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Informal Sector Business in Kenya: The Impact of National Policy on Local Government Practice

July 1990

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ABSTRACT

The Kenyan informal sector plays a key role in the national economy, both as a locus of entrepreneurial development and as a source of employment for Kenya's rapidly expanding urban population. Approximately 40 percent of the urban labor force in Kenya is now engaged in informal sector business activities, and government projections suggest that approximately 75 percent of all new employment generated in urban areas in the next decade will be in the informal business sector.

The Government of Kenya has in recent years formally recognized the significant contribution made by the sector in meeting priority GOK objectives for expanded employment opportunity and economic growth with equity. Recently adopted GOK policy outlines a strategy of support for the sector and calls for reform of regulatory measures at the local government level that have impeded its growth.

This study examines the extent to which local governments are responding to the GOK's call for a more facilitative regulatory framework for informal business activity. Major findings of this study are that that local governments have been slow to respond and that outdated local by-law provisions, business licensing requirements, licensing fee structures, building controls, and enforcement procedures remain in place, the net effect of which runs counter to the intentions of GOK policy. Recommendations are made for modification of local regulatory practices toward the informal business sector in several key areas, with particular attention to reform of business licensing procedures.

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INFORMAL SECTOR BUSINESS IN KENYA: THE IMPACT OF NATIONAL POLICY ON LOCAL GOVERNMENT PRACTICE

INTRODUCTION

The Kenyan informal sector has become in recent decades a key source of employment for Kenya's rapidly expanding labor force. The combined factors of extremely high rates of population growth, limited labor absorptive capacity within the agricultural sector, and sluggish growth in formal sector business development and employment have contributed to this phenomenon. Employment projections, which underscore the importance of the informal sector in the overall Kenyan economy, indicate that 75 percent of all new jobs created in Kenyan urban areas and up to half of new rural employment by the year 2000 will be in the informal business sector.

After many years of ignoring informal sector issues and while continuing to largely ignore the sector's key role in housing provision, the Government of Kenya since 1986 has adopted a series of policy statements which explicitly recognize the informal business sector's contribution to the overall Kenyan economy. Government policy calls for a two-fold strategy of support for informal business involving both direct intervention through government-sponsored land, credit, skills training, and marketing assistance, as well as enabling legislation designed to reduce, more generally, regulatory restrictions on the operations of informal sector businesses. To a significant degree, local governments in Kenya will bear responsibility for translating the GOK's informal sector strategy into action. The level of commitment and skill that they bring to the process of strategy implementation will have major bearing on its success.

This paper specifically examines the manner in which GOK policies toward informal sector business are being interpreted and implemented at the local level in selected urban areas of Kenya. The paper contains five elements:

1. Background - This section provides information on general social and economic conditions in Kenya which have influenced the growth and development of the urban informal sector.

2. National Policy Overview - This section examines GOK policy toward informal sector business, as reflected in the current National Development Plan and other key

documents.

3. Regulatory Framework - This section examines basic features of the Kenya Local Government Act and typical local government by-law provisions, as they relate to local government regulation of informal business sector activity. The extent to which this regulatory framework conforms to or contrasts with GOK policy is explored.

4. Case Studies - This section provides case study examples of the way in which selected Kenyan local governments have addressed GOK policy directives vis-a-vis the informal sector. The extent to which actual local government practice has accommodated or hindered informal sector business development in these case study examples is reviewed. These case study analyses were drawn from background studies previously prepared by Z.P. Omwando and Peter Ngau on behalf of RHUDO/ESA.

5. Conclusions - This section provides summary findings regarding conflicts and/or consonance amongst the three elements under consideration: national policy, the local government regulatory framework, and case study local government practice toward the informal sector in Kenya.

This paper is one of four brief studies commissioned by the A.I.D. Office of Housing and Urban Programs under its Informal Sector Project. The collective purpose of these studies is to examine the experience of selected urban areas worldwide in accommodating informal sector activities and to define urban management lessons learned from this process.

1. BACKGROUND

Kenya, located in eastern Africa, has an estimated population of 23 million. The proportion of the population living in urban areas now exceeds 20 percent of the total and is growing at a rate of 8 percent per annum, one of the highest urbanization rates of any country in the world. By the year 2000, almost 30 percent of Kenya's population is expected to reside in urban areas.

34 percent of the total urban population lives in the capital city of Nairobi, which has a population of approximately 1.5 million. Although the city is in most respects a typical primate city, the Kenyan urban system has grown into a complex hierarchy of 172 urban areas which perform a diverse array of functions. In addition to the three secondary cities with populations over 100,000 (Mombasa, Kisumu, and Nakuru), another

89 towns with populations over 5,000 exist. These smaller towns are by far the fastest growing segment of the Kenyan urban hierarchy.

