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Flaws in the Development and Allocation of Jua Kali Sheds and Hawkers Markets in Kenya

Despite the beneficial role that the *Jua Kali* sector[1] plays in providing employment, improving income distribution, and developing dynamic private enterprises, initiatives to support its growth by providing workspaces[2] have fallen below the required levels. Inadequate supply of workspaces for micro and small enterprises (MSEs) and the intensive competition for scarce urban land remains a major hindrance to their productivity, competitiveness and growth. Such scarcity is partly explained by the rapid growth of the informal sector and the absence of effective physical planning.

Informal sector employment grew by 7 percent in 2005 compared against 3 percent growth for the formal sector. The informal sector also accounted for 90 percent of all new jobs created. Such rapid expansion in the informal sector indicates an increased demand for workspaces, yet there is no evidence that supply of workspaces has responded positively to this expansion. The *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*[3] of 2004 indicates shrinking public space available for MSEs. This is likely to exacerbate conflicts between hawkers and security officers as well as create loopholes for seeking bribes by officers who allocate workspaces to MSE operators at the various local authorities.

Empirical evidence indicates that obtaining a secure site from which to do business is a major problem for MSEs in Kenya. Entrepreneurs face severe constraints in terms of access to worksites and interference from authorities. About 22 percent of rural and 78 percent of urban MSEs do not have access to worksites. In addition, harassment by the local authorities is a major problem for 19 percent of rural and 81 percent of urban MSEs.

A review of policies and investments in workspace provision reveals three clear regimes: public sector interventions in the 1970s, a shift towards private sector involvement in the 1980's and 1990's and, currently, productivity-oriented investments. The main players in the development, allocation and management of workspaces in Kenya include local authorities, Ministry of Labour and Human Resource Development (*Nyayo Jua Kali* sheds programme), Kenya Industrial Estates (incubators for manufacturing firms), Export Processing Zones Authority (incubators for export-oriented MSEs), and the Aga Khan Foundation (hawkers' markets).

At independence, there was no official government policy on MSEs. However, the role of providing workspaces was mainly vested with local authorities under the Local Government Act (Cap 265 of 1963). Local authorities were established to provide structures for local governance in matters relating to regulation, policy, planning and revenue. Through this law, the local authorities through their planning departments have developed *Jua Kali* sheds, city/council/municipal markets (stalls), open-air markets, matatu/bus termini, taxi parks, open spaces (including sidewalks), although official data on these is limited.

In the 1970's, Government industrialization policy aimed at nurturing "modern" small industry and Kenyanising economic activity. The Kenya Industrial Estates (KIE) was established in the early 1970's to provide preconstructed industrial sheds as well as extension services (technology and feasibility studies), management and technical training; and supplies of raw materials and subsidized credit. The Kenya Industrial Estates, with the support of development partners, constructed 28 industrial estates in Embu, Nyeri, Nairobi, Mombasa, Nakuru, and Kisumu. These consisted of 448 industrial premises with a total build up area of 76,000 square meters of working space at a cost of Ksh 156 million.

Beginning in the late 1980's, the government acknowledged the need to provide workspaces on large scale. Sessional Paper No. 2 of 1992 on *Small Enterprises and Jua Kali Development in Kenya* provided the policy framework for establishing the *Jua Kali* Development Fund while the District Focus for Rural Development as outlined in the National Development Plan 1983–1989 provided the rationale for balanced growth through decentralization of industrial activity from urban to rural areas. In part, the *Jua Kali* Development Fund was used to support the decentralization policy by developing *Jua Kali* sheds in all provinces in Kenya.

Beginning with the Ministry of Research, Technical Training and Technology, and later the Ministry of Labour

This policy brief is based on KIPPRA Discussion Paper No.53 on Misallocation of workspaces for MSEs in Kenya: Some lessons and models. The paper is a product of a USAID-supported project on Enhanced Policy Formulation and Implementation for Micro and Small Enterprises, being implemented by KIPPRA. The aim of the project is to increase the level of adoption of policy recommendations and therefore narrow the gap between policy formulation and implementation.

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and Human Resource Development, serviced worksheds using resources from the *Jua Kali* Development Fund were developed. These programmes were implemented with complementary finances from development partners. By 2003, there were about 1,235 *Nyayo* and *Jua Kali* sheds in 82 sites countrywide. These were distributed among the eight provinces as follows: Nairobi (127), Central (174), Eastern (156), Coast (166), North Eastern (24), Rift Valley (301), Western (100) and Nyanza (187).

The Sessional Paper No. 1 of 1986 on *Economic Management for Renewed Growth* provided the impetus for liberalization and privatization. Given the focus of this policy on greater involvement of private sector in economic activity, the 1980's were marked by some private sector investments in workspaces provision. During the period, the Aga Khan Foundation supported the construction of City Park hawkers' market in 1989 and Kibera hawkers' market in 1996. City Park market accommodates 1,000 traders while Kibera market accommodates 500 traders.

Currently, government involvement has moved towards more targeted interventions, particularly those that enhance the competitiveness of the MSE sector. This has led to the establishment of business incubators by Export Processing Zones Authority, targeting export-oriented MSEs with high potential for growth. The project is scheduled to start in 2006 with the first batch of 40 entrepreneurs. It is too early to assess the viability of the project.

