⁶⁰ Bilal, A. et al (2003), Customary Laws Governing Natural Resource Management in the Northern Areas

²⁶¹ Vapnek, J. et al (2009), Law for Water Management: A Guide to Concepts and Effective Approaches

²⁶² Shah , T. (2008), Issues in Reforming Informal Water Economies of Low-Income Countries: Examples from India and Elsewhere in John Butterworth Mark Giordano Barbara Van Koppen (ed), Community-based Water Law and Water Resource Management Reform in Developing Countries

²⁶³ Mumma, A. (2011), 'The Role of Local Communities in Environmental and Natural Resource Management: The Case of Kenya' in LeRoy, P. et al (eds), Compliance and Enforcement in Environmental Law. Toward More Effective Implementation.

²⁶⁴ Kenya, Republic of (2002), The Water Act 2002. Nairobi, Government Printer.

4.3.2 Unpackaging Soweto East informal law system

Though residents of Soweto East do not have a common ancestry, they do have a common unification point which is, they all live in the ghetto. As such, they do have their own traditions developed over time, a culture and ways of doing things. These modes of being have developed and concretized over time to form the institution called ‘desturi ya Kijiji.’ Every dweller subscribes to ‘desturi ya kijiji’ though it does not claim its authority from the political authority of the state. Most of the participants interviewed during the Field Survey, frequently spoke of ‘desturi ya Kijiji’ referring to the law governing the K-WATSAN blocks and community life in general. ‘Desturi ya kijiji’ is a Swahili term which when translated means the ‘Habit of the village.’ This is a literal translation which does not refer to the word ‘habit’ in terms of daily practices but the laws and rules that govern their daily interactions. These are the practices which the residents adhere to, to ensure smooth transactions in their everyday life; and any new comer to the settlement will necessarily be initiated into them to better adopt into the society. An interview with the area Chief who is an administrative officer appointed by the government also confirmed this.²⁶⁵ He explained that most aspects of life in the community, are governed by their informal normative and institutional structures. He said:

‘Many of the cases I receive here are cases of theft, either someone stole money or did not pay a debt that he had promised to pay within a specific time. I do not send them to the court, but I deal with them according to our established customs e.g. I send my men to collect some property from the offender’s house and confiscate it until the time he is able to honour

²⁶⁵ Interview with Patrick Adiri, Chief of Laini Saba Location

the debt. Long time ago the people used to lynch them, but those days are long gone. Same to the running of these water systems, we just agree and met out punishment and rewards according to our understanding.'

There is no written record of the informal norms of Soweto East, though everyone seems to be aware of what appropriate behaviour is and what is not. These norms have been passed orally from one family to the next and from one new entrant to the next. As per the above excerpt from the chief and discussion with the representatives of the elders and opinion leaders who are the custodians of the informal norms reaffirmed that all housing and water resources in the village are subject to these undisputable unwritten codes. They are understood by the followers and date back to the time of the inception of the village, though no one can attest to the exact day. Most of the rules evolve especially when need arises and some crises need to be resolved. This is usually the best opportunity which permits the elders to conglomerate for a discussion on the best solution, which is later promulgated as law and added to the corpus of the unwritten obligatory code.

For example the informal norms governing the sanitation facilities are composed of rules on allocation of water, management of the sanitation facility and preservation of water quantity and quality. Examples of rules on allocation include the application of different rules for water during periods of scarcity. While there are no restrictions on how frequently one can use the toilet facilities, there are restrictions on when to flush during periods of water scarcity. This restriction ensures that one flushes the toilet only when it is absolutely necessary so as to conserve the water, to enable it stretch as much as possible, for many of the dwellers to access it and limit the movement to other villages in search of the precious commodity.

The informal system also includes rules on quality of the water. An example of a rule relating to water quality is the general prohibition against destroying any spaghetti connections or littering on top of pipes as this may introduce pathogens to the water flowing through, which may compromise the water purity. More rules are discussed in the proceeding sections.

Plate 4. 1: Spaghetti connections in the village with litter during mid-project cycle



Source: Field Survey

The community members description of the rules, suggest that they are closely linked with ideas of respect and honour among each other.

4.4 Features of Soweto East informal law system for water resource management

As stated earlier, each system that is governed by local institutions evolves over time, according to the specific needs of the society. These characteristics that make it unique usually depend on the context and environmental expectations. The following section outlines the three major features that are omnipresent in this particular system, they are; user developed, participatory and localism.

4.4.1 User –developed

Due to the experience from the past interventions in the slum, this particular system has been described as a bottom-up uprising against the top-down tyranny, which means that the community who are users of the system were the main initiators of the working of the system. One of the SEC members Mr Francis attested to the fact that;

‘The development partners came to us, to find out what we wanted and not to tell us what our needs were. So we told them we wanted toilets and water. It was us who decided our fate. That is why you can see the community elected us to represent them and they are happy with the sanitation blocks.’

I wanted to find out to what extent the system is user developed and asked the respondents how they would define this home grown nature. They actually told me that the system is home grown and relies on users to manage, monitor compliance and enforce the rules of the system. Consequently, it contains provisions requiring community service for the maintenance of the water resource and other institutional arrangements for resource management.²⁶⁶ For example

²⁶⁶ Bilaa, A. et al,(2003), Customary Laws Governing Natural Resource Management in the Northern Areas

one of the respondents in the survey mentioned that whenever there is any repair work to be done on the facility; the community members always volunteer to do it as opposed to hiring labour from outside. If labour is hired from outside, it means that there is a cost implication which will put a dent into their savings, normally the dent is not appreciated. As a researcher in the field I also sought to find out how this user-development took place and its extent of inclusivity; most of the respondents told me they were consulted on issues related to the running, inception and management of the facilities. See tables 4.1, 4.2 and 4.3

Due to its home grown nature the Soweto East residents were involved in the identification of their needs as they were the main project beneficiaries. This was done during KENSUP baseline survey where the residents were given an opportunity to identify and prioritize their needs whereby water and sanitation enhancement emerged as the most pressing challenge in the village, hence the naissance of K-WATSAN project. According to the UN-HABITAT 2009 progress report²⁶⁷: “social mobilization, although a grueling process has been instrumental in the smooth running of operations in Soweto East. A lot of time was spent in mobilizing and informing residents about their roles in the project, before actual implementation begun. This is not a one-off activity as had been envisaged, but a continuous process throughout the project cycle.” From the field surveys it was found out that about half of the respondents (44.8%) heard about the project through meetings, local cooperatives, seminars organized by the implementing partners, speakers and community opinion leaders and an equal number from passers-by (Table 4.1).

²⁶⁷ UN-HABITAT (2009), Progress Reports on K-WATSAN, Nairobi

Table 4. 1: Mode of awareness of the project

Awareness mode	%
Meetings, cooperatives, seminars, speakers and opinion leaders	44.8
Family members	10.3
Passers-by and residents	44.8
Total	100.0

Source: Field Survey

The community has continuously been consulted on several issues through meetings with the SEC members (Table 4.2).

Table 4. 2: If consulted about the project

Consulted:	N	%
Before the project started	21	37.5
During the project	22	39.3
At the time of survey	23	41.1

Source: Field Survey

Literature indicates that the social enterprise approach was used. This is an enterprise that is owned by those who work in it and/or reside in a given locality, governed by registered social as well as commercial aims and objectives and run co-operatively.²⁶⁸ To determine what extent this

²⁶⁸ UN-HABITAT (2009), Progress Reports on K-WATSAN, Nairobi

was furthered, the respondents were asked if they were consulted during the running and facility management process, two-thirds of the respondents (62%) revealed (Table 4.3) that indeed they were consulted and felt that they were more likely to adopt the rules that came from the deliberations as evidenced by communities which adopt effective rules in macro-regimes that facilitate their efforts than in regimes that ignore their resource problems entirely.

Table 4. 3: Consultation issues

Issues consulted about	(%)
Running and facility management	61.9
Community mobilization	19.0
Hygiene issues	14.3
Location of facilities	4.8
Total	100.0

Source: Field Survey

As for the norms that were and are used in the governance system, the community was party to developing them. The laws have not been developed and imposed from without but rather they have been founded on an internal criteria and process.²⁶⁹ Omondi a SEC member mentioned that;

‘The rules of this system are developed by the ones who are using them. Us as SEC we do not go to tell them what to do, they have their own facilities management group and they can decide what they want to do.

²⁶⁹ Glenn, P. (2007), *Legal Traditions of the World: Sustainable Diversity In Law*

For us we just want to know that the facilities are running in the proper way. They have water all the time, the money is being taken to the cooperative society and no one is fighting.'

I later on came to discover that the rules are not as simplistic as they sound or look.²⁷⁰ There is a complex or sophisticated mechanism of meting out justice. For example if one fails to participate in the clean-up organised monthly (I discovered this was the ideal envisioned but does not happen), he would be beaten up by 'unknown' people on his way home from work. The process of developing the rules involves a lot of communication among the users as they all have a sense of ownership of the project which elicits more cooperation than if the rules were imposed on them. They feel that they have sufficient interest to warrant their voice being heard and as such they contribute to the conversations revolving around the creation of rules and their implementation. Most of the respondents of the survey mentioned the collaborative nature in which they were engaged in to develop the rules. Mama Stella contributed to the conversation by adding that;

'Mimi huchangia kusema nataka nini ifanywe, wakati wa kupeana maji kwanza, hiyo ndio wakati mzuri kwa sababu kama kuna kiangazi, unaambia watu wachote ndoo moja moja na wale wa watoto wadogo, mbili mbili. Alafu tena kukiwa na kikao, ingawaje sisi wanawake hatupendi kuenda huko sana, ni wanaume ndio wako mbele sana. Lakini unapata hawa madotcom wakienda, hao hawana kazi ya kufanya. Sasa huko ndio kuna ile mkutano kabisa, unasema maoni yako kwanini huoni ile sharia haifai na ile sharia ingine inafaaa.'

²⁷⁰ Hodgson, S. and FAO (2006) , Modern Water Rights: Theory and Practice

'I contribute to the conversation about how I would like the facility to be run, this is especially in times of water scarcity, I can regulate how people should fetch water. There are also those monthly meetings which it is mostly men who participate in them, though these young ones do too. In these meetings, each one voices their opinions as to why which rules should be upheld and which ones should be done away with.'

They indicated that the law on governing these facilities was developed by them as they were the first users of this kind of the project- they are actually the guinea pigs. A discussion with the facilities management team explained that the rules have been changing due to the changing nature of the community and lessons learnt as they use the facilities. The changing rules are determined through a consultative process in which the local opinion leaders together with the members of the facilities management team discuss and agree on the proposed new rules. Each sanitation facility has a member who represents it in the facilities management committee. As such they are the community representatives in the web of governance. They are responsible for preserving the integrity of the facility. They are also the ones charged with the responsibility of meting out sanctions which range from peer remonstrations to monetary fines. The consultative meetings in which rules are determined are commonly held monthly. Apart from these meetings the community members explained that most community affairs are determined through a consultative process on an ad hoc basis. While the chief is often invited to these meetings he is not considered as an elder, his role is ex-officio.

4.4.2 Participative nature

Like many systems and development initiatives in informal settlements, this project called for a participative approach. The participative approach is a way of working in which more than one actor is involved in the development of the goal, normally through partnerships. Partnerships can be defined as collaborative arrangements in which actors from two or more spheres of society (society, market and civil society) are involved in a non-hierarchical process through which these

actors strive for a sustainability role.²⁷¹ The chief of the area talked of this partnership as one of the greatest assets of the project as everyone is given a chance to put forward their best ideas in terms of innovations, i.e. the government, the NGOs, community and other development partners, he emphasised on collaborations in which all partners are given a valued chance to contribute to the development. Indeed most of the World Bank funding nowadays require that there is a form of partnership established so as to harness potential at all costs.²⁷² In effect, the idea of partnership has gained significant political influence in recent years on a global level and within national and localized contexts as it offered a third way and more efficient alternative to the free market and strong state.²⁷³

Nancy from Maji na Ufanisi mentioned that

We had to form multi-stakeholder partnerships to enhance the strength of this project, so that the private enterprises which come here can help the community earn a living, our side we can bring in the technical aspect of plumbing, while the government can bring in the policy enforcement, so we work as a team of equal partners.

²⁷¹ Glasbergen, P.(2007), ‘Setting the Scene; The Partnership Paradigm in the Making’ in Glasbergen, P., Biernmann, F. & Mol A.P.J. eds., Partnerships, Governance and Sustainable Development; Reflections on Theory and Practice, Cheltenham, Edward Elgar

²⁷² World Bank (2003), Making Services Work for Poor People: World Development Report, World Bank, Washington, DC and Oxford University Press, Oxford

²⁷³ Murphy, D.F. & Coleman, G. (2000), ‘Thinking Partners: Business, NGOs and the Partnership Concept’ in Bendell, J. ed., Terms for Endearment; Business, NGOs and Sustainable Development, Sheffield: Greenleaf Publishing Limited & McDonald, I. (2005), Theorising Partnerships: Governance, Communicative Action and Sport Policy, *Journal of Social Policy* 34

This project is characterised by Public, Private Partnerships (PPPs) who's rational is that the private sector is intrinsically more innovative and efficient than the public sector, so by working through PPPs these skills could be harnessed without the profit motive gaining ascendancy over the public.²⁷⁴ Jecinta from the Ministry side, contradicts this argument, saying that it is not the private sector which is efficient, it is just that they have been given a more enabling chance to work with the community more than before, as the government does not have the mechanism for going to the grassroots for each particular project but can facilitate.

Plate 4. 2: Consultative community focus group discussion



Source: Field Survey

Multi-stakeholder partnerships promised many advantages, by establishing a partnership with people affected by an initiative, socially acceptable solutions were more likely to be identified²⁷⁵

²⁷⁴ Stiles, J. & Williams, P. (2003), The Impact of Intent on Public/Private Sector Partnership, International Conference on Global Business and Economic Development

²⁷⁵ Mitchell, B. (2005), Participatory Partnerships: Engaging and Empowering to Enhance Environmental Management and Quality of Life? Social Indicators Research 71, 123-144

and a new sense of ownership of both problems and solutions, which leads to more effective and sustained implementation, in this project the partnerships were signed in the official offices where bureaucracy is rife and were ratified on ground by the community being involved in all the stages of implementation. For example during the planning stage, the main partners were the community, Maji na Ufanisi, UN-HABITAT and the government. Their main aim was to foster mutual agreements and cooperation in which the sanitation facilities could be constructed with ease. Nancy from Maji na Ufanisi continues to attest that;

‘The planning team consults widely with different stakeholders. They identify the areas to construct project facilities by both mutual cooperation and contractual agreements. The planning team then deals with the design, planning and scheduling of the projects [...] Having partners working together has reduced design-construction conflicts. For example, the planning for the relocation of houses and electricity poles to pave way for an access road was done by this team – in consultation with the relevant arms of the government and the community.’

When the government agrees to engage in these collaborations it lends credence and legitimacy to its policies and their effectiveness as the community sees them as being responsive to their needs²⁷⁶ which has always been in contrast to what they have been led to believe in the many years of their existence in this village where they have had to contend with second class citizen position and treatment implying no rights to the city goods as their rich counterparts living in other suburbs.

²⁷⁶ Brewer, B. & Hayllar, M.R.(2005), Building Public Trust Through Public-Private Partnerships, *International Review of Administrative Sciences* 71(3), 475-492

Partnership fosters a more holistic way of thinking and encourages partners to work collaboratively putting in their different strengths²⁷⁷ by sharing their best practices. In fact it has been suggested that institutional reform of partner's organizations might be a more important product of partnership than any other outcome.²⁷⁸ For example in this particular project one of the community members remarked that the change in attitude was very marked as soon as they started working together. There has been a solidarity wall in the community and more people are eager to participate in development projects. Other scholars argue that there is always an inherent assumed benefit of participatory approaches which is that individuals and organizations learn.²⁷⁹ In this sense partnerships are transformative.²⁸⁰ For instance, for this partnership, the community needed to provide space for the facilities to be constructed but they did not have the technical strength to do the construction. As such, one of the partners, the UN-HABITAT provided tractors (see Plate 4.3) to clear paths which could be used for easier movement of goods and people to the sanitation facility while the community identified areas where space could be provided, thus, there was mutual contribution to the aims of the project.

²⁷⁷ Haque, M.S. (2004), Governance Based on Partnership with NGOs: Implications for Development and Empowerment in Rural Bangladesh, *International Review of Administrative Sciences* 70 (2), 271-290; Lasker, R.D et al, (2001), Partnership Synergy: A Practical Framework for Studying and Strengthening the Collaborative Advantage. *The Milbank Quarterly* 79 (2) 179-205

²⁷⁸ Tennyson, R. (2003), *The Partnering Tool book*, The International Business Leaders Forum

²⁷⁹ Mitchell, B. (2005), Participatory Partnerships: Engaging and Empowering to Enhance Environmental Management and Quality of Life? *Social Indicators Research* 71, 123-144

²⁸⁰ Lasker, R.D et al, (2001), Partnership Synergy: A Practical Framework for Studying and Strengthening the Collaborative Advantage *The Milbank Quarterly* 79 (2) 179-205

Plate 4. 3: Tractor paving way for the spine road



Source: Maji na Ufanisi

4.4.2.1 The test of partnership

As seen from the above discussion, the partners have to be willing to contribute their strengths for the viability of the project. In Soweto East, the beginnings were very grueling due to the very many interests at stake, for example, the structure owners did not want to part with their structures, as these structures were their source of income, yet somebody needed to provide space for the construction to take place. See Plate 4.5 (sign in the slum). The structure owners were adamant and took the K-WATSAN project to court to halt the impending demolitions, but unfortunately they lost the case.

‘The structure owners wanted compensation from the government, if we were going to demolish their houses, they said that this was where they had been collecting rent for their families for many years, so it was unfair

that us in K-WATSAN we can demolish their structures to pave way for the road or the sanitation facilities. When we hit a deadlock, they went to court to block the demolitions. But they did not succeed because the court told them, that they had been occupying the land illegally, so they should pay to the government the land rates that they owe the government and then the government will compensate them. When the figure was calculated, it was discovered that the structure owners owed the government much more than what the government would pay them in terms of compensation. So there was no court case!'

These were words from Mr. Francis of SEC, he continues to say that they experienced a lot of community resistance, due to the culture of mistrust already ingrained in them, so a lot of community mobilization and awareness was done to negotiate for space with minimum displacement as possible. One of the residents told me that for those whose structures were removed to pave way for the construction of the spine road (including drainage and walkway), they were relocated to other areas within the settlement. In addition, the business structures that were demolished were rebuilt along the walkway to enable the owners maintain the business advantage they had before the construction.

Plate 4. 4: Businesses relocated to the spine road to maintain their competitive advantage.



Source: Field Survey

The K-WATSAN project counted on the residents' goodwill for them to relocate to other areas, since this meant uprooting not only a structure but a whole micro-culture which is more tasking and unnerving as one of the residents put it. It involved making new friends and building social networks which take time to build and forge. As a gesture of goodwill an invisible solidarity wall has been put up that says: 'this was my land that I donated so I own the facility'. This sense of empowerment is an advantage claimed by multi-stakeholder partnerships as it has the potential for emancipating the people they sought to help who were traditionally excluded from

developmental processes.²⁸¹ It has been reported that the participatory approach is founded on the assumption that those who have been excluded should be brought in to the developmental process. It represents the people in the bad, non-participatory past as passive objects of programmes and projects that were designed and implemented from outside.²⁸² The project also sought to have some capacity building; this has been done by empowering the youth in diverse knowledge spheres e.g. construction of blocks, computer skills, business skills etc. as has already been mentioned in chapter four; the youth empowerment program was very vital in ensuring that capacity is enhanced and all partners bring to the table their potentials. Rowe & Devanney²⁸³ claimed that partnerships which engaged local communities could bring forth the benefits of local knowledge and experience and develop social networks and capacity.

²⁸¹ Haque, M.S. (2004), Governance Based on Partnership with NGOs: Implications for Development and Empowerment in Rural Bangladesh, *International Review of Administrative Sciences* 70 (2), 271-290

²⁸² White, S.C. (2002), Depoliticising Development: The Uses and Abuses of Participation in Eade, D. ed., *Development, NGOs and Civil Society*, Oxford: Oxfam

²⁸³ Rowe, M. & Devanney, C. (2003), Partnerships and the Governance of Regeneration, *Critical Social Policy* 23 (3), 375-397

Plate 4. 5: Blocks made by the Soweto Youth Group



Source: Field Survey

This social networks and local knowledge were further enhanced by the provision of labour by the community. This labour was provided during the construction phase and up to the implementation phase. Due to their availability during most of the day and “honesty”, women contributed to slightly more than 75% of the labour.²⁸⁴ They provided labour in making the low-cost bricks, in record keeping and transportation of materials from one point to the other. The

²⁸⁴ Personal communication, SEC Treasurer

latter had to be done “by hand” due to the inaccessibility of the settlement. Although the process was slow and tedious, it cultivated a sense of ownership. The labour used to be rotated on a weekly basis to ensure equity and that most of the people in the community benefit. At the moment, the labour is rotated on a monthly basis, with each of the attendants at the sanitation facility earning a salary.