Urbanization in Kenya, as well as the growth and development of the urban informal sector, is of relatively recent and colonial origin. Nairobi and all other major non-coastal urban areas were created by and for the trade and administrative purposes of British settlers beginning at the turn of the century. The Africans who migrated there were typically regarded as temporary urbanites who came to supply much needed labor in white-owned businesses, to earn some money, and then as quickly as possible return to their families and homes in rural areas. In the absence of an adequate housing policy and with legal restrictions on African urban in-migration, accommodations and services provided for the largely male African work force in the major urban areas were meager both in qualitative and quantitative terms. By the 1940s, development of informal settlements in and around the major urban areas commenced in response to shortages in the supply of affordable, appropriate formal sector housing provided through both public and private means (Obudho, 1989). In addition, the very low wages offered to African workers spurred pursuit of informal business activities as an income supplement strategy by many low-income urbanites.

With Independence in 1963 and the abolition of laws restricting African in-migration to urban areas, a number of trends commenced which would expand the role played by the urban informal sector as a source of both housing and employment for low-income Kenyans.

First, increasing overall population growth rates paired with a shortage of arable land and introduction of more capital-intensive farming practices has led to rapid changes in the rural/urban population balance. Between 1962 and 1969, the urban population doubled and then, during the 1969-79 period, doubled again. While rural dwellers had previously been "pulled" temporarily to urban areas in expectation of economic gains, complementary "push" factors also began to come into play. Circular rural-urban-rural migration continues to be a cultural ideal, but for many landless Kenyan households urban life has become an increasingly permanent condition.

Second, provision of low-cost housing and related urban services by government agencies and the formal private sector, inadequate even under the controlled in-migration conditions of the colonial period, has fallen further and further behind in meeting low-income household need. By 1983, it was estimated that only 17 percent of demand for new housing was being met through formal public and private sector means (Robert Nathan, 1984) and that this housing was being largely directed to middle and upper income households. Approximately 40 percent of the urban population is now believed to live in informal settlements which lack access to the most basic urban services including reticulated water, sanitation, electricity, all-weather road/footpath access to dwellings, and security of tenure (NACHU, 1990).

Third, expansion of employment opportunities within the formal private sector has not kept pace with growth of the labor force. Following a period of rapid economic expansion in the immediate post-Independence period, the Kenyan private sector has been characterized by declining growth rates since the early 1970s. During the 1972-83 period, formal private sector employment expanded at only 2.6 percent per annum, well under the 4.0 percent per year rate of overall labor force growth. The formal private sector's share of total employment actually declined from 9.2 percent to 7.9 percent in the same years (The World Bank, 1986).

While definitional difficulties influence any analysis of informal sector business, an estimated 40 percent of the urban workforce in Kenya now derives its livelihood from informal sector business activities. In recent years, the informal business sector has consistently outperformed the formal private sector in providing new employment opportunities and, as such, has played a key role in absorbing residual labor force growth. Between 1972 and 1983, informal sector employment grew at an average annual rate of 9.3 percent, in contrast with formal private sector employment growth of 2.6 percent (The World Bank, 1986). This skewed pattern of employment growth is expected to continue. GOK projections now indicate that 75 percent of all new urban employment created until the year 2000 will be provided by the informal sector (GOK, 1988).

The Kenyan urban informal sector, like that of other developing countries, encompasses an extremely wide array of economic activities. These range from manufacturing in fixed places of businesses within informal settlements to petty street vending. The informal sector includes enterprises which are registered by local governments, thus retaining some degree of official sanction, and those whose rights to operate are not recognized under the regulatory or legal system. And informal sector participants range from relatively successful to very marginal entrepreneurs and their employees. Urban household income distribution suggests a strong connection between the urban poor and informal sector employment: in 1976 the average annual household income of informal sector workers was KShs. 5,900 vs. KShs. 16,100 and KShs. 10,830 for formal private sector and public sector employees, respectively. However, the urban informal sector reflects considerable diversity of income: in 1977 average annual household income of informal sector entrepreneurs and their employees was KShs. 27,600 and KShs. 1,850, respectively (The World Bank, 1982).

Much emphasis has been traditionally placed on the informal sector's role in the production of goods for local consumption; however, surveys of informal businesses in Kenya suggest a strong orientation to retail sales and services rather than manufacturing. In 1982, 82.5 percent of informal sector workers were found to be engaged in trade and personal services activities, while only 15.7 percent were involved in manufacturing (The World Bank, 1986).

Despite the diversity of activities defined as falling under the informal sector umbrella, two key sectoral characteristics are clear. First, most low-income urban households derive their livelihood in full or in part from informal sector business activities (GOK, 1988; The World Bank, 1982). Second, in sharp contrast to the formal private sector, the informal sector is effectively providing jobs for the rapidly growing labor force, and will increasingly be called upon to do so if widespread urban unemployment in Kenya is to be avoided in the future.

