

Graham Alder

Some Initial Thoughts

I read *The Mystery of Capital* (MoC) only following your invitation (and was surprised to find a copy, the only one, in Nairobi at a normal bookshop). It is very rewarding and a response could run to many pages. Unfortunately I do not have the time for that. So, a few immediate comments which, I am sure, beg more questions than they resolve. I have not responded to the questions directly but hope that the following covers at least some of them. I apologised for including such a large chunk of the 'Development Strategy for Nairobi's Informal Settlements' but, on referring to it after reading the MoC, it did seem particularly relevant.

My recent experience where I can speak with *some* understanding with specific regard to de Soto's thesis has been in Kenya and in Swaziland (and in Palestine but that is a very particular situation) but for these purposes I will stick mainly to Kenya. The ideas put forward in the book are interesting and powerful and one would like to see them discussed and tested in a greater number of countries than those included in the original research by de Soto's 'team.' As far as I recall no sub-Saharan African country was included. One certainly would like to be able to have more empirical data in Kenya and elsewhere to test their usefulness.

Comments in Relation to Kenya

As many of your readers will know, Kenya has a highly unequal society in terms of incomes and of assets (see the latest UNDP Human Development Report). In urban areas land falls into two broad categories, private and public (government and local authority). Private land is normally registered under title deeds but the process of registration and transfer tends to be cumbersome and expensive and there is considerable corruption within the system.

The poor normally live in slums or 'informal settlements'. Research undertaken in Nairobi by Matrix in 1993 showed that 55 percent of the city's population lived in these slums although they only occupied 5.5 percent of the residential land area. This is a spatial dimension of poverty and inequality. Roughly half of these settlements are on public land and the form of tenure is particularly Kenyan although there may be similar experiences elsewhere. Generally, access to land by individuals is normally allowed by the representative of the Provincial Administration, the District Officer or more commonly the Chief or Assistant Chief. The allottee normally receives a letter which confirms the right to use the land for a limited period. This is not the 'Temporary Occupation Licence' which can be approved by (the CoL) which has a similar purpose but which is an official document recognised in legislation.

In the highly commercialised Kenyan situation the allottee normally builds a 'barrack block' structure of 10-12 rooms of a very low standard and rents them. The return on capital is high. The form of tenure is therefore 'extra-legal but also is party of a system to which Administration officials (and politicians) are party. A Chief is paid by the allottee and it is alleged, this informal revenue then trickles back up the system. This parallel system is part of the system of patronage which characterises the Kenyan political structure. Clearly the losers are the poor who have insecure tenure and

dreadful living conditions. What the system does provide is affordable accommodation — something which the formal sectors have been unable to provide.

Thus, those who have been allocated land under the 'semi-formal' system of patronage, and who hold some form of evidence of right of usage, are able to exploit this for immediate economic gain. Very few of the 'structure owners' (technically not landlords) reside in the slums and in many instances are well-connected to senior politicians and civil servants. The tenants, of course, have very few rights as they are tenants-at-will.

I am not sure how this experience connects to the MoC for, as far as I know, the documentary evidence of right of use on *public* land is not used for any other purpose than to build rooms for rent and collect the resultant revenue. On private land ownership does release assets.

There has been much debate about how to tackle the problem of slums in Kenya with their particular characteristics in terms of tenure and the links to the patronage system. The 'Development Strategy for Nairobi's Informal Settlements has been developed by a body representing various stakeholders, the Nairobi Informal Settlements Coordination Committee (NISCC). The structure of the NISCC in a way recognises de Soto's points in his final chapter in that various stakeholders have been strategically co-opted into these processes.

The strategy in respect of security of tenure (it also deals with environmental health and sanitation, education, income generation, skills development and employment) proposed the following. I think worth quoting the section in almost its entirety as it (it was drafted first in 1997) seems to concur with a lot of de Soto's thinking:

Security of tenure is fundamental to unlock the potential of residents of informal settlements to use their own resources to achieve development. Informal settlements should therefore be regularised and formally integrated into the physical and economic framework of the city.

At the same time it is vital to ensure that regularisation does not have the effect of increasing the demand for the land on which informal settlements are built. More land grabbing in these areas will force out poor tenants who will simply find another area to inhabit — the problem will not just disappear.