4.4.2.2 Pitfalls of partnerships

Although partnerships are characterized by horizontal as opposed to hierarchical coordination and accountability and as equality in decision making as opposed to domination by one or more partners sometimes it has some pitfalls.

Nyaguthie a community member indicated that

‘Hii mradi imekawia sana, kama ingekuwa serikali inafanya pekee yao, tungekuwa tushapata maji na tumeingia kwa hizo manyumba, lakini sio kila mtu angeingia ,kuna wengine wenye ni fisi. Lakini sasa unaona, watu wa UN wanakuja kutuongelesha, watu wa Kanjo wanakuja, watu wa Maji ndio hao pia, hii situtamaliza watoto wetu wakisha zaa.’

Loosely translated as;

‘This project has taken very long to be accomplished, if it was the government solely responsible, then we would have already gotten the water and have settled in the new houses, even though there would have been a bit of corruption (hyenas). But now there are all these consultations with the different stakeholders, the UN, the County Council & Maji na Ufanisi, this project will be completed after our children’s progeny.’

She was actually complaining of the long time that decisions take to be made. In partnerships it is important to coordinate as well as make decisions that are mutually benefiting to all the members. Mutual participation implies more than dialogue, coordination, alliance, coalition, cooperation or consultation, it affirms the need for mutual decision making.²⁸⁵ But this mutual decision making can be a hindrance as some parties may not have the goals very clear, which lends to studying of the individual interests, which necessarily take a lot of time.

Competition between agencies is another pitfall in partnerships, ideally partnerships are established to realize objectives that cannot be met by a single actor working alone i.e. the establishment of a collaborative advantage,²⁸⁶ which ensures that the sum is greater than its parts. This did not always happen in Soweto East as noted by Harrison, who mentioned that sometimes the government did not consult them- the UN-HABITAT team, which resulted in duplication of activities. The government wanted to shine and look better in the eyes of the community, so they kept on attributing all the works to themselves and sometimes hindering the work of the development partners which led to lack of an identity which showed a communicable purpose to the outside world.²⁸⁷

²⁸⁵ Robinson, D. (1999), Partnerships- Practice and Theory in Robinson, D. ed., Partnership- from Practice to Theory, Wellington; Institute of Policy Studies

²⁸⁶ Mitchell, B. (2005), Participatory Partnerships: Engaging and Empowering to Enhance Environmental Management and Quality of Life? *Social Indicators Research* 71, 123-144

²⁸⁷ Austin, J. (2007), Sustainability Through Partnering: Conceptualising Relationships Between Business and NGOs in Glasbergen, P., et al (eds), Partnerships, Governance and Sustainable Development; Reflections on Theory and Practice, Cheltenham, Edward Elgar

4.4.3 Localism

Customary law systems tend to operate within a relatively small and well defined boundary.²⁸⁸ Due to their origin and evolution, the constitutive norms of a customary law system often embody a wealth of experience and are particularly suited to the local situation, livelihoods, cultures and social mores of the people.²⁸⁹

In Soweto East the rules that have been developed there tend to only apply to this particular jurisdiction and not in another, even as close as Lindi, the neighbouring village; this is because they are very territorial and have been adopted to the needs and temperaments of the people who live there. These dwellers appreciate the importance of the shared facilities, thus they have developed a normative system and an institutional governance framework that deters any unsustainable behaviour, as they know these behaviours have a direct and immediate impact to their livelihoods. These facilities are viewed as a precious resource which must be protected by any means possible. They have a sense of ownership of the resource instilled in them as they participated in its development and maturation, as seen in the preceding section.

'Hata ufanye nini, hapa sitoki, nimetoa jasho yangu hapa, lazima tuilinde hii maji yetu, watu wa Lindi wakitaka mambo yao , wafanye, sisi hapa tuko na desturi yetu, na sio lazima wa Lindi wafuate desturi yetu.'

Waitherero, a middle aged man, when asked why he feels that these facilities would survive the test of time, his reply was laden with self-accomplished pride;

²⁸⁸ Ostrom, E.(1992) , Crafting Institutions for Self-governing Irrigation Systems

²⁸⁹ Vapnek, J. et al (2009), Law for Water Management: A Guide to Concepts and Effective Approaches; 75.

'I have sweated for this facility and as such I have to protect it, this is our water, which is governed by our own local rules, if our neighbours in Lindi village want to follow suit let them follow, but we shall not force them to follow our way of doing things, this is particular to us.'

This conviction indicates that the dwellers are aware of the highly localised nature of their systems which have been born out a deep seated nature of avoiding any negative externalities that they have had in the past. It is more of a psychological mode of reaction which indicates that humans sensing negative effects of unsustainable behaviour change their behaviour to produce desired positive results; the deep- seated evolutionary cognitive and emotional responses are usually awakened. It is the power of proximity principal.²⁹⁰ Which talks of human beings not being inherently sustainable, but when faced with a fight or flight choice, they choose to change their behaviour to obtain a better living standard. Also humans who live in close communities have the capacity to resolve problems of unsustainable use of shared resources through self-developed mechanisms of order without the need for formal legal rules.²⁹¹ For instance when asked how they deal with a facilities manager who wastes resources, i.e. who does not conserve the water and lets the tap run? This question arose out of an observation point, when I noticed that there were some managers who did not turn off the tap immediately after giving someone water, which led to undue wastage of water. Some respondents from two different sanitation facilities told me that they normally approximate a figure in terms of monetary value e.g. KES, 500 and deduct it out of his/her salary. It happens at a very local level but the lesson is very clear

²⁹⁰ Benjamin J. Richardson, 'A Damp Squib: Environmental Law from a Human Evolutionary Perspective' (2011) *SSRN eLibrary*.

²⁹¹ Robert. C. E. (1991), *Order Without Law: How Neighbors Settle Disputes*. Cambridge , Harvard University Press

and learnt in the hard way, as any coin that one can lay hold of in the slum matters, so KES 500 less at the end of the month is a big blow to the people.

It is interesting to recall at this point that, the implementing agencies had provision of houses as the priority but the community vehemently rejected their proposal and instead insisted on water and sanitation being a priority need. One of the design principles that Ostrom²⁹² postulates is the ‘right to organize’; these are the rights and legitimacy of users to devise their own institutions. If this is recognized by outsiders then the resource shall be managed well. It is important to ensure that the commons have their own power to elect those whom they wish to represent them; those whom they wish to see as the ones who are in charge of their institutions. Thus the informal institution made formal according to the commons is the surer way of lending longevity to the project. These rights to organize themselves can only be very context specific, which is a characteristic of the localised nature of this particular system.

4.5 Multiple layers of rules governing the sanitation facilities

As mentioned earlier and following the discussion above, this system has been functioning with multiple layers of rules, each superimposing the other to make a unique system. This section outlines the informal norms present and later on goes on to summarise the statutory regulatory framework present in the facilities.

4.5.1 Informal norms in the sanitation facilities

The prediction that resource users are led inevitably to destroy common property resources is based on a model that assumes all individuals are selfish, norm-free, and maximizers of short-run results. Individuals can actually act for the benefit of others if they see what is there for them to gain and thus modify the behaviour to suit the interests of the group and as such they can develop

²⁹² Ostrom, E. (1990), *Governing the Commons: The Evolution of Institutions for Collective Action*

norms that facilitate the smooth running of the institution.²⁹³ To establish exactly what form of governance is in place in this sanitation facilities it was important to ask the question; “what informal rules or norms do you subscribe to here?” And not only “what are the rules?”, but also “how do you implement these rules here?” These were very interesting questions as they led to an array of diverse answers. The people managing the facilities had their own rules, while the user groups had also their own different set of rules, hence the compromise or middle ground was the uniting thread; though it was very clear that the norms even though not stated needed to be obeyed by all to the letter. The disparities in the norms depended on which side of the coin one was. If for instance it was one’s turn to manage the facilities, he or she was stricter and had rules according to his or her temperament while this changed if the same person was on the user side. The management of the facilities is done on a rotational basis, i.e. for each calendar month someone is chosen to manage the facility and steps down the following month for someone else to manage on behalf of the community. This arrangement was put in place to ensure equity and fair play in this common resource that is being shared by the community.

Whether norms to cope with common property resources dilemmas evolve without extensive self-conscious design, depends on the relative proportion of behavioural types in a particular setting. Reciprocal cooperation can be established, sustain itself, and even grow if the proportion of those who always act in a narrow, self-interested manner is initially not too high. When interactions enable those who use reciprocity to gain a reputation for trustworthiness, others will be willing to cooperate with them to overcome common property resources dilemmas, which leads to increased gains for themselves and their offspring. Thus, groups of people who can

²⁹³ Eldridge, C. (2013), Participatory Methods, Behaviour-Influence and Development – A Discussion Paper

identify one another are more likely than groups of strangers to draw on trust, reciprocity, and reputation to develop norms that limit use.²⁹⁴

Informal norms are a way in which community device to ensure that its adherents feel obliged to follow the proper code of conduct, or what is deemed as proper and appropriate behaviour. They are ways that protect the community from the internal and external shocks that would otherwise promote a quick degeneration of a system or resource that would otherwise be of great magnitude and importance to the people.

The facilities management team works on the principle of trust allowing each node to run on its own devices; each of the nodes has been left independent with the responsibility for its own failure or success. In other words they are accountable to the people or users of the system.²⁹⁵ They know that a failure on their part means that the sanitation facility will not be of benefit for them at the moment and neither for their posterity.

The seven nodes have as a backdrop a constitution laid down by the facilities management team, but each of them implements the constitution as they see it fit. During the field survey it was noted that six of the facilities had similar regulations while one had modified the rules. When quizzed why one had modified the rules, they were quick to point out that the rules were adopted to suit the public that one dealt with. In fact I conjectured that the physical location of the facility determined the rules of the game. I noted that this facility with strict sanctions was located closer to Laini saba kwa reli; Rumours go round that Laini Saba which is one of the villages of Kibera, is where the real Kibera is; in other words it means the hard core people who have embraced the

²⁹⁴ Ostrom et al (1999), *Revisiting the Commons: Local Lessons, Global Challenges*

²⁹⁵ Kooiman, J. (1993), *Effective Water governance, Modern Governance; New Government- society interactions*, Sage publications

ghetto life live in Laini Saba, with most of them having a hard line stance in terms of attitude. They want to appropriate everything for themselves and get anything at zero cost, so if they can get water and go to the toilet free of charge, then why not? Remember the toilet is clean and not the normal flying toilet²⁹⁶- an added advantage.

As mentioned above in the preceding section, the facilities' modus operandi was user developed and localised, they maintained their autonomy but from time to time shared the lessons and experiences learnt to ensure that they remained relevant. Some of the informal rules gleaned from the system were:

- a) The management of the facility is on a monthly rotational basis and upon completion of term, one cedes office voluntarily without trying to manipulate the other community members
- b) Monies collected during the day should be handed in to the 'collector' before the sun sets; in broad daylight to allow for transparency
- c) The manager should ensure the facility is clean at all times of the day
- d) The facilities remain non-operational only on the days when there is a lack of water flowing into the water storage tanks
- e) Payment of services should be done before one uses the facility
- f) Credit facility is only offered to those with good records of repayment
- g) If one has a stomach problem, then he or she is advised to inform management and seek a special rate, but this favour is not to be abused by benefiting from it daily

²⁹⁶ A way of toileting in which human waste is put in plastic bags and thrown 'anywhere', out of the user/owner's sight.

- h) Everyone should ensure that they leave the facility cleaner than they found it before their use
- i) Everyone is requested to comply with the above rules.

As for node seven; the one next to Laini Saba kwa reli; stringent measures have been put up to ensure its sustainability. For instance it is only members from defined households who utilize the facility and not anyone who passes around there. The reason is that most of the passers-by refuse to pay for the service. Secondly, the facility is usually manned by two people at the same time i.e. the manager and his assistant, this is in case of any eventuality or people who want to forcibly enter the facility, and thirdly the facility is padlocked.

I would be bold enough to talk about another set of rules that plays in this field; this is the ‘person to person rule.’ In the facilities, it was found out that the people respected each other and always corrected each other in case there was evidence of misconduct. For example if one woman had left the sink dirty, her friends or other women would come and tell her in private to be more careful and clean, they would encourage her to shun dirt. Another example would be when one has diarrhea; they would buy their own toilet paper and have free access to the toilets as long as he or she reciprocated the same favour to the one managing the facilities at that particular moment.

4.5.1.1 Implementation of the norms

4.5.1.1.1 Sanctions

Evolved norms, however, are not always sufficient to prevent overexploitation. Participants or external authorities must deliberately devise (and then monitor and enforce) rules that limit who can use a common property resources, specify how much and when that use will be allowed, create and finance formal monitoring arrangements and establish sanctions for non-

conformance.²⁹⁷ Sanctions are ways to deter people from bad behaviour or discourage a person from continuing to carry on the behaviour that is seen as not appropriate. As noted earlier, the community employs various forms of sanctions for those who do not follow the code of conduct laid down. Users who depend on a resource for a major portion of their livelihood, and who have some autonomy to make their own access [...] rules, are more likely than others to perceive benefits from their own restrictions, but they need to share an image of how the resource system operates and how their actions affect each other and the resource. Further, users must be interested in the sustainability of the particular resource so that expected joint benefits will outweigh current costs. If users have some initial trust in others to keep promises, low-cost methods of monitoring and sanctioning can be devised.²⁹⁸

Sanctions can take different forms which can be in the form of gossip, disapproving looks, verbal rebuke, conditional resource use or ostracization depending on the offense or gravity of the crime committed. In this particular project the following sanctions were observed;

- a) If the manager proves to be dishonest by consistently handing in less than the 'expected' amount of revenue at the end of the month, he/she is blacklisted and not given another opportunity to manage the facility on behalf of the community, the person is discriminated against during subsequent rounds until he proves remorseful (the latter part of the rule is yet to happen; no one has been given a second chance to prove their reliability)
- b) If the facility is not clean or one of the users does not adhere to the cleanliness code of conduct; the women gossip and ensure that the gossip inadvertently gets to the culprit, who in turn will have to change his or her behaviour as it touches on the emotional sphere of a person

²⁹⁷ Ostrom et al (1999), *Revisiting the Commons: Local Lessons, Global Challenges*

²⁹⁸ Ibid.

- c) If a person does not honour the credit facility given within a specified time, he or she is given restricted use and at worst he or she is ostracized from the community as this is a code of honour
- d) Some people also receive disapproving looks from the system users
- e) Others received verbal rebukes

4.5.1.1.2 Rewards

Even though norms are usually regarded as only enforcing conditions for meting out rule and order; sometimes these norms lend to the sphere of rewards. Not only punishing the ones who have not adhered to the code of conduct but also for recognizing and giving due diligence to the ones who have been masterful in the proper running of the system and have brought success to it. In this particular system to ensure that the system remains relevant and resourceful, rewards have been put across. These rewards are not explicitly mentioned but can be observed subtly when one is at the facilities. They are a means of promoting good behaviour among the users who share the sanitation facilities. Examples of these rewards are:

- a) Getting credit facilities for a longer period than the stipulated three days
- b) Getting no charge for the visitors who come to one's house when they use the facility
- c) Getting two jerricans of water at the price of one; that means an extra twenty litres to the household
- d) Getting to manage the facilities on a more frequent monthly rotation than the other members

The last reward is the best reward according to most of the members, because it gives one a higher social standing than the rest. It is an ego booster as one of the men put it- 'Inaonyesha ukubwa wako' translated to mean; 'It shows your might'. If one is tasked with managing the

facilities, they are deemed to be very honest, have good managerial skills and above all, they earn a salary of KES 6,000 which is a tidy sum.

4.5.1.1.3 My poo-pee, my future- the mind of an investor

In some of the villages in Kibera, there is a project called '*poo-pee*'; this project signifies the 'dollars' that this communities make out of a basic human need and practice, which is going to the toilet to produce human waste. This project translates the human waste into organic fertilizers used in farms and of course the farmers get better yields and pay the Kibera people. This solves two problems (i) the sewerage problem and (ii) the 'poverty' trap- it creates a source of livelihood for the residents.

Translating into the Soweto East residents; the residents are aware that for every coin they put into the usage of the toilet (*poo-pee*) or shower is actually a direct investment into their future. These people know that these monies collected by the manager of the facility for that month are usually put into a collective account so that they earn an interest for the benefit of all.

Societies which are invested in the well-being of each other for a greater good are far more successful in the pooling together of a resource than those that are not invested in each other. As the sage have put it wisely 'if you want to go faster, go alone; but if you want to go further go together!' As mentioned at the outset of this thesis that the project in which this water and sanitation intervention is nested is a project aimed at upgrading the lives of slum residents in Kenya and as such their standard of living and quality of life by providing them with better quality housing at an affordable cost. The water and sanitation component was used as an entry point to help the residents of the informal systems to buy into the idea of having newer and better houses built for them. These houses, even though they are of a higher and better quality than the previous ones of Soweto East residents, they come at a higher cost than the slum dwellers can

afford, which of course poses a problem. The problem being the “slum upgrading curse” or the resource curse.²⁹⁹ This curse comes about when the houses are present yet the ones intended to occupy them are not the ones occupying them but the richer middle class people who have more resources than their poor compatriots occupy the houses.

Cognizant of this fact and in a bid to prevent the realization of this curse; the residents of Soweto East organized themselves into smaller groups according to the nodes so that they could save money and procure investments that could help them afford the houses when they will be ready. These small groups are managed in the spirit and principle of the Chama. Each day of the month, the one who is in charge of managing the sanitation facility, gives the money collected to the “collector”, the collector is the treasurer of the group, who then banks the money the following day. At the onset of the program, the monies used to be banked on specific days for each of the different zones. Each zone had a specific day of the week in which it could do its banking but this changed recently as it was safer to keep minimum amounts of monies in the facilities. The collector keeps accurate records of the monies collected, so that at the end of the month he or she has records that can be verified by the whole community. This money that has been banked cannot be withdrawn by any member as it is an investment for their future. Mr. Shirima claimed that currently most of the nodes have monies amounting to almost two million Kenya Shillings.³⁰⁰

4.5.1.1.4 The Chama

The word ‘Chama’ which refers to these groups is a Swahili word which means ‘group’. ‘It has been pluralized as chamas.’ These groups are usually self-help groups ordained at helping the

²⁹⁹ Sachs, J. (2001), Natural Resources and Economic Development, The curse of natural resources, *European Economic Review* 45 ;827-838

³⁰⁰ K-WATSAN Chairman, Soweto East Zone D, interview on 7th May 2015

members have a better living and improve their quality of life. Even though there are also larger formal groups called cooperatives which operate around the same principle of helping their members in pooling resources together, they can be differentiated from the chama. The cooperatives are formal, larger, command a lot of resources and are mainly manned by men. The chama has been used to refer to informal groups where women meet regularly in groups to address the welfare needs of members. The groups are normally formed on the basis of women's own initiative, often engaging in a cross section of activities that relate to them and their families. They come from the concept of the founding president Mzee Jomo Kenyatta who attributed to the concept of working together or rather pulling together... the concept of 'harambee'. Harambee is the act of pooling together resources so as to gain a greater good. This good could either be digging the shamba together or paying a medical bill or sending a child to school etc. In essence it is team work. Harambee acknowledges the different gifts and talents that each member has in ensuring that a task is accomplished.

The notion appears to fit in with sections of language and gender studies which show women to have tendencies of working together in the language of 'let us' verses males' 'let me' (i.e. women adhere more to the practices and communication mode of rapport/support/togetherness while men follow more individualistic mode of communication, for report/self-sufficiency/independence.³⁰¹

Chamas use locally mobilized resources, have local leadership and use indigenous reciprocal and communal assistance principles. They begin as a means of survival. Relatives, neighbors or work colleagues pool some of their resources under a chama and use the money as a fund for borrowing and lending among members in times of difficulty, emergencies or a daily need.

³⁰¹ Tannen, D. (1991), *You Just Don't Understand: Women and Men in Conversation*, Random House Publishing Group

Though most of Chamas have been founded by women; in this case the Soweto East village has put aside the gender concept of it being a women's group. The whole idea is to save money; though it is common to find that it is the women who insist so much in this concept as it is more natural to them. The concept of putting money in the tins is a physical act of putting one seed at a time, the idea of a coin at a time is what will make their dreams come to reality.

4.5.1.1.4.1 Governance of chamas

Chamas will most often be initiated by a small group who have been friends for some time. Successful chamas will have among their founders at least one person who naturally stands out as the champion for the chama. That person will tend to pull harder than the rest in the process of forming and managing the chama. It is the champion who thinks out who to invite as the pioneers of the chama. This first group may be initially small. Its main role is to establish the norms for the proposed chama. The initial number could be anything from three to six. It is this initial group that determines the size of the chama, and how additional members of the chama will be sourced.