2. NATIONAL POLICY OVERVIEW

Government of Kenya policy toward the informal business sector has evolved significantly in recent decades from a position of neglect through tacit acceptance to strong support. This process commenced with a detailed study of the Kenyan informal sector conducted by the International Labor Organization in 1972 and solidified with the issuance of the very influential GOK policy document entitled Sessional Paper No. 1 on Economic Management for Renewed Growth in 1986 (GOK, 1986). This latter document provided, for the first time, an unequivocal statement of GOK support for the role of informal sector business in the Kenyan economy.

Sessional Paper No. 1 argues, among other things, that

> "[t]he informal sector suffers from a negative public image, yet it possesses many positive characteristics and has a vital role to play in contributing to renewed economic growth of the country. Informal sector activities conserve scarce foreign exchange, require very little capital to create jobs, rely primarily on family savings, often provide their own skill training at no cost to the Government, and are a prime training ground for future African entrepreneurs. Above all, the informal sector offers an unmatched potential as a source of new jobs for the expanding lab[or] force. . . ."

Sessional Paper No. 1 goes on to state that in GOK efforts to stimulate the expansion of the informal sector,

> "[i]nitiatives will be undertaken to expand access to credit for informal sector businesses; to disseminate information on market opportunities and appropriate production methods for small-scale manufacturing; to expand youth polytechnic training and focus it on appropriate skills and management techniques; and to relax current restrictions on informal sector activities."

The subsequent national Development Plan 1989-93 (GOK, 1988) elaborated upon these policy statements regarding the informal business (or jua kali) sector. The Plan states that

> "[e]xperience shows that [direct Government support to informal sector enterprises] inevitably leads to slow entrepreneurial development, failure to take risks and eventually an in-built dependency in the very people Government wishes to encourage to be self-reliant. Despite these contraditions, Government is convinced that its facilitative role in the development of small-scale and jua kali enterprises is necessary. This role will be reflected firstly in the content. . .of policies supportive of their development. Secondly, through its taxing and spending programmes, Government will directly and indirectly change the cost-price relations that will be beneficial to the development of [these] enterprises. Thirdly, where the limiting factor is the availability or inaccessibility to capital, Government will intervene to redress the problem."

Thus, while recognizing that direct government intervention vis-a-vis informal sector business might be a counter-productive strategy, it is precisely an interventionist approach by the GOK that is called for in these policy documents. The Plan proposes direct Government programming in a variety of areas including the provision of land, credit, skills training, advisory service, and marketing assistance to informal sector firms. The Plan also calls for implementation of related Government enabling strategies vis-a-vis informal sector businesses including appropriate revision of building codes and suspension of certain categories of business licenses as they apply to such businesses.

At present, a number of programs are being undertaken by the Government in support of the policy directives defined above. These include:

- Land Allocation - Land is being set aside for informal sector businesses by various local governments. The success of these efforts has varied widely, as will be discussed in more detail in Section 4 of this report, depending on the location of the sites selected, the amount of land servicing provided, and the level of prior consultation with beneficiaries regarding their needs.

- <u>Construction of Workshops and Kiosks</u> - Low-cost sheds have been erected in Nairobi and other towns to provide shelter for informal sector businesses. These construction projects are often carried out by the GOK through its representative offices at the district level.

- <u>Financial Assistance/Training</u> - Four Government institutions - the Kenya Industrial Estates (KIE), the Joint Loan Board Scheme, the Industrial Commercial and Development Corporation, and the Small Enterprise Finance Company - have provided approximately $50 million in credit and training assistance to small businesses over the past two decades. Lending to informal business has been included in the portfolios of these institutions in recent years. The cost effectiveness of these programs in channeling assistance to informal sector business, however, has been questioned, given the high cost per job created and the limited number of informal sector businesses assisted. A random survey of 1,500 informal sector businesses conducted by the Ministry of Planning and National Development indicated that none had received credit assistance from any government source.

The GOK has been slower to act on encouraging the local government regulatory reform vis-a-vis informal business which was called for in Sessional Paper No 1 and the national Development Plan. Local by-law provisions, business licensing requirements, and building regulations, as well as the manner in which they they are interpreted and enforced, continue to be determined at the local government level in Kenya with little or no concrete guidance from national government agencies. However, the GOK, through the Ministry of Local Government, is now examining the local government regulatory framework and plans to issue recommendations on appropriate areas for reform.

There is one aspect of the informal sector policy outlined in Sessional Paper No. 1 which, by its glaring omission, is worthy of note: a recognition of the key role played by the informal sector in housing production. While the majority of low-income urban households meet their shelter needs through informal means, there is little precedent for slum upgrading by local governments in Kenya and no coherent national policy in support of such an approach. Despite the apparent similarity between the "positive characteristics" of the informal business and housing sectors in addressing shortfalls in employment generation and housing production, respectively, by the formal private sector, Sessional Paper No. 1 and the National Development Plan include no discussion of this correlation.