In order to provide security of tenure to the present residents of informal settlements and encourage them to invest in their development, the following strategies are proposed:

Recognise existing settlements

It is imperative that any actions relating to informal settlements in Nairobi are preceded by a clear expression of good intent on the part of the authorities. This should include:

- the formal recognition of all existing settlements;
- a moratorium on all demolitions (this has been done) and
- an immediate stop on allocations of all public land that is already settled.

For the purpose of recognition it will be necessary to define the limits of existing settlements and to ensure that construction of houses in existing or in new informal settlements does not take place. The document "Nairobi Informal Settlements: an Inventory", 1993, updated to the present time, could provide the regulatory basis for the definition.

At the same time it will be equally important to set aside suitably located land for planned settlement by low-income groups. This will accommodate households displaced by upgrading of recognised settlements as well as newly formed households, and will be essential to prevent further squatting.

Under the moratorium on demolitions, no demolition of informal settlements should be allowed without consultation with the affected communities and without the provision of appropriate alternative accommodation.

Provide security of tenure to residents of recognised settlements

Existing settlements are located on land that is owned in three main ways: private freeholds, public land, and public land that has already been alienated to private land owners other than the present settlers. No change of tenure is proposed on the existing private freeholds. However for settlements located on public land an appropriate tenure system should be selected which will fulfil the following criteria:

- a tenure system which ensures that residents directly benefit, perhaps with a mix of ownership and rental (many prefer to rent);
- a tenure system which reduces the possibility of present residents being "bought out" by higher income speculators (e.g. through the "Community Land Trust" concept now being introduced in Voi);
- a tenure system that is selected with the direct participation of the residents;
- a tenure system which will encourage business investment.

For settlements located on land that has already been allocated to private individuals, other than the residents, and the allocation was done while the settlements existed, it is proposed that the residents be given the collective opportunity of purchasing the land from the legal owners at GOK prices. There is adequate evidence to show that the respective communities can collectively afford to pay the requisite GOK values (i.e. stand premiums, survey fees, stamp duty etc.) sufficient to compensate the allottees.

The local community should be provided with all the information necessary to enable it to select the tenure system most appropriate to its needs.

Streamline and improve the transparency of land delivery systems

The provision of secure tenure is a critical step to unlocking the self-help potential of the low-income residents of the informal settlements in Nairobi. However it is simply not enough for Government to decide that secure tenure is a good policy; it must also put in place effective machinery by which this security can be delivered. The current land allocation, registration, and administration procedures applicable in Kenya are extremely cumbersome, ambiguous and open to abuse. Land information systems are completely inadequate. A more efficient, transparent and affordable land delivery system is urgently

required to ensure equity in the distribution of urban land and prevent the development of informal settlements in future.

To achieve this, the Commissioner of Lands in liaison with Nairobi City Council should review, consolidate and streamline land laws and expedite registration of land and issuance of titles. The introduction of computer-based land information systems would also help to simplify and speed up the registration process.

In addition, in order to ensure transparency and fairness, the responsibility for plot allocation should be decentralised to the local level.

Introduce a participatory approach to physical planning and upgrading of settlements

Once the settlements have been recognised and a suitable tenure system selected, the physical upgrading process should be undertaken largely by the residents themselves with support from the relevant authorities.

Not all settlements will be suitable for upgrading and some relocation may be necessary. Relocation of residents to new sites may also result from the need to move structures to make way for improved services or community facilities in the recognised settlements. This relocation should be carried out in the least painful way possible and with the full participation of the affected residents. It will also be necessary to identify overspill sites in advance.

The adoption of appropriate and affordable technologies for the development of infrastructural services in informal settlements will have a very positive effect on socio-economic development. Improving accessibility and the provision of electricity will have a beneficial impact on productivity as existing enterprises will be able to upgrade their operations and become more efficient. Many income-earning opportunities will also be created through the application of labour-intensive methods to construct and maintain access roads and drainage. The same is also true for other services such as water supply.

Make suitable land available for low-income housing development

The population of the city will continue to grow and the demand for housing from low-income groups will continue to increase. It is necessary therefore to put in place mechanisms to ensure that suitable housing for the low-income majority of the population can be provided in sufficient quantity to prevent the future development of informal settlements.

To achieve this, several management tools will be necessary:

- A detailed inventory of informal settlements in the city based on both ground surveys and aerial photography to provide a definitive regulatory baseline for "legitimising" existing and preventing the development of new informal settlements (an updated version of the 1993 inventory could serve this purpose).
- An inventory of existing land in the city in order to establish ownership patterns and suitability for development of new low-income housing.
- A review of the physical growth strategy of greater Nairobi.
- Rapid provision and allocation of land to be developed in public/private partnerships so as to provide shelter in quantities sufficient to maintain rents at affordable levels.