The founders usually set the basic rules that will guide who else will be invited into the chama. And every member has a right to endorse who will be invited to the chama. Any dissenting voice does have a right not to give a reason for who should not be in the chama, this is for the sake of harmony. This is the same concept used in 'members' only groups or clubs like the Muthaiga golf club or united Kenya club- the names are proposed and all members veto why the new name should not or should be there. The chama usually decides at what form it will exist whether with officials or board members. There is usually a rule book guiding the behaviours of members and sanctions are set and signed by each member, there is never ambiguity here and members are

usually content or pretend to be content when subjected to these sanctions during the operations.

One of the nodes in the settlement has even started an investment program and they have actually build houses for renting out, whereby they collect revenue of KES 20,000 every month,³⁰² which is such a huge sum of money and goes a long way in aiding them to realize the goals they have set so far.

4.5.2 Regulatory framework in managing the facilities

These are the formal norms set out by the government of Kenya to actually ensure provision of water and sanitation services in the settlement. In this thesis the emphasis is on the Water Act of 2002, Public Health Act, Physical Planning Act and the Local Government Act.

4.5.2.1 The water act of 2002

The Water Act 2002 provides the legal framework for the implementation of the water sector reforms based on the following guiding principles:³⁰³

- The separation of water resources management from water supply and sewerage services.
- The institutional separation of policy formulation, regulation and service provision functions.
- Decentralisation, participation, autonomy, accountability, efficiency, affordability and sustainability. For example, *decentralisation* of services to the regional and local levels, i.e. to the Water Services Boards, Water Service Providers, Catchment Areas Advisory

³⁰² K-WATSAN Chairman, Soweto East Zone D, interview on 7th May 2015

³⁰³ Kenya, Republic of (2002), The Water Act 2002. Nairobi, Government Printer; Owuor & Foeken (2009), Water Reforms and Interventions in Urban Kenya: Institutional Set-up, Emerging Impact and Challenges. ASC Working Paper 83/2009. Leiden: African Studies Centre.

Committees, and Water Resources Users Associations; *participation* of all the stakeholders; financial and operational *autonomy* of the Water Service Providers; and financial and ecological *sustainability* in the management of water resources.

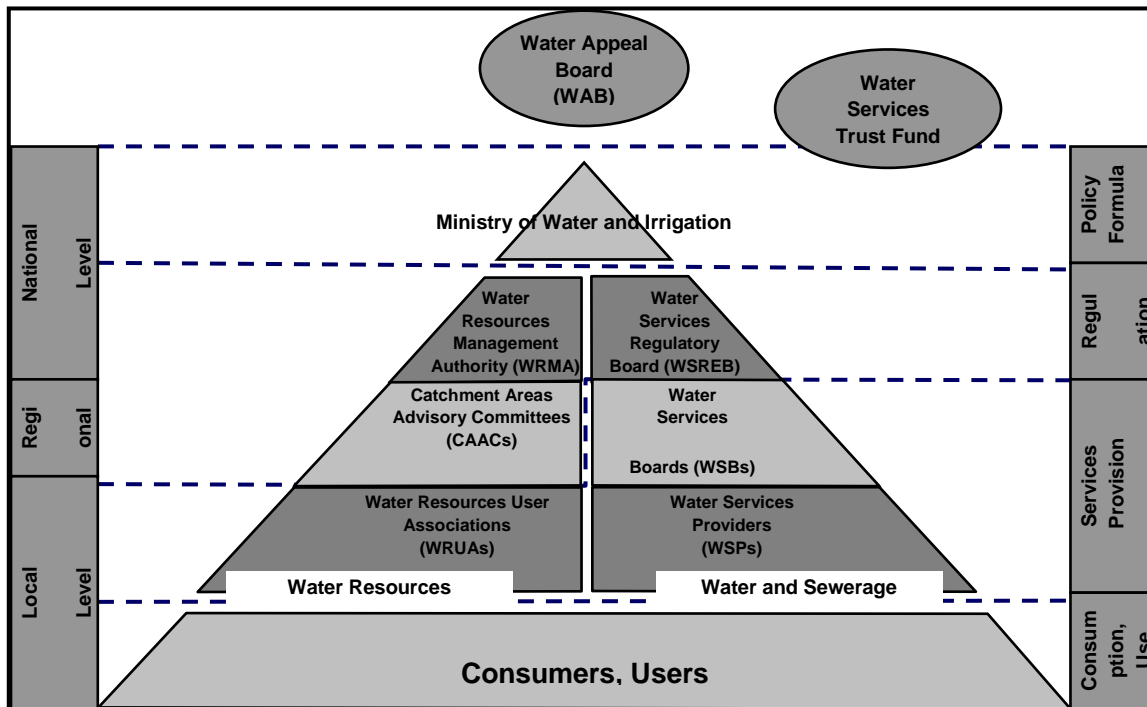
- Institutionalising support to the financing of water services for underserved areas, i.e. the Water Services Trust Fund.
- Establishing mechanism for handling disputes in the water sector, i.e. the Water Appeal Board.

The Act aims at addressing the weaknesses that face(d) the water sector by separating policy functions from regulation and services delivery. It further separates service delivery functions into asset holding (ownership) and investment and direct water and sewerage services provision. Figure 4.1 presents the ‘famous triangle’ summarising the institutional set-up of water sector reforms under the Water Act 2002.

It is expected that the clear roles and responsibilities defined to sector actors will result in improved water sector performance. At the policy formulation level the sector reforms are expected to improve coordination in the water sector, enhance clear policy accountability, and give more attention to water resources management. At the regulation level the sector reforms are expected to set in place a clear regulatory framework, enhance monitoring and evaluation, and improve performance of water undertakers. Lastly, the expected outcomes at the service provision level include improved management of water resources (quantity and quality), ability to attract and retain skilled manpower, improved and efficient service delivery, increased coverage, ability to attract investments, and improved infrastructure³⁰⁴

³⁰⁴ Ibid

Figure 4. 1: The institutional set-up of Water Act 2002



Source: Owuor & Foeken (2009)

4.5.2.2 The public health act

The Public Health Act (Cap 242) ³⁰⁵ has provisions for safeguarding the well-being and health status of the population. It has various sub-sections dealing with habitable dwellings, public water supplies, food, sleeping quarters, and materials for construction, among others. The Act aims to safeguard the quality of life of the people and bring it up to fit-for-life status. It creates provision for securing and maintaining health. Section 116 of the Act specifies the duty of local

³⁰⁵ Kenya, Republic of (1986), Public Health Act. Nairobi, Government Printer.

authorities to maintain cleanliness and prevent nuisance. It stresses on prevention of water pollution by any waste and provision of human waste disposal facilities which should be kept clean.

Section 118 warns the public not to discharge raw sewage into a public water source and spells out acts that are nuisances and are punishable by law. Section 118 deems to be a nuisance any noxious matters or waste water, flowing or discharged from any premises, wherever situated, into any public street or into the gutter or side of any street, or into any mullah or water course, irrigation channel or bed thereof not approved for the reception of such discharge.

Section 129 and 130 specifies the duty of local authorities to prevent pollution and purifying any water supply in the event of it being polluted. The Act in part states that, it shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures:

- (a) for preventing any pollution dangerous to health of any supply of water which the public within its district has a right to use and does use for drinking or domestic purposes (whether such supply is derived from sources within or beyond its district); and
- (b) for purifying any such supply which has become so polluted; and to take measures (including, if necessary, proceedings at law) against any person so polluting any such supply or polluting any stream so as to be a nuisance or danger to health.

Part XII, Section 136, states that all collections of water, sewage, rubbish, refuse and other fluids which permit or facilitate the breeding or multiplication of pests shall be deemed nuisances under this Act. This part seeks to guard against the breeding of mosquito – a cause of malaria. In view of this, it prohibits actions that will lead to making water polluted. For example, bathing, washing of clothes or other articles or of animals in, or in any place draining into, any water

supply or erecting dwellings and sanitary conveniences that drain to public water supply which is used for drinking or domestic purposes.

4.5.2.3 Local government act of 1998

This Act has vested powers to local government authorities to provide housing, sewerage operations and garbage dumps, execute sewerage and drainage works on land, and oversee sustainable urban growth. The Act³⁰⁶ provides the regulating framework in which the municipal councils, town councils and urban councils carry out their operations. Of interest to the present study are Sections 144, 169, 170, 176, 177 and 178. Sections 144 and 177 provide general guidelines on land acquisition and erection of housing units, while sections 160, 169, 170, 173, 176 and 178 deals with water and sewerage. Section 144 vests powers on the local authority of a particular area to lease, let or acquire compulsorily any land for its functions and purposes which are deemed to be public purposes. It has the authority to grant any person jurisdiction over a piece of land so long as the authority approves the functions that the land will be subjected to.

Section 160 helps local authorities to ensure effective utilization of sewage systems. It states in part that municipal authorities have powers to establish and maintain sanitary services for the removal and destruction of, otherwise deal with kinds of refuse and effluent and where such services is established, compel its use by persons to whom the services is available. However, to protect against illegal connections, Section 173 states that any person who without prior consent in writing from the council erects a building or excavates or opens-up; or destroys a sewer, drain or pipes shall be guilty of an offence. Any demolitions and repairs thereof shall be carried out at the expenses of the offender.

³⁰⁶ Kenya, Republic of (1998), Local Government Act. Nairobi, Government Printer.

For purposes of providing proper housing, Section 177 states that a municipal council, town council or an urban council may, subject to any written law relating thereto:

(a) Lay out building plots or otherwise subdivide any land acquired or appropriated by it, whether within or without its area, for the purpose of housing schemes for the inhabitants of its area;

(b) Erect and maintain dwelling-houses with their appurtenant outbuildings on such plots or subdivisions of land; and

(c) Convert buildings into dwelling-houses and alter, enlarge, repair and improve the same

Section 169 sets out regulations on carrying out drainage or sewerage works in the local authority area and outside its boundaries. The local authority should lay the pipes in a manner which will ensure the effective disposing of sewerage and drainage in an area and see to its maintenance. In addition, the local authority is given power to access private property for purposes of inspection and repair of sewers, drains, pipes, ventilating shafts or other conveniences for the disposal of sewage or drainage (Section 170).

Further on, Section 176 gives each municipal council, town council, or an urban council power to regulate sewerage and drainage connections between private properties and the main sewer lines of the council concerned, while Section 178 and 180 gives the councils mandate to supply, establish, acquire and maintain works for the supply of sufficient water within its area as long as the authority considers the supply to be necessary, practicable and reasonable.

4.5.2.4 Physical planning act of 1996

This Act³⁰⁷ was enacted to provide for the preparation and implementation of physical development plans. It vests powers on local authorities to ensure orderly development, regulate zoning, control and prohibit the subdivision of land into small and un-economic sizes. Thus any development done in an area has to be approved first by the local authority in charge. The development could be any material change in the use or density of any buildings or land subdivision or erection of buildings or carrying out maintenance works that exceed 10% of a building's floor area or carrying out works on a road reserve.

Section 16 (1) has provision for the Director of Planning to make physical development plans with reference to any government land, trust land or private land within the area of local authority for the purpose of improving the land and providing for the proper physical development of such land. It also ensures securing suitable provision for transportation, public purposes, utilities and services, commercial, industrial, residential and recreational areas, including parks, open spaces and reserves, as well as making of suitable provision for the use of land for building or other purposes.

Section 16 (2) of the Act states that for the purposes of sub-section (1), a regional physical development plan may provide for planning, re-planning, or re-constructing the whole or part of the area comprised in the plan, and for controlling the order, nature and direction of development in such area. Section 29 continues to vest powers on the local authorities to:

- (a) Prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area.

³⁰⁷ Kenya, Republic of (1996), Physical Planning Act. Nairobi, Government Printer.

- (b) Control or prohibit the subdivision of land or existing plots into smaller areas.
- (c) Consider and approve all development applications and grant all development permissions.
- (d) Ensure the proper execution and implementation of approved physical development plans.
- (e) Formulate by-laws to regulate zoning in respect of use and density of development.
- (f) Reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

Section 30 states that any person who carries out development without development permission will be required to restore the land to its original condition. It also states that no other licensing authority shall grant license for commercial, industrial use or occupation of any building without a development permission granted by the respective local authority. If the local authority is of the opinion that the proposed development activity will have injurious impact on the environment, the developer shall be required to submit together with the application, an environmental impact assessment report.

4.6 Rendering Soweto East governance structure resilient

The above discussion demonstrates the governance of the Soweto East water management structure, attributing to it the features that single it out. While this section analyses the capacity and features of the informal norms which have been rendering the system resilient in that, the system has been adapted to the users who make it contribute to the longevity of their water resource.

4.6.1 Knowledge management system

The system possesses a way of transmitting knowledge between the seven nodes and within each

of the nodes on its own. It is important to have a medium in which the knowledge or experiences acquired over time can be passed on to the next generation or the next set of persons who will be using the facilities to ensure proper and effective management throughout the successive course of implementing the project.

Data collected from a survey of literature and discussions from key informants confirmed that there is documentation of the physical construction and technical aspects of the sanitation facilities. The community leader's i.e. the SEC members and the chief explained that all the lessons learnt from the commencement of the project to date have been documented meticulously so as to always have a point of reference to always understand what transpired throughout the process. They said that all the construction plans of the sanitation facilities, all the plumbing designs have been stored safely so that in the event of a plumbing repair that needs to be done, the people involved do not have to resort to guess work, but they can always refer to the manuals and go exactly to where the problem is, as opposed to trying to figure out where there is a problem, which then ends up opening the whole system which perhaps was not necessary. Mr. Shihima, who is the K-WATSAN chairman of Zone D attested to this by saying that;

'We keep records of everything, even the receipts that we used to procure electricity, so that the next person managing the facility does not have to spend half his time trying to learn the system and sometimes the one who was before him has gone upcountry so we cannot call him to ask him where he left the keys for example.'

The elders explained that it was no easy task to construct all the sanitation facilities as many challenges arose along the way. The facilities were constructed by the community members with

the aid of some technical experts, this I confirmed as I used to go to the construction site to talk to the community members when they were providing paid labour, especially for the last sanitation block which took more time to be constructed than the rest due to the politics of space and might.

Lessons on how the community was mobilised to own the project were also documented, together with the challenges faced. The opinion leaders confirmed that the processes used to effect the community mobilization were derived from local knowledge passed on from the people themselves in the village. The procedures of recruiting members to work in the construction sites, how space was procured, how the authorities were involved. The information relating to the project has all been documented to ensure transparency and replicability of the system.

4.6.2 Effective feedback mechanism

A successful system for resource governance has a feedback mechanism that allows for relevant information to be put back into the system.³⁰⁸ Effective feedback of how the system is being managed properly or its lack of management is important as it can be used in the decision making process. Such a feedback mechanism, especially if it allows for user community involvement enables consequences of earlier decisions to influence the next set of decisions, making adaptation possible.³⁰⁹ For example in one of the facilities, the young girls were finding it difficult to go to the sanitation facilities unaccompanied at night, as they complained of being harassed by the caretaker. This was deliberated in one of the meetings and the caretaker was

³⁰⁸Bosselman, F. (2005), Adaptive Resource Management through Customary Law in Peter Ørebech et al (eds), *The Role of Customary Law in Sustainable Development*

³⁰⁹ Ibid

sanctioned, he had to pay a fine for not providing security to the girls. Not only did the caretaker suffer the punishment but also the whole section of the community accessing that particular facility suffered, in that their facility was opened and closed for only minimum number of hours to make them reflect on their behaviours. Therefore it used to be closed at 6:00 p.m. which meant that the community either had to use flying toilets - a thing of the past or walk for a longer distance in search of a toilet and water. After the lesson was well absorbed, the facility was reopened again to serve the community at will.

Informal social learning is recognised as an effective feedback mechanism. Ostrom and Basurto have argued that where participants are in an environment in which they can share experiences of failures and successes for example in regular meeting places where they can discuss problems being faced with the managers of the system, then the system is likely to produce better outcomes and be sustainable.³¹⁰ An observation of community habits demonstrated that monthly K-WATSAN meetings, the tap area and the kiosks along the roads provided a hub where community members consulted and shared experiences including many personal matters that were affecting them. For the women, the kiosks (see Plate 4.6) and the tap were the most common places of exchange, while the men used the K-WATSAN meetings as their main node of exchange. Many of the respondents also confirmed that the implementation and enforcement of the norms was a consultative process.

'Sisi huwa na mikutano kila mwezi, ili tujiunge na wale kutoka facility zingine na kujadiliana vile mambo yameendelea hiyo mwezi. Tunalinganisha expenses zetu na za wengine, kuona kama zinafuanana ama zinatofautiana, na kama zinapitana kwa umbali. Kama zinapitana tunauliza ni kwa nini alafu tunajua vile kutatua hiyo shida, kama

³¹⁰ Ostrom, E. & Basurto, X. (2009), 'The Evolution of Institutions: Toward a New Methodology' SSRN eLibrary 14.

hazipitani na mbali sana tunawachana nayo. Pia tunajifunza kutoka kwa facility zingine. So hapa tunakuja kufunzwa na kufunzana.[...] Lakini unapata wakina mama wanapenda fitina sana, wanaongea hizi vitu kwa duka ya mama mboga au hapo kwa mfereji. Ningependa kama hawa wamama wangukuja kwa mkutano waseme kila kitu badala kuenda kwa mambo ya fitina.'

'We normally have a monthly meeting, where we meet with people from other sanitation facilities, we compare our expenses and look out for the discrepancies, which can be questioned if we suspect there is foul play. We also share experiences regarding the management of the facilities for each specific month and learn from each other, through the feedback we all receive. [...] the women gossip a lot, as such they go to the kiosks or the tap to discuss issues, I wish they could join us in the monthly meetings where they could bring out all these issues.'

In view of this the community's informal law system is thus constantly changing to reflect not only the changing regimes of managing the facilities but also changes in the socio-political and economic conditions.

Plate 4. 6: Spaces where women have their discussions- Mama mboga’s kiosk



Source: Field Survey

4.6.3 Inherent modification procedure

One of the conclusions drawn from research on successful common property governance systems was that in order for a management system to be resilient it had to have good procedural rules for changing the substantive rules.³¹¹ The procedural rules ensure that the system can develop new rules to match new circumstances, including the diverse environmental and strategic threats common in dynamic systems.³¹²

³¹¹ Ostrom, E (1990), *Governing the Commons: The Evolution of Institutions for Collective Action*

³¹² Ostrom, E (1992), *Crafting Institutions for Self-governing Irrigation Systems*

Effective procedural rules include an attitude of open-mindedness of rule-makers to adopt alternative ways of thinking that may result in better outcomes or that may be necessary given the change in social, economic or ecological conditions.³¹³ This attitude was observed in the system as it gave voice to all the people of the society. All the different sectors of society were recognised and allowed to share their ideas as pertains to the management of the facilities. If a rule was not auguring well with the users, then open communication to all concerned parties was taken into consideration. The representatives of the different groups, either the youth, widows, disabled etc. spoke about the modification and if accepted it was taken as law. Community participation in the rule-making process also facilitates the revision of these taboos and religious sanctions where the continued existence ceases to be justified.

4.6.4 Stratification of rules

One of the features of an effective customary law system is that the rule system must be sufficiently stratified to allow for partial modification. Bosselman refers to this quality as the system's possession of fine-grained rules arguing that a rule is fine grained if it is capable of being modified in small increments.³¹⁴ A successful customary law system is thus one that defines rules and individual entitlements in such a way that these can be adjusted without having to overhaul the entire rule system.³¹⁵

³¹³ Bosselman, F. (2005), 'Adaptive Resource Management through Customary Law' in Peter Ørebech et al (eds), *The Role of Customary Law in Sustainable Development*

³¹⁴ Ibid

³¹⁵ Rose, C.(2002), 'Common Property, Regulatory Property, and Environmental Protection: Comparing Community-based Management to Tradable Environmental Allowances' in Ostrom, E. (eds) *National*

Since the implementation of the rules in Soweto East are mostly consultative, sometimes these rules are subject to negotiation and modification with relative ease. For example one of the rules states that credit facility can only be given for a specified amount of time; if the household exceeds this allotted time then, it is denied access to water. However, before this rule is implemented the concerned household head is given an opportunity to justify his/her actions. Depending on the reason, other sanctions can be applied to avoid inconveniencing the entire household for example, the household can be given access to only 70% of their water needs, so instead of drawing 10 containers each day, they could be given only permission to draw 7 containers, this is to avoid too much debt accrual or if the debt is too much then, they pay in kind i.e. they provide labour at the sanitation block and have their debt written off in lieu of payment. This modification of the rule is based on the appreciation of the diverse circumstances that afflict the slum dwellers. Sometimes they have opportunities to access livelihood incomes , while other times they cannot access sources of income, yet they belong to the same community and these facilities are supposed to benefit the whole community as such there is a bit of modification to allow for an all inclusivity of the community members.