In summary, the GOK has recently adopted a selectively positive policy stance toward the informal sector which recognizes its key role in the overall Kenyan economy and as a source of employment for the rapidly growing urban workforce. The strategy defined by the GOK for policy implementation includes both direct GOK interventions through Government-sponsored projects and introduction of regulatory reforms aimed at facilitating the growth of the informal business sector. To date, however, implementation of this strategy has focused on Government-sponsored project interventions which, it may be argued, have generated limited benefit to the informal sector business community. Regulatory reform which may be a more appropriate emphasis for Government, has not yet commenced in any coordinated or concerted manner.

3. REGULATORY FRAMEWORK

Legislation which affects the Kenyan informal sector, either directly or tangentially, is scattered in various legal instruments. Fundamentally, however, local governments in Kenya carry responsibility for day-to-day regulation of urban informal sector operations. Local government powers under the Local Government Act in the areas of licensing, licensing fees, and building controls are the primary tools used to control informal sector operations.

The Local Government Act (GOK, 1978) provides the legislative basis for local governments in Kenya and defines their powers. Section 201 of the Act, a key provision, generally enables a local government to make by-laws "as are necessary for the maintenance of the. . . well-being of the inhabitants of its area. . . and for the prevention of nuisances therein." Other sections of the Act empower local governments:

- To control public sales and places of any sales and license persons to conduct such sales (Section 145P).
- To charge fees, without restriction on amount, for any business license issued (Section 148).
- To prohibit and control shops in rural areas (Section 159L).
- To control all establishments where articles of food or drink are manufactured, prepared for sale or use, stored, or sold (Section 161D).

- To prohibit or control peddling, hawking, street trading, barbers, second-hand goods dealers, and trades and industries deemed to be noxious or offensive (Section 163).

- To refuse to grant and to cancel business licenses (Section 165).

- To make adoptive by-laws under the Local Government Act and other laws of Kenya, including the Building Code and the Public Health Act (Section 210).

The diversity of these provisions gives local governments in Kenya enormous powers to control or prohibit informal sector operations through their by-laws. In fact, the strict application of any of these provisions, in combination with the more general power of Section 201, is potentially enough to paralyze the operations of the sector.

A sample review of local government by-law provisions in Kenya suggests, however, that hawking and other informal businesses, whether occurring on public or private land, are rarely prohibited outright by local ordinance (Omwando, 1989). Rather, local governments in Kenya typically have by-laws and council resolutions in place which seek merely to control the number of such businesses, their placement, and health and safety implications of their operations. Licensing, licensing fees and charges, and building controls are the primary mechanisms used by local governments in this regard.

Business licensing is the main tool used by local governments to control small scale enterprise operation as any unlicensed trader automatically violates local by-laws and is, therefore, liable for prosecution. A survey of court cases in the three towns - Nairobi, Nakuru and Karatina - revealed that, with very few exceptions, those charged for illegal trading were found to be trading without a license (Omwando, 1989).

There are several factors that influence local governments when issuing licenses to small businesses. The Nairobi City Commission, for example, limits the number of such businesses which may be licensed. Only 5,000 hawker licenses can be issued annually in Nairobi despite an estimated 45,000 such businesses in current operation (Mitullah, 1989). The siting of informal business operations is also considered. The Nairobi City Commision, for example, permits hawkers to locate along tertiary road reserves and in underutilized open spaces, but prohibits them along primary/secondary road reserves and near public markets. Local governments typically also apply minimum standards for informal business structures or "kiosks", as locally styled. Minimum standards for such kiosks are applied in the case of Nairobi and other urban areas. Finally, it should be noted that local governments are empowered by the Local Government Act to rescind properly issued hawker licenses, and local governments do exercise this right. Possession of a hawker license under such circumstances does not ensure security of continued operation.

Surveys undertaken in Nairobi suggest that local licensing requirements have serious repercussions for informal sector businesses (Mitullah, 1989). First, in light of limitations on the number of hawker licenses which can be issued, the majority, an estimated 88.7 percent, of such businesses in Nairobi are unlicensed, are unable to become licensed, and are therefore liable to arrest and harassment by City officials. The majority of informal sector business operators surveyed in Mitullah's study indicated that they had been subject to harassment, typically in the form of confiscation of merchandise by City officials; others claimed to have "avoided" harrassment through payment of token bribes to City officals. Mitullah's study also suggests that local government efforts to publicize licensing requirements may be inadequate. The unlicensed hawkers surveyed identified ignorance of licensing requirements and procedures as their primary reasons for not possessing a license. Local government efforts to establish more appropriate limits, if any, on issuance of hawker licenses and greater attention to publicizing licensing requirements would seem to be warranted.