- Balanced development of middle and low-income housing to prevent pressure on low-income housing from higher income groups.

Introduce appropriate development standards

The introduction of appropriate planning, shelter and infrastructure standards is essential to enable the low-income majority of the population to improve their living environment. The standards should not only safeguard public health but should also be affordable. More flexible and lower standards and simpler procedures will enable greater access to legal housing for potentially large numbers, and will stimulate the informal building sector which is likely to increase jobs and income.

When improving existing or designing new infrastructural services, planning standards should not be imposed regardless of the realities of the situation. Residents should participate in identifying the type and level of infrastructure they require to ensure that it is affordable and suitable to their needs.

NCC is in the process of adopting the revised building standards commonly referred to as Code 95. As Code 95 covers only those amendments of the building code which can be effected without amending existing legislation, a more comprehensive review of planning, infrastructure and building standards is still required.

As part of the process it will be necessary to promote appropriate building and infrastructure technologies and standards. This could be through demonstration on for example public buildings, leaflets, Shelter Forum or NATIS information service, technical assistance, etc.

Mobilize local resources for low-income housing

Lessons learnt over the past 20 years show that borrowing hard currency to finance low-income housing development is not always appropriate. Firstly the import content on appropriate low-income housing is almost nil. Secondly, reliance on foreign loans and grants to finance housing has the effect of retarding local capital resources. It is therefore prudent for GOK and NCC to begin examining the mobilisation of local financial resources to support low-income housing and appropriate urban development. Options open to NCC with necessary GOK support include:

- Liquidating all existing NCC housing stock and mortgage portfolios and reinvesting the proceeds in affordable mortgages through housing finance institutions. Such mortgages can be used to upgrade existing housing in informal settlements or to develop new housing. Innovative approaches such as NACHU's Housing Rehabilitation Programme and the Community Housing Mortgage Programme, used by NACHU in the Kariobangi project, will be invaluable here.
- Exploring other savings and lending instruments which would be appropriate to housing the low-income.
- Encouraging similar investments by large financial institutions such as the NSSF.
- Issuing tightly managed municipal bonds, possibly with externally backed local currency guarantees.
- Securing from the Government and the Kenya Revenue Authority, exemptions from business and other taxes for developers of genuine low-income housing."

I think future elaboration of the strategy could take into account some of the ideas in MoC.

It seems that the problems presented are not so much in the analysis but in implementing these approaches in situations where elites within the bell-jars are protecting their vested interests. I hope I am not over-simplifying the argument but it seems to me that MoC is saying that in most situations, using subtly appropriate strategies, change can be effected. I agree with the MoC that for change to take place there has to be incentives for those with vested interests to cooperate *if* change is to take place *within* the existing system. However, this may be over-optimistic for a number of countries with ossified leadership which has no vision. I liked the example of barking dogs given in Indonesia (with ref. to boundary identification) but I wonder whether anything actually happened there afterwards.

The poor (if not the very poor) do have some access to various programmes extending micro-credit to small businesses. Indeed, one such programme, K-Rep, has recently incorporated as a bank. Many of these programmes work on the conceptual basis of the Grameen approach using peer pressure (an guarantee) as collateral for loans. As in most other sub-Saharan African countries social security resides mainly within the extended family, clan, and tribal networks augmented by churches and other social groupings. These groupings can be very strong but the situation can be desperate for those without these connections.

Comments with Relation to Swaziland

Finally, a vignette of my experience in Swaziland may be relevant. We made an initial attempt to define a strategy for peri-urban areas as the government is concerned that uncontrolled growth in the corridor between Mbabane (the capital) and Manzini (the commercial centre) is uncontrolled and leading to environmental problems. Urban areas in Swaziland largely have 'conventional' land titling. Peri-urban and rural areas have customary land ownership and management although in peri-urban areas the reciprocal obligations of customary ownership are breaking down with the influence of a market economy. We developed a draft strategy together with the principal stakeholders which tried to use traditional tenure arrangements as a point of departure but which was more based on community participation and less on the power of 'traditional authorities'. In the short-term at least the strategy process was blocked as the traditional authorities saw the strategy as a threat to their power. Again, this description is an over-simplification of work that went on over a three-year period.

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