Another example of a stratified modification is on the enforcement system currently in use. Even though it is the responsibility of the each facility to met out sanctions to the ‘offenders’ sometimes the one managing the facility is not able to met out the sanction due to various reasons e.g. violent individuals. In such situations the chief is usually called on to intervene.

4.6.5 Autonomy

Autonomy is the ability of being independent of any superior power; it implies sovereignty and self-sufficiency. Autonomous systems are usually more resilient and sustainable as they ensure equity and do or die mechanisms. These systems are autonomous in the design, operation and modification of the rules governing the systems; these are better placed in ensuring self-governance as opposed to superimposed systems.

The informal law system of Soweto East is based on norms developed by the community. The operation and implementation of the rules is in the hands of the community. The autonomy in design of the rules is considered sacred as was evidenced in the focus group discussion with the facilities management team. One of the participants in the discussion referring to the unacceptability of the imposition of externally developed rules stated: ‘There is no law that will come to tell us who will or how we will use the water. The water is for us and for our children, we sweated for it. No one will tell us how to use it’

4.7 Conclusion

This chapter has outlined the governance structure of Soweto East, depicting how the formal and informal merge here. There is the government bodies which are charged with ensuring that law and order is followed here and yet at the same time, the residents are aware that the government has allowed them to operate in the circle of managing their own properties.

The two systems of law intermingle here and we find that the informal one rules more with the sanctions and rewards as opposed to the formal one which only puts up the regulations, which need to be adhered to. The people are more prone to following the informal codes in which they

have participated in their creation as opposed to the ones that they have been superimposed upon. The informal norms are more dynamic and they change according to who and what is being managed. They thus ensure that the system has longevity.

The informal norms are based on mutual trust and accountability as they operate within user groups which are known to each other, who thus feel compelled to adhere to what is deemed as the correct code of conduct.

It should be noted that water systems are more political than they present themselves to be, as such they always need to be referenced on a political angle more than a geographical angle and as such their management has also local politics that come into play, as has been depicted above on who runs the water system on that particular month, he has the power to decide the fate of the villagers who rely on him and also if the regulatory frameworks are not put in place then, the villagers too will definitely suffer the same consequences they had had before.

The growing literature on governing of common property systems has also confirmed the continued relevance of customary law systems. Common property regimes of governance are usually local in origin, often inter-twined with the custom, social life and livelihoods of the users and operate without the intervention of the state. The common property regimes thus, represent a parallel form of governance that is distinct from the state mechanism. Especially where the system is of limited commons managed by customary practices and institutions.

PART 3

5 THE JUST CITY: IS JUSTICE A QUAGMIRE OR A REALITY

5.1 Introduction

Following a discussion, of the different workings of the water system in the informal area, this chapter aims at analysing the impact of planning policies which have been in existence in Nairobi and Kenya as a whole on the various groups prevalent in the area. These policies have already been discussed in the first chapter, but now they are being analysed to see how their formulation has been extended to provide justice for all city dwellers. It has been noted that previously the claims of urban slum dwellers were totally absent from the planning discourse, while the claims of the elite were dominant, as such the slum dwellers were put in a periphery position which disadvantaged them.

This chapter aims to rethink how urban justice under conditions of recognition, urban (de)neo colonisation and democratic democracy can be used to ensure justice is accorded to the city dwellers. I argue that these components should be vernacularized besides the right to the city and made s(p)lace specific. This requires political will so as to avoid the colonial pitfalls of planning.

Since the urban is always fluid like an estuary, there is a reclamation of the sense of rights and obligations of the state and its citizens to provide and receive the same on the basis of fair redistribution of urban goods and services and not be recognized by ‘othering’ which promotes the spatial and economic urban divide. I continue to argue that to obtain these goods, especially water, the human rights based approach should be revisited.

5.2 What constitutes a just city?

The foundations of the just city debate has spanned decades of elaboration and discussion among several scholars and city practitioners yet it still remains a contested term as we still try to grapple with the constituent elements of a just city. The call for a Just City is compelling. The demand for justice is a vital one, with centuries of struggle, of interpretation, and of political concern behind it. It is concrete; it is not a call for another world, but for changes in this world, in one clear direction. The exact definition of justice may indeed be controversial, but the philosophical difficulties do not lessen the importance of the formulation.³¹⁶

Much of philosophical discussion in relation to justice thus revolves around the question of the desirability of equality based on primary goods—for example, whether or not handicapped individuals should receive the same amount of primary goods as everyone else or whether they should receive additional, compensatory benefits (Anderson 1999; Nussbaum 2006).³¹⁷ Rawls calls for the provision of primary goods as a way of organizing a well ordered city which resonates well with the proponents of the rational choice theory who uphold the principle of liberty and difference or equality and argue that free individuals acting rationally, will choose a rough equality of primary goods so as to assure that they will not end up in a position which is inferior to them.³¹⁸ This equality dimension does not resonate well with the sociological camp as they would rather employ the term equity and concern themselves with redressing disadvantaged

³¹⁶ Marcuse, P. et al. (eds) (2009), *Searching for the Just City: Debates in Urban Theory and Practice*, Routledge, Abingdon

³¹⁷ Fainstein, S. (2006), *Planning and the Just City*, Conference on Searching for the Just City, GSAPP Columbia University

³¹⁸ Rawls, J. (2001), *Justice as Fairness*. Erin Kelly (Eds) . Harvard University Press, Cambridge

groups. Equity leads to the inclusion of broad range of considerations like, the impacts of environmentally degrading facilities on different social groups, or who has access to public space and for what purposes public space can be used. It literally points to the results of public policies rather than to simply the analysis of starting points, which further leads to the examination of outcomes in relation to groups thus avoiding the utilitarian cost-benefit analyses that focus on aggregates. This then gives a better handle on power relations and social structures.³¹⁹

Still in the quest for the dimensions of a just city there are contrary voices to the foregoing thoughts in that some demand for provision of capabilities. Capabilities define what people are able to do and be and what they have the opportunity to do but at the same time the opportunity must be available, including a consciousness of the value of these capabilities. However it must be noted that these capabilities cannot be traded off against each other thus transposing a communal rather than individualistic ethic.³²⁰ Other schools clamor for political accountability where political responsibility is a collective practice in which questions of justice are articulated with the evaluation of individual conduct and social interaction in a non-reductive way and arises from the ways in which different actors are implicated in structural social processes.³²¹ This calls for some personal societal accountability and institutionalization though it does not collapse institutional analysis into the analysis of individual interactions, a single standard of justice is not applied to social structures and the individual action³²², instead the principle has two levels of

³¹⁹ Fainstein, S. (2006), Planning and the Just City, Conference on Searching for the Just City, GSAPP Columbia University

³²⁰ Nussbaum, M.C. (2002) *Beyond the Social Contract: Capabilities and Global Justice*, Oxford University Press, New Delhi

³²¹ Young I.M. (2004), Responsibility and Global Labor Justice. *Journal of Political Philosophy* 12:365-388

³²² Young, I.M. (2003), From Guilt to Solidarity; Sweatshops and Political Responsibility: *Dissent* 50 (2):39-44

moral evaluation: one to do with the individual interaction and the other to do with the background condition within which that action takes place.³²³

The background conditions enable scholars and practitioners get into grips with what constitutes a just city and what does not. While at the same time allows the living out of the daily practices and interactions of the inhabitants of a society. It has been argued that the sense of injustice and justice is intuitive and some works on justice do not bother to define their foundations but out rightly embody these assumptions in their discussions. Fainstein after defining values that make up the just city contended to admit that ‘critical planning literature attacks planning in practice, it assumes that we know good and bad when we see it and that we do not need to make elaborate arguments justifying our criteria. My own work embodies such obliviousness. In an article entitled “Cities and Diversity” (2005), I defined the just city in terms of democracy, equity, diversity, growth, and sustainability (philosophers might argue that this is the good city not the just city). These values, however, are problematic in that they all have undesirable potentials or risks. At any rate, I did not attempt a justification for choosing these values but simply assumed agreement on them. The appropriate value criteria for urban development, however, require extensive analysis.’³²⁴

This extensive analysis has been seen in urban planners trying to combine new forms of urban living with social agendas of equality, modernity, community, and a new moral and professional zeal sometimes instrumentalizing the planning as a legitimacy mechanism for the uneven manifestation of the capitalist state³²⁵ leading to city fragmentation due to purposeful neglect of

³²³ Young, I.M. (2006), Taking the Basic Structure Seriously. *Perspectives on Politics* 4(1): 91-97

³²⁴ Fainstein, S. (2006), Planning and the Just City, Conference on Searching for the Just City, GSAPP Columbia University

³²⁵ Oren, Y. et al (2009), Urban Justice and Recognition Affirmation and Hostility in Beer Sheva

social needs and foundation of long term inequalities³²⁶ as planning is in tandem with the privileged facilitation of capitalist demands. This led to the big urban question of seeking for ways in which a just distribution could be realized and justly arrived at hence the emergence of “urban” justice literature as an attempt to rethink the links between space, development, power, and planning. This literature however was not wrought without a heated debate among planning scholars especially the Marxian and the liberal thinkers, though they both agreed that planning was essentially about the process of distributing material resources.³²⁷ This then introduced new vocabulary and imagination into the definition of a just city concept which included recognition, diversity, difference, multiculturalism ethnicity and racial relations in which space is a critical axis, though dissenting voices emanated from the radical Marxian and libertarian thinkers.³²⁸

5.3 Vernacularisation of justice

The concept of vernacularisation has been a growing term developed by a couple of scholars, among them is Anderson. He used the term “vernacularisation” to explain the process of deviation from the original Latin language by the nations of Europe leading to a ground for and justification of nationalist sentiments among the citizens of those European countries in the nineteenth century.³²⁹ The concept acknowledges the use of language, where by a language is made comprehensible to the people it is being applied to. It is broken down into digestible pieces, so that the people can relate to the concepts being discussed or put forth, so that the ideas

³²⁶ Marcuse, P. (1978), “Housing Policy and the Myth of the Benevolent State,” *Social Policy*, (January/February): 21–26.

³²⁷ Oren, Y. et al (2009), Urban Justice and Recognition Affirmation and Hostility in Beer Sheva

³²⁸ Fainstein, S. (2005), Cities and Diversity: Should We Want it? Can we plan for it? *Urban Affairs Review*, 41 (1), 3-19

³²⁹ Anderson, (1991), *Imagined Communities: Reflections on the Origin and Spread of Nationalism*.

are not alien ideas, but ideas which can be embraced by the owners of the space. In the processes of vernacularisation, the ideas and concepts are normally adjusted to the recipient citizens to make them palatable and easily acceptable, or even though they are not easily acceptable, they can resonate with them.

For justice to be vernacularized, first, it has to have a universally agreed and acceptable meaning, which we have tried to elucidate in the foregoing part, which asks what is a just city? Many scholars have looked for the foundations of justice especially where geographers have been attacked to lack strong foundations in clearly defined conceptions of the human good, flourishing or justice, they have been criticized for taking critical postures in moral and political philosophies and taking normative conceptions, which leads to the challenge of asking, what are these normative conceptions meant to do for us?³³⁰ The response is clear, that by embracing the normative, it involves facing up to this task of providing clear foundations for judgment.³³¹ Secondly, using concepts like justice, equality and freedom is a matter of practical reasoning, meaning that it involves the activity and being able to give reasons for and against that use.³³²

Practical reasoning in this context can be seen as vernacularisation of justice in the context of the informal settlements and not just any informal settlement, but an informal settlement in the context of a Southern city called Nairobi. Therefore this process will entail extracting the meaning of justice from the universal idea and adopt it to the local context. Justice is a

³³⁰ Olson, E. & Sayer, A. (2009), *Radical Geography and its Critical Standpoints: Embracing the Normative*. *Antipode* 41(1):180-198

³³¹ Carmalt, J.C. & Faubian, T. (2009), *Normative Approaches to Critical Health Geography*. *Progress in Human Geography* 33:1-17

³³² Tully, J. (2009), *Public Philosophy in a New Key. Volume 1: Democracy and Civic Freedom*. Cambridge University Press, Cambridge

transnational idea, how can it be meaningful and fitting in the local social and cultural setting? How can we apply it so that we provide reasons for its use or against its use? How can we translate the general, universal, broad and commonly accepted idea of ‘every human being in the city deserves justice? From this transnational level to community level, so that an ‘I deserve justice’ statement can resonate well within the social and cultural context and environment of each person in the informal settlement. As there is already a common agreement that it is essential for all human beings to access it in its entirety and not be denied the benefits and privileges that comes with it.

It is therefore important to theorize cities as ordinary cities, each with its own specificity so that we are not always on the look out to test pre-existing concepts but acknowledging that even though cities have their singularities, cities in the globe are highly interconnected and we have to make our cases open to other debates³³³ thus have the open mind to accept that as ideas from transnational sources travel to small communities, they are typically vernacularised or adopted to local institutions and meanings.³³⁴ However the policies and concepts are both relational and territorial, in motion and fixed.³³⁵

³³³ Robinson, J. (2011), *The Spaces of Circulating Knowledge: City Strategies and Global Urban Governmentality*. In McCann, E. and Ward, K. (eds), *Mobile Urbanism: Cities and Policymaking in the Global Age*. Minnesota, MN: University of Minnesota Press, 15–40.

³³⁴ Merry, S. (2006), *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago

³³⁵ Ward, K. (2011), *Entrepreneurial Urbanism, Policy Tourism and the Making Mobile of Policies*, in Bridge, G. and Watson, S. (eds), *The New Blackwell Companion to The City*, Oxford: Wiley Blackwell, pp. 726-737 & Robinson, J. (2011), *The Spaces of Circulating knowledge: City strategies and Global Urban Governmentality*. In McCann, E. and Ward, K. (eds), *Mobile Urbanism: Cities and Policymaking in the Global Age*. Minnesota, MN: University of Minnesota Press, 15–40.

Vernacularisation is in fact a process rather than a concept: a process of translating, bridging, mediating and negotiating.³³⁶ To translate justice to the city dwellers in the south, a definition must be sought. This definition must be sought and translated into their own language so that it is palatable to them. For instance, the language of the Nubian community living in Kibera, would entail being given title deeds to show that they are the rightful owners of the land of their forefathers as opposed to offering them apartments. This would be a language translated to them and understandable to them. The definition has to be practical and resonate with the political vibe of the community.

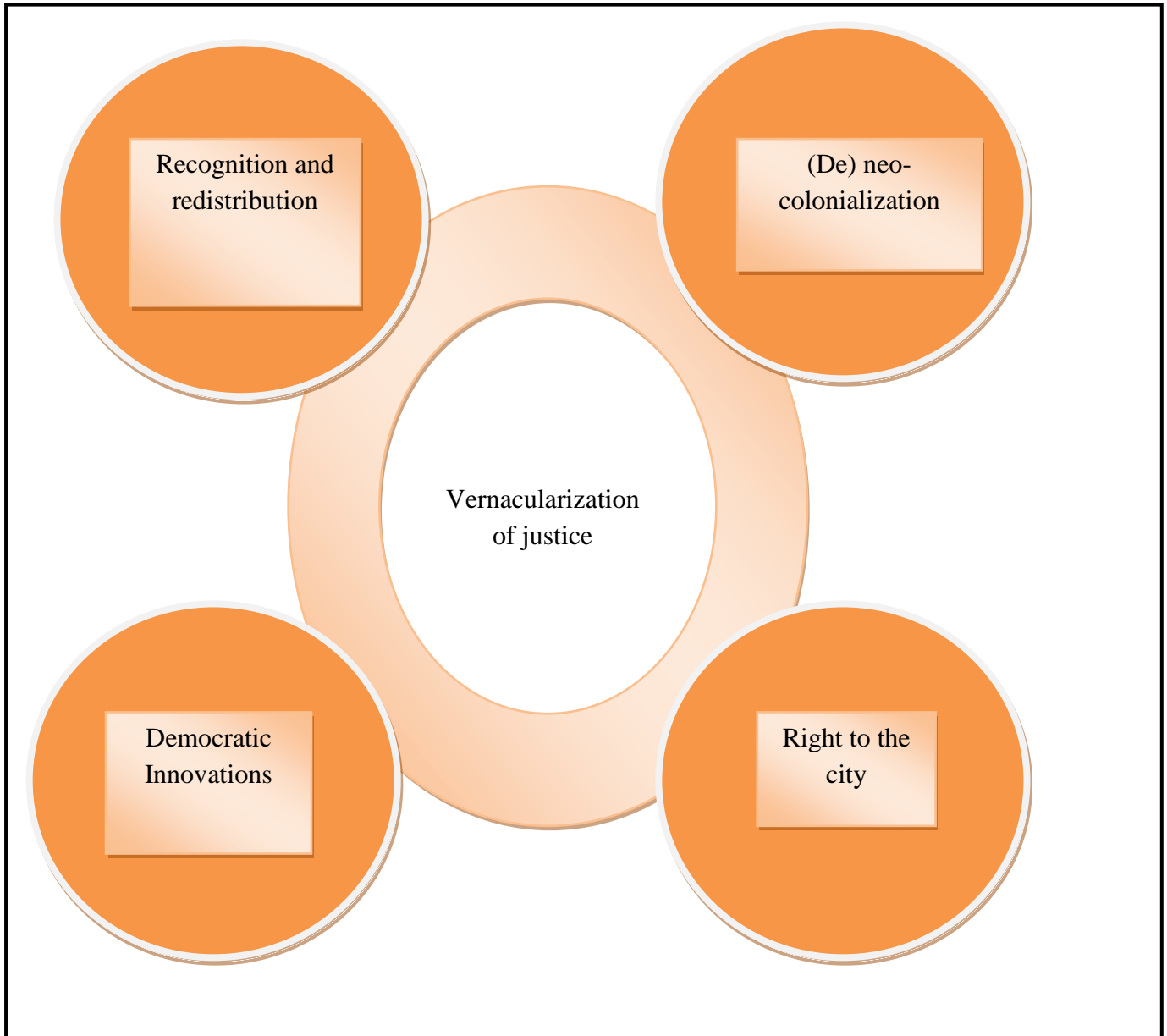
Thus I argue that the concepts of recognition and redistribution of material resources, should focus on the local context. Some proponents of justice talk about recognition of race and migrants, for this community, these are not aspects they relate to, but they are still concepts that can be defined in the realm of justice. For this community recognition and redistribution would entail the redress of what was taken from them, which is the land that their forefathers were given, they would lay claims of equity that the second and subsequently the third and fourth generation would require possession of the land rather than being given apartments to lease for some period of time. This is their voice. Another aspect of recognition would be that the current informal settlement dwellers, would require that their areas be fitted with proper amenities and services, so that they may live like the rest of the citizens in the city. This would speak more to them, than aspects of race and migration. Thus the challenge of translating the word to fit the people is paramount and evident, in that these two groups of people live in the same area, yet their definition of justice is different, thus skillful mediation and negotiation would be the key to ensuring effective transposition of the normative concept of justice, to some clear practical and tangible aspect.

³³⁶ Merry, S. (2006), *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago

Democracy has been a curse and clearly flawed in the history of the settlement, as such there is need to bring in democratic innovations and deliberations which would make their voice heard. These innovations should be familiar to them, so that they would be in a position to participate in them. For instance there is a wave of the technology bug where most democratic innovations are occurring in the virtual space where people do not need to assemble in a physical space to organize themselves in making a protest as witnessed in the recent protests of Hongkong, where social media was the platform of communication to effect a change in the government. In this society the language of virtual communication would not be acceptable to them as it is deemed to be foreign yet what would be more palatable to them, is the person to person connection, as such they would use a baraza or a watering point, which would ensure that they perceive that their concerns have been taken to account and the process is legitimate. Hence the use of the term s(pl)aces to recognize spaces and physical places of participation.

Vernacularising the process of de(neo)colonisation, would entail a rigorous sensitization of the whole society as to the effects that have been ongoing historically, so that the citizens understand the policies that have actually been in effect and have led to the current situation. Armed with this knowledge and will power the citizens would be in a position to understand that though the 'urban' is a densely regulated realm of institutions, cultures, power and symbolic artifacts, it can still offer reprieve for all who live in it. It would also entail admitting everyone to claim their right to the city as envisioned by the proponents of a just world.

Figure 5. 1 : Dimensions of justice in need of vernacularisation



Source: Author

5.3.1 Translation: A curse or a benediction?

Implementing the idea of vernacularisation may contribute to the actual realisation of justice for individuals and communities at a local level, as the translated version speaks in the language they best understand. The ideas of justice need to be translated from the global scale to the local scale so as to make the wordings of the scholars and proponents of global justice compatible with the values and norms of a given society. Ultimately vernacularisation is an upholding of the rights of individuals to know as it emphasizes the rights of the agency to express their daily practices in an unconstrained manner. It protects local communities from changing their lifestyle towards an undefined universalistic set of meanings and tries to find ways to bring duty bearers and right holders together, so that duty bearers can concretely respect, protect and fulfill the rights of right holders without damaging the local culture.