Since the passage of the Local Government (Powers and Transfers) Act of 1970 and the subsequent transfer of the graduated personal tax to the central government, revenue sources available to local governments have seriously eroded. Licensing fees are now one of the primary sources of revenues open to local governments to finance their operations. Local governments, thus, are inspired to maximize wherever possible revenues from any and all sources, including licensing fees applicable to informal businesses. Under such circumstances, there is little evidence that local governments are responding to Sessional Paper No. 1's call for suspension of licensing fees applicable to certain informal businesses, an objective which may be unrealistic in light of local government finances.

Two main aspects are noteworthy in respect to licensing fees as they apply to informal sector business. First, because of a lack of standardized guidelines, the levels of fees charged by local governments for similar trades vary widely. Second, again due to the lack of standardized guidelines, local governments may deliberately charge high fees as a means of increasing municipal revenues and/or discouraging certain businesses, particularly those in the informal sector.

A few comparative examples may serve to explain the differentials on the levels of fees charged. In 1989, the annual fee for a license to run a tea-room was Kenya Shillings (KShs.) 100 in Karatina, while it was KShs. 575 in Nairobi. For a small bakery, it was KShs. 300 in Karatina, KShs. 1,320 in Kisumu, and KShs. 3,000 in Nakuru and Nairobi. For a small laundry it was KShs. 600 in Karatina, KShs. 550 in Nakuru, and KShs. 3,000 in Nairobi. Such fees are typically payable on a lump sum, annual basis.

There have been regular complaints from informal business operators regarding the high fees charges by local councils on licenses, the financial burden entailed by a single annual payment, and the perceived lack of services provided by local councils in return for such fees. The net effect of high licensing fees under such circumstances may be negative for all concerned if they cause the informal business operators to "opt out" of the licensing process, thus removing themselves as a source of licensing revenues for local governments. A standardized, appropriate fee structure would assist to guide local councils in this regard.

The issue of <u>building standards</u> applicable to informal sector businesses premises cannot be isolated from the general consideration of building regulations in force in Kenya. Kenya has traditionally maintained very high building standards based on western models. Largely for this reason, production of housing suitable for low-income households by government has been quantitatively limited, formal private sector participation has been negligible, and the informal sector has become, by default, the major provider of low-cost urban housing.

The issue of building and planning standards was extensively studied in the early 1980s. In 1986, the then Ministry of Works, Housing and Physical Planning prepared reduced standards which were subsequently approved by the GOK, but which have not yet been passed into law. Local governments are free to adopt the majority of the reduced standards, but very few have done so to date. In light of the relatively stringent building and development standards in place, past local government attempts to prepare appropriate kiosk designs suitable for and affordable to informal sector businesses have not been successful, particularly those recently designed by the Nairobi City Commission. Maintenance of high building standards by local governments has both served as an obstacle to the issuance of licenses to low-income informal sector operators and been a common cause of harassment of unlicensed informal businesses.

It is difficult to generalize about local government by-law enforcement practices as they apply to informal sector businesses in Kenya or elsewhere. Enforcement occurs "on the street," as it were, and is undertaken by public officials who may have their own interpretations of municipal regulations and various reasons for acting the way they do. Nevertheless, several studies (Mitullah, 1989; Kulundu-Botonye, 1986; and Muench, 1977) suggest that enforcement in Nairobi, for example, tends to be random and harsh. Informal business operators found to be contravening by-law provisions face arrest, confiscation of merchandise, or demolition of their premises in cases where token bribes cannot be first arranged with the involved City inspector. Enforcement does, however, tend to be less rigorous within the City's informal settlements than in other parts of the City, particularly in the central business district (Mitullah, 1989). Rigid application of City regulations, however, does typically characterize the process of issuing business licenses or building permits to hawkers and other informal businesses (Muench, 1977).

In summary, the local government regulatory framework in many ways is inconsistent with the GOK's newly positive policy of supporting and encouraging the growth and development of informal sector business. There is little evidence of widespread implementation by local governments of the regulatory reform called for in Sessional Paper No. 1 and the National Development Plan. By-law provisions, licensing requirements regarding the number and location of informal businesses, licensing fee levels, building requirements, and general regulatory enforcement methods in place at the local government level frequently conflict with the informal sector support objectives outlined in these documents.

4. CASE STUDIES

The following provides case studies of local government efforts to address informal business sector concerns, which illustrate more graphically some of the policy and regulatory issues discussed above.

The Town of Kutus and the City of Kisumu, operating under similar regulatory frameworks but with very different results, recently have attempted to "regularize" informal sector operations within their jurisdictions. The Town Council of Kutus has pursued a strategy of relocating such firms, as it deemed necessary to meet its priority urban development objectives. This strategy, and the manner in which it has been implemented, is shown to have had negative repercussions for the affected informal businesses. The Municipal Council of Kisumu, in contrast, has recognized various financial and public service benefits to be derived from a more supportive stance toward informal sector business and has facilitated the expansion of an existing informal sector market.