Problems Associated with Workspace Provision

An analysis of the existing approaches to development, allocation and management of workspaces reveals a process riddled with several problems.

Centralized decision-making

Initiatives to develop MSE workspaces, such as the *Jua Kali* sheds programme, have remained overly bureaucratic and narrow-based in approach. They have failed to involve stakeholders in the development and management of workspaces. In addition, all the state-sponsored programmes were initiated through top-down political decrees and implemented mainly through donor funding. The approaches have been predominantly supply-pushed and lacked the requisite local level support. Some of them were duplicative, while linkages between the major workspace providers remains weak. Although workspace requirements vary according to sub-sector (services, manufacturing, trade and agriculture), the models used have largely ignored the diversity of enterprises and their requisite workspace needs. Right from initiation, the programme designs have failed to develop in-built cost-recovery mechanisms, raising questions over their sustainability. For KIE sheds, bureaucracy and political factors worked against commercial orientation, implying that such investments have failed to justify the huge capital expenditures on buildings and other fixtures.

Bad governance

One of the most pervasive and elusive problems in the development, allocation and management of workspaces is that of bad governance. Across the country, there is evidence of encroachment of land meant for *Jua Kali* developments. According to reports at the Ministry of Labour and Human Resource Development, about 22 parcels of land in various towns have been encroached by various interest groups. The Ndung'u Report of 2004 documents some of the irregular land allocations. For instance, the report indicates that about 585 cases of parcels of land approximating over 39 hectares belonging to the Kenya Industrial Estate, and which was reserved for industrial use and provision of worksites through the incubator model, have over the years been irregularly allocated to private developers.

According to the Ndung'u Report, land that was initially reserved for development of markets and MSE worksites within the main municipalities has been reallocated for other purposes such as residential, commercial, private use, etc. Within Nairobi City Council, over 27 incidences are documented where land that was initially set aside for markets has been allocated to individuals and other users who have diverted the land from its original use. In Eldoret Municipality, about 18 hectares of land reserved for industrial use have been reallocated and converted to residential use. In Mombasa and Kisii municipalities, four such cases of diversions of land use from market to business, residential or offices are recorded.

As a result of governance problems, the philanthropic efforts of the Asian Foundation to set up a third market for *ciondo* weavers (mostly women) were frustrated when the Nairobi City Council allocated the land earmarked for the market to a private developer.

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Institutional-failure

The main problem with the local authority approach to workspace provision is that devolution has remained shallow, since most local authorities have not been able to effectively sustain their fiscal operations. They have lacked capacity to develop economic policies and plans for the MSE sector, which is the biggest contributor to their revenue and employment. This has meant that the economic activity of MSEs is rarely recognized in physical planning. The MSEs are rarely consulted during urban physical planning processes—placing their needs outside the formal planning systems. Thus, the traditional design of most towns and cities was not meant to accommodate informal enterprises.

Problems related to weak capacities at the local authorities have resulted into inadequate provision of suitable land, unclear procedures for allocation of land and worksites, inadequate development of markets, workshops and industrial sites and poor maintenance of existing facilities. Similarly, most local authorities have failed to evolve policies that encourage private sector participation in services management.

The Kenya Industrial Estates (KIE) performed fairly well until 1989 when the President gave a directive to sell KIE sheds on mortgage at non-commercial rates. This was a shift from the original purpose of incubation. Another limitation is attributed to the growth of KIE into an unwieldy bureaucratic structure, with highly centralized functions and costly service centers that rendered its services less effective.

The development of *Nyayo Jua Kali* sheds experienced several limitations. Some of them were not planned; some were poorly located and lacked utilities. Similarly, congestion was rife in the worksites.

Legal and regulatory flaws

The Local Government Act (Cap 265 of 1963) has been contested for several flaws. First, sections 201, 161 and 163 of the Act have been applied to prohibit performance of certain activities/businesses, including street vending, barbers, and secondhand goods that local councils have continued to view as a public nuisance. By-laws have been used to "control and punish" rather than to "facilitate and ensure compliance". Building laws are out-dated and poorly enforced. They do not encourage low-cost and innovative building technologies.

Second, although the Local Government Act confers the responsibility of managing land and workspace to local authorities, the Provincial Administration (under the Chiefs Act) have official administrative powers to regulate or prohibit the use of land. Officers serving under the Provincial Administration have been known to allocate public spaces like road reserves, riverbanks, and so on. This occasions overlaps and conflicts that increase the transaction costs for MSEs. Third, regulations governing the issuance of hawking licenses are not accompanied by security guarantees for continued operations, implying that operators' sheds could be demolished even though they hold valid licenses from the local authority.

Weak policy environment

The policy framework has failed to clearly define the key players, their coordination and their roles in the development, allocation and management of workspaces. It is not clear how monitoring should be done and who should do it. This has been one of the greatest contributors to poor policy implementation. The roles of local authorities, the main custodians of MSE operations, have not been clearly spelt out in policy on workspaces. Furthermore, ownership of policies has been weak since most policy prescriptions were not based on adequate needs assessments and market surveys. Other shortfalls of the policy frameworks include their failure to recognize the heterogeneity within the sector and come up with innovative approaches to workspace provision.