For this to happen we have to ask the question, who are we trusting to bring the concepts to the community in a language that is palatable? Who are the mediators of this concept? As we know there are always difficulties that emerge when concepts travel from one setting to the next. There is always a challenge in travelling a universal concept as cities are not products of capitalist transformation, thus theory cannot be transported from north to south; they do not travel quite straightforwardly, they need a conduit that is agreeable to them.³³⁷ They need a fluidity of concepts and wordings that relate to day to day experiences of local contexts as they function and negotiate as mediators in several different spheres, between local, regional, national and universal or intra-national systems, meanings, cultures and interpretations. So the choice of wordings that are used may need to be constructed in such a way that they string together positively as meaning changes over time and space. Indeed they refashion global rights agendas

³³⁷ Simone, A. (2001), On the Worlding of African Cities , *African Studies Review*, Vol. 44, : 15-41

for local contexts and reframe local grievances in terms of global human rights principles and activities.³³⁸

As the urban is always incoherent, a result of fragile assemblages of spectacles and particular events, the translator has to make compromises to meet certain cultural grounded wishes that may even contradict the concept of justice that we are trying to define for the local situation. These translators move between the discourses of the localities they work with, taking ideas from one place and redefining them or adapting them to another thus we have to critically examine to what extent these compromises are possible, following the historicity of a particular region and even check to see who can be a 'sufficient' enough translator between the government who have the duty of protecting its citizens and the community in which the concepts and laws will come into existence.

This leads to the concept of trust and suspicion, as mediation takes place in fields of unequal powers, and translators are more often on one of the two sides: national or local.³³⁹ They are in danger of being distrusted by both groups they have to connect rendering them both vulnerable and powerful at the same time. Thus for a successful vernacularisation to occur, the translators have to be neutral to understand the feelings of the locals and the state, which is a hard challenge to conquer, as most of them are usually paid by the state to translate travelled concepts.

Thus vernacularisation can lead to citizens obtaining just cities if the concepts are transported well and adapted to their own settings. Thus I argue that the state and citizens should look for a common understanding of the concepts that they think should be addressed so as to get a just

³³⁸ Merry, S. (2006), *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago

³³⁹ *Ibid*

city. The proceeding section highlights the three dimensions that should be vernacularised in an attempt to realize the just city. They are: recognition and redistribution; (de)neo-colonialisation and having democratic innovations.

5.4 Dimensions appropriate to a just city

5.4.1 Recognition and redistribution

The foregoing values in part one where we ask the question ‘what is the just city?’ were almost universally agreed upon, though there still remained questions on the right manner to approach difference and incorporate its various aspects into the planning process, but it was agreed by nearly all theorists that supporting diversity is “good,” thereby providing a “new orthodoxy” for planning theory.³⁴⁰ Difference and diversity are the background for a group to be offered recognition and have an almost fair share of redistributed resources on their plate. Recognition of the diversity accounting for the different classes of people offers them a way of getting justice³⁴¹ especially in the urban policy framework. Claims for justice can be organized on two major structural axes—distribution and recognition—that constantly interact, but are not reducible to one another. Within each axis, approaches to justice range between “affirmative” and “transformative” measures. Affirmative measures denote relatively cosmetic steps with a temporary effect on injustices, which tend to reproduce in the long-run the unequal capitalist/nationalist and male-dominated settings. Transformative measures, on the other hand, have more profound effects by challenging the social systems that produce the hierarchical order of classes, genders, “races,” and ethnic entities.³⁴²

³⁴⁰ *Ibid*

³⁴¹ Fraser, N. (1996), Recognition or Redistribution? A Critical Reading of Iris Young’s Justice and the Politics of Difference. *Journal of Political Philosophy*, 3 June: 166–80.

³⁴² Oren, Y. et al (2009), Urban Justice and Recognition Affirmation and Hostility in Beer Sheva

The acceptance that all these classes should be given a space in the debate, created space for ‘recognition’ as an aspect of justice to be considered as part of the bigger picture, thus recognition became a catch-all phrase for the act of including minority or weakened groups, allowing them a “voice” in the policy process. Recognition was to be accepted as the liberal or civil “right” to be heard, to be counted and represented.³⁴³ As a “right” it presupposes a benign state and political setting and an operating constitutional democracy where rights can be secured through an independent judiciary and should be supplemented by ‘capabilities’ as rights alone are not enough to progress towards a just city.³⁴⁴

A second aspect of planning for recognition is that it should pay attention to the material, economic and concrete power aspects so that it does not focus only on participation and inclusion and remains blind to the material inequalities and oppressions,³⁴⁵ the distribution of these should be done in a fair manner so that all aspects of society should access it and lastly we should bear in mind that this recognition may bring in unintended unjust consequences of exploitation and dispossession as it has the tendency of ‘othering’. This formal ‘othering’ tag may induce the labeling of minorities as weaker distinct groups in society leading to a situation where the dominant groups perpetuate their disempowerment especially if the minorities are not well represented and grounded in the civil constitutional foundations. This ‘othering’ and uneven recognition of different groups in different ways, leads us to ask what consequences result from this in the long term.

³⁴³ Fainstein, S. (2006), Planning and the Just City, Conference on Searching for the Just City, GSAPP Columbia University

³⁴⁴ Nussbaum, M.C. (2002), Beyond the Social Contract: Capabilities and Global Justice, New Delhi: Oxford University Press.

³⁴⁵ Marcuse, P. (2000), Identity, Territoriality and Power, *Hagar: International Social Science Review* 1(1): 128–143.

5.4.1.1 Historical (un)recognition of the Nubians

The debate as to whether the Nubians are Kenyans or not, has spanned decades, with each of the political regimes shutting down, stifling the discussion and pretending not to have them as an agenda to be sorted out or discussed. The colonial government had already stated and claimed that they owed allegiance only to the Nubian soldier who fought in the war and as such they would reward him with a pension, which was a place to settle and make a home after his retirement. This was the only recognized person, yet this Nubian had descendants; these were the second generation who were not recognized and as such had to fight for their rightful place in the Kenyan society. This fight has not been an easy one, as it still continues up to date.

His fight has been on various fronts; besides fighting for recognition in the political and economic spheres, he has had to fight for his rights of citizenship. To get recognized as a Kenyan citizen one requires a national identification card, yet for the Nubians they have had several problems in that they have to actually identify who their grandfathers were and the location of ancestral land (which is Kibera for the second generation) and as such go through many bureaucratic procedures to get a recognition that they belong to this country.³⁴⁶

To redress this lack of citizenship and political representation, cosmetic steps have been put up in different regimes, for example when the country was under the ruling party of KANU, Mzee Hassan was made the chief between 1995 and 2002, so as to ensure that the voting block of the Nubians is skewed towards the ruling party and fights off the opposition. This was a very cosmetic step in terms of affirmative recognition as the community still did not get placed on the map of the ethnic communities of Kenya. They were only used as a block for the electoral process. This recognition placed a burden on the Nubian community in that they still did not

³⁴⁶ Conversation with Husna Hassan

achieve an equal share of resources, they still were dominated by the ruling elite and the land they lived on was not theirs, it belonged to the crown. It must be noted however, that only recently were they recognized as the 43rd ethnic community of Kenya.

On the economic sphere they best fought their economic marginality by creating more sub-lets in their backyards as they became small scale landlords and sublet their houses to other communities who came in search of accommodation in the city. This occasioned the burgeoning of unplanned settlements and the creation of opportunities that saw small scale housing entrepreneurs from high and middle income classes build shacks to generate additional income for themselves and create the 'other' group called the slum dwellers.

5.4.1.2 Distribution of resources to the 'other' group

As noted in the first chapter the slum dwellers were not tolerated in the city as they occasioned a sorry site and were not part of the 'planned city'. This necessitated an incessant need of doing away with their presence at all costs. This is what the colonial government did with the slum clearance policies.³⁴⁷ This can be termed as negative recognition, in that we agree that the 'other' group exists but we do not want to give them a right to all the resources that the city has to offer, instead we clear them away and pretend that this did not happen.

On the other hand, the independent government changed their policy and recognized their presence by giving them recognition by setting political boundaries and recognizing them as part of a constituency which could enable them to vote under a particular jurisdiction, thus giving them a voice to articulate who they would wish to have as their representative leaders. Thus the

³⁴⁷ MacOloo, G. C. (1998), 'The relevance of Kenya's Urban Settlement Policies for Independent South Africa, *Southern African Geographical Journal*, 80 (2): 81-85

slum grew bigger and had within it a system of governance which included chiefs, area councilors and a local member of parliament.

This area was recognized, but at what cost? The slum gave a chance for people with capital to invest illegally by constructing houses and providing illegal council services. For example provision of electricity directly from the grid, which is dangerous, illegal and translates to a loss in revenue for the electric power provision company in Kenya. Another basic service is the provision of water by water tankers as opposed to connected water pipes leading directly to the houses of the dwellers. This type of recognition has been detrimental in the long run as this has been seen as a weaker group materially and as such they have been exploited by the dominant groups in society who charge premiums for the provision of services which other people in the city access at modest rates. For instance KWAHO affirms that the substantial range of water prices in Kibera (higher during shortages) and minimum Kibera prices are higher than average in Kenya and maximum price are about double European prices.³⁴⁸ Mostly due to the amount of effort it takes to deliver the water to the door step of the clients as opposed to the tariff set by the water company.

I argue for a transformative recognition which has been going on since the commencement of the K-WATSAN project in that the specific civil societies and non-governmental organizations conducting interventions have challenged the status quo of the settlement by bringing in changes to the social systems that produce the hierarchical order of classes and the uneven distribution of resources. This is in line with the Vision 2030 which seeks to improve the lives of 100 million slum dwellers by the year 2030 in Kenya.³⁴⁹ The status quo had been the perpetual presence of

³⁴⁸ Crow, et al (2010), Access to Water in a Nairobi Slum: Women's Work and Institutional Learning. *Water International*, 35(6), 733 - 747. UC Santa Cruz: Center for Global, International and Regional Studies.

³⁴⁹ Kenya, Republic of (2007), Kenya Vision 2030, Nairobi, Government Printer

never ending interventions by non-governmental organizations which never brought change to the settlement, yet no one held them accountable for their misdeeds even though they were not sustainable. At this point in the history of Kenya, there is a concerted effort to redistribute resources to the marginalized groups which is enshrined in the constitution, especially in terms of allowing people to access land and housing.³⁵⁰

5.4.2 Urban (de)neo colonialism

Urban colonialism has imposed a new urban order in which dominant elites, whose privilege draws upon their identity, class and location, utilize the contemporary city to advance three main dimensions of colonial relations: (1) expansion of material or power position; (2) exploitation of labor and/or resources; and (3) segregation, that is construction of hierarchical and essentialised difference. European conquest and settlement is now reversed, with a flow of disenfranchised, often rural folk into the world's major cities create patterns of ethno-class segregation and economic disparities that often resemble the traditional colonial city (King 1990; see al-Sayyad 1996).³⁵¹ These flows are often directed to the marginalized sectors of the urban fabric, thus creating an unmatched uneven tapestry of layers of discrimination along lines that are more of class created than plan created thus defining layers of economic class and social power.

Identity and class inequalities are frequently connected and present different bases for human organisation in the variety of urban colonial relations recorded in non-Western cities in which the majority of the world's urban population now resides.³⁵² As such these two factors require home grown policies for allocating resources to the different segments of the society as urban space is

³⁵⁰ Kenya, Republic of (2010), *The Constitution of Kenya*. Nairobi, National Council for Law Reporting.

³⁵¹ Oren, Y. et al (2009), *Urban Justice and Recognition Affirmation and Hostility in Beer Sheva*

³⁵² Robinson, J. (2006), *Ordinary Cities: Between Globalization and Modernity*, London: Routledge

being actively shaped and reshaped as it is produced, as such we must conceptualize urbanism with elsewhere in mind.³⁵³

These colonial-type urban relations bring with them a situation where groups enjoy vastly differing packages of rights and capabilities under the same urban regime, drawing on their class, identity and place of residence.³⁵⁴ This is evident by the fact that in the wider Kibera slum there are no fair opportunities for the people to enjoy for example the council/public schools are not present, we find only private run schools for children aged below 15 years. This is in contrast with the planned area. Most of the students leave the settlement on a daily basis in search of education; they go to schools in the ‘other’ areas of the city and return to their homes in the evening. The pregnant question that could be posed here is why does such a significant amount of ‘recognised’ population lack a basic right, which is education? Are they disenfranchised because of their place of residence? Are they not so profitable to invest in? Where is their voice?

This same regime caters and clamours for an all-inclusive city, but why does this area lack in water and sanitation? Water and sanitation is the least profitable³⁵⁵ enterprise any investor would want to indulge in, but for a government this should be present in the planning for a people. The regime does not declare openly that they shall not provide water and sanitation to the slum dwellers but silently leave them out of any debates or plans of service provision. This could be termed as institutionalised neglect where discrimination and inequality are based on de jure and de facto mechanisms, which are commonly identified as “temporary.” One of the most conspicuous “temporary” phenomena is the emergence of “gray” spaces composed of informal,

³⁵³ *Ibid*

³⁵⁴ *Ibid*

³⁵⁵ McFarlane, C. (2008), Sanitation in Mumbai's Informal Settlements: State, 'Slum' and Infrastructure. *Environment and Planning A*.40:88-107.

often illegal, development, and populations (see al-Sayyad 2004).³⁵⁶ So these poor people in the informal settlements are usually caught up between the various state regulatory systems and mechanisms and thus dot the urban landscape interposing between the planned and the unplanned and increasing in their numbers by the day.

In chapter four there was one of the stakeholders interviewed, who off the record attested to the fact that, the slum dwellers are a necessary evil as they are a cheap source of labor and resources for the rich man and the industries. This form of neo-colonialism is entrenched in the non-western cities as the elites exploit these people for the cheap labour they can produce from their disadvantaged position, makes the elite expand their material power and position further entrenching this neo-colonial relation among citizens of the same country.

5.4.2.1 (De)neo colonialism of informal settlement dwellers

As a city fights for justice for its people, then all the dwellers should enjoy equal rights and capabilities to enhance their position if they so wish. The aspect of choice should be offered to them so as to remove them from a disadvantaged position to a position of rational empowerment and choice. This can be done through urban policy which changes a group's position from marginalization to an equal footing in the exchange of rights. Where this can be achieved in a context where active political forces are recognized as major actors in the processes that occur within a society as opposed to forces that are deemed to be of external influence.

Urban (de)neo colonialism, can be achieved where the political forces allocate a fair share of power and resources proportionally, where the disadvantaged groups can be integrated in the city and not be dominated by the ruling elites who normally have a privileged position. Generally the

³⁵⁶ Oren, Y. et al (2009), Urban Justice and Recognition Affirmation and Hostility in Beer Sheva

informal settlements due to their proximity to the city and privileged housing quarters end up producing labour that is extremely low priced, bordering on the exploitative side as they live in a near hand to mouth existence and have to fight for their survival. This form of labour is utilized by the ruling elites to expand their own interests either in their houses or in the enterprises they own leaving the informal settlement dwellers disenfranchised. The city cannot be termed as a just city as large numbers of people cannot meet their basic needs as others live in opulence.

For de(neo) colonialism to take root, we need to concede that the urban is made up of assemblages which need to be factored in, for any meaningful policy of redistribution of materiality to occur. The failure to acknowledge the coherence of collectivities and their structural relationships to each other evades a fundamental social issue of redistribution—how can we avoid imposing an unacceptable burden on the better-off? How much social conflict is an acceptable price to pay for greater justice? What circumstances allow the diminution of control (political and material) of those who have a disproportionate amount? And how much is necessary to remedy inequality especially in the informal settlements who are already spatially marginalized.³⁵⁷

5.4.3 Deliberative democracy and democratic innovations

As a new field of political research, democratic innovations are more than rethinking of old concepts of participatory democracy and more of engaging the citizens at their point of need. Studies indicate that people have become more and more disenchanted with the traditional institutions of representative government, detached from political parties, and disillusioned with

³⁵⁷ Fainstein, S. (2006), Planning and the Just City, Conference on Searching for the Just City, GSAPP
Columbia University

old forms of civic engagement and participation³⁵⁸ they are in search of true engagement which is the ideal speech situation as it resonates well with citizens. This thought brings into play concepts of rationality, truth-telling, and democracy; its assumption is that through discourse, participants in decision-making will arrive at the best decision resulting from the force of the best argument.³⁵⁹ The best argument is always the one that the citizens have bought into as it speaks about their own preoccupations and desires.

Deliberative democrats would argue that providing participants with sufficient information and access to expertise, and seeking to encourage them to form positions during discussions rather than to bring pre-prepared positions and agendas with them, can instill new norms of conduct.³⁶⁰ Therefore, for justice to be realised, support from other levels of society should be enhanced, not only the people concerned as such the state and other institutions should be in a position to integrate new technologies into public discourse in an effort to allow the voices of the people be heard, regardless of socio-economic status, party affiliation, or party(ies) in power. The urban programs and policy discussions should be imbued in a concept of justice relevant to what is within the city government's power and in terms of the goals of urban movements³⁶¹

³⁵⁸ Yetano, A. et al (2010), What is Driving the Increasing Presence of Citizen Participation Initiatives? *Environment and planning*.

³⁵⁹ Healey, P. (1997), *Collaborative Planning: Shaping Places in Fragmented Societies* (2nd Ed) Macmillan Press, London

³⁶⁰ Fung, A. (2003), Survey Article: Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences', *Journal of Philosophy* 11(3): 338–67.

³⁶¹ Fainstein, S. and Hirst, C. (1995), *Urban Social Movements* in Judge, D. et al (eds), *Theories of Urban Politics*, Sage Publications, London

In response to these new forms of conduct, the recent years have seen a growing interest not only in increasing participation, but also in the quality and form of the engagement between citizens through the use of direct, deliberative and participatory democratic mechanisms.³⁶² It is argued that if the decision-making process is inclusive and dialogue between citizens is unconstrained, it will lead to greater understandings of different perspectives, more informed debate and decisions that are widely accepted by participants which makes them engaged and empowered.³⁶³ Therefore, techniques that are explicitly oriented to amplifying the voices of the least vocal enhance the possibilities of deliberation, allowing positions to be openly debated rather than defensively asserted. Thus, the introduction of innovative interactive practices can begin to change the culture of interaction in the participatory sphere, countering the reproduction of old hierarchies and exclusions, and enabling a greater diversity of voices to be heard so as to bring the best voice forward.³⁶⁴

If citizens are given a chance to participate equally without others having more rights than they would be in a better position to air out their views. Especially the residents in informal settlements; the state should look for ways to boost public involvement in the political process. This could be through participatory budgeting, citizens' assemblies, consensus conferences, citizens' juries among other blended democratic innovations which offer opportunities for wider and deeper citizen engagement as they offer a chance for the state to reclaim the distrust which citizens have of them. In Soweto East, there has been a lot of mistrust from the state as the

³⁶² Graham, S. (2009), *Democratic Innovations: Designing Institutions for Citizen Participation* Cambridge, Cambridge University Press, A Comprehensive Examination of Recent Micro Deliberative Institutions

³⁶³ Fishkin, J. (2009), *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford, Oxford University Press: A Comprehensive Description of the Theory Behind Deliberative Polling

³⁶⁴ Cornwall, et al (eds), (2007), *Spaces for Change? The Politics of Participation in New Democratic Arenas*, Zed Books, London

citizens feel and see themselves as second class citizens, as they are not able to bargain their daily lives. The state through the local leaders has always promised them rewards but it all comes to lack of fruition thus leaving them disenfranchised and concerned about democratic accountability, participation and representation.

The challenge of building democratic polities where all can realize their rights and claim their citizenship is one of the greatest of our age. Reforms in governance have generated a profusion of new spaces for citizen engagement. In some settings, older institutions with legacies in colonial rule have been remodeled to suit contemporary governance agendas; in others, constitutional and governance reforms have given rise to entirely new structures. These hybrid ‘new democratic spaces’ are intermediate, situated as they are at the interface between the state and society; they are also, in many respects, intermediary spaces, conduits for negotiation, information and exchange.³⁶⁵ These spaces help in the governance of a particular circumscription and could either be invited or invented spaces, which could be one off or perpetual, as long as needs demand.

5.4.3.1 Invited spaces of participation

For deliberative democracy to take root and be effective there needs to be s(pl)aces where the citizens can freely participate and make their views known. They may be provided and provided for by the state, backed in some settings by legal or constitutional guarantees and regarded by state actors as their space into which citizens and their representatives are invited. These spaces can also be created by the legitimate bodies that are carrying out the interventions and ruling of a jurisdiction. They offer legitimacy to the intentions of the ruling bodies as they demonstrate that the citizens have a voice in matters affecting them.