The Case of Kutus*

Kutus is a town of 5,000 located in central Kenya which is growing at an average rate of 9.4% per annum. The high rate of town growth may be explained by a number of factors including Kutus' role as a market town and transportation hub in the agriculturally rich and diverse area surrounding Mount Kenya. Kutus has about 380 businesses, in addition to which, on market days, the open air market has about 500 food sellers and 370 non-food sellers.

The Town Council has a sound financial and administrative record, having operated at a surplus over the last six years. The recent growth of business in Kutus has been a boon to its finances. About 66 percent of its revenue comes from fees charged and taxes levied from market trade and town businesses. This has enabled the Council to embark on an ambitious development program including a new market, a new bus park, stormwater drainage and sewage systems, paving the town streets, increased water supply, and extending the electricity supply.

Most of what are described above as "businesses" are in fact in the informal sector - artisans making and mending things and selling food, clothing, and simple household equipment. Most of these businesses were operating with temporary occupation licenses and were mostly sited on land designated as "areas of undetermined or deferred use" when events described below occurred.

Despite their importance to the local economy and as a source of local government revenues, informal sector businesses in Kutus have been the target of many previous evictions by the Town Council. In 1981 the Council ordered the arrest and eviction of all hand cart operators and public transit touts. The action backfired, however, as the number of crimes in the town increased; thus forcing the Council to stop harassing these operators. In 1983 the Council decided to relocate forcefully all wood workshops including cart makers and carpenters. They were required to move from the old town to a site 2 kms away. It was impossible to operate at the new site as there were no roads and poor access to potential customers. More recently, in 1986, the Council decided also to evict barbers and beauty salons from the town. They were given notices to vacate their premises, but they did not do so. After playing a hide and seek game with Council officials for several months they remained in the same area.

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*Background study prepared by Peter Ngau for RHUDO/ESA (1989).

The Council then made the decision to relocate the town's _jua kali_ artisans from their centrally located site near the petrol and bus stations, which they had occupied for over 5 years, to a new site 1 km away from the old town. According to Council officials the action was taken as part of a larger plan to place business activities in places more suited to their operation, and where there would be room for expansion in the future. The Council had, however, targetted the artisans' old site for development of a new public market, and this presumably influenced its action.

After providing eight days notice, a large contingent of Council police moved onto the old site armed with a bulldozer, trucks, and clubs. These officials went from one workshop to another, confiscated all the equipment they considered valuable, and leveled what remained of the previous businesses.

At the new site the Council set aside 30 workshop plots in place of the previous 13 workshops. The Council therefore saw its action as a step forward in support of the small scale artisans. The artisans on the other hand had more complaints than praise for the action taken by the Council. A major complaint came from those _jua kali_ operators who had worked jointly at the old site, but were not allocated plots at the new site. Although the old site had only 13 workshops there were more than 2 operators for each workshop, and this had not been recognised in the new allocations. The balance of newly developed plots at the new site were allocated to outsiders. A second major complaint of the artisans concerned the loss of their expensive equipment during the eviction. Some were lucky; by paying a charge they got their equipment back from the Council's garage, others were not. Four artisans discontinued their work because they lost their equipment altogether. On average each artisan lost KShs. 6,250 from the eviction. These costs included loss of equipment, recovery charges paid to the Council, cost of transporting materials and towing vehicles under repair to the new site, and expenses of clearing the new site. This did not include the cost of building structures at the new site. Also, at the new site each artisan would be required to pay an annual licence fee of KShs. 1,900, whereas at the old site it was KShs. 1,300.

There was a great contrast between the old and the new sites with respect to convenience for informal sector activities. The old site had access to electricity and was located next to the bus park, close to the open-air market, close to the main road, and close to a river. The old site was well situated in relation to town-based customers and traffic passing through Kutus. In contrast, the new site had few such advantages. It was located in the midst of maize and banana gardens about two kilometers from the center of business activity in Kutus.

Besides its remote location, there was poor access, which becomes impassable during the rains, and the site lacked such vital facilities as water and electricity. It was far from, and inaccessible to actual and potential customers at the bus station, the market, and passing through town on the main road. Furthermore, the plots were very small, fenced with barbed wire, and allowed no room for vehicular parking. As a final blow, the allottees were only given temporary occupation licenses, which meant that in theory they could be thrown off the new plots as abruptly as they had been thrown off the old ones.

Largely due to the unsuitable business location, a lack of essential facilities, and a loss of equipment, the artisans suffered considerable losses. A few abandoned their businesses completely. All suffered severe declines in incomes, increased costs of operation, and waste due to idle equipment. As a result of the slump in business there was also a slump in employment: the average number of employees per business dropped from 5 to 1. Wages also dropped drastically as income from the business declined.