Policy Recommendations

Broad-based participation:

A new approach to the provision of MSEs workspaces should espouse the principles of participation and local-level ownership. Priority should go towards demand-driven and needs-based interventions. Informal sector players need to be involved in formulation of policies and planning for the sector. Their representation could be channeled through local representative committees and/or sectoral associations. The MSEs sector itself needs to build strong, collective, representative and accountable associations to lobby for their interests. Effective and strong MSE associations would play a critical role in championing the rights of enterprises, providing loan schemes and lobbying the government to prioritize issues of MSE workspaces in the national policies and programmes. MSE associations should also enhance the capacity to improve governance in the allocation of land for development of workspaces by forming vibrant advocacy and lobby groups that would "blow the whistle" and therefore prevent cases of irregular acquisition of public land meant to benefit MSEs.

Undertake legal and regulatory reforms:

The laws and regulations governing the allocation of MSEs workspace have tended to place too much power in the hands of local authorities. More reforms are needed to ensure that the Local Government Act supports the growth and development of the sector by mainstreaming MSE associations in decisions relating to formulation of by-laws, licensing of businesses and trade, policy development, planning and land development. Some of the regulatory reforms include up-dating the building by-laws, which are currently unrealistically stringent, to encourage innovative and low-cost building technologies. Similarly, all stakeholders (including MSEs) should be involved in the design of licensing regulations and determination of fees and charges in line with profitability/sales/location or any other reasonable criteria. There should be initiatives to harmonize business schedules for all local authorities. The by-laws governing issuing of hawking licenses should be changed to ensure that they are accompanied by requisite property rights, and where this is violated, cost-effective and non-judicial compensation mechanisms should be put in place.

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Encourage private sector participation in the development and management of workspaces:

Given the predominance of public investments and the need for commercial orientation and sustainability, private sector participation in the development and management of workspaces should be encouraged. This will require initial government support or subsidy. Such subsidies could range from provision of free land, to tax rebates for private providers of workspaces, stamp duty exemptions, and investment allowances for establishment of incubators.

Encourage innovative workspace provision models:

Innovative approaches include periodic markets and live/work schemes. Periodic markets ensure making multiple uses of spaces like streets and open spaces by creating additional workspaces for the MSEs. Certain streets would be closed from traffic to allow traders to carry out their businesses on specific times or days. To a small extent, this concept has been implemented in Nairobi and Mombasa. There is need to replicate it in other smaller towns and municipalities.

Another alternative but cheaper workspace model is the live/work scheme. Under such schemes, one's dwelling place also doubles up as the work place, providing the advantage of operating one rather than two premises and gives convenience to people who prefer to work where they live. Because of the cost-savings, it is increasingly becoming important in providing workspaces for small enterprises in developing countries. Recognition should be given to this model by encouraging entrepreneurs to make multiple use of their residential houses for business activity. However, care should be taken to identify sectors that could benefit from this model without causing noise, heat, smoke and so on. The demerit with this approach is the associated costs of regulation, which may be high and may initially outpace the capacities at local authorities. However, this limitation could be minimized through a wider application of self-regulation of the enterprises.

Enhance policy and institution coordination:

There is need to enhance institutional coordination to avoid conflicts and wastage in the development of workspaces. The Ministry of Labour and Human Resource Development should liaise with the Directorate of Monitoring and Evaluation at the Ministry of Planning and National Development to ensure that a monitoring and evaluation system for MSEs activities is put in place. Such a system should develop the indicators, define the key actors, establish the financing framework, define how monitoring should be done, and identify who should do it.

The policy framework should clearly define the role of local authorities, as well as other key players in workspace provision. In addition, it should engage other stakeholders so as to enhance ownership of policies and programmes. Responsive policies will require reliance on needs assessments and market surveys in designing policies.

Mainstream workspace provision in urban physical plans:

The Ministry of Local Government should require all urban centers to ensure that at least one-fifth of urban land is reserved in their physical development plans towards MSE workspaces. Such sites should be well supplied with roads, water, electricity, toilets, security and drainage. The staff capacity of Planning Departments at local authorities should be complemented by economic planners to ensure a synergy between physical plans and economic priorities. This is likely to ensure that the contribution of MSEs is reflected in urban physical plans.

Notes

[1] The terms *Jua Kali*, informal sector and MSEs are used interchangeably in this policy brief.

[2] Workspaces or worksites for MSEs range from *Jua Kali* sheds, Kenya Industrial Estates' sheds, Export Processing Zones Authority's incubators, council markets, open-air markets, and open spaces (including sidewalks). Some worksites are fully developed and have basic infrastructure. Others are partially developed while the rest are not developed at all.

[3] Hereafter referred to as the Ndung'u Report of 2004.

About KIPPRA Policy Briefs

KIPPRA Policy Briefs are aimed at a wide dissemination of the Institute's policy research findings. The findings are expected to stimulate discussion and also build capacity in the public policy making process in Kenya.

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