³⁶⁵ Cornwall, A., and Coelho, V.S. (eds), (2004), ‘New Democratic Spaces?’, IDS Bulletin 35 (2) .

In chapter four we find that there is a concerted effort by the local administration to assure the citizens that they have the intention of promoting transparent and responsible government. This they do by creating formal spaces where the citizens can participate. Citizens have a space where they have the right of putting forth their suggestions and grievances if they so wish. This allows for near perfect representation. This has been accomplished by the state offering a s(pl)ace where representatives from the community could go to the ministry of housing to speak about their intentions. This has been done severally through consultative forums where the community representatives through the SEC gave their suggestions about the house designs, location of water and sanitation points in the settlement and the hierarchy of needs when invited by the implementing organ.

Other invited s(pl)aces in which the citizens were given opportunity to have their voice heard was in the chief's barazas - which are open air gatherings that give opportunity to all community members to air their opinions. The citizens are aware of these forums in which they can have direct access to speak out their concerns to the local authority. These forums are legitimized in that the chief acts as a representative of the state. If managed well, deliberative democracy enable citizens access efficiency and effectiveness in financial management and equity in delivery of services like unbiased access to the basic necessities of urban life, championing of pro-poor policy for vulnerable populations and promotion of participatory decision-making processes which ensure accountability, transparency in operation of local government, responsiveness to central government and citizens, and promotion of integrity.³⁶⁶

³⁶⁶ Taylor, P. (2006), The Urban Governance Index: A tool to Measure the Quality of Urban Governance, Presentation to UNESCO UN-HABITAT Meeting, Paris, December 2006

5.4.3.2 Invented spaces of participation

Expanding democratic engagement calls for more than invitations to participate.³⁶⁷ It calls for demonstrative participation whereby people are able to exercise their political agency. For this to take root, they need first to recognize themselves as citizens rather than see themselves as beneficiaries or clients.³⁶⁸ This then calls for new forms of s(pl)aces where civil society can engage and conquer in demanding inclusion of citizens by mixing conventional representative forms of participation with new direct as well as deliberative participatory instruments (hybrid democracy).³⁶⁹

In all sectors of society, human beings have a way of being disenfranchised, even after all efforts of securing their wellbeing have been thought out and put up by them. As such they have to create spaces where they feel represented and can make a stake at the community level. Civil societies usually bridge the gap created between the state and citizens by mobilizing the citizens at the most informal level, which has granted legitimacy to the significance of informal politics and of informal action at the grassroots level which most development and planning projects, including the hard-core promoters of neoliberal development programs have been forced to pay special attention to.³⁷⁰ These spaces, though occupied at the grassroots and claimed by their collective action, are institutionalized and directly confront the authorities and the status quo in the hope of larger societal change and resistance to the dominant power relations.

³⁶⁷ Cornwall, A, and Coelho, V.S. (eds), (2004), 'New Democratic Spaces?', IDS Bulletin 35 (2) .

³⁶⁸ Cornwall, A. et al (eds), (2007), Spaces for Change? The Politics of Participation in New Democratic Arenas, Zed Books, London

³⁶⁹ Miraftab, F.(2004), Invited and Invented Spaces of Participation: Neoliberal Citizenship and Feminists' Expanded Notion of Politics , Wagadu Volume 1

³⁷⁰ *Ibid*

It has been argued that these are spaces of contestation as well as collaboration, into which heterogeneous participants bring diverse interpretations of participation and democracy and divergent agendas. As such, they are crucibles for a new politics of public policy. The people of Soweto East through the capacity building done by the civil societies have been able to organize themselves to influence the policy and organization in that they formed cooperative societies, and 'chamas' where they can determine their livelihoods and financial future, while the watering points provide plenty of room for negotiations and discussions by women. These are s(pl)aces where, they have created for themselves to carry out their intentions. For instance when they want to make retribution or a chastisement to one of them, the best place to do this is at the water tap as opposed to the formal spaces where it would be inappropriate to discuss the nitty gritty of the day to day practices.

Plate 5. 1: A sign indicating protest



Source: Archives

A sign in the informal settlement which the residents have put up as a matter of contestation and a call to fight for their rights. It is prominently displayed on dangerous electricity poles in plain view of residents who can see it from wherever they are and act accordingly. This is a form of protest against the ruling status quo, where citizens have organized themselves to solve their own issues.

The institutions of this sphere have a semi-autonomous existence, outside and apart from the institutions of formal politics, bureaucracy and everyday associational life, although they are often threaded through with preoccupations and positions formed in them.³⁷¹ The council of elders is another important invented space as it is used for locating and localising interactions and sanctions. It is the collaborative space of the village, where binding decisions are made before they are taken to the formal bodies. Besides the council of elders, the Settlement Executive Committee acts as a s(pl)ace of contestation in that it ensures that the status quo is challenged. It ensures that the government does not lord over the community what they should do, but lets the community decide their fate, this has been achieved by ensuring that every member of the community has a chance to voice his or her opinion and then it is transferred to the ‘governing council’ of the project. These community members are represented in either the structure owners, the youth, the widows, the faith based groups and the opinion leaders.

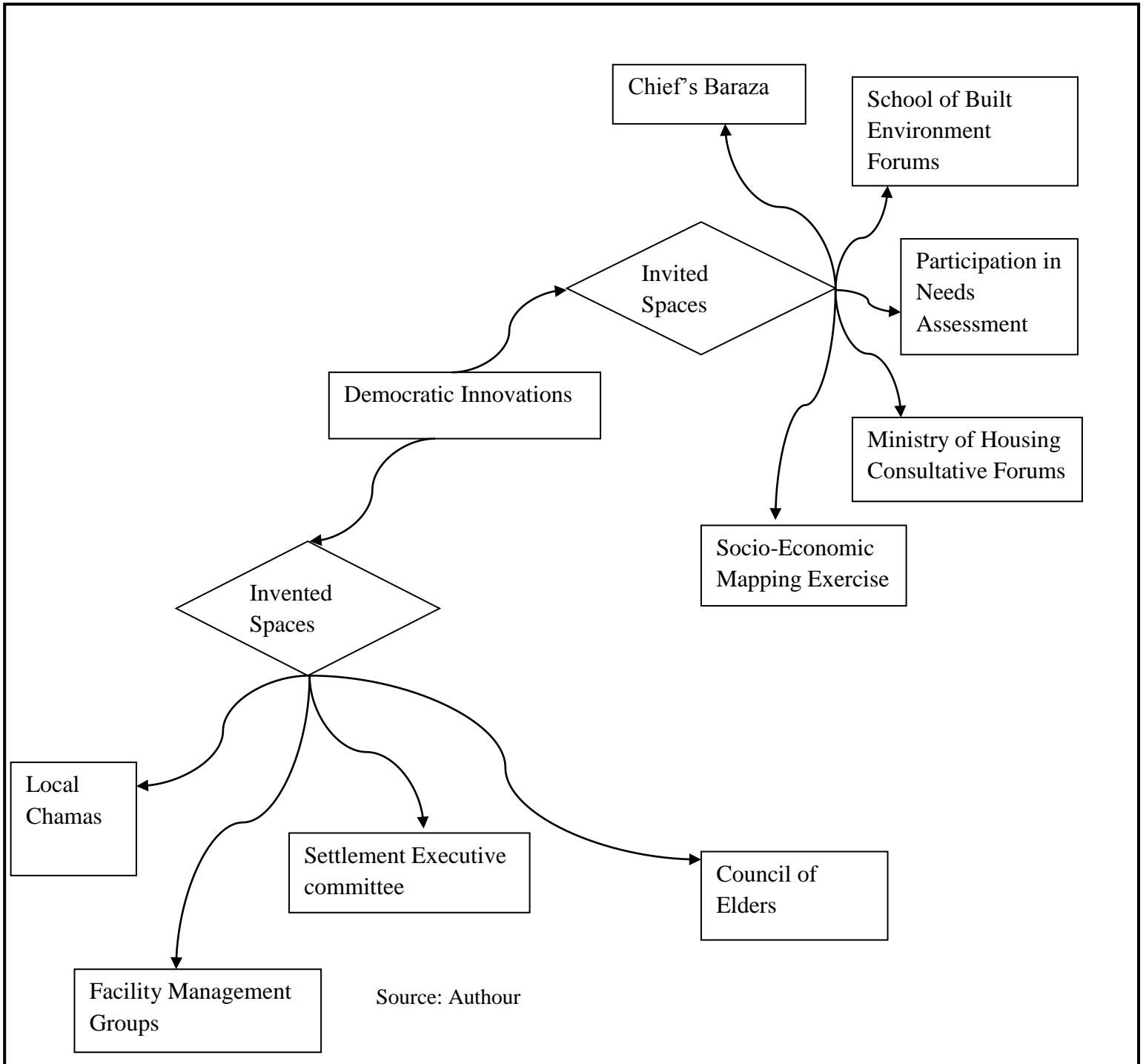
Invented s(pl)aces are arenas in which the boundaries of the technical and the political come to be negotiated, they serve as an entirely different kind of interface with policy processes than other avenues through which citizens can articulate their demands – such as protest, petitioning,

³⁷¹ Goetz, A.-M. and Gaventa, J. (2001), ‘Bringing Citizen Voice and Client Focus into Service Delivery’, IDS Working Paper No. 38, Institute of Development Studies, University of Sussex, Falmer

lobbying and direct action – or indeed organize to satisfy their own needs.³⁷² They should be encouraged as much as possible as they give rise to new political subjectivities opening up more areas of decision making to public engagement thus multiplying spaces in which growing numbers of people come to take part in political life allowing them to take charge of their destiny, giving them a fair share of their belonging to a just city.

³⁷² *Ibid*

Figure 5. 2 : Democratic Innovations present in Soweto East Village



5.5 Acknowledging the right to the city for all

The right to the city is grounded in the entitlement to physically occupy urban space, it flows from the inhabitation of urban space, it is neither a natural nor a contractual right but emerges from the essential qualities of the urban – as a space of centrality, gathering and convergence. It ‘gathers the interests of the whole society and firstly of all those who inhabit’.³⁷³ It should not be viewed as a new legalistic instrument, but rather as an expression of the deep yearnings of urban dwellers to see their multiple human rights become more effective in urban areas.³⁷⁴ Hence it is a call for more inclusive development which contests the spatial exclusion of certain segments of urban fabric from both the benefits of the material dimension about the adequacy of collective urban services and the appropriation of space. It is a right not to be expelled from social life and a rejection of enforced segregation to the urban peripheries.³⁷⁵

Indeed it is a right that defends individual liberties of the inhabitants. The right to the city is also a recognition of the importance of the urban as a space of encounter, allowing differences to flourish in order to facilitate the possibility of collective political action. Lastly, it is a demand for a participatory role in all circuits of decision-making leading to the control and development of the organisation of social space as a means of resisting the control of space by the state, its planning bureaucracies, and capital.³⁷⁶ This right to the city will also ensure that no colonial type

³⁷³ Lefebvre, H. (1996), *Right to the City*, English Translation of 1968 text in Kofman, E. and Lebas, E. (eds and translators) *Writings on Cities*, Oxford, Blackwell Publishing

³⁷⁴ Brown, A. & Kristiansen, A. (2009), *Urban Policies and the Right to the City: Rights, Responsibilities and Citizenship*. MOST-2 Policy Paper Series

³⁷⁵ Butler, C. (2009), *Critical Legal Studies and the Politics of Space*, Griffith University, Australia

³⁷⁶ Martins, M. R. (1982), 'The Theory of Social Space in the Work of Henri Lefebvre', pp. 160-185 in Forrest, R. et al (eds), *Urban Political Economy and Social Theory*, Aldershot: Gower

relations are enhanced in the city, thus contesting against the neo-colonialism discussed above which is present in the southern cities leading to people being disenfranchised materially and politically.

This right can transform the ‘power relations that underlie the production of space, fundamentally shifting control away from capital and the state and toward urban inhabitants.’³⁷⁷ A right to inhabit space would concretise the rights of the citizen as a user of multiple urban services and directly challenge the dominance of more limited ‘liberal-democratic’ forms of political citizenship. The right to the city supports in particular the fight against the privatization of public space, services and the maintenance of heterogeneity within the periphery areas.³⁷⁸ As applied to Soweto East it condemns the taking of crown land, which is public land by private developers and building shacks that do not have basic amenities for the dwellers.

This right needs to be pushed forward by policy makers, who are committed to seeing it flourish. As it is has evolved over the past fifty years under the influence of social groups and civil society organizations responding to the need for better opportunities for all and finally enshrined in the World Charter on the Right to the City, it is not a new right all together, but a right that will ensure recognition of all inhabitants of the city, be they migrants, informal dwellers or the elites, this right shall give them the oomph to contest any disadvantaged position and give them voices to organize themselves politically in a democratic way to take charge of their destiny. This right is the backbone of all other rights that we fight for in the city.

³⁷⁷ Butler, C. (2009), *Critical Legal Studies and the Politics of Space*, Griffith University, Australia

³⁷⁸ Lefebvre, H. (1996), *Right to the City*, English Translation of 1968 text in Kofman, E. and Lebas, E. (eds and translators) *Writings on Cities*, Oxford, Blackwell Publishing; Mitchell, D. (2003), *The Right to the City: Social Justice and the Fight for Public Space*. New York: Guilford Press.

5.5.1 Rights to urban services

The right to the city is a vision for an alternative, adequate and ideal city where mutual respect, tolerance, democracy and social justice prevail. This right requires that all the inhabitants access the basic services in a timely, effective and quality manner. While the right to the city is a broader concept than simply rights to urban services, nevertheless basic services are a core necessity if communities are to access the benefits carried by the right. These basic services give the privilege for all to utilize their space in a proactive, dignified and equitable manner. The basic services should be provided by the municipal council to accord social justice for all.

Of fundamental importance is the right to water and sanitation, it is a requirement for achieving liberty, choice and freedom inherent in the right to the city. Lack of adequate sanitation is the primary cause of water contamination and diseases linked to poor water quality and the continuing contamination, depletion and unequal distribution of water in urban areas is exacerbating poverty and ill health.³⁷⁹This has been reverberated by many organizations for example United Nations Committee on Economic, Social and Cultural Rights, made the following commitment as a legal basis of the right to water: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements” The ‘right to water’ applies both to its availability and quality and contains both freedoms and entitlements; the freedom to predictable, uncontaminated supplies, and the entitlement to a water management system without discrimination.³⁸⁰

³⁷⁹ Rakodi, C. et al, (1996), *Issues in the Integrated Planning and Management of River/Lake Basins and Coastal Areas*, Nairobi, United Nations Centre for Human Settlements, (Habitat)

³⁸⁰ Committee on Economic, Social and Cultural Rights (2000), Article 2, 12 and 10

Besides rights and access to water in urban areas or cities, we must contend with the fact that the provision of basic services is highly context specific. The provision of basic services, relies heavily on the political will of a country, the historical injustices and their redress, the infrastructure – most of which is ageing, inadequate and requires maintenance. Any activity developed over time engenders a space, and can only attain practical ‘reality’ or concrete existence within that space.³⁸¹ It is also important to clearly define an integrated framework which is cross-disciplinary to find a range of solutions which would afford the provision of these services to the city population as it is the right of any inhabitant to access basic needs as specified in the in the Universal Declaration of Human Rights besides the economic, social, cultural, civil and political rights.³⁸²

5.5.2 Human rights based approach (HRBA) to sanitation and water

The HRBA emerged as an alternative approach to traditional development approaches of service delivering and basic needs, by informing about and advocating for human rights, rather than implementing services, to reach development objectives.³⁸³ In practice, the HRBA represents the attempt to address development problems by analysing and redressing the inequalities and discriminatory practices that are at the root of these problems by focusing on legal and institutional reforms. The objective of the framework is to bring human rights to the core of development so as to ensure the primacy of human well-being in the determination of

³⁸¹ Lefebvre, H.(1991), *The Production of Space*, Blackwell Publishing, Oxford,

³⁸² Ishay, R. M.(2007), *The Human Rights Reader*, 2nd edition, Routledge Taylor & Francis Group, New York

³⁸³ Kindornay, S et al (2012), *Rights-Based Approaches to Development: Implications for NGOs*, *Human Rights Quarterly* 34, pp. 472–506

development goals.³⁸⁴ It encourages redefinition of development problems into “claims, duties and mechanisms that can promote respect and adjudicate violation of rights”. This implies an increased focus on accountability, which is what “distinguish charity from claims.”³⁸⁵ Thus reiterating the fact that creating claims and duties, makes development a responsibility and obligation rather than an act of solidarity and charity.³⁸⁶

It mostly focuses on the poor and marginalized as structural causes behind poverty, are often inequalities, exclusion and unequal power relations. Its main focus includes analysis of inequalities, discriminatory practices and imbalance in power relations that often are the main obstacles to development,³⁸⁷ especially in cities where the opportunity divide is evident.

5.5.2.1 Recognition of the human right to water in the context of Kenyan law

The formal recognition of the human right to water and sanitation was made by the United Nations General Assembly in July 2010, through a Resolution of the General Assembly.³⁸⁸ The Resolution recognises the right to water and sanitation as essential to the realisation of all human rights.³⁸⁹ Consequently, it calls upon states and the international community to provide the

³⁸⁴ Musembi, C.M. & Cornwall, A. (2004), What is the “Rights-Based Approach All About? Perspectives from International Development Agencies ’ *IDS Working Paper 234*

³⁸⁵ Uvin, P. (2007), From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development, *Development in Practice*, Vol. 17, No. 4/5 (Aug., 2007), pp. 597-606

³⁸⁶ Banik, D. (2010), Support for Human Rights-Based Development: Reflections on the Malawian Experience, *The International Journal of Human Rights*, 14:1, 34-50

³⁸⁷ *Ibid*

³⁸⁸ 'The Human Right to Water and Sanitation, GA Res 64/292, UN GAOR, 64th session, 108th mtg, Agenda Item 48, Supp No 49, UN Doc A/64/L.63/Rev.1 (26 July 2010)'.

³⁸⁹ *Ibid.*, [1].

financial resources necessary to help developing countries, in the provision of safe, clean and accessible and affordable drinking water and sanitation to all.³⁹⁰

The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and that it is inextricably linked to the right to the highest attainable standard of physical and mental health as well as the right to life and human dignity.³⁹¹ This Resolution by the Human Rights Council also reaffirms that the primary responsibility for the realisation of all human rights, including the right to water and sanitation, lies with the state and therefore delegation to third parties does not exempt the state from its human rights obligations. States are thus encouraged to put in place the mechanisms necessary for the progressive achievement of the human rights obligations related to this right with an emphasis on the not served or underserved areas.³⁹² Thus when applying the HRBA to water governance , there is need for a paradigm that seeks to direct all water management systems towards a guarantee of the basic human need for water and that provides the individual water user with the instruments to enforce this need for water.³⁹³

The Constitution of Kenya demands for the right of all Kenyans to clean and safe water in adequate quantities and requires the government to take affirmative action to ensure that

³⁹⁰ *Ibid.*, [2].

³⁹¹ *'Human Rights and Access to Safe Drinking Water and Sanitation*, Human Rights Council Res 64/292, UN GAOR 15th session, 108th plenary meeting, Agenda Item 3, UN Doc A/HRC/15/L.14 (30 September 2010)', (2010), [3].

³⁹² *Ibid.*, [8].

³⁹³ Bourquain, K. (2008), *Freshwater Access from a Human Rights Perspective: A Challenge to International Water and Human Rights Law* .

minorities and marginalized groups have reasonable access to water.³⁹⁴ In article 69 it grants all Kenyans a right to a clean and healthy environment which includes the right ‘to have the environment protected for the benefit of present and future generations through legislation and other measures and sets out the obligations of the State and state organs in protecting and conserving the environment and ensuring ecologically sustainable development and use of natural resources. Water resources are part of the environment and thus these provisions can be invoked to protect the right to water resources.

5.5.3 Challenges to accessing the right to the city

The right to the city has been conceived as a right for all inhabitants by virtue of them possessing the space physically, the challenge to accessing it, is in exploring how this right plays out in practice, that is: whose rights? Where are these rights accessed? How are they accessed? Rights to what aspects of ‘the city’? and could they all be lumped up as human rights? The rights could be achieved in cities which are inclusive, with an inclusive city being defined as a city that promotes growth and equity whilst empowering citizens to participate fully in the opportunities it offers.³⁹⁵ Though the right to the city has been a highly contested and accepted term, it has challenges in implementation for instance.

The disjuncture between policy and processes can make this right a mirage for many. Many governments have failed to turn policy aims into processes that actually bridge the gap that promotes exclusiveness as opposed to an inclusive city. This is especially so in cities which experience serious resource constraints and lack inclusive mechanisms and institutions that are

³⁹⁴ Kenya, Republic of (2010), The Constitution of Kenya. Nairobi, National Council for Law Reporting.