The actions of the Kutus Town Council, while ostensibly undertaken to support the operations of local informal sector businesses, had, in reality, the opposite effect. This case dramatically demonstates several inherent discrepancies between GOK policy objectives regarding the informal sector and Council urban development objectives which may revolve around improving municipal revenues, beautification, and order. The Kutus Town Council felt it had an immediate need for the well-situated and publicly-owned site occupied by informal sector businesses to address its own development objectives, serve a wider perceived public need, improve the town "image", and provide a new Council revenue source. The potentially negative impact of relocation on the profitability or employment generation of the informal businesses was of lesser importance to the Council. Second, the business licensing practices of the Council, which are typical of other urban areas in Kenya, allow such licenses to be withdrawn at any time. Under such regulatory circumstances, informal businesses, whether licensed or not, have no assurance of that their business operations will be allowed to continue in their current site or any other. Third, local government fees charged for issuance of licenses to informal sector firms, regardless of how high, do not necessarily imply a quid pro quo relationship involving provision of public services to these firms. Following relocation, the affected informal businesses paid a higher licensing fee while receiving much less in the way of locational advantages and infrastructure provision from the local government.

The Case of Kisumu*

Kisumu, located on Lake Victoria, is Kenya's third largest city. It has a population of approximately 200,000 and is the chief commercial hub of the agriculturally diverse far western part of the country. Kisumu has been subject to high levels of in-migration in recent years, as reflected by its average annual growth rate of 16.9 percent during the last intercensal period.

This case explores the Kisumu Municipal Council's response to the development of the largest of the more than 20 informal sector markets within its jurisdiction: the Kibuye Open Air Market. Records on the history of this site and its design are not available, but it appears to have been spontaneously established by hawkers more than 20 years ago. The market was partially destroyed by fire in 1987; however, the area has continued to be a very active commercial center providing jobs to a large number of Kisumu residents.

The market has retained its open air nature, but a large number of kiosks have also been developed over time. The market is situated on land allocated to the Kisumu Municipal Council by the Commissioner of Lands on a Temporary Occupation License (TOL) basis, which means that no permanent structures may be erected on the site.

Because of an increased demand by informal sector vendors for places within the site, the Municipal Council arranged to extend the market area to accommodate more traders. The Council deemed market expansion to be necessary to address congestion within the old site and to respond to the large number of job seekers that were crowding the Municipal Council offices daily.

The Council cleared and fenced the new area and allocated space for 280 new kiosks to supplement the 243 which had been developed at the old site. Spaces were allocated through the Town Planning Committee of the Council following advertisements on Council noticeboards. Allottees were then permitted to develop their kiosks in the spaces provided to them.

There was no consultation with the prospective allottees or with the Kibuye Market Trading Association, which was established in 1971 and which represents vendors within the site, with regard to the design of the market extension. The need for this seemed to be minimal given the fact that only temporary kiosks could be erected at the site. Discussions

*Drawn from background studies prepared by Z.P. Omwando on behalf of RHUDO/ESA (1989).

with members of the Association and records of the Municipal Council indicate, however, that there has been some degree of consultation in the past. For example in May of 1982 the Association wrote to the Council with requests for the repair of gates at the old site, provision of lighting, and guard service at night. In response, the Council agreed to approach the local electrical company to supply lighting. Another example of consultation is the fact that the Council did not carry out its recent intention to allocate an additional row of kiosks in one of the site's open spaces, as the Association objected due to the congestion and fire risks involved.

The Kibuye Open Air Market is one of the main revenue earning sources of the Municipal Council. The Council earns a monthly average of over KShs 400,000 from open air markets through fees charged to vendors occupying space within these markets. Revenues from Kibuye account for approximately 40 percent of the Council's total earnings from open air markets:

	All Markets (KShs.)	Kibuye Market (KShs.)
Jan. to May 1985	1,529,840	570,910
Nov. and Dec. 1985	826,311	330,528
Feb. and March 1986	768,673	316,854
March and April 1987	874,835	408,252
July and Aug. 1987	813,213	318,516
July 1988	444,990	176,674

The Kibuye Open Air Market is an example of a successful local response to Government development objectives relating to informal sector activities in the areas of job creation and income generation. The market is also a key source of municipal revenues. An important factor, and probably the most significant lesson to learn from the Kibuye example is the local government's resolve to take deliberate efforts to improve what started as spontaneous open air trade in the Kibuye area. Coupled with this is the simple nature of the constructed kiosks by the allottees themselves at minimal costs. The Council simply created the environment by clearing the area, fencing it and encouraging the traders to construct their own kiosks with the materials they could afford.

There is no doubt that with greater Council attention to the provision of adequate services such as water supply, lighting and security and to more efficient revenue collection, the Council could improve conditions within the market. Efforts need to be made on the part of the Council to hold regular consultations with the traders through their association. This will facilitate provision of the necessary services such as water supplies and also assist in making appropriate decisions with regard to the use of the available space.