³⁹⁵ UN-HABITAT (2008), Kibera and Mirera-Karagita Non-Motorized Transport Project- Project Document. Nairobi

required to bridge the urban divide. At times their leaders have not demonstrated the strength of vision or political commitment needed to overcome the urban divide.

Secondly, the lack of institutional coordination between the various spheres of leadership may make this not become a reality. Findings show that many times the coordination is promoted only in terms of economic growth as opposed to political and social inclusion. Thirdly, ill-informed policy making contributes substantially to municipal failures to integrate the various dimensions of equality in any organic manner and lastly there is powerful interest group influences which interfere with inclusive urban policies.³⁹⁶

These challenges can be overcome by establishing periodic assessments of urban governments and their administrations to see if they are perpetually concerned with development of strategies to improve quality of life for their citizens. Governments can help reduce poverty and inequality through strategies that support initiatives of the poor, but repressive policies and actions can also exacerbate poverty.³⁹⁷ If they are committed to ensure these policies are implemented, then they will automatically put the right to the city forward.

5.6 Is urban justice an advantage (right) for all?

Cities are constantly changing, being shaped and reshaped by the political forces that play a role in their making. They are built by the inhabitants who conglomerate in the cities to gain what they have lacked in their places of origin, more often than not, less urbanized than the city. Though these inhabitants have a right to lay claim on the city they find themselves confronted with other realities which are foreign to them. The reality is a reality described as a man-made

³⁹⁶ UN-HABITAT (2011), State of the World's Cities 2010/2011, Bridging the Urban divide, Earthscan, London

³⁹⁷ Devas, N. (2004), Urban Governance, Voice and Poverty in the Developing World, Earthscan Publications Ltd, London

fraction of the fragmented city running along a spatial and social continuum, reflecting the only difference between their respective populations- the socio-economic status.³⁹⁸

This difference is perpetuated by the producers of space leading to spatially segregated enclaves of communities living at varied socio-economic scales, divided along ‘rich’ and ‘poor’ lines and in extreme cases, groups live in almost completely isolated areas.³⁹⁹ These spaces, physically and socially formed, through processes of planning, development, or community activism, continue to perpetuate just or unjust spaces thus promoting the existence of a socio-spatial dialectic in achieving spatial justice, where the economic and social conditions of different groups and the geography of injustice – that is, how the social production of space impacts social groups and their opportunities.⁴⁰⁰ This difference then is clearly manifested by the urban divide.

The urban divide is the face of injustice and a symptom of systemic dysfunction where stark differences in the way space and opportunities are produced, appropriated, transformed and used are manifested.⁴⁰¹ It shows the intangible yet enduring divisions in society that apportion unequal opportunities and liberties across all urban residents. This divide can be manifested in the economic divide/ spatial divide / opportunity divide and the social divide, leading to a city that is not all inclusive for its inhabitants.⁴⁰² This city is a city wrought by pockets of unjust spaces,

³⁹⁸ UN-HABITAT (2011), State of the World’s Cities 2010/2011, Bridging the Urban divide, Earthscan, London

³⁹⁹ Kruythoff, H. (2003), Dutch Urban Restructuring Policy in Action Against Socio-Spatial Segregation: Sense or Nonsense? *European Journal of Housing Policy*, 3(2), 193.

⁴⁰⁰ Bassett, S. (2013), The Role of Spatial Justice in the Regeneration of Urban Spaces Groningen. The Netherlands NEURUS Research

⁴⁰¹ UN-HABITAT, (2011), State of the World’s Cities 2010/2011, Bridging the Urban divide, Earthscan, London

⁴⁰² *Ibid*

inhabited by various socio-economic categories of people who feel excluded by the planning fathers. By placing focus on spatial justice, the intersection of space and social justice, a new perspective can offer a rethinking of our assumptions about who gets to use space that can help diverse social justice struggles find common ground and offer a way of thinking across traditionally silo-ed sectors for a scale-able and organised response.⁴⁰³

Spatial injustices are and continue to be rooted in the social and physical infrastructures that have been formed through decades of uneven development and (re) development processes. If the uneven developments that are often the results of urban regeneration processes are to be challenged and rectified, they must be engaged on both spatial and social terms.⁴⁰⁴ Spatial justice can be recognized through the connectivity between spatial claim, spatial power, and spatial links through the formation of solidarities across differences to change or reconfigure injustices. Spatial policies are key to safeguarding the integrity of a city, they ensure that the economic divide/ opportunity divide and the social divide are diminished or brought to a low level that is ‘acceptable’. Therefore an analysis of policy engagement on both social and spatial terms provides direction and a way of how to measure the urban advantage which is an indicator of the relationship between socio-economic and spatial dimensions of a city.

Recognising spatial injustices, is necessary to work against issues of institutionalised oppression and covert power imbalances. Connectivity between spatial claim, power, and links through the formation of “solidarities across differences” is a way to change or reconfigure these injustices, spatial claim (ability to live, work, or experience space), spatial power (opportunities to succeed

⁴⁰³ Bassett, S. (2013), The Role of Spatial Justice in the Regeneration of Urban Spaces Groningen. The Netherlands NEURUS Research

⁴⁰⁴ Bromberg, A et al (2007), Spatial Justice. Critical Planning: A Journal of the UCLA Department of Urban Planning.

in and contribute to space), and spatial link (access and connect to and with other spaces).⁴⁰⁵ These concepts could be used to elaborate the urban advantage to all the city inhabitants as they have the right to the city.

5.7 Conclusion

The justice discourse has been going on for several decades and more so, the just city. There has been an increasing demand and realisation that humans need to live in all inclusive cities which represent their rights and their capabilities. Cities for a long time have been products of capitalistic influences and as such have not accorded the inhabitants equity and platforms for experiencing the diversity and richness of the city. Thus in this chapter I have attempted to join the debate of establishing what a just city is in the context of a southern city which has been fraught with uneven development due to a colonial legacy that left the inhabitants with near to no access of urban services and further promulgated by the lack of just planning policies and a sluggishness of their implementation to create a divided city with stark realities of the rich ruling elite and the urban poor.

The city which is just has been defined as a city that has been able to vernacularize justice. This is articulating justice in a manner that is comprehensible to the people in their own language, which could include actions and processes. These actions and processes should address any historical injustices that could possibly have prevailed in the said space. It is of paramount importance to address the issue of vernacularising justice in its entirety as this forms the backbone of the discourse and engagements. Justice can be vernacularized by having special recognition for the interest groups and not ‘othering’ the group that is marginalized. They also need to have a fair share of the resources that are available in the city. This can be achieved

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through breaking the self-defeating patterns of the elite ruling and dispossessing the disadvantaged groups by a process of (de) neo colonization and having the power of voice by having democratic innovations which are in tandem with the society.

To follow suite, I argue that for any of the rights to be granted so as to acquire the basic services, by virtue of being inhabitants of the city, the right to the city discourse has to be acknowledged and furthered to ensure inclusive cities. This right should also acknowledge the human rights based approach to the provision of water and sanitation services for the informal dwellers and any challenges that are present in offering the urban advantage to all should be looked into by addressing the socio-spatial injustices present in cities, which are created by an invisible urban divide, which is real and tangible.

GENERAL CONCLUSION

The misfortune and impact of urban degeneration is the result of spatial injustices that are and continue to be embedded in the physical and social infrastructures that have been shaped through decades of uneven development. Many of these uneven socio-political histories can be “read” through the visible and tangible public infrastructure prevalent in a city. This degeneration is a result of neglect fostered by retrogressive policies which were formerly enacted by the ruling regime and finally inherited by the incoming regime. These policies, despite their good intentions are normally out of sync with the reality on the ground and as such they produce spatial enclaves of poverty and despair; hope and prosperity which are continuously in constant contestation as space is ideological, socially produced, disputed, and constantly changing among social, political, economic, and geographic territories.

This thesis has thus been placed in the light of all these contestations. It is situated in an informal settlement which has endured years of neglect and exclusion from the urban fabric due to the foregoing – policies of non-inclusion. The informal settlement has been situated in a periphery position lacking the urban services which the city has to offer and thus denying this group of citizens their right to the city. To redress this lack of justice for the slum inhabitants, the government embarked on an ambitious slum upgrading initiative which saw the introduction of a water and sanitation initiative in the settlement in line with the sustainable development goals so as to make the settlement dwellers entertain the hope that they too have a stake in the city and make them enjoy the urban advantage.

Therefore this thesis has in the first place tried to answer the major question of how water and sanitation systems can be governed in informal settlements to make them sustainable and resilient. The inspiration for this question was a result of observing the pilot project of Kenya Slum Upgrading Program (KENSUP) and noted with interest that this pilot project has endured

the test of longevity. It has been in operation long after the implementing agency has left the intervention site. This is a far cry from the normal, as the normal is always allowing the projects to fail after decommissioning due to total disregard and neglect.

To answer this question and illuminate the discussions, the pilot project – K-WATSAN was used as a case study, for an in-depth analysis and study. This led to asking the following minor questions:

1. In which historical, livelihood and governance contexts is the Soweto East water project embedded and what trends can be observed?
2. How is the K-WATSAN project configured in terms of actors, activities and values?
3. What arrangements are used to govern K-WATSAN project?
4. How do these governance arrangements impact the livelihoods of actors in K-WATSAN project and their sustainability?
5. How do formal and informal aspects of governance interplay in the development process, and how do they relate to the wider rules of the game in a society?

These questions helped to offer an explication of the big picture. Therefore, the project was studied at the macro-level, meso-level and micro level to get a holistic view of it. A lot of time was spent in the field to gather ethnographic material as this explains better the intricacies of the system. Literature pertaining to this particular project was very scarce, therefore I had to rely on other interventions in informal settlements to understand what concepts I would be expecting in my study site. The reason as to why literature is scarce is that this is a new project and thus has had very few scholarships on it, though Kibera (the wider settlement) has been extensively studied.

As I talked to the people and studied their habits and practices, a couple of themes emerged and revolved around the topic, thus together with the dwellers we mapped the following themes: Co-production; Localism; Community Participation and Representation; Elders Role; Justice and Vernacularisation. They shall be discussed in the next sections. The mapping of these themes facilitated the analysis of the system to answer the first question on how resilience has been realized on a system like this. It was evident that informal norms were a major playing factor in the longevity of the system.

Co-production

Co-production has gained the approval as a governance paradigm to deliver sustainable water solutions especially in RIO+20. It has been defined as a “process through which inputs from individuals who are not “in” the same organization are transformed into goods and services”, which entails the bringing together of synergy and cooperation between different entities, mostly government and citizens. This ensures that the strengths of one are capitalized by the other party and the strengths of the other are capitalized by the corresponding party. There is mutual reciprocity of dealings. This process ensures that there is substantial resource contribution in terms of goods and services and citizens are active participants in the execution of public policies which could have been drafted with them or at the policy table.

In this particular system, the dwellers were keen to see the building of solidarities among them so that they could have a stronger bargaining power on their destiny and move from simple claim making from the state to collective production and consumption of their water. Thus, they accomplished this by being at the forefront of designing their facilities, as they were the users and more so they knew what they needed more than the external implementers. They needed the technical assistance and advice but wanted to own the solution. For example they (dwellers)

knew they wanted sanitation solution as opposed to housing at the first instance so they sat called the external implementers and sat with them in a meeting as equal partners to deliberate on their intervention course of action, hence they were able to articulate their needs as opposed to solutions being procured from outside.

They were able to design their facilities and be at the forefront of learning how to manage them, thus co-production as a strategy enhances the learning through the exchange of ideas and experiences, enabling people build on each other's strengths and bestow confidence. It also relies on governance solutions passed through informal channels which do not pass through the state or other formal institutions. This helped in solving the water and sanitation situation in Soweto East which had previously been termed as a failure of the state.

Localism

In Soweto East, the system has been developed to serve a particular jurisdiction and therefore the rules too. This is effective as any informal system should embody a wealth of experience if it is situated in a local situation as it understands the livelihoods, cultures and social mores or customs of the people. Localism entails user development of the system so that they own the solution as opposed to being loaded upon by external influences.

In the process of launching their system, the dwellers were in an extra legal position, thus they had to develop their own forms of governing systems to ensure the sustainability of their system. This system was a conglomeration of experiences and lessons learnt from previous interventions which had failed or from best practices seen in other informal areas. So they developed their own social norms which have an obligatory force. These rules operate in the same field as the State laws though they actually supersede them as it is the local dwellers who enforce them, with a

‘desturi ya kijiji’ attitude. This means that sanctions can be applied for non-compliance, for instance the withdrawal of 70 % of water access if a household does not honour their debts.

These users also determine the limits of usage for their resource; for instance when it will be utilised, what quantities shall be consumed and how the financial gains shall be distributed among them. They also decide how they can modify the rule system depending on the benefits (or lack of) they perceive to result from a change as well as the expected costs of negotiating the change.

Thus localism of governance systems relies on informal mechanisms to implement the norms and the good will of the users for proper functioning. The processes, procedures and nodes need to be in tandem with the cultural practices and customs of a particular area and not imposed by an external agent. This needs to respect the statutory laws and acknowledge the plurality of legal orders operating in a semi-autonomous field. This then will accord agency their due autonomy to enforce a resilient and sustainable system.

Community participation and representation

Inclusivity demands for total consideration of all users of a system and their free articulation of their wants and needs. The aim of this articulation is to ensure capacity building and representation of the user’s views which represents their actions, meanings and attitudes towards life. Thus at all levels of development the community should actively participate and be entrenched deeper into all decision making aspects of the project. This should be in terms of design, management and government of the facilities so as to break the circle of marginalization.

The participation should be in the manner demanded by the community and in the frequency necessary to ensure that aims and objectives have been achieved. For instance the Nubian community never felt consulted in the dispossession of their land, because they were not

consulted in the tradition of their heritage, though they were consulted in authoritative modern methods which did not resonate with them.

In this specific community the role of the elders was very crucial in locating interpersonal relations and acted as advisors in the development, thus the role of the elders should be emphasized as it helps the community be grounded in traditions and rule enforcement. The elders are the ones who met out justice to the dwellers more than even the formal codified systems. The elders should thus be accorded a special place in the running of any informal system.

In ensuring that participation is entrenched in a system, the citizens should be given s(p)laces where they can articulate their voices. For instance in organized citizen assemblies or meetings where this can be achieved. Therefore the creation of democratic innovations on how participation can occur is paramount. In Soweto East, they actually utilized invented and invited s(p)laces of participation fully and what was glaring is that the information that came out of the invented s(p)laces was richer and more binding than the one that came out of the invited s(p)laces.

Therefore, the intricacies of information sharing and consumption are important and should facilitate the formation of multi-stakeholder partnerships. These types of partnerships provide for learning, collaboration and near total community participation. If the community feels empowered through participation then the programs or endeavours will always be resilient.

Justice and vernacularisation

Historical marginalization has been a thread in the narrative, where injustices prevailed. These injustices denied the dwellers the basic urban services they needed through a consistent attempt to neglect them and pursue other interests. The original inhabitants did not also have their rights and pleas addressed thus still laying spatial claims to the land and are fighting for a just situation

which they really should be accorded, while the slum dwellers too would require the same in terms of rights of the slum dwellers to accessing the urban services present so as to access the urban advantage for all.

For a system to be resilient as this one, justice has to be vernacularized. That is, it should be translated into a language that they understand, hence the recognition and democratic innovations for giving the urban advantage to all, should be translated into the informal systems that the dwellers resonate with, hence they will be appreciative and sustainable in their thought process.

The last word

This thesis has summed up the narrative of K-WATSAN and the overarching theme is that informality is to be hailed especially if we want to speak of any successful system being sustainable and resilient then, informal norms are the answer.

This then leads me to ask, if informality is the answer, then what is the question?

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Appendix 1: Project Household Survey Questionnaire

Consent for interview:

This is a more detailed follow up research on your water situation, utilization, access, running of the facilities and other aspects after the ethnographic studies have been carried out in this particular village. As informed earlier, it is purely for academic purposes and will not be used for any unlawful gain. Would you like to proceed or not?

Name of Respondent (Optional):

Age bracket :

User Involvement

1. How were the needs assessed in this project?
2. How did you hear about this project? Were you involved in its starting?
3. What were the levels of consultation in this project? Were you involved at the inception stage? The implementation stage and what were your roles then?
4. Do you want to tell us about your migration history into the settlement and how it has affected your access to water?

Governance Arrangements

5. Would you know anything about the laws in the Kenyan constitution about the water governance and land systems?
6. Who manages this system?

7. When were the rules created to govern this system?

8. Who created the rules?

9. When one does not follow these rules to the letter, is there a system put in place of chastising them?

Partnerships and Operations

10. How is the money collected in this system?

11. If the person manning the facility steals the collections of the day is there a way to recover them?

12. Does he also do the repairs and maintenance arising from the everyday usage of the facility?

13. There are a number of organizations with posters on the roads and facilities, are they working with you?

14. Do they portray legitimate partnerships?

15. How transparent and traceable is the running of this project

16. Are you content with this project and how it is being run and carried out?

17. Have you personally ever been involved in the running of this facility?

18. Were you compensated for it? And did you find the compensation adequate?

Appendix 2: Expert Survey Questionnaire

Name of expert/ Organization:

1. What is your main field of expertise? And how many years have you been working in your field (s) of expertise.

Please tick as appropriate: Multiple answers are possible

	Less than 2 years	More than 2 years and less than 5 years	More than 5 years and less than 10 years	More than 10 years	No answer
Urban Sociology					
Urban Geography					
Political Science					
Law and Governance					
Environmental Sciences					
Economic Sciences					
Other: (Please specify)					

2. What is your current position?

Please tick as appropriate. Multiple answers are possible

- Teaching/ Research Assistant

- Senior Scientist / Senior Researcher
- Consultant
- Chief Executive
- Other:

3. In which kind of institution do you hold your current position?

- University
- Public Research Institute
- Non-Governmental Organization
- Consultancy
- Public Administration
- Other (Please Indicate)

4. Please estimate your previous knowledge about Kenya Slum Upgrading Programme and Kibera Integrated Water, Sanitation and Waste Management Project

- Excellent Knowledge
- Very good knowledge
- Good knowledge
- Little knowledge
- No knowledge

5. How do you see the actual politics articulated in this project in terms of sustainability?

6. Has this subject been articulated sufficiently?

7. Is there anything that can be done better to ensure resilience and sustainability is enhanced?

8. What partnerships have been envisaged here?

9. In your opinion are these partnerships leading to growth in all the parties or are they skewed?

10. Are there any political parties (personal figures or actual parties) invested in this project?
If so, what is their role?

11. What laws can you identify in this system?

12. In your opinion are these laws juxtaposed or they are ingrained in the system and are beneficial?

13. Is there any way these laws could be linked to the sustainability of the system?

14. In terms of urban justice; is this project the ideal one to ensure that the urban divide is diminishing?

15. How about the provision of basic urban goods and services?

16. How has the statutory system been married with the informal system to run this project?

17. In relation to other interventions, how resilient can this one be termed?

18. In your opinion, can you account for the resilience of this system, if there is any

19. In terms of ecological resilience, please elaborate on this project

20. How viable is this project and will it be sustainable?

21. Are there any sustainability issues that you may want to speak about?

Appendix 3: Guideline for Focus Group Discussion

1. Since the inception of this project, how do you see it has helped or has not helped?
2. What are the various uses you have for this water?
3. Does 'It help you and you don't have to fetch water in the mornings, so you don't get tired?
4. How about the tiredness levels and school going children, let us talk about that.
5. The money issues?
6. Have you lives improved?
7. Who does the transportation of water to the houses?
8. Could you account for the time used to acquire the water
9. In terms of fetching time /moment, is it any time during the day or are there specific instances where it is some specific category of people who do the fetching?
10. What are you doing to ensure that this project continues to go on and does not fail like many other projects that had come before this one?
11. If you want to know how much money has been collected from a day, how do you go about it?
12. How much money do you expect in a single day for the facility?
13. Where does this money stay?
14. If someone who was in charge of the facility does not account for the money, what do you do?
15. Are there fines charged for whatever reason in this system?
16. Do you have sanctions and reprimands here?
17. Are there any rewards in this system?
18. What is the preferred means of communication to correct offenders and secondly to pass information about the facility to the dwellers?
19. I have noticed there is some form of 'Zamu' (rotation) of the facility manager, how does this happen and how are they chosen?
20. For the construction of this project and the running, who is and was co-opted?
21. Explain to me the rules/norms that are around this system?
22. Who is the originator of these laws?
23. Where does the chief fall in, in all these?
24. And the elders / opinion leaders?
25. Let us talk about the role of the government, the banks and cooperative societies.
26. There have been some political figures coming here, what have they been coming to do in relation to this project?
27. What about the Nubian Community?
28. Is there anything else you may want to add?

Appendix 4: Land use/ Zoning in Nairobi

ZONE	AREAS COVERED	GC %	PR %	Dept Ref. Map	TYPE (S) OF DEVELOPMENT ALLOWED	MIN AREA (Ha.)	REMARKS/POLICY ISSUES	
1A	Central Business District (CBD)			CP/FP/XXX	Commercial/Residential/Light Industry	0.05		
	• Core CBD	80	600					
	• Peri- CBD	80	500					
	• West of Tom Mboya St.	60	600					
	• East of Tom Mboya St.	80	350					
	• Uhuru H/W/University Way/Kipande Rd.	80	500					
1E	Upper Hill Area			CP/FP/XXX	Commercial/Offices/Residential	0.05		
	• Block 1 – Offices (Community)	60	300					
	• Block 2 – Comm/Off	60	250					
	• Block 3 - Offices	60	300					
	• Block 4 – Residential	35	150					
	• Block 5 – Institutional (KNH)							
	• Block 6 – (Mixed: Inst; Hls; Offs)	60	200					
2	Eastleigh			CP/FP/XXX	Commercial/Residential (High-rise Flats)	0.05		
	• Eastleigh District Centre	80	250					
	• Eastleigh Comm/Residential	60	240					
	Pumwani/California	60	240	CP/FP/XXX	Commercial/Residential (High-rise Flats)	0.05		
	Ziwani/Starehe							
	• Commercial	80	150					
	• Residential	35	75					
3	Parklands			CP/FP/XXX	Commercial/Residential (High-rise Flats)	0.05		
	• Commercial	50	100					
	• Residential	35	75					
		City Park Estate/Upper Parklands	35	75	CP/FP/XXX	Commercial/Offices/Residential (High-rise Flats) – Four Storeys Max.	0.05	
		Westlands						
		• Westlands CBD	80	240				
		• Westlands/Museum Hill						
		• Block 1 Commercial	80	200				
		• Block 2&3 Offices & Highrise Residential	35	80				
		• Block 4 Offices	80	200				
	• Block 5 Commercial/Residential Hotel							
4	Spring Valley	35(s) 25(u)	75(s) 25(u)	CP/FP/XXX	Residential (Apartments allowed on sewer only) – Four Storeys Max.	0.05	• Policy Under Review	
	Riverside Drive							
	Kileleshwa							
	Thompson							
	Woodley							
5	Upper Spring Valley	25	25	CP/FP/XXX	Low- Density Residential One-Family House	0.2(u) 0.1(s)	• Maisonettes Allowed On Sewerd Areas Of Lavington	
	Kyuna							
	Loresho							
	Lavington/Bernard Estate							
		• On sewer	35					75
	• Unsewerd	25	25					
6	Muthaiga	25	25	CP/FP/XX	Low- Density Residential	0.2	Single Family Dwelling	
	New Muthaiga							

ZONE	AREAS COVERED	GC %	PR %	Dept Ref. Map	TYPE (S) OF DEVELOPMENT ALLOWED	MIN AREA (Ha.)	REMARKS/POLICY ISSUES				
7	Mathare Valley	50	75	CP/FP/XXX	<ul style="list-style-type: none"> High –Density Residential (Flats) Informal Settlements (Slums) 	0.05 Lower in S&S Schemes	Special Scheduled High-Density Informal Development				
	Mathare North										
	Lower Huruma										
	Kariobangi										
	KorogochoDandora										
8	Old Eastlands			CP/FP/XXX	<ul style="list-style-type: none"> These largely constitute old city council housing-ripe for high-rise high density redevelopment 		<ul style="list-style-type: none"> Special Scheduled Areas <ul style="list-style-type: none"> NCC Site-and-Service Schemes as Low-Income Housing 				
	• Shauri Moyo										
	• Maringo										
	• Bahati										
	• Kaloleni										
	• Makongeni										
	• Mbotela										
	• Jericho										
	• Jerusalem										
	Makadara	50	100	CP/FP/XXX	Residential - <ul style="list-style-type: none"> Mixed Development <ul style="list-style-type: none"> Flats Maisonettes Bungalows Site-and-Service Schemes Condominiums (Single Rooms) 	0.05	<ul style="list-style-type: none"> Comprehensive Subdivision Allowed Minimum To Fit a House On Type Plan Design 				
	Doonholm Neighbourhood (Block 82)	50	75								
	Uhuru (1-3)	50	75								
	Buru Buru (1-6) (Block 72-79)	50	75								
	Umoja (1-2)	50	75								
Umoja Innercore	50	150									
Komarock											
• Commercial	80	150									
• Residential	50	75									
Kayole											
• Commercial	80	150									
• Residential	50	75									
9	Main Industrial Area	80	300					CP/FP/XXX	Industries/Godowns	0.05(on sewer)	Becoming Over Developed
9E	Dandora Industrial Zone	80(s) 50(u)	150(s) 100(u)					CP/FP/XXX	Light Industries/Godowns	0.01 if not on sewer	Ruaraka EPZ Covered
	Kariobangi Lt/Industrial	50(u)	100(u)	CP/FP/XXX							
	Mathare North Lt/Industrial	50(u)	100(u)	CP/FP/XXX							
	Kariobangi Lt/Industrial	80(s) 50(u)	150(s) 100(u)	CP/FP/XXX							
10	Nairobi West	35	75	CP/FP/XXX	High Density Residential Development Mixed Residential Development	0.5	<ul style="list-style-type: none"> Comprehensive Subdivision Allowed With Lower Sizes On Type Plan Development 				
	Madaraka										
	South 'B'	35	75	CP/FP/XXX							
	South 'C'										
	Nairobi Dam	50	75	CP/FP/XXX							
	Ngummo	50	75	CP/FP/XXX							
	Highview										
	Magiwa										
Golf Course											
Langata Estates											

	<ul style="list-style-type: none"> • Southlands • Otiende • Ngei 1&2 • Onyonka • Masai • Uhuru Gardens • Jonathan Ngeno 	50	75		<ul style="list-style-type: none"> • Flats, • Maisonnettes • Bungalows 		Density @ 35 Units Per Hectare
ZONE	AREAS COVERED	GC %	PR %	Dept Ref. Map	TYPE (S) OF DEVELOPMENT ALLOWED	MIN AREA (Ha.)	REMARKS/POLICY ISSUES
10E	Villa Franca	50(s) 25(u)	75(s) 25(u)	CP/FP/XXX	Residential Mixed Development	0.5	<ul style="list-style-type: none"> •Area not fully sewered •Comprehensive Subdivision Allowed with lower sizes on type plan (max 35 units/Ha.)
	ImaraDaima	50	75	CP/FP/XXX			
	Tassia						
	Fedha						
	Avenue						
	Embakasi village			CP/FP/XXX			
	• Commercial	80	150				
• Residential	50	75					
11	Special Scheduled Area (Kibera Slums)			CP/FP/XXX	Informal Mixed Development Comprehensive Residential Scheme	0.05	<ul style="list-style-type: none"> •NHC Plan Lacking In Social Infrastructure e.g. Schools,Clinics, Recreation and Commercial Zone •Comprehensive Subdivision Allowed With Lower Sizes on Type Plan
	National Housing Corporation (NHC) Estate						
	• Ayany	50	75	CP/FP/XXX			
	• Olympic						
	• Fort Jesus						
• Karanja Road							
12	Karen/ Langata			CP/FP/XXX	Low Density Residential Development (One Family Dwelling House)	0.2 0.4	Local Re-Development Plan Under Review/Preparation
	karen						
13	Gigiri	25	25	CP/FP/XXX	Low Density Residential (One Family Dwelling House)	0.2	Plan Well implemented only pockets of intensity of developments e.g. Village, Market & American Diplomatic Housing
	Kitisuru	25	25	CP/FP/XXX			
	Ridgeways	25	25	CP/FP/XXX			
	Garden Estate	25	25	CP/FP/XXX			
	Safari Park/Balozi Housing	25	25	CP/FP/XXX			
14	Roysambu	25	25	CP/FP/XXX	Low Density Residential (One Family Dwelling House)	0.2	Intensive Development in Marurui&Roysambu
	Thome	25	25	CP/FP/XXX			
	Marurui	25	25	CP/FP/XXX			
15	Dagoretti	35	75	CP/FP/XXX	Agricultural / Residential Mixed	0.1 0.05 on township sewer	<ul style="list-style-type: none"> •Area Maintains Agricultural Character •High –rise Flats developments becoming popular
	• Riruta	35	75	CP/FP/XXX			
	• Kangemi	35	75	CP/FP/XXX			
	• Mutuini	35	75	CP/FP/XXX			
	• Waithaka	35	75	CP/FP/XXX			
	• Ruthimitu	35	75	CP/FP/XXX			
• Uthiru	35	75	CP/FP/XXX				
16	Baba Dogo				Industrial Zone Residential (Mixed Residential Development)	0.05 lower if comprehensive	High Density Residential
	•Industrial	80(s) 50(u)	300(s) 100(u)	CP/FP/XXX			
	•Residential	35(s) 25(u)	75(s) 25(u)				
	Ngumba /Ruaraka						
	Githurai 44 & 45	50(s)	200(s)	CP/FP/XXX	Industrial Zone Residential		

17	Zimmerman				(Mixed Residential Development)		<ul style="list-style-type: none"> • Replete with unplanned developments hence “Blanket approval” vide TP resolution of 18/7/97
	Kahawa West	50	100				
	• Commercial	50	100				
	• Residential	50	75				
	• Industrial	50	100				
ZONE	AREAS COVERED	GC %	PR %	Dept Ref. Map	TYPE (S) OF DEVELOPMENT ALLOWED	MIN AREA (Ha.)	REMARKS/POLICY ISSUES
18	Kasarani			CP/FP/XXX	<ul style="list-style-type: none"> •Agricultural •Residential Mixed (Development) 	<ul style="list-style-type: none"> •2.0 •0.05 on sewer •0.1 Ha. If not on sewer •Lower min.size if land buying company 	<ul style="list-style-type: none"> Area has potential for residential developments (invasion by land buying companies and land speculators)
	• Clayworks	50	100				
	• Clay City						
	• Sports View						
	• Mwiki			50			
	• Njiru	25	25	CP/FP/XXX			
• Ruai							
19	Special Scheduled Area Outside Nairobi Boundary			CP/FP/XXX	Agricultural Residential (Mixed Development)		<ul style="list-style-type: none"> •Area fully influenced by city dynamics •NCC not in control of development •Overwhelmingly dependant on services of the city
	• GithuraiKimbo						
	• Wendani						
	• KahawaSukari						
20	Public/ Strategic Reserved Areas (Gazzetted) <ul style="list-style-type: none"> • State House • JKIA Airport • Wilson Airport • Military Sites <ul style="list-style-type: none"> ○ Military Airbase Eastleigh ○ DoD Headquarters ○ Kahawa Barracks ○ Langata Barracks ○ Defence College, Karen ○ Forces Memorial Hospital 			CP/FP/XXX	Special/ strategic facilities and Developments		Boundaries Require to be clearly defined
13	Recreation And Forests <ul style="list-style-type: none"> • City Park • Arboretum • Ngong Forest • Karura Forest National Game Park Stadiums <ul style="list-style-type: none"> • Moi Sports Complex, Kasarani • City Stadium • Nyayo stadium Uhuru Park Central Park Uhuru Gardens			CP/FP/XXX	Public Open Spaces, Reserves and Recreational Facilities		

Appendix 5: Terms of Reference for Settlement Executive Committee

THE CRITERIA FOR ELECTION OF SEC MEMBERS

- a. The candidate: must have been residing and/ or working in the settlement for at least two years. Must have been an active member of one of the organizations or social groupings within the settlement
- b. Must have a record of ability to mobilize community members and good public relations within the settlement
- c. Must have been interested and have participated in community development projects or work within the settlement. Should preferably be able to speak both Kiswahili and English
- d. Three positions must be reserved for representatives of disadvantaged groups. Every stakeholder will be gender sensitive during representative elections. The district officer, Area Councilor and Area Chief will be co-opted as members
- e. Representation will be as per the ratio of members in that particular stakeholder category. Possible categories are: Structure Owners, Tenants, Widows, Orphans, Disabled, Faith Based Organizations, Community-Based Organisations Area Councillors and any other organization that might be in that particular area.

SEC OFFICIALS

- a. SEC members will elect their Chairman, Vice Chairman and the Assistant Secretary. However, the Secretary will come from the Settlement Project Implementation Unit team.
- b. Elections for SEC officials shall be every two

years; and those officials will be eligible for re-elections during the subsequent elections. Notice for such a meeting shall be given at least 21 days before the date for election.

- c. The term for SEC members will be four years after which another stakeholder election will be called. The stakeholders can re-elect their representative or replace him/her with another representative.
- d. Any vacancy of the SEC officials caused by death or resignation shall be filled by any of the SEC members and the official shall serve only the remaining period before elections for new SC officials are held as per (b) or (c) above. Thereafter the relevant stakeholder category will be notified to elect a replacement to SEC.
- e. Vacancies arising from the SEC officials being removed from the office for any reason shall be filled in the same manner as indicated in (d) above.

Settlement Executive Committees MEETINGS

- a. SEC will meet once monthly at the site office, but should need arise a special meeting will be convened
- b. The Chairman, or in his absence, the Vice- Chairman, shall chair all SEC meetings.
- c. Quorum for any meeting shall be two-thirds of the SEC members.
- d. Decision making will be by simple majority voting of the members present in a meeting.
- e. Ex-officio members will not be eligible to vote. The Secretary will ensure that the

proceedings of the meetings are minuted for the record purposes.

- f. Confirmed copy of the minutes shall be distributed to the Director of Housing; the director, HDD (NCC) and the Programme Coordinator, Programme Secretariat.
- g. Any SEC member who fails to attend three consecutive meetings without apology or valid reason shall be considered and/or recommended for replacement by the relevant stakeholder group

ROLE OF SEC IN THE PROGRAMME CYCLE

SEC members will

- a. Create awareness within the community on various components and activities of the Slum Upgrading Programme
- b. Assist JPPT in the enumeration process by working in partnership with appropriate organizations in the identification and documentation of residents of settlement area
- c. Ensure concerns and issues raised by the community members are conveyed to the Programme Secretariat/JPPT
- d. Be part of the dissemination team at the community level, assisting in selecting research assistant/enumerators from the community
- e. Assist in verifying and confirming the various data collected during research team meetings
- f. Get views from the community on house design options

- g. Get views from community members on construction at the decanting site and subsequent relocation exercise
- h. Actively participate in the relocation exercise to the decanting site by assisting the JPPT/ Programme Secretariat/SPIU
- i. Assist the community members in settling into their new environment by raising public awareness and education on their rights to basic social amenities and of maintaining good neighbourliness

*For any document from SEC to be considered valid, it will have to be signed by the SEC officials (i.e. Chairman, Secretary or both).

THE ROLE OF SEC DURING PREPARATORY PHASE

They will participate in the identification of areas of interest for their capacity building. They will:

- a. Participate in the development of key messages to be incorporated into the Information, Education and Communication (IEC) materials
- b. Document and report key views the community might have on tenure systems to be adopted
- c. Document and update information on key case studies with regards to HIV/AIDS impacts and propose activities by KENSUP
- d. Actively participate in the dissemination of information on the process at the community level to the media through reports to the secretariat. They will also be responsible for

disseminating information from stakeholders and partners to the community through focus group discussions

- e. Identify/establish and maintain community- based communication networks to ensure that reliable information flows to the community
- f. Continuously maintain an update of information from the community on the upgrading process through fortnightly meetings at the site office
- g. Provide reports to the programme secretariat on community- based issues in regards to the programme process
- h. Inform the community members of decisions made by the JPPT/Programme Secretariat
- i. Inform the community members of any planned official visits to their area by any visitor such as a government minister

THE ROLE OF SEC DURING IMPLEMENTATION PHASE

The SEC members will

- a. Assist in identifying the unskilled construction labour force from the community members
- b. Update the community members on the construction progress
- c. When necessary, accompany the technical staff and other visitors during their inspection visits

THE ROLE OF SEC DURING MONITORING AND EVALUATION

- a. JPPT and SEC will jointly develop appropriate community based tools for monitoring and evaluation
- b. SEC will actively participate in the monitoring and evaluation of the programme, as appropriate, including after each specified activity/phase for feedback and improvement of future phases

THE ROLE OF SEC DURING REPLICATION

Where necessary, SEC will participate in peer exchange visits to share lessons learned and best practices in slum upgrading.

Nominations/elections for the Soweto East SEC members were conducted during each stakeholder/organization meetings held in Soweto East village on different dates between 26th May, 2004, and 10th July, 2004. Below is the breakdown of the stakeholders representation:

Appendix 6: Ethnography Guide⁴⁰⁶

On Spatial Claims

(Who has the ability to experience this particular space together with its rights and duties)

Who uses the place, who does not, and why?

How is the space used?

What talents and gifts do people have here?

What is unique about the history and culture of the area?

On Spatial Power

(The (un) creation of opportunities to succeed in this space)

How are people able to practice, contribute and create here?

What qualities would you use to describe the place?

What messages and behaviors does the space suggest?

What prevents anyone from full participation in personal or public life?

On Spatial Links

(Connection to assets and resources held within a place)

What barriers exist in the physical environment?

What invisible, historical or social barriers divide people?

What historic memory exists in the place and the people here?

What connects this place to other places?

⁴⁰⁶ Adapted from UCLA's Critical Planning Journal, Volume 14, 2007, 15:16

SUMMARY

Cities are made up of assemblages of incoherent wholes which co-exist together in a seemingly placid or tolerating mode of existence. Due to their nature and neo-liberalist policies governing them, the urban services are assumed to be provided in the right quantities and the right time for all, which is not always the case as many interests are at play contesting the powers that are. Water – a basic good and right enshrined in many nations’ constitutions is still a far cry for all, is at the crux of this thesis in which a case study of Soweto East - a routinely marginalized heavily contested ‘ghetto’ space in which the residents have suffered historical neglect and injustice in the provision of basic urban goods and services and a site of several failed development interventions which foster urban injustice and further entrench the lack of the right to dwell in the city- has been used to depict the governance of a water system to ensure resilience and sustainability in the wake of the Sustainable Development Goals.

Using the Governance Analytical Framework, this thesis unpackages the contested s(p)laces where dwellers have democratically organized themselves to take charge of their destiny by creating systems that utilize both the statutory norms and informal norms in differing measures to ensure that they can lay claim on water services. The system boasts of a rich interwoven tapestry of both historical and current claims for its being. The research explores the different roles and relationships existing between the various actors who move in between discourses of the local realities, relying on their local political economy to define or adapt to the actualization of the basic human right to a decent livelihood in the city and minimize the scarcity of these urban goods and services. Mixed method research infused with ethnography and archival material demonstrated the unique governance features of this particular system which is a model of a non-conformist emergent space where the dwellers are critical in governing their water system using the informal norms and systems.

Key Words:

Governance, Water, Informality, Resilience, Scarcity, Justice

RÉSUMÉ

Les villes sont constituées du regroupement d'ensembles cohérents qui coexistent de façon apparemment paisible ou dans la tolérance. En raison de leur nature et des politiques néolibérales qui les régissent, les services urbains sont supposés être fournis dans de bonnes quantités et au bon moment pour tous, ce qui n'est pas toujours le cas car de nombreux intérêts sont en jeu, s'opposant aux pouvoirs en place. L'eau, un bien élémentaire et un droit inscrit dans les constitutions de nombreux pays, est encore loin d'être un bien pour tous; elle est au cœur de cette thèse qui présente une étude du cas de Soweto East. Soweto est un «ghetto» controversé, un espace systématiquement marginalisé où les résidents souffrent de négligence historique et d'injustice dans la fourniture de biens et de services urbains de base, un site où plusieurs interventions de développement ont échoué, où l'injustice urbaine nie le droit de demeurer dans la ville. Soweto a été choisi pour montrer comment la gouvernance de l'eau peut assurer la résilience et la durabilité dans la ligne des objectifs de développement durable.

En utilisant le Cadre Analytique de la Gouvernance, cette thèse observe des espaces et des lieux très discutés, où les habitants se sont démocratiquement organisés pour prendre en charge leur destin en créant des systèmes qui utilisent à la fois les normes légales et des normes informelles dans des mesures différentes, pour veiller sur ce qu'ils peuvent réclamer concernant les services d'eau. Le système se présente comme une riche tapisserie où sont entrelacées des revendications historiques et actuelles. La recherche explore les rôles et les relations existant entre les acteurs qui interagissent dans les discours sur les réalités locales. Se fondant sur leur économie politique locale, ceux-ci définissent et actualisent leur droit humain fondamental à une vie décente dans la ville ; ils minimisent la rareté de ces biens et services urbains ou s'y adaptent. La recherche s'appuie sur une méthode mixte avec des recherches ethnographiques et des documents d'archives. Elle montre les caractéristiques uniques de ce système de gouvernance particulier, qui est un modèle dans un espace émergent non-conformiste, où les habitants ont un rôle essentiel dans la gouvernance de leur système d'eau par leur utilisation des normes et des systèmes informels.

Mots clés

Gouvernance, Eau, Informalité, Résilience, Rareté, Justice