5. CONCLUSIONS

Local governments in Kenya have not yet responded in an effective, coordinated manner to Sessional Paper No. 1's call, in general, for a more facilitative stance towards the informal business sector or, more specifically, for the reform of regulatory measures that have impeded its growth. Certain by-law provisions (as well as the Local Government Act upon which they are based), business licensing requirements, licensing fee structures, building controls, and enforcement procedures remain in place, the net effect of which runs counter to the intentions of GOK policy. The informal business sector's "negative public image" noted in Sessional Paper No. 1 still appears to characterize much of the interaction between local government and the sector in Kenya.

The conflict between current GOK policy and local practice is not entirely surprising. First and quite obviously, it is more difficult to implement policy pronouncement than it is to make them. The GOK strategy of support for the sector outlined in Sessional Paper No. 1 is of relatively recent origin and represents a dramatic departure from past government policy on the subject. In contrast, the regulatory framework in place at the local government level represents a complex body of legal measures built up over a period of many years and reflects attitudes, practices, and interests long held by local (and national) government officials, as well as by the public at large. Bureaucratic inertia also figures in. The Nairobi City Commission, for example, at a regular meeting held on July 2, 1984, identified for action a series of regulatory reforms needed for a more supportive Commission stance toward informal businesses operating within the City. Six years later, virtually none of these recommendations have yet been acted upon. Clearly, a number of local government regulatory measures applicable to the informal sector are out of date and must now "catch up" to GOK policy; however, the analytical framework required by local governments to initiate this difficult process has been, to date, largely lacking. Recent efforts by the GOK to initiate the examination of laws affecting the informal business sector and to consider suitable changes is a positive step which should greatly assist local governments to consider appropriate regulatory reform.

Second, it is unwise to assume unanimity of purpose toward the informal sector by national and local levels of government. The GOK views the expansion of the sector as being critical to meeting the GOK's objectives for expanded employment opportunity for the rapidly growing Kenyan labor force. On the other hand, local governments, according to surveys conducted by Kilundu-Bitonye (1986) and others, tend to view informal businesses as impediments to their priority objective for increased municipal revenues, beautification, and public order. This very basic conflict of objectives may largely explain the inability, to date, to reconcile local regulations toward the informal business sector with national policy.

Third, this study demonstrates, in some ways, the "down side" of decentralization strategies. It is currently fashionable in development literature and among international donor organizations to stress decentralized decision-making as a solution for a host of urban development ills. However, local governments can and often do lack the broad perspective needed to gauge the impact of their individual actions on larger economic development concerns. Kenyan local governments will need assistance in understanding the very real connection between their local regulatory practices toward the informal business sector and larger economic concerns for growth with equity, increased employment, and entrepreneurial development for Kenyans. Appropriate training for local government officials in this regard would appear to be warranted.

Finally, it may be argued that the importance of getting the "right" informal sector policies in place has been over-valued by international donor organizations. The case of Kenya demonstrates that without corresponding reform of local regulatory and enforcement practices, the impact of enlightened national policies on the informal business sector is negligible.

There are several areas in which regulatory reform at the local level could establish a more supportive environment for informal businesses without ignoring local government concerns about municipal finance. Licensing is a key area of concern.

Local licensing requirements vis-a-vis informal sector business, while perhaps originally conceived to discourage the proliferation of informal sector businesses, now appear to merely discourage such firms from becoming licensed. This serves neither the interests of the businesses, which thus become subject to harassment by local officials, nor the interests of local governments, which thus lose potential licensing revenues.

Several key changes in licensing practices at the local government level would improve the situation:

- Establishment of more realistic local limits, if any, on the number of informal businesses which can become licensed, subject to annual review.

- Establishment of more appropriate fee structures for licenses issued to informal sector firms which are consistent with affordability criteria.

- Allowance of amortized payment of license fees on a monthly or quarterly basis.

- Adoption of specific local government criteria for suspension of licenses properly issued to informal sector businesses.

- Publication of local government licensing requirements and procedures in clear language and through media that can be understood by informal business operators.

- Consideration of alternative approaches to enforcement of local by-law provisions and licensing requirements applicable to informal businesses. Fines, rather than arrest and seizure of merchandise, may be a more appropriate mechanism for enforcement of local regulations in this regard.

- Continued benign neglect by local governments regarding enforcement of business licensing requirements within informal settlements.

Introduction of these reforms would go a long way toward reconciling conflicts between the GOK policy framework regarding the informal business sector and regulatory practices generally in place at the local government level. However, there are other areas of local government reform, particularly in the areas of appropriate siting for informal businesses, suitable standards for informal business structures, and local government services to informal businesses, which do not lend themselves to generalized solutions. Greater local government attention to regular consultation with informal businesses through their representative associations to arrive at appropriate local solutions is clearly warranted